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.

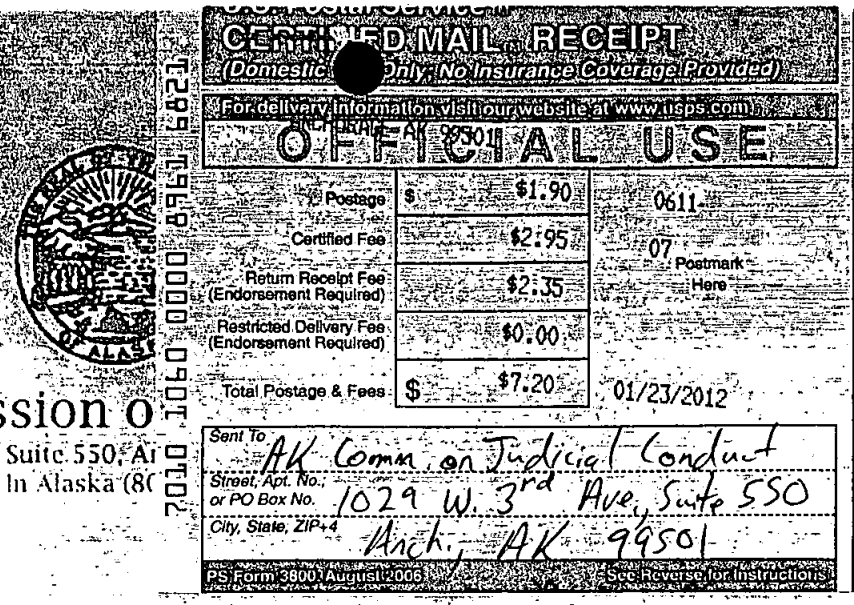
The attached copy of the 1-13-12 Motion to Disqualify Judge Bauman for Cause (Corruption) identifies other court records proving Judge Bauman committed perjury and provides evidence why he did so and that he did so knowingly.

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.
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(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.
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(907) 277-8002 fax

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

Brent R. Cole, Esq.
Law Offices of Marston & Cole, P.C.
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(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

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Brent R. Cole, Esq.
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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.

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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

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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

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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.

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Anchorage, Alaska 99501
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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

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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

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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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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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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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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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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
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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~~ big game ☐ 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

[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: [illegible] DA, Robinson 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

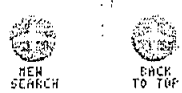

EXHIBIT 4
PAGE 14 OF 14 Page 3 of 3

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

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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

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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.

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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

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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

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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:

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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

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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,

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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

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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

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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

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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

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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

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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.

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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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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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& 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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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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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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> 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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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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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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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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"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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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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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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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

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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

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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

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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
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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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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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[35] *Shaw v. State, Dept. of Admin., Public Defender Agency*, 816 P.2d 1358, 1360-61 (Alaska 1991).

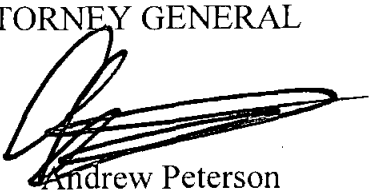
[36] *Hurd v. State*, 107 P.3d 314, 328-29 (Alaska 2005). Motion and Memorandum to Permit Filing of Supplemental Class Action Complaint, p. 3.

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: 
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Assistant Attorney General

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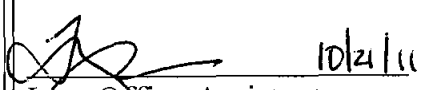
I certify that I am employed by the Office of the Attorney General, Anchorage, Alaska and that on this date, I caused to be served a true and correct copy of the above document by U.S. mail, postage prepaid, on the following:

Michael W. Flanigan
Flanigan & Bataille
1029 W. 3rd Avenue, Suite
250
Anchorage, AK 99501


10/24/11
Law Office Assistant

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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:

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_____ 10/17/11
Tina Osgood Dated

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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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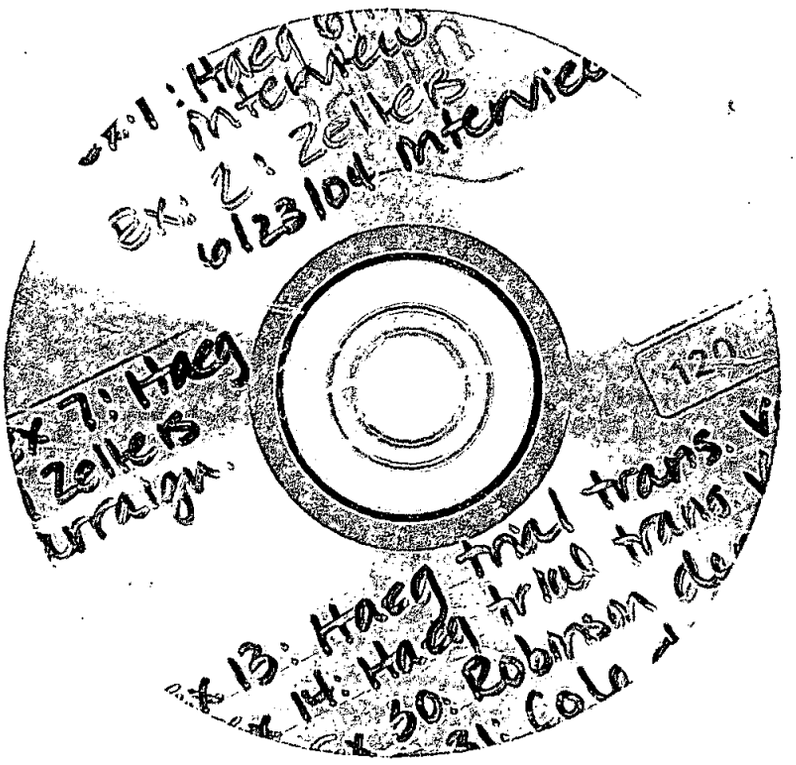
Ex. 1: Haeg interview
Ex. 2: Zellers
6/23/04 interview
Ex. 7: Haeg
Zellers
arraign
120
Ex. 13: Haeg trial trans.
Ex. 14: Haeg trial trans.
Ex. 30: Robinson
Ex. 31: Cole

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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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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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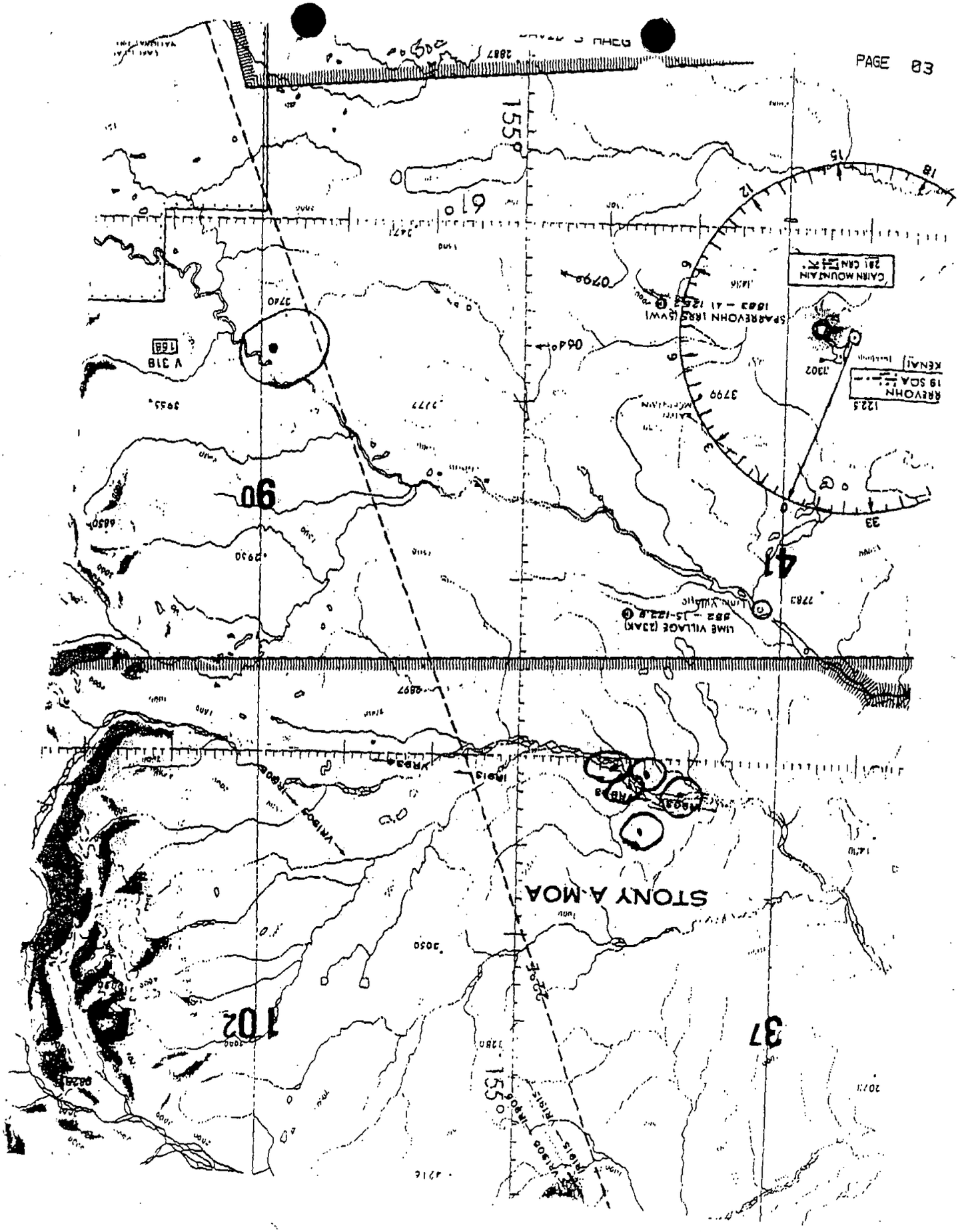

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EXHIBIT A
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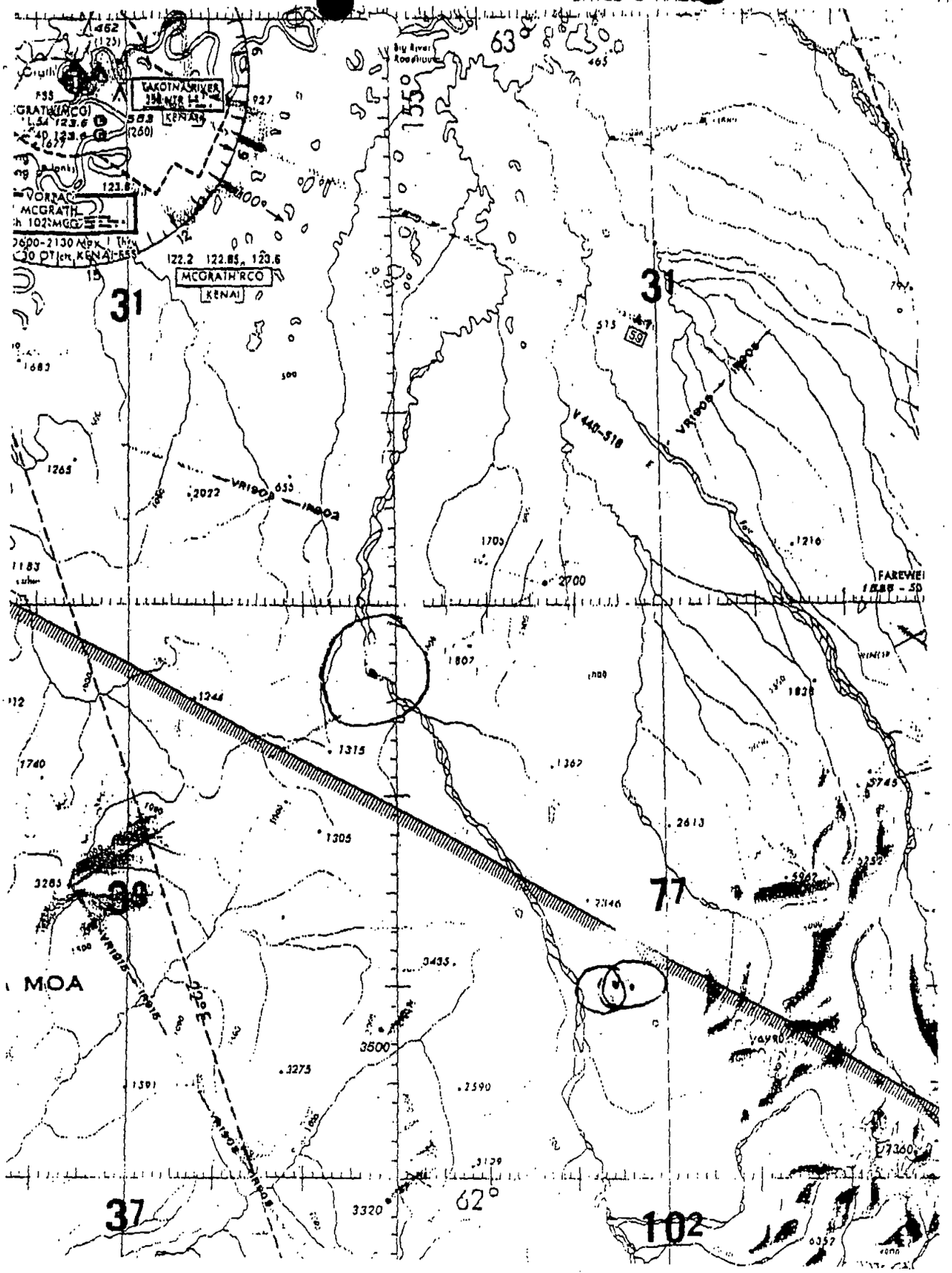

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1 1339

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
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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

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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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1 0650

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
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TELEPHONE (907) 277-8001
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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
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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
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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 Haeg

ADDRESS

SOLD BY	CASH	C.O.D.	CHARGE	ON ACCT.	MDSE. RET'D.	PAID OUT

QTY.	DESCRIPTION	PRICE	AMOUNT
2	wolf skulls	35 each	
	bag + white		
1	wolverine	35	
1	marten	10	
	9 wolf skulls + total [illegible]		
	+	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

Attachment Page 4 of 6

EXHIBIT 25

PAGE 13 OF 15

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

EXHIBIT 25
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

EXHIBIT 26
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

EXHIBIT 26
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 #____.

Page 6 of 6
CR-705 (11/83) (st,4)
AFFIDAVIT FOR SEARCH WARRANT

AS 12.35.010-.120
Crim. R. 37

EXHIBIT 26
PAGE 6 OF 10

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
Page 1 of 6

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
Page 2 of 6

EXHIBIT 26
PAGE 8 OF 11

02499

STATE OF ALASKA
Department of Fish and Game

5:00 pm

Permit to Take Wolf Using Aircraft
Gunner Permit
– OVERLAY –

Control Project ID: [redacted]
Control Area: Unit 19D East
Year: 2003-2004
Permit: 13

Tony	R.	Zellers	
9420 Subsistence Circle	Eagle River	AK	99577
SA Physical Address	Eagle River	696-2319	
MC Town, airport, or specific locality	4011 M	PA-12 Eagle & 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 3 of 6

MAR. 31 2004 02:54PM PS PHONE NO. : 9072524577S FROM : MCGREGTHELP

EXHIBIT 26
PAGE 9 OF 11

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 specific information: as minimum 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 additional 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 acrobatic flight, flight time in Alaska, low-level (i.e., 500 feet or less) operations, type of airplane(s) flown and off-airport and ski-flying operations. Also, describe your ability and experience using an airplane to identify and follow wolf tracks in snow.

(Attach an additional sheet if necessary)

Completed applications may be mailed or faxed to:
ADF&G Division of Wildlife Conservation
P.O. Box 34828
Juneau, AK 99802
FAX (907) 465-4745
Application information (907) 465-4190

Attachment
Page 4 of 6

EXHIBIT 24
PAGE 10 OF 14

[illegible] Qualifications for Aerial Wolf Hunting in Unit 19 (McGrath) area:

Pilot Ratings and Qualifications

Commercial Pilot
Current Flight Instructor
Airplane Single Engine Land & Sea
Instrument [illegible]

[illegible] in Command Time: 7000 total hours with 6000 in a PA-18 Supercub or PA-12 Super Cruiser in low level [illegible] spotting, has held [illegible] trapping, hunting, guiding and hunting spotting. Over 3000 of these hours were inside of Unit 19. Learned to fly in the bush at age 15 and became a commercial pilot at age 17.

Is 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 navigation, 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 25 and is currently a licensed master big game guide in Unit 19 at age 36. 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

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

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 16 Pilot in Command Time: 650 hours
Unit 16 Second in Command Time: 250 hours

[illegible]

24 years landing and mapping experience with the last 5 years alreftt mapping 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 navigation.

Attachment 2

[illegible]

Attachment
Page 6 of 6

[illegible]

[illegible]

EXHIBIT 26
PAGE 12 OF 16

02503

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

~~SEARCH WARRANT~~ NO. 4MC-04-003SW

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: THE STATE OF ALASKA at , Alaska, specifically search and seize the N4011M, Piper PA-12 Super Cruiser aircraft wherever it may be located within the State of Alaska

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 CONTAINED WITHIN. CRANK CASE OIL SAMPLE, AND SPARE QUARTS OF OIL IN USE. 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, TAILWHEELS. ALSO SATTELITE TELEPHONE

SEARCH WARRANT NO. 4MC-04-0035W

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 EVID FAKE AS 11.56.610(a)(1)(3)(4)

[ ] 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

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 26
PAGE 14 OF 18

SEARCH WARRANT NO. 4MC-04-003 SW

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)

3-31-04
Date

Judge

7:44 ~~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: _____

RECEIPT AND INVENORY OF PROPERTY SEIZED

EXHIBIT 26
PAGE 15 OF 16

SEARCH WARRANT NO. 4MC-04-0035SW

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)

EXHIBIT 26
PAGE 16 OF 16

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT KENAI

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

Case No. 3KN-10-1295 CI

AFFIDAVIT

STATE OF ALASKA,	)	
	)	SS
THIRD JUDICIAL DISTRICT	)	

I, Scot Leaders, being first duly sworn upon oath, state and depose as follows:

1. I am an employee with the State of Alaska, Department of Law. Currently I am the Kenai District Attorney. In 2004, I was an assistant attorney general with the Office of Special Prosecutions and Appeals responsible for prosecuting

STATE OF ALASKA
OFFICE OF THE DISTRICT ATTORNEY
THIRD JUDICIAL DISTRICT
120 TRADING BAY RD., SUITE 200
KENAI, ALASKA 99611
PHONE: (907) 283-3131

statewide fish and game cases. My caseload included the case State v. Haeg, 4MC-04-24 CR. In January of 2005, I transferred to the Kenai District Attorney Office to serve as an assistant district attorney. Despite the transfer of positions, I continued to represent the State of Alaska in State v. Haeg, 4MC-04-24 CR based on my substantial prior involvement in the case.

2. In preparing to draft this affidavit, I reviewed the original Information filed in this case against Haeg and Zellers, the Amended information filed against both, the State's Rule 11 Offer Dated August 18, 2004, side A of the audio interview between David Haeg and the State on June 11, 2004, and a series of emails and letters exchanged between myself and Mr. Haeg's attorneys, both Brent Cole and Arthur Robinson, regarding criminal case 4MC-04-024 CR against Mr. Haeg.

3. Shortly after the Alaska State Troopers executed search warrants 4MC-04-002 SW and 4MC-04-003 SW to search Mr. Haeg's home, garage and airplane on April 1, 2004, I was contacted by attorney Brent Cole on behalf of Mr. Haeg. Mr. Cole informed me that Mr. Haeg was interested in working with the State to reach a resolution of any potential charges he may be facing from the investigation of wolves he had killed near McGrath. Cole asked me to delay filing any charges against Mr. Haeg so that that Haeg could fulfill the guiding contracts he had with clients (including out-of-state clients) for the spring bear season in 2004, and so that the parties could negotiate an agreement as to the charges and sentence to be imposed and then enter into the sentencing agreement at the time of the arraignment in the case.

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4. Based on Mr. Cole's request, I did not immediately file charges against Mr. Haeg or Mr. Zellers. Rather, I engaged in extensive negotiation discussions with Mr. Cole regarding exactly what charges to bring, and what the disposition of the charges would be. Several issues became the focus of these negotiations: 1) the exact charges to be filed against Mr. Haeg, 2) whether and to what extent Haeg's Big Game Guide License would be suspended or revoked, and 3) the disposition of Mr. Haeg's airplane that was seized during the investigation. Throughout the negotiations the State maintained that any agreement would require forfeiture of Haeg's airplane and a suspension or revocation of his Big Game Guide License.

5. As the parties negotiated the terms of the agreement, the specific charges that Haeg would plead to became significant because of the impact the charges would have on his Big Game Guide License. Specifically, the charging issue focused on exactly how the State would charge Mr. Haeg for his illegal taking of wolves from an airplane. The negotiations regarding the charges to be filed were significant because the offense of "same day airborne" as it is widely referred to, is, along with the offense of wasting of game, among the most serious of Alaska game violations. Because of their positions as big game guides, Haeg and Zellers were subject to prosecution under AS 08.74.720 which proscribes certain conduct by guides. As a self-regulating industry, guides are essentially held to a higher standard of conduct than non-guides for game violations they commit.

6. Under AS 08.74.720(a)(8)(A) a guide commits a crime by committing or aiding in the commission of a violation of guiding or hunting statutes or

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regulations. Because the taking of big game in Alaska with the use of an airplane is generally prohibited for all hunters per 5 AAC 92.085(8), Mr. Haeg was subject to being charged under AS 08.74.720(a)(8)(A). If convicted for a violation of AS 08.74.720(a)(8)(A), Haeg faced a mandatory Big Game Guide License suspension of one-to-five years per AS 08.74.720(f)(2).

7. However, in recognition of the seriousness of taking game the same day airborne, AS 08.74.720(a)(15) specifically proscribes guides from engaging in the conduct and establishes greater penalties than for other offenses under AS08.74.720. Under AS 08.74.720(f)(3) Haeg faced a minimum three year suspension of his Big Game Guide License, and the potential for a permanent revocation of the license if charged and convicted under AS 08.74.720(a)(15). Additionally, under AS 08.74.720(d) Haeg faced the potential of being charged with a felony for future conduct in violation of AS 08.74.720(a)(15) if convicted under that subsection for his conduct in 4MC-04-024 CR.

8. During the course of negotiations, the parties agreed to conduct a voluntary interview with Mr. Haeg regarding the alleged violations of the same day airborne taking of wolves and related unsworn falsification charges surrounding Haeg's involvement in the predator control program. Additionally, the State asked Mr. Haeg about an illegal moose kill that the State intended to present as part of sentencing.

9. The interview was a non-custodial interview in which Mr. Haeg was free to leave at any time. Trooper Gibbens stated this fact during the initial part of the interview. Haeg's attorney, Mr. Cole, was present with him during the interview.

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Additionally, Tom Stepnosky, Mr. Haeg's friend and camp manager was present during the interview. Mr. Haeg gave his statement as a means of showing his good faith intent to accept responsibility for his conduct, and to influence the State to resolve the matter in a manner favorable to him, including resolution of the matter on charges other than AS 08-74.720(a)(15) which would have required a minimum three year suspension of his Big Game Guide License. I believed the statement was made pursuant to settlement discussions. Consequently, I was operating under the belief that his statements could not be used against him at trial based on Alaska Rule of Evidence 410.

10. At no time did the State make Haeg an offer of immunity for his statements. This fact is made clear by the subsequent negotiations of the parties toward resolving Haeg's case through a Criminal Rule 11 agreement. Additionally, subsequent communications sent to the State by Mr. Cole support the fact that Haeg's interview was made pursuant to plea negotiations. Furthermore, at the time of the interview with Mr. Haeg I had served as a prosecutor for the State of Alaska for approximately six years. During that timeframe I had become well aware of the fact that I did not have authority to grant immunity for an individual's statements. Such authority is reserved for the Attorney General, or his designee, which throughout my now thirteen plus years as a prosecutor has always been a person among the highest ranking members of the Central Office of the Criminal Division of the Department of Law.

11. Haeg also provided the State with a map outlining the locations of the wolf kills. This map consisted of a photo copy of an aeronautical sectional chart. The map provided is attached as pages 5-6 of Exh. 17. This map was never utilized at

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trial nor was it entered into evidence. Rather, the State relied upon the full sized aeronautical sectional chart map belonging to Trooper Gibbens with markings created during his investigation. This map was admitted into evidence and marked as Trial Exh. 25. Tony Zellers supplemented the information on this map at trial by indicating other kill locations that were not discovered by Trooper Gibbens.

12. On or about August 18, 2004, I drafted a written offer to resolve Haeg's case. A copy of the offer is identified as Exhibit 3. The writing on the offer letter reflects subsequent negotiations between the parties. I sent an email update to troopers on September 1, 2004, outlining the fact that Haeg wanted to go open on the charges. This email indicates that the parties were still negotiating various possible resolutions to Mr. Haeg's case.

13. On or about November 4, 2004, I 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. The charges filed reflected the plea negotiations between the parties and my belief that Mr. Haeg had accepted the State's Rule 11 agreement. The charges did not reflect the charges that I intended to file absent a pending Rule 11 agreement. Specifically, the parties had negotiated that the State would pursue charges related to the aerial killing of the wolves under AS 08.74.720(a)(8)(A) rather than AS 08.77.720(a)(15) based on Haeg's agreement to the specific terms of the disposition of the charges and forfeiture of his airplane.

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14. After filing of the original information, but prior to the arraignment, I learned that Haeg no longer intended to plead in accordance with the Rule 11 agreement he had negotiated with the State. 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. I received this information in a telephone call with Mr. Cole after business hours on the night before the scheduled arraignment. Based on this information, and prior to the arraignment the next day, I filed an amended information with the charges I would have originally filed absent the Rule 11 agreement that had been reached through the pre-charging negotiations. 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. 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.

15. 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

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months, part of which was retroactive. Prior to filing the amended information, I advised Mr. Cole that if Mr. Haeg wanted to go open, he could go open to the charges originally contemplated by the State. Alternatively, the State's Rule 11 offer was still available to Mr. Haeg. This fact was made clear at Haeg's arraignment when I 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 terms of the State's Rule 11 offer.

16. The original information and the amended information both contain the exact same probable cause statement. 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.

17. Following Haeg's arraignment, I still believed that the parties would resolve the case according to the Rule 11 agreement. I stated this fact on the record and sent an email update on November 9, 2004, at 11:53:39 a.m. to troopers which outlined the current Rule 11 agreement. The email indicates that Haeg would be pleading to five counts consistent with the original information, that a jail sentence of 60 days with 55 suspended would be imposed per count, a fine of $1,000 with $500 suspended per count, 20 hours of community work service per count and a three year guide and personal hunting license suspension with two years suspended. The license suspension was to be retroactive to July 1, 2004. The Rule 11 offer also called for the

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forfeiture of Haeg's airplane. See Exh. 8. Thus, Haeg's license was to be reinstated on July 1, 2005, under the terms of the deal which was in place on November 9, 2004.

18. On December 3, 2004, I received a letter from Brent Cole, in which Mr. Cole informed me that he would no longer be representing Mr. Haeg. Cole asked for a taped copy of Mr. Haeg's interview. Exh. 9. Mr. Haeg subsequently hired attorney Arthur Robinson to represent him.

19. Haeg ultimately rejected 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. Exh. 11. This offer was similar to that originally negotiated with Mr. Cole, but the one year license revocation was no longer going to be partially retroactive.

20. Haeg ultimately rejected the State's Rule 11 offer that was extended through Mr. Robinson and elected to go to trial.

21. Prior to trial, Mr. Robinson requested an audible copy of the interview that David Haeg gave to the troopers. It is my recollection that a copy had previously been provided to Mr. Haeg's attorney based on Mr. Cole's December 2004 request, but was of poor quality. Because of the poor quality of the audio recording, I requested the original recording of the interview be sent to me for copying. The original copy was on a mini cassette tape. Upon receipt of the original it was sent to Typing, etc., a third party copying service, for the original to be copied onto standard size cassette tapes for both me and Mr. Robinson. According to billing receipts the copies were completed on May 16, 2005, right before the original start of the trial. Exhibit 12.

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I believe that Mr. Robinson was in possession of this additional copy of the original audio recording prior to the start of trial as he never mentioned at trial that he was still in need of an audible copy of the interview.

FURTHER YOUR AFFIANT SAYETH NOT.

DATED this 19 day of April, 2012, at Kenai, Alaska

By: _____
Scot Leaders
District Attorney
Alaska Bar No. 9711067

SUBSCRIBED AND SWORN to before me this 19 day of April, 2012.

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

State of Alaska
NOTARY PUBLIC
Mellinee Davis
My Commission Expires With Office

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IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT KENAI

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

Case No. 3KN-10-1295 CI

AFFIDAVIT

STATE OF ALASKA,	)	
	)	SS
THIRD JUDICIAL DISTRICT	)	

I, Brett Gibbens, being first duly sworn upon oath, state and depose as follows:

1. I have been employed by the State of Alaska, Department of Public Safety as an Alaska Wildlife Trooper since September 1997. I am currently stationed in McGrath. In 2004-2005, also as an Alaska Wildlife Trooper, I was stationed at McGrath.

2. In 2004, I was the case officer responsible for investigating the state's case against David Haeg.

3. On June 11, 2004, I was present with Scot Leaders, David Haeg, Brent Cole, and a friend/camp manager of David Haeg's for the purpose of interviewing

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Mr. Haeg. The interview was conducted in a non-custodial manner and Mr. Haeg was told that he was free to leave at any time. At no time did I ever hear Scot Leaders and/or Brent Cole discussing an immunity agreement that would apply to Haeg's interview. It was always my understanding that Mr. Haeg was giving a voluntary statement for the purposes of settlement negotiations.

4. I was the case officer for trial and present during the entire case. At no time during the trial or sentencing did I ever eat a meal with then Magistrate Murphy. There were times that we were in the same restaurant together or the same location, but we never ate a meal together.

5. It is not uncommon in McGrath for me to offer a ride to anyone walking from the airport. Due to the remoteness of McGrath and the limited option for transportation, it is possible that I gave Magistrate Murphy a ride, but I do not recall ever giving her a ride at this time. I believe that I may have given her a ride at some time in the past, but again cannot remember when this took place if at all.

6. I would never discuss a defendant's case with the judge outside of court and Haeg's case is no different.

7. I believe that at some point during one of the earlier trial proceedings, Judge Murphy stored a case of Diet Coke in the Trooper/VPSO Offices. At some point, I believe that I was asked to retrieve the Diet Coke for Judge Murphy, but I do not recall exactly when.

8. During the course of my investigation into the Haeg/Zeller matter, I utilized an aeronautical sectional chart to outline the location of wolf kills and other

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important locations that I found in the field. This map was admitted at trial as Exhibit 25. It contains a legend on the bottom which identifies all of the locations I marked on the map. It also contains a sticky note addition to the legend which identifies the information provided by Tony Zellers identifying locations A-E and Z. Pages 5 and 6 of Exhibit 17 are copies of the map that was provided to the state by Haeg. The maps provided by David Haeg were never utilized in trial to the best of my knowledge.

FURTHER YOUR AFFIANT SAYETH NOT.

DATED this 19th day of April, 2012, at McGRATH, Alaska

By: Brett A Gibbens
Brett Gibbens

SUBSCRIBED AND SWORN to before me this 19th day of April, 2012.

CRYSTAL COLLEY
My Commission Expires
NOTARY PUBLIC
May 18, 2013
STATE OF ALASKA

Crystal Colley
Notary Public in and for Alaska
My commission expires: w/office

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IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT ANCHORAGE

DAVID HAEG

Plaintiff,

vs.

STATE OF ALASKA,

Defendants.

Case No. 3KN-10-01295 CI

STATE OF ALASKA)
) ss.
THIRD JUDICIAL DISTRICT)

AFFIDAVIT OF JUDGE MARGARET L. MURPHY

Margaret L. Murphy, being duly sworn, deposes and says:

1. I am a District Court Judge for the State of Alaska. In that capacity I presided over the criminal trial of David Haeg in McGrath in 2005.

2. The trial occurred over the course of several months. Initial jury selection was on May 17-18, 2005, but trial was then continued due to the illness of defense counsel. Trial resumed on July 26 and the jury returned a verdict on July 29. The sentencing hearing occurred on September 29.

3. Other court personnel were in McGrath to assist with the trial during the May and July sessions. In May, Ms. Natalie Alexie, the Clerk of Court for Bethel, acted as the in-court. In July, Ms. Lillian Markus, Judicial Assistant from Bethel, acted as the in-court, and Magistrate David Woodmancy, the Magistrate for the Aniak and McGrath courts, also assisted.

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4. I ate my meals either with these other court personnel or alone. I do recall that in May we ate at a restaurant where state troopers were also present, but we did not eat with them. During the July session I ate all my meals either at the Takusko House, where I was staying, or in the court office in the Captain Snow Center. I believe there were troopers staying at the Takusko House at the same time, but I never ate meals with them or otherwise socialized with them. In September, I ate at the court office by myself. I never had a meal with Trooper Gibbens during the Haeg trial or at any other time.

5. Since there is no public transportation in McGrath, we did, on occasion, use state vehicles belonging to the troopers. In May, after trial was continued, we used a state vehicle to run some court-related errands. In July, the troopers loaned Magistrate Woodmancy a state-owned ATV, which he used to run errands such as getting our meals and getting snacks and drinks for the jurors.

6. In September, I got a ride from the airport to the court from VPSO Parker, who had no involvement in the Haeg case. After the sentencing hearing was over, I asked Trooper Gibbens for a ride back to my hotel. It was 1:30 a.m., cold, dark, and snowing, and a walk back to the hotel would have taken me past two open bars. I asked for the ride because of concerns for my personal safety. Trooper Gibbens and I did not speak about the Haeg case during the brief ride to the hotel. I did not speak to him or to any other trooper about the Haeg case at any time outside of open court.

7. The transcript of the sentencing hearing does imply that Trooper Gibbens gave me another ride during the sentencing hearing on September 29. However, I actually never left the Captain Snow Center from the time I arrived in McGrath, at about 10:00 in

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the morning, until after the hearing concluded sometime after 1:00 a.m. the next morning. The transcript shows that just before a break in the proceedings, I informed counsel for the parties, on the record, that I was "going to commandeer Trooper Gibbens and his vehicle" to take me to the store for some Diet Coke, since I had no other transportation. I expressly assured the parties that "I'm not going to talk about the case," and counsel made no objection. Before we left the building, however, Trooper Gibbens reminded me that I had left a 12-pack of Diet Coke in the building with one of the local public safety officers at the close of the July court session. He retrieved it for me, and so we did not go to the store after all.

8. The ride back to my hotel at the close of the sentencing hearing was the one and only time that Trooper Gibbens ever chauffeured me anywhere during the Haeg trial.

DATED this 18th day of April, 2012.

MARGARET L. MURPHY

SUBSCRIBED AND SWORN TO before me this 18th day of April, 2012.

Notary Public in and for Alaska
My Commission Expires: 6/10

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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 4-9-12 motion, for an extension of time, from 1 hour to 2 hours (from 2:30 pm to 4:30 pm on April 30, 2012), for oral argument on the state's first motion to dismiss, is hereby GRANTED / ~~DENIED~~.

Done at Kenai, Alaska, this 11th day of April, 2012.

CARL BAUMAN
Superior Court Judge

APR - 9 2012

CERTIFICATION OF DISTRIBUTION
I certify that a copy of the foregoing was mailed to the following at their addresses of record:
Haeg, Peterson
4-12-12 Roberts
Date Clerk

02524

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)

4-9-12 Non-Opposed Motion for Extension of Time for Oral Arguments

COMES NOW Applicant, David Haeg, and hereby files non-opposed motion for extension of time, from 1 hour to 2 hours, for oral argument on the state's first motion to dismiss.

Prior Proceedings

(1) On March 22, 2012 Judge Bauman held oral arguments on the state's second motion to dismiss, allowed further briefing on the corruption of Judge Murphy and Trooper Gibbens, and scheduled a 1 hour oral argument hearing, starting at 2:30 pm on April 30, 2012, on the state's first motion to dismiss. Although oral argument on March 22, 2012 was limited to 1 issue, the hearing went over the scheduled 1 hour.

(2) On April 6, 2012 Haeg contacted AAG Peterson who stated he would not oppose a request for more time, as he was sure the hearing would run long.

Discussion

Because the oral arguments on the state's second motion, concerning just one issue, went over 1 hour, it is clear that the oral argument hearing on the state's first motion to dismiss, concerning multiple issues, must be longer than 1 hour.

The state recognized this, stated it was sure the hearing would run longer than 1 hour, and stated it would not oppose Haeg's motion for more time.

Conclusion

In light of the above Haeg respectfully asks that the oral argument hearing on April 30, 2012 be extended to 2 hours – and run from 2:30 pm to 4:30 pm.

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.

United States Supreme Court in Monroe v. Pape, 365 U.S. 167 (1961):

"[T]he local administrations have been found inadequate or unwilling to apply the proper corrective. Combinations, darker than the night that hides them, conspiracies, wicked as the worst of felons could devise, have gone unwhipped of justice. Immunity is given to crime, and the records of the public tribunals are searched in vain for any evidence of effective redress.

[C]ertain States have denied to persons within their jurisdiction the equal protection of the laws. The proof on this point is voluminous and unquestionable... the State made no successful effort to bring the guilty to punishment or afford protection or redress to the outraged and innocent. The State, from lack of power or inclination, practically denied the equal protection of the law to these persons...those who representing a State in some capacity were unable or *unwilling* to enforce a state law.

[I]f secret combinations of men are allowed by the Executive to band together to deprive one class of citizens of their legal rights without a proper effort to discover, detect, and punish the violations of law and order, the State has not afforded to all its citizens the equal protection of the laws.

Whenever, then, there is a denial of equal protection by the State, the courts of justice of the nation stand with open doors, ready to receive and hear with impartial attention the complaints of those who are denied redress elsewhere. Here may come the weak and poor and downtrodden, with assurance that they shall be heard. Here may come the man smitten with many stripes and ask for redress. Here may come the nation, in her majesty, and demand the trial and punishment of offenders, when all, all other tribunals are closed. . . ."

The United States courts are further above mere local influence than the county courts; their judges can act with more independence, cannot be put under terror, as local judges can; their sympathies are not so nearly identified with those of the vicinage; the jurors are taken from the State, and not the neighborhood; they will be able to rise above prejudices or bad passions or terror more easily. The marshal, clothed with more power than the sheriff, can make arrests with certainty, and, with the aid of the General Government, can seize offenders in spite of any banded and combined resistance such as may be expected. Thus, at least, these men who disregard all law can be brought to trial.

Does the grim shadow of the State step into the national court, like a goblin, and terrify us? Does this harmless and helpless ghost drive us from that tribunal -- the State that mocks at justice, the State that licenses outlawry, the State that stands dumb when the lash and the torch and the pistol are lifted every night over the quiet citizen?" Monroe v. Pape, 365 U.S. 167 (U.S.Supreme Court 1961)

Haeg will prevail, no matter how many judges, prosecutors, troopers, or defense attorneys join the conspiracy to cover up, not because he is strong or

clever – it is because the axe he swings is named United States Constitution and as the forces against it grow it will burn brighter and brighter, calling all those sworn to protect it to its aid. And while a criminal conspiracy of judges, prosecutors, troopers, and defense attorneys is powerful indeed, our Constitution and those sworn to uphold it are far mightier still and will prevail. Our Constitution and the countless people who have died for it demand nothing less.

I declare under penalty of perjury the forgoing is true and correct. Executed on April 9, 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 April 9, 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 REGARDING FIRST MOTION TO DISMISS

At the oral argument on the State's second motion to dismiss, oral argument was scheduled on the first motion to dismiss. The State was given an opportunity to respond to Mr. Haeg's recent 245-page supplemental memorandum, which focuses primarily on his ineffective assistance of counsel claims. Mr. Haeg was permitted to supplement his supplement with points regarding the Judge Murphy/Trooper Gibbens contacts as regards any effect on the trial and sentencing. The court ordered the State to submit, prior to the oral argument, (1) the terms and conditions of the alleged immunity agreement regarding the 5-hour statement/interview given by Haeg to the prosecutor and Trooper Gibbens, (2) the terms and conditions of the plea negotiations (meaning the final version by the respective sides, before and after the statement by Haeg), and (3) the map allegedly made by Haeg that was used or admitted into evidence at trial.

In addition to the foregoing, in their responsive memorandum, both parties are requested to address the recent U.S. Supreme Court decisions in Missouri v. Frye, No. 10-444 (March 21, 2012) and Lafler v. Cooper, No. 10-209 (March 21, 2012), as regards the plea

negotiation related issues in this case. Please include your position on whether either of the two new U.S. Supreme Court cases have any effect on the following portion of the Court of Appeals decision in the Haeg appeal:

> Haeg's claim that the district court erred by failing to inquire about plea negotiations
>
> Haeg argues that Judge Murphy should have asked the parties about the failed plea negotiations. If Haeg believed that he had an enforceable plea agreement with the State, he was entitled to ask the district court to enforce it.[FN20] But we are aware of no requirement that a trial court in a criminal case, without a motion or request from the parties, must ask why plea negotiations failed. We conclude that Haeg has not shown that any error occurred.
>
> FN20. See *State v. Jones*, 751 P.2d 1379, 1381 (Alaska App.1988).

Dated at Kenai, Alaska, this 2nd day of April, 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
4-2-12 Roberts
Date 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)

3-29-12 JUDGE MURPHY/TROOPER GIBBENS MEMORANDUM

COMES NOW Applicant, David Haeg, and hereby files this Judge Murphy/Trooper Gibbens memorandum. Haeg also wishes to remind the court of Criminal Rule 35.1(f)(1):

"In considering a pro se application the court shall consider substance and disregard defects of form…"

In spite of this rule pro se (without an attorney) Haeg has been consistently held to a higher standard of form then the state attorneys – and this perversion has been consistently used to hamstring Haeg's efforts for 8 years.

Incorporation

To make his case of Judge Murphy's pervasive bias, corruption, and conspiracy (along with that of Trooper Gibbens) Haeg incorporates and relies upon Superior Court Judge Stephanie Joannides decisions disqualifying Judge Murphy for cause; Judge Joannides' 43 and 77 pages referrals to the Alaska

Commission on Judicial Conduct – which certified the evidence of Judge Murphy, Trooper Gibbens and judicial conduct investigator Marla Greenstein's corruption and conspiracy; Haeg's original PCR application, including its supporting 43-page memorandum, exhibits, and affidavits; and motions to supplement Haeg's PCR with claims and evidence.

Prior Proceedings

(1) On November 21, 2009 Haeg filed a 19-page post-conviction relief (PCR) application; a 43-page memorandum detailing the specific instances, dates, proof, and prejudice requiring PCR; 310-pages of exhibits proving Haeg must be granted PCR; and 9 affidavits proving Haeg must be granted PCR.

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

(3) On January 3, 2012 (over 2 years after Haeg filed for PCR) Superior Court Judge Carl Bauman (without the required an asked for oral arguments), ruled on the states motion to dismiss - ruling that Haeg had not made a "prima facie" case of the corruption of Judge Murphy (who presided over Haeg's prosecution) and Trooper Gibbens (the main witness against Haeg); dismissed most of Haeg's claims as too weak (including claims of corruption and conspiracy already certified as true by Superior Court Judge Stephanie Joannides); gutted the substance of those that remained; and ordered Haeg, by February 29, 2012, to depose Cole and to file a second PCR 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 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." (When Haeg never claimed that Judge Murphy and Trooper Gibbens' corruption only affected his sentence – Haeg claimed it affected his entire prosecution – including trial.)

(4) On January 12, 2012 the state filed a second motion to dismiss.

(5) On January 13, 2012 Haeg filed a motion that Judge Bauman must be disqualified for corruption and that his orders must be stricken from the record – and provided irrefutable proof Judge Bauman was not only corruptly covering up for those already criminally implicated in Haeg's prosecution but was also falsifying sworn affidavits to corruptly delay the resolution of Haeg's now 8-year-long case.

(6) On January 23, 2012 Haeg filed a motion to supplement the evidence against Judge Bauman with proof that Judge Bauman, only after he knew he had been caught falsifying sworn affidavits, started backdating official court orders to illegally and corruptly exonerate himself. Also on January 23, 2012 Haeg filed felony criminal and judicial conduct complaints against Judge Bauman regarding the forgoing and included these in his motion to supplement the record.

(7) On February 3, 2012 Judge Bauman denied Haeg's motion that Judge Bauman must disqualify himself and strike his own January 3, 2012 orders.

(8) On February 3, 2012 Kenai Superior Court Judge Anna Moran was assigned to review Judge Bauman's decision not to disqualify himself for cause. Haeg was only given notice of this assignment nearly a month later (on March 2, 2012) - after he filed a motion for an evidentiary hearing and oral argument on Judge Bauman's refusal to disqualify himself for cause.

(9) On March 12, 2012 Judge Moran upheld Judge Bauman's refusal to disqualify himself for cause except for Haeg's claim regarding the felony criminal complaint and judicial conduct complaint Haeg filed against Judge Bauman.

(10) On March 14, 201 Judge Bauman ruled that the felony criminal complaint and judicial conduct complaint Haeg filed against him would not affect him and he could be fair and impartial toward Haeg.

(11) On March 22, 2012 Judge Bauman held oral arguments on the state's second motion to dismiss, allowed further briefing on the corruption of Judge Murphy and Trooper Gibbens, and scheduled oral argument on the state's first motion to dismiss – even though Judge Bauman has already ruled on this motion without having held the required oral argument.

Discussion

Although a "prima facie" case has already been made of the corruption of Judge Murphy and Trooper Gibbens during Haeg's trial and sentencing (see Judge Joannides dismissal of Judge Murphy for cause, Judge Joannides' 43 and 77 page ACJC referrals certifying the evidence of Judge Murphy, Trooper Gibbens, and Marla Greenstein's corruption/conspiracy, and Haeg's original PCR application,

memorandum, affidavits, and exhibits) Haeg will again point out the facts supporting his claim of corruption and how it harmed him.

To make a "prima facie" case for post-conviction relief all Haeg must do is claim facts that, if true, would entitle Haeg to relief. In deciding if Haeg met this burden a court may only consider Haeg's claims, must take them as true, and must give no consideration to the state's claims. See State v. Jones, 759 P.2d 558 (AK 1988)

Facts

(1) The wolf control program is one of the our nation's most controversial wildlife management programs – sparking nationwide boycotts of Alaska tourism by animal rights activists to stop it.

(2) The Alaska Board of Game, the government officials who started and ran the wolf control program, have testified they received numerous death threats by people wishing to stop the program. See court record and Haeg's PCR exhibits.

(3) Before trial and at Haeg's insistence, attorney Brent Cole sent the court (Judge Murphy) Haeg's letter explaining that the state told Haeg it was for the greater good of the state for Haeg to take wolves wherever he could find them but claim they had been taken in the wolf control program area. See court record and Haeg's PCR exhibits. During Cole's deposition he testified that Haeg provided this letter and that he (Cole) sent this letter to the court. See deposition. Cole even confirmed the fax cover sheet he used to send Haeg's letter to Judge

Murphy. See Cole's deposition. Yet all that remains in the official court record is Cole's fax cover sheet, signed into the court record by Judge Murphy, proving Haeg's letter was received by the court – yet Haeg's letter is missing from the court record – proving that someone with access to the court record (Judge Murphy at the time) had removed the evidence in Haeg's defense. See court record and Haeg's PCR exhibits.

(4) State Trooper Gibbens has stated that Alaska's governor had put himself on the line for the program and that Haeg was giving the animal right activists ammunition to shut the program down. See attached email of a recording of Trooper Gibbens in tape #4MC-304-24.

(5) Haeg's attorneys have testified that the governor had placed enormous pressure on Judge Murphy and the prosecution to make an example of Haeg to protect the program. See Cole deposition and Haeg's PCR exhibits.

(6) Haeg's attorneys have testified the state would punish Haeg's attorneys if they advocated for Haeg. See Cole deposition and Haeg's PCR exhibits.

(7) Haeg's attorneys have testified Judge Murphy was "a prosecuting judge and not the independent, judicial type you're supposed to have." See Robinson's deposition and Haeg's PCR exhibits.

(8) McGrath is not on a road system, has a population of 337, and has no taxi service or car rental companies.

(9) Judge Murphy flew into McGrath from Aniak, state Trooper Gibbens picked her up at the airport and chauffeured her everywhere every morning, noon, and night of Haeg's trial and sentencing – which took place in McGrath. In addition to the chauffeuring Judge Murphy and Trooper Gibbens were seen having meals together. These round-the-clock favors to Judge Murphy (who was presiding over Haeg's prosecution at the time) by Trooper Gibbens (who was the main witness and investigator against Haeg at the time) resulted in Judge Murphy's pervasive bias toward Trooper Gibbens and the state and against Haeg. See court record, Judge Joannides disqualification of Judge Murphy for cause, Judge Joannides 43 and 77 page referrals to the Alaska Commission on Judicial Conduct, Robinson's deposition, and Haeg's PCR affidavits and exhibits.

(10) Trooper Gibbens presented all of his falsified affidavits (claiming the wolves were killed in the Game Management Unit that Haeg was allowed to guide in - when the state's own GPS coordinates proved they were killed in a Game Management Unit in which Haeg was not allowed to guide in) for search warrants to Judge Murphy and Judge Murphy granted Trooper Gibbens all 4 warrants he asked for. See court record and Haeg's PCR exhibits.

(11) Cole, Haeg's first attorney, testified under oath that the state gave Haeg "transactional immunity" in order to get a statement from Haeg. See Cole deposition and Haeg's PCR exhibits.

(12) Transactional immunity means that there can be no prosecution for the offense to which the compelled testimony relates. See Black's Law Dictionary.

(13) After being given transactional immunity Haeg was required to give Trooper Gibbens and prosecutor Leaders a 5-hour statement relating to everything Trooper Gibbens and prosecutor Leaders later prosecuted Haeg for. See court record, Cole's deposition, and Haeg's PCR exhibits. During this statement Haeg specifically told Trooper Gibbens and prosecutor Leaders that their evidence had been corruptly falsified to Haeg's guide area from an area Haeg was not allowed to guide.

(14) Before trial Haeg filed a motion that his wolf control permit and the wolf control program law prevented him from being charged with hunting guide violations (as the program by law precluded these charges). See court record. The state opposed by claiming Judge Murphy could not rule on this, as it was factual issue for the jury to decide. See court record. Judge Murphy agreed with the state, ruling that since this was a factual issue the jury would have to decide this. See court record. Yet just days later the state asked Judge Murphy for a protection order preventing Haeg from claiming the wolf control program permit and law protected him from hunting guide violations – claiming this issue was now a legal issue for Judge Murphy to decide. See court record. Unbelievably Judge Murphy agreed with a the state's 180 degree change in position – granting the state's protection order and stripping Haeg of the protection of the wolf control program/law – by claiming the very same issue she had previously ruled was a factual issue for the jury was now a legal issue for her to decide – all so she could corruptly keep Haeg from making this defense to his jury. In other words, to keep

Haeg from using his participation in the wolf control program as a defense, Judge Murphy (at the state's urging) made two rulings that were incompatible and in exact opposition with each other.

(15) Before trial Haeg protested to Judge Murphy that the state was using his statement to prosecute him – a violation of Haeg's constitutional right against self- incrimination. See court record. Yet Judge Murphy did nothing to stop or even investigate this clear violation of Haeg's most basic constitutional rights (see court record) – as her oath of office and judicial canons required her to do. See judicial oath of office and judicial canons.

(16) Prosecutor Leaders argument to convict Haeg of hunting guide violations was that Haeg was killing wolves to benefit his guide business area. See court record.

(17) During Haeg's trial prosecutor Leaders, even though he had already been told and shown that the wolves had not been killed in Haeg's guide area, solicited and accepted state Trooper Gibbens sworn false testimony that Haeg had killed the wolves in Haeg's guide area. See court record and Haeg's PCR exhibits. Only at Haeg's furious insistence was state Trooper Gibbens forced to admit he knew his testimony was false when he gave it – admitting none of the wolves were killed in Haeg's guide area (see court record, Robinson's deposition, and Haeg's PCR exhibits) – by definition felony perjury.

(18) The false sworn testimony that Gibbens knowingly presented to Judge Murphy and Haeg's jury was the exact same false testimony Trooper

Gibbens placed on all the affidavits he presented to Judge Murphy in order to seize evidence and the property Haeg used as the primary means to provide a livelihood for his family of 4. See court record and Haeg's PCR exhibits.

(19) Even though state Trooper Gibbens was proved to have committed felony perjury to her and Haeg's jury – in order to corruptly support the false case Haeg was killing wolves where he guided in order to benefit his business, Judge Murphy did absolutely nothing to sanction Trooper Gibbens or to cleanse his perjury from tainting Haeg's prosecution. See court record, Robinson's deposition, and Haeg's PCR exhibits.

(20) After Trooper Gibbens had admitted he knowingly falsified his sworn testimony to corruptly claim Haeg had killed the wolves in his guide area, prosecutor Leaders continued to argue Haeg had killed the wolves to benefit his guide area. See court record.

(21) Judge Murphy prevented Haeg from a jury instruction asking the jury if his wolf control permit and the wolf control law protected him from being convicted of hunting guide violations. See court record.

(22) Haeg was convicted of hunting guide violations and when Judge Murphy sentenced Haeg her specific reason for his severe sentence was that Haeg had killed most, if not all, the wolves in his guide area (see court record) – the exact falsehood Trooper Gibbens had presented to her in all his warrant affidavits and in his sworn testimony against Haeg at trial. This proves the taint of Gibbens

false testimony and proves Haeg's jury almost certainly also relied on this testimony which the state knew was false when they presented it to Haeg's jury.

(23) After Judge Murphy, using testimony she knew to be false, had sentenced him to nearly 2 years in jail, $19,500 fine, forfeiture of the property he used as the primary means to provide a livelihood, and to the complete destruction of his guide business, Haeg filed a complaint (of Judge Murphy and Trooper Gibbens' corruption) with Alaska Commission on Judicial Conduct investigator Marla Greenstein. See Judge Joannides disqualification of Judge Murphy for cause, Judge Joannides 43 and 77 page referrals to the ACJC, and Haeg's PCR exhibits.

(24) Immediately after Haeg was convicted Judge Murphy (who was a magistrate judge in Aniak during Haeg's trial) was promoted to district court judge of Homer – without ever having filed for this.

(25) During the official judicial conduct investigation by Marla Greenstein into Judge Murphy being chauffeured by Trooper Gibbens while Judge Murphy presided over Haeg's trial and sentencing, Judge Murphy and Trooper Gibbens testified that Trooper Gibbens did not chauffeur Judge Murphy until after Haeg was sentenced. See Judge Joannides disqualification of Judge Murphy for cause, Judge Joannides 43 and 77 page referrals to the ACJC, and Haeg's PCR exhibits.

(26) The official court record captured Judge Murphy and Trooper Gibbens themselves admitting the chauffeuring was taking place before Haeg was

sentenced - proving Judge Murphy and Trooper Gibbens' testimony, that no chauffeuring took place until after Haeg was sentenced, was irrefutably false. See court record.

(27) Alaska Commission on Judicial Conduct executive director and only investigator of Alaskan judges for the last 25 years, Marla Greenstein, falsified contacting every single witness to the chauffeuring that Haeg had provided at Greenstein's request - and then Greenstein completely and exactly falsified the testimony the witnesses would have provided had she actually contacted them – stating on tape that no one except Haeg had testified they had seen Trooper Gibbens chauffeuring Judge Murphy. See Judge Joannides disqualification of Judge Murphy for cause, Judge Joannides 43 and 77 page referrals to the ACJC, and Haeg's PCR exhibits.

(28) Marla Greenstein's falsification of all witness testimony exactly mirrored Judge Murphy and Trooper Gibbens' false testimony – proof the three of them conspired to do so. See Judge Joannides disqualification of Judge Murphy for cause, Judge Joannides 43 and 77 page referrals to the ACJC, and Haeg's PCR exhibits.

(29) Marla Greenstein completely exonerated Judge Murphy. See Judge Joannides disqualification of Judge Murphy for cause, Judge Joannides 43 and 77 page referrals to the ACJC, and Haeg's PCR exhibits.

(30) After Haeg filed for post-conviction relief, claiming in part the corruption of Judge Murphy, the state asked that Judge Murphy be assigned to decide the case against herself. See court record.

(31) Over Haeg's objections she could not decide the case against herself, Judge Murphy was assigned to decide Haeg's PCR application that claimed Judge Murphy was corrupt. See court record.

(32) Haeg filed a motion to disqualify Judge Murphy for cause, Judge Murphy denied this, and Superior Court Judge Stephanie Joannides was assigned to review Judge Murphy's refusal to disqualify herself. See court record.

(33) After reviewing the tape recordings of Judge Murphy, Trooper Gibbens, and Marla Greenstein, and the affidavits from all the witnesses that Greenstein had never contacted them (and that, had she contacted them, they would have all testified they had personally witnessed Trooper Gibbens chauffeuring Judge Murphy during Haeg's trial and sentencing) Judge Joannides reversed Judge Murphy's decision and disqualified Judge Murphy for cause. See Judge Joannides disqualification of Judge Murphy for cause, Judge Joannides 43 and 77 page referrals to the ACJC, and Haeg's PCR exhibits.

(34) Haeg filed an Alaskan Bar Association complaint that Marla Greenstein (an attorney licensed in Alaska) had falsified contacting every witness Haeg had provided for her judicial conduct investigation and had exactly falsified the testimony the witnesses would have given had she contacted them. See Haeg's motions to supplement his PCR application and exhibits.

(35) In her "verified" Bar response to Haeg's complaint Greenstein testified that, in addition to the witnesses Haeg had provided to the chauffeuring, she had also contacted Chuck Robinson, Haeg's trial and sentencing attorney. See Haeg's motions to supplement his PCR application and exhibits.

(36) Haeg contacted Robinson, and Robinson, on tape, testified that Greenstein had never contacted him and that he also personally remembered witnessing Trooper Gibbens chauffeuring Judge Murphy while she presided over Haeg's trial and sentencing. See Haeg's motions to supplement his PCR application and exhibits.

(37) During his deposition Robinson testified under oath that Greenstein had never contacted him about Trooper Gibbens chauffeuring Judge Murphy and that he personally seen the chauffeuring taking place. See Robinson deposition.

(38) Robinson testified that Trooper Gibbens chauffeuring Judge Murphy gave the appearance of bias but that Trooper Gibbens and Judge Murphy lying about the chauffeuring during the investigation into it was evidence of actual bias.

Law

"Justice must satisfy the appearance of justice." Offutt v. United States, 348 U.S. 11 (U.S. Supreme Court 1954)

"A fair trial in a fair tribunal is a basic requirement of due process. Fairness, of course, requires an absence of actual bias in the trial of cases. But our system of law has always endeavored to prevent even the probability of unfairness. Circumstances and relationships must be considered. This Court has said, however, that 'Every procedure which would offer a possible temptation to the average man as a judge . . . not to hold the balance nice, clear, and true between the State and the accused denies the latter due process of law.' Tumey v. Ohio, 273 U.S. 510 (U.S. Supreme Court 1927) Such a stringent rule may

sometimes bar trial by judges who have no actual bias and who would do their very best to weigh the scales of justice equally between contending parties. But, to perform its high function in the best way, 'justice must satisfy the appearance of justice.'" In re Murchison, 349 U.S. 133 (U.S. Supreme Court 1955) Withrow v. Larkin, 421 U.S. 35 (U.S. Supreme Court 1975)

"[T]he Due Process Clause clearly requires a 'fair trial in a fair tribunal.' Where specific allegations before the court show reason to believe that the petitioner may, if the facts are fully developed, be able to demonstrate that he is...entitled to relief, it is the duty of the courts to provide the necessary facilities and procedures for an adequate inquiry." Bracy v. Gramley, 520 U.S. 899 (U.S. Supreme Court 1997)

"[A] trial court must be ever mindful of the sensitive role it plays in a jury trial and avoid even the appearance of advocacy or partiality." United States v. Harris, 501 F.2d 1 (9th Cir. 1974)

[J]udicial rulings alone almost never constitute valid basis for a bias" Liteky v. United States, 510 U.S. 540 (U.S. Supreme Court 1994)

"[T]he 'appearance of justice' will best be served by vacating the decision an remanding for further proceedings." Aetna Life Ins. Co. v. Lavoie, 475 U.S. 813 (U.S. Supreme Court 1986)

"Even more critical, the court's conduct could have also created the erroneous impression that the court itself was not performing its impartial role." United States v. Foster, 500 F.2d 1241 (9th Cir. 1074)

"[A]s one who, in the eyes of the jury, occupies a position of preeminence and special persuasiveness, the district judge must be assiduous in performing his function as governor of the trial dispassionately, fairly and impartially." Pollard v. Fennell, 400 F.2d 421 (4th Cir. 1968)

"The trial court's role is especially sensitive in a jury trial. It must be ever mindful to eschew advocacy or the appearance of advocacy." United States v. Malcolm, 475 F.2d 420 (9th Cir. 1973) See also Blunt v. United States, 100 U.S. 266 (D.C. Cir. 1957)

"No matter what the evidence was against him, he had the right to have an imprtial judge." Tumey v. Ohio, 273 U.S. 510 (U.S. Supreme Court 1927)

Alaska Code of Judicial Conduct: Canon 2. A Judge Shall Avoid Impropriety and the Appearance of Impropriety in All of the Judge's Activities.

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. 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.

A judge must perform judicial duties impartially and fairly. A judge who manifests bias on any basis in a proceeding impairs the fairness of the proceeding and brings the judiciary into disrepute. Facial expression and body language, in addition to oral communication, can give others an appearance of judicial bias. A judge must be alert to avoid behavior that may be perceived as an expression of prejudice.

"[T]he dignity of the U.S. Government will not permit the conviction of any person on tainted testimony. The government of a strong and free nation does not need convictions based upon such testimony. It cannot afford to abide with them." Mesarosh v. U.S., 352 U.S. 1 (U.S. Supreme Court 1956)

"Conviction obtained through use of false evidence, known to be such by representatives of the State, is a denial of due process, and there is also a denial of due process, when the State, though not soliciting false evidence, allows it to go through uncorrected when it appears. Principle that a State may not knowingly use false evidence, including false testimony, to obtain a tainted conviction, implicit in any concept of ordered liberty, does not cease to apply merely because the false testimony goes only to the credibility of the witness." Napue v. Illinois, 360 U.S. 264 (U.S. Supreme Court 1959)

"Requirement of 'due process' is not satisfied by mere notice and hearing if state, through prosecuting officers acting on state's behalf, has contrived conviction through pretense of trial which in truth is used as means of depriving defendant of liberty through deliberate deception of court and jury by presentation of testimony known to be perjured, and in such case state's failure to afford

corrective judicial process to remedy the wrong when discovered by reasonable diligence would constitute deprivation of liberty without due process." Mooney v. Holohan, 294 U.S. 103 (U.S. Supreme Court 1935)

"The principle that a State may not knowingly use false evidence, including false testimony, to obtain a tainted conviction, [is] implicate in any concept of ordered liberty..." Giles v. Maryland, 386 U.S. 66 (U.S. Supreme Court 1967)

"We hold the Due Process Clause of the Fifth Amendment is violated when a defendant has to stand trial on an indictment which the government knows is based partially on perjured testimony..." United States v. Basurto, 497 F.2d 781 (9th Cir. 1974)

"[A]ll evidence obtained by searches & seizures in violation of the Federal Constitution is inadmissible in a criminal trial in a state. Nothing can destroy a government more quickly than its failure to observe its own laws, or worse, its disregard of the charter of its own existence." Mapp v. Ohio, 367 U.S. 643 (U.S. Supreme Court 1961)

"Once defendant has shown that specific statements in affidavit supporting search warrant are false, together with statement of reasons in support of assertion of falsehood, burden then shifts to State to show that statements were not intentionally or recklessly made." Lewis v. State, 9 P.3d 1028, (Ak.,2000)

"State & federal constitutional requirement that warrants issue only upon a showing of probable cause contains the implied mandate that the factual representations in the affidavit be truthful." State v. Davenport, 510 P.2d 78, (Ak.,1973)

"Misstatements on warrants were material and intentional, justifying suppression of evidence obtained through use of the warrants." State v. White, 707 P2d 271 (Ak., 1985)

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

"A defendant can be required to give an incriminating statement if he is granted immunity equal to that of the right against self-incrimination, as risk of

self-incrimination is removed." Counselman v. Hitchcock, 142 U.S. 547 (U.S. Supreme Court 1892)

The federal government holds that a defendant required to give a statement can still be prosecuted for actions referred to in the statement as long as there is no use whatsoever made of the statement. "The Government must do more than negate the taint; it must affirmatively prove that its evidence is derived from a legitimate source wholly independent of the compelled testimony." Kastigar v. United States, 406 U.S. 441 (U.S. Supreme Court 1972)

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

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

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

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

Finally, and most importantly, an ex parte review in appellate chambers is not the equivalent of the open adversary hearing contemplated by Kastigar. See United States v. Zielezinski, 740 F.2d 727, 734 (9th Cir.1984) Where immunized testimony is used... the prohibited act is simultaneous and coterminous with the presentation; indeed, they are one and the same. There is no independent violation

that can be remedied by a device such as the exclusionary rule: the...process itself is violated and corrupted, and the [information or trial] becomes indistinguishable from the constitutional and statutory transgression.

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

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

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

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

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

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

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

The second basis for our decision is that the state cannot meaningfully safeguard

against nonevidentiary use of compelled testimony. Nonevidentiary use "include assistance in focusing the investigation, deciding to initiate prosecution, refusing to plea-bargain, interpreting evidence, planning cross-examination, and otherwise generally planning trial strategy." United States v. McDaniel, 482 F.2d 305, 311 (8th Cir.1973). Innumerable people could come into contact with the compelled testimony, either through official duties or, in a particularly notorious case, through the media. Once persons come into contact with the compelled testimony they are incurably tainted for nonevidentiary purposes.

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

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

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

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

Discussion

Judge Murphy being chauffeured by Trooper Gibbens (the main witness against Haeg) and the "immense pressure" Cole testified was placed on her by high level state officials to make an example of Haeg was personal and had nothing to do with Judge Murphy's judicial duties. The chauffeuring of Judge Murphy (who was presiding over Haeg's case) by Trooper Gibbens (the main witness against Haeg) and their lying and conspiring to cover it up afterward violates all concept of "Justice must satisfy the appearance of justice"; "Every procedure which would offer a possible temptation to the average man as a judge . . . not to hold the balance nice, clear, and true between the State and the accused denies the latter due process of law." and that "[A] trial court must be ever mindful of the sensitive role it plays in a jury trial and avoid even the appearance of advocacy or partiality." That this corrupt influence affirmatively and pervasively biased Judge Murphy against Haeg is demonstrated by:

(1) Judge Murphy removing evidence out of the court record that would have exonerated Haeg.

(2) Judge Murphy, in order to deny Haeg's motion that the wolf control program law protected him from being charged with hunting guide charges, first ruling this was a factual issue for Haeg's jury to decide.

(3) Judge Murphy, in order to grant the state's protection order preventing Haeg from claiming the protection of the wolf control program law, afterward ruling this was a legal issue for her to decide – making two rulings just

days apart that were in exact opposition with each other - to prevent Haeg from presenting to his jury the very defense she said Haeg must present to his jury.

(4) Judge Murphy ignoring Haeg's claim and affidavit that the state was violating his constitutional right against self incrimination - when a judge's most important duty is to make sure a person's constitutional rights are not violated.

(5) Judge Murphy failing to sanction Trooper Gibbens or clean the taint from Haeg's trial after the irrefutable evidence that Trooper Gibbens had knowingly presented perjury to her and Haeg's jury in order to convict Haeg.

(6) Judge Murphy specifically using Trooper Gibbens admitted perjury as the reason for Haeg's severe sentence.

(7) Judge Murphy conspiring with Trooper Gibbens so their false testimony, that Trooper Gibbens did not chauffeur Judge Murphy until after Haeg was sentenced, agreed with each other.

(8) Judge Murphy conspiring with Marla Greenstein so Marla Greenstein's falsification of her investigation (of what Haeg's witnesses testified) agreed with Judge Murphy's false testimony.

Every single decision, order, action, and justification Judge Murphy made was against Haeg and for Trooper Gibbens and the state.

Conclusion

Any possible claim that Judge Murphy was not actually biased against Haeg, did not conspire with Trooper Gibbens to frame Haeg, or engage in ex parte (without Haeg's participation) discussion of Haeg's case (no doubt to organize

their framing of Haeg for hunting guide violations), is completely baseless because if there was no conspiracy against Haeg there would have been no reason for Judge Murphy and Trooper Gibbens to lie about the chauffeuring during the official investigation into it or to conspire with Marla Greenstein to cover everything up. In other words, if Judge Murphy and Trooper Gibbens had not conspired to deprive Haeg of a fair trial they would have never lied about what they did during Haeg's trial when this was investigated.

As a section chief with U.S. Department of Justice stated when Haeg was hand delivering the tape recordings proving the corruption and conspiracy of Judge Murphy, Trooper Gibbens, and Marla Greenstein:

"Its obvious why this cover up happened. No one in America would believe you got a fair trial if the main witness against you was chauffeuring your judge."

Longtime Alaskan attorney Dale Dolifka's sworn testimony to Superior Court Judge Joannides:

Mr. Haeg: Ok 'other than just an outright payoff of a judge or jury it is hard to imagine anyone being sold down the river more'?

Mr. Dolifka: I don't remember saying that but I – I might of.

Mr. Haeg: Ok -um- -uh-…

Mr. Dolifka: That could have been in the context of – of all of the – the little travels… I mean your stuff even with the proprieties that went on I'm so glad you got a new judge on this because one of the things that smelled so bad to – to lay people was all the stuff that you filed for new judge about. The judge riding around with the Trooper and commandeering vehicles. I mean that smelled to high heaven. Especially to non-lawyers. That was one of the things the community was most outraged was just…

Mr. Haeg: Well and not only that – that when I went to the single investigator of judicial conduct and I can prove she lied. I mean that and when she told me – well I guess I'm testifying but… Is the fact that she investigated and because she's been the only judicial investigator for 21 years and – and you reading the stuff should know she lied. Was that a concern?

Mr. Dolifka: Of course. I mean it was and it was… Look at the people that are here today. It was those things that became so troubling. Not only in your case but other cases down there. You would see this stuff and you would just go 'my god that cannot be…

Mr. Haeg: Ok.

Mr. Dolifka:…true'…

Mr. Haeg: Ok. Well let me – I'll just 'your end of the bargain was not met. It was heads I win tails you loose. You didn't even have to be a lawyer or you don't even have to be a lawyer to know inherently there's something wrong with that'.

Mr. Dolifka: I – I'm sure I said that and I still feel that way. That how you – when you went and told everything that you did thinking you had an agreement. Turns out you didn't have agreement and your charges got exponentially increased. That statement I made right there. I absolutely said it. I'm sure and I agree with it today….And I don't understand how you possibly had due process with regard to the seizure of your airplane. I have read it and read it and read it. I've - I could write a doctors brief on it and I can't – and – and I'm just wore out trying to figure it out. Cause I – I can't.

Mr. Haeg: Ok if I told – 'if you told a thousand ordinary citizens that for a deal you went in an spilled your guts and then never got the deal they would find that appalling. That's what smelled so bad to me'?

Mr. Dolifka: I'm sure I said that.

Mr. Haeg: -Um- 'the fruit of the poisonous tree started with the warrants which claimed all the evidence was found where you guide. The dominos should have all went down right there. That's what I thought Chuck would latch onto'?

Mr. Dolifka: Well yeah when – when I read your case and the lay people here read your case it appears that the whole the whole foundational things built on a lie. Unless we're all misreading it - it looks like it - it the whole deal about section this and all the affidavits. Everything had it. And then the hearing while it

wasn't that at all it – when I used it... And that was kind of odd thing to use as fruit of the poisonous tree. We all had that. For us old coots that was a common theory in law school. And once you poison something it's like a house without a foundation. So all the good folks that are here today that we would talk about – I think almost everyone goes back to that original seminal issue that how the hell did this case go on when it appears to lay people and to me a lot of it was built on a lie in a sworn affidavit?

Judge Joannides: And Mr. Haeg just want to tell you that this kind of information (undecipherable) is the kind of information that generally goes to PCR judge about the legal defects in the case.

Mr. Haeg: -Um- 'everyone in your case has had a political price to pay if they did right by you. If they did right by you the DA would take it out on them and other cases. Then you got the case of your lawyer and the other lawyer got hurt. You had a series of situations which everyone was doing things to protect everyone rather than you because there was a price to pay'?

Mr. Dolifka: I agree with that.

Mr. Haeg: Ok. -Um- 'your case has shades of Selma in the 60's. Where judges, sheriffs, and even assigned lawyers were all in cahoots together'?

Mr. Dolifka: Well I don't remember that but as a southerner I probably said that.

Mr. Haeg: Ok. 'Troopers at least didn't try to kill you like they did one of my other clients'?

Mr. Dolifka: I don't remember saying that but that doesn't mean I didn't.

Mr. Haeg: Ok. -Um- 'the attorneys of this state have banded together against you. Under no circumstances get another attorney in Alaska. Contact firms'... and I think you said Washington. 'Tell them that you have the goods on two law firms'?

Mr. Dolifka: Well I – I could have said that.

Mr. Haeg: Ok this actually is and I'm getting close to the end here -um- at least this. Did we come to you fairly recently to try work out how to pay off are credit card debts and have a meeting with you with me and my wife and Tom Stepnosky?

Mr. Dolifka: Not fairly. I haven't talked to you for a long - long time.

Mr. Haeg: Ok well was -uh- I when I say fairly recently 8-19-08 oh yeah 2 years ago. But anyway let me just see if you remember this. 'The reason why you have still not resolved your legal problems is corruption. I can tell you exactly what happened. In the early stages you were one of the first that I realized it was corruption. At first I thought it was ineptness. Over time in this journey with you here's a corrupt case here's a corrupt case and here's a corrupt case. Now here's what happens when they come up on appeal. You have a Supreme Court sitting there looking at a pile of dung and if they right by you and reveal you know you have the attorneys going down, you have the magistrates going down, you have the troopers going down. You are one small part of the pocket. A lot of lawyers would agree with me. The reason is all gummed up at the top. You're just one of many. It's absolute unadulterated self-bred corruption'?

Mr. Dolifka: If that was in that era down there I – I probably did say that. I – I was – I had got to such a point of cynicism that I – I was ready to throw in the towel.

Mr. Haeg: Ok and then you…

Mr. Dolifka: But I…

Mr. Haeg: …you gone on 'I talked to Judge Hanson about this. I talked to Judge Hanson for 3 hours about your case. I lean on him all the time. He now sees it. The system crushes them. I don't have any question now because I couldn't figure out why your appeal could be over and done with. I walked over here and lawyer A says my god they're violating every appeal rule ever. How can it be like this?'

Mr. Dolifka: Well I probably…

Mr. Haeg: Ok. I mean this is you know then you said 'I absolutely have no faith left in the system'?

Mr. Dolifka: During that time that I probably would have said that.

Proof this conspiracy is bigger than just Judge Murphy and Trooper Gibbens is the fact that judicial conduct investigator Marla Greenstein entered into the conspiracy to cover up what happened during Haeg's trial – and there is no

possible way the only investigator of judges in an entire state for the past 25 years would risk her job, reputation, law license, career, and freedom just to cover up for a magistrate-just made-district-court-judge and a bottom-of-the-rung-Trooper.

What Judge Murphy and Trooper Gibbens did corruptly changed the whole evidentiary picture from the state was fraudulently conducting the WCP to Haeg was a rogue guide out to feather his own nest. This completely protected the wolf control program at Haeg's expense – exactly as Haeg's attorneys have testified the state intended.

There is absolutely no doubt that Judge Murphy and Trooper Gibbens worked together to strip Haeg of his right to numerous basic constitutional rights:

(1) The right to due process, when the state told and induced Haeg to do exactly what he was charged with; when Judge Murphy removed this evidence out of the court record; when the state testified under oath the evidence was found where Haeg guided when they knew it was not; when Judge Murphy did nothing about this– especially when this specific evidence location was the state's justification for charges and conviction of Haeg; when Haeg was not given the required notice of a prompt hearing to contest the seizure and deprivation of property he used as the primary means to provide a livelihood; when the state and Judge Murphy refused to allow Haeg to bond out the property, that he used as his primary means to provide a livelihood, before being charged, prosecuted, or convicted; when the state and Judge Murphy stripped Haeg of the protection of the wolf control program law; and when the state prosecuted Haeg after given him

immunity, used his immunized statement to do so, and Judge Murphy did nothing after she was informed of the violation.

(2) The right against unreasonable searches and seizures, when the state and Judge Murphy knowingly and materially falsified search and seizure warrants/affidavits and then used the false warrants to search Haeg's home and seize Haeg's property.

(3) The right that no warrants shall issue, but on probable cause, supported by oath or affirmation, when the state and Judge Murphy used false oaths to issue warrants.

(4) The right against self–incrimination when the state prosecuted Haeg after giving him immunity - and then used his immunized statement to do so.

(5) The right to the equal protection of the laws when the state and Judge Murphy violated AS 12.50.101 and State of Alaska v. Gonzalez, 853 P2d 526 (1993) to prosecute Haeg for crimes referred to in his compelled statement; when the state and Judge Murphy violated AS 28.05.131 and Waiste v. State by not giving Haeg the required notice of the opportunity for a hearing after seizing the plane Haeg used to provide a livelihood, and when the state and Judge Murphy violated the wolf control law to prosecute Haeg for hunting guide violations.

(6) The right that no state shall deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws, when the state and Judge Murphy did all of the above.

Every person reading Judge Joannides referrals, reading Greenstein's "verified" Bar response, and listening to the recordings of Robinson unequivocally states that this ALONE means Haeg was deprived of a fair trial. They all agree that Judge Murphy and Trooper Gibbens' actions during Haeg's prosecution; their lying about it afterward and conspiring with Greenstein to cover it up; and Greenstein having to later yet falsify a "verified" document to continue the cover up, is, by itself, overwhelming proof of unacceptable corruption in Haeg's trial.

For one count of "unsworn" falsification (that the state told Haeg was in the state's best interest), Haeg, who had no prior criminal history whatsoever, was sentenced to 3 months in jail. Judge Murphy, Trooper Gibbens, and Greenstein will be going to jail for many years for their falsification (including "verified" falsification) to cover up that judges, state troopers and judicial conduct investigators are conspiring to framing U.S. citizens in violations of very nearly every civil right that is supposed to protect a citizen from government tyranny.

"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 the 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." United States National Archives and Records Administration

Judge Murphy, Trooper Gibbens, and Marla Greenstein's governmental corruption and conspiracy, to violate Haeg's civil rights as specifically guaranteed by our Constitution's "bill of rights", is an act of war against our entire nation.

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.

United States Supreme Court in Monroe v. Pape, 365 U.S. 167 (1961):

"[T]he local administrations have been found inadequate or unwilling to apply the proper corrective. Combinations, darker than the night that hides them, conspiracies, wicked as the worst of felons could devise, have gone unwhipped of justice. Immunity is given to crime, and the records of the public tribunals are searched in vain for any evidence of effective redress.

[C]ertain States have denied to persons within their jurisdiction the equal protection of the laws. The proof on this point is voluminous and unquestionable... the State made no successful effort to bring the guilty to punishment or afford protection or redress to the outraged and innocent. The State, from lack of power or inclination, practically denied the equal protection of the law to these persons...those who representing a State in some capacity were unable or *unwilling* to enforce a state law.

That the State courts in the several States have been unable to enforce the criminal laws of their respective States or to suppress the disorders existing, and, in fact, that the preservation of life and property in many sections of the country is beyond the power of the State government, is a sufficient reason why Congress should, so far as they have authority under the Constitution, enact the laws necessary for the protection of citizens of the United States.

[I]f secret combinations of men are allowed by the Executive to band together to deprive one class of citizens of their legal rights without a proper effort

to discover, detect, and punish the violations of law and order, the State has not afforded to all its citizens the equal protection of the laws.

Whenever, then, there is a denial of equal protection by the State, the courts of justice of the nation stand with open doors, ready to receive and hear with impartial attention the complaints of those who are denied redress elsewhere. Here may come the weak and poor and downtrodden, with assurance that they shall be heard. Here may come the man smitten with many stripes and ask for redress. Here may come the nation, in her majesty, and demand the trial and punishment of offenders, when all, all other tribunals are closed. . . ."

The United States courts are further above mere local influence than the county courts; their judges can act with more independence, cannot be put under terror, as local judges can; their sympathies are not so nearly identified with those of the vicinage; the jurors are taken from the State, and not the neighborhood; they will be able to rise above prejudices or bad passions or terror more easily. The marshal, clothed with more power than the sheriff, can make arrests with certainty, and, with the aid of the General Government, can seize offenders in spite of any banded and combined resistance such as may be expected. Thus, at least, these men who disregard all law can be brought to trial.

Does the grim shadow of the State step into the national court, like a goblin, and terrify us? Does this harmless and helpless ghost drive us from that tribunal -- the State that mocks at justice, the State that licenses outlawry, the State that stands dumb when the lash and the torch and the pistol are lifted every night over the quiet citizen?" Monroe v. Pape, 365 U.S. 167 (U.S.Supreme Court 1961)

Haeg will prevail, no matter how many judges, prosecutors, troopers, or defense attorneys join the conspiracy to cover up, not because he is strong or clever – it is because the axe he swings is named United States Constitution and as the forces against it grow it will burn brighter and brighter, calling all those sworn to protect it to its aid. And while a criminal conspiracy of judges, prosecutors, troopers, and defense attorneys is powerful indeed, our Constitution and those sworn to uphold it are far mightier still and will prevail. Our Constitution and the countless people who have died for it demand nothing less.

I declare under penalty of perjury the forgoing is true and correct. Executed on March 29, 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
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Certificate of Service: I certify that on March 29, 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:

Dave Haeg

From: "Dave Haeg" <haeg@alaska.net>
To: <ostermanlaw@alaska.net>
Sent: Tuesday, March 28, 2006 12:17 PM
Subject: Note from Dave haeg

Mark,

Just before trial Trooper Gibbens interviewed Lewis "Lucky" Egrass (possibly the most respected bush pilot and person in McGrath, Nikolai, & Takotna).

(Transcription of Tape #4MC-304-24)

Trooper Gibbens: Um- what are your concerns with regards to -uh- -uh- people who are issued Predator Control permits to participate in this - this wolf control project and they kill wolves outside of the wolf control area -um- what are your thoughts about that and - and what it might - **what affects it could have on the – on the project**?

Mr. Egrass: --- **I was told by you know -uh- yourself Officer Gibbens** --- the sensitivity you know of – of --- you know **this goes all the way up to the Governor – the Governors putting himself on the line**

Trooper Gibbens: Yeah (*under his breath, very quietly*).

Mr. Egrass: --- you know politically but -uh- ---

Trooper Gibbens: **Right yeah I would hate to see any – any -uh- ammunition giving to – given to the animal rights groups that are – that could potentially be used in the fight to get these programs shut down**.

I don't know if it is legal or ethical for Trooper Gibbens to be **telling** one of the most **respected** people in McGrath (population under 350), Nikolai (population 100), & Takotna's (population under 40) that what the State is charging me with, when my trial in McGrath, **is** going to "**shut down**" the Wolf Control Program that the villagers desperately need to help bring back a subsistence resource. What other reasons could Trooper Gibbens have for doing this other than **intentionally poisoning** the small jury pool that is **COMING FROM MCGRATH, NIKOLAI, AND TAKOTNA?**

Thanks,

Dave

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)

3-19-12 INEFFECTIVE ASSISTANCE OF COUNSEL MEMORANDUM

COMES NOW Applicant, David Haeg, and hereby files this ineffective assistance of counsel memorandum.

Incorporation of Original PCR Application and Memorandum

In the interested of keeping this memorandum as short as possible Haeg incorporates and relies upon his original PCR application, especially its supporting 43-page memorandum, and the supporting exhibits and affidavits (all filed on November 21, 2009) to establish why the attorney conduct meets both Risher standards –especially the prejudice requirement. *See* Risher v. State, 523 P.2d 421 (AK Supreme Ct 1974).

Prior Proceedings

On November 21, 2009 Haeg filed a 19-page post-conviction relief (PCR) application; a 43-page memorandum detailing the specific instances, dates, proof,

and prejudice requiring PCR; 310-pages of exhibits proving Haeg must be granted PCR; and 9 affidavits proving Haeg must be granted PCR.

(1) On January 3, 2012 (over 2 years after Haeg filed for PCR) Superior Court Judge Carl Bauman ruled that Haeg had not made a "prima facie" case of ineffective assistance of counsel; dismissed most of Haeg's claims as too weak (including claims of corruption and conspiracy already certified as true by Superior Court Judge Stephanie Joannides); gutted the substance of those that remained; and ordered Haeg, by February 29, 2012, to depose Cole and to file a second PCR 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 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." (When Haeg never claimed the Judge Murphy and Trooper Gibbens' corruption only affected his sentence – Haeg claimed it affected his entire prosecution – including trial.)

(2) On January 13, 2012 Haeg filed a motion that Judge Bauman must be disqualified for corruption and that his orders must be stricken from the record – and provided irrefutable proof Judge Bauman was not only corruptly covering up for those already criminally implicated in Haeg's prosecution but was also falsifying sworn affidavits to corruptly delay the resolution of Haeg's now 8-year-long case.

(3) On January 23, 2012 Haeg filed a motion to supplement the evidence against Judge Bauman with proof that Judge Bauman, only after he knew he had been caught falsifying sworn affidavits, started backdating official court orders to illegally and corruptly exonerate himself. Also on January 23, 2012 Haeg filed felony criminal and judicial conduct complaints against Judge Bauman regarding the forgoing and included these in his motion to supplement the record.

(4) On February 3, 2012 Judge Bauman denied Haeg's motion that Judge Bauman must disqualify himself and strike his own January 3, 2012 orders.

(5) On February 3, 2012 Kenai Superior Court Judge Anna Moran was assigned to review Judge Bauman's decision not to disqualify himself for cause. Haeg was only given notice of this assignment nearly a month later (on March 2, 2012) - after he filed a motion for an evidentiary hearing and oral argument on Judge Bauman's refusal to disqualify himself for cause.

(6) On March 12, 2012 Judge Moran upheld Judge Bauman's refusal to disqualify himself for cause except for Haeg's claim regarding the felony criminal complaint and judicial conduct complaint Haeg filed against Judge Bauman.

(7) On March 14, 201 Judge Bauman ruled that the felony criminal complaint and judicial conduct complaint Haeg filed against him would not affect him and he could be fair and impartial toward Haeg.

Discussion

Although Haeg provides below the requested references to the depositions and record it is irrefutable that Haeg has already made a "prima facie" case against

his former attorneys – which would then require an evidentiary hearing (trial by judge) in which Haeg could call witnesses and present evidence to prove his claims and in which the state could call witnesses and present evidence to defend.

To make a "prima facie" case of ineffective assistance all Haeg must do is claim facts that, if true, would entitle Haeg to relief and to ask his attorneys to provide an affidavit responding to these claims. Haeg has done both.

> "[I]f the application – whether in its original form or as augmented following notice of intent to dismiss – sets 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." State v. Jones, 759 .2d 558 (AK 1988).

> "It is true that, for purpose of determining whether a claim of ineffective assistance of counsel may be rejected summarily, without affording the defendant an opportunity for an evidentiary hearing, this court must provisionally accept as true any facts asserted by the defendant." Lott v. State, 836 P.2d 371 (AK 1992)

Among other claims just as compelling, Haeg claimed he had been given immunity to compel a statement about every aspect of the case against him, his attorneys lied to him so that could he be prosecuted when by law he could not be, and so that his statement could be used to do so.

Alaska law states that if you are given immunity to compel a statement you cannot ever be prosecuted for the events talked about in the statement – no matter what other evidence there is. *See* AS 12.50.101 and State of Alaska v. Gonzalez, P.2d 526 (AK Supreme Court 1993).

If the law prevented Haeg's prosecution and Haeg's attorneys lied to allow this to happen, it is clear that, on this issue alone, not only were Haeg's attorneys

deficient there was no doubt that this deficiency contributed to the outcome in Haeg's case. *See* Risher v. State, 523 P.2d421 (AK Supreme Court 1974)

Haeg provided an affidavit that he asked his attorneys for affidavits refuting this and other claims and his attorneys refused to do so - yet Judge Bauman claims Haeg has not shown what efforts were made to obtain affidavits.

Brent Cole Deposition

On February 7, 2012 Haeg's first attorney Cole was deposed (sworn under oath to tell the truth under penalty of perjury) at the Office of Special Prosecutions and Appeals, 310 K Street, Anchorage Alaska, 99501. At times during the deposition Cole's hands shook so hard he could hardly hold anything.

(1) In violation of Civil Rule 30(c), Cole, backed up by state attorney Peterson, refused to answer numerous questions – even when Haeg stated Cole was required to. Just some of which Cole refused to answer are: ever been arrested (for what); ever been convicted (for what); ever been sued (for what); did he meet with the state before the deposition (along with how many times, where they occurred, how long they lasted, and what was talked about); what he did to prepare for the deposition; if he talked to the state attorney or anyone else before the deposition (and what they talked about); did he read, or did anyone else read to him, anything to prepare (and what it was); had he ever been sanctioned as a lawyer (for what); anything about meetings with the U.S. Department of Justice concerning Haeg's case; etc; etc.

All of the questions above are legitimate, could produce compelling evidence of Cole's motivations for the actions he took to represent Haeg, are asked in virtually all depositions, and are so common they are listed by numerous law schools as "must ask" deposition questions. It is irrefutable that Cole was required to answer them. His refusal to do so, when he was required to, unjustly crippled Haeg's ability to expose what motivated Cole. This means there must be a hearing at which Haeg is allowed to question Cole on this matter and until this hearing takes place Haeg's PCR cannot be dismissed. Cole and the state working together to unjustly deprive Haeg of a fair deposition is additional proof they worked together to deprive Haeg of a fair prosecution while Cole represented Haeg.

(2) Cole testified he did not know of anything that would lead him to believe that the U.S. Department of Justice was investigating Haeg's case. Yet Cole has provided discovery to the state that includes letters proving Cole has been providing evidence of what occurred in Haeg's case to the U.S. Department of Justice. See attached letters. This proves Cole's sworn testimony to be irrefutably false, proven perjury by Cole, is an attempt to cover up his sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client. *See* Haeg's original PCR memorandum/exhibits/affidavits for additional evidence and how this harmed Haeg.

(3) Cole refused to answer additional questions involving the U.S. Department of Justice – preventing Haeg from answers that by Cole's own admission during discovery was material to Haeg's case - and could have exposed

compelling motivations for Cole's actions. This means there must be a hearing at which Haeg is allowed to question Cole on this matter and until this hearing takes place Haeg's PCR cannot be dismissed.

(4) State attorney Peterson objected to Cole answering questions about Cole's prior testimony about how and why he (Cole) represented Haeg as he did. Peterson flat told Haeg that Cole would not answer Haeg's questions. This intervention by Peterson, who was not allowed to intervene because he was not Cole's attorney, prevented Haeg from getting answers to questions critical to proving Cole gave Haeg defective representation and then took actions to cover this up. This means there must be a hearing at which Haeg is allowed to question Cole on this matter and until this hearing takes place Haeg's PCR cannot be dismissed.

(5) Cole testified that he had no idea if the state bent over backwards to make an example of Haeg for political reasons. Yet Haeg has recordings of Cole testifying that the state was bending over backwards to make an example of Haeg. See Haeg's PCR exhibits. This proves Cole's conflict of interest, that his sworn testimony is irrefutably false and proven perjury, is an attempt to cover up his sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client. *See* Haeg's original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

(6) When Haeg asked if Cole ever made the statement "the state bent over backwards to make an example of me [Haeg] for political reasons" Cole

testified that he never represented Haeg. Yet Haeg has a contract with Cole that proves Cole was supposed to be representing Haeg from April 11, 2004 to December 9, 2004 and that during this time Haeg paid Cole $200 per hour. See attached contract. In addition the court record proves that Cole was supposed to be representing Haeg during this time. *See* court record. If, as Cole testified under oath was the case, he was not representing Haeg this explains why his representation of Haeg was deficient (non-existent in fact) and explains why Cole never advocated for Haeg and instead told Haeg it was not a legal defense that the state told Haeg it was for the greater good of the people for Haeg to take wolves wherever he could but claim they were taken in the open Wolf Control Program area; why Cole told Haeg there was nothing that could be done about the state falsifying all evidence locations to Haeg's guide area and then using this false evidence locations to destroy Haeg's only livelihood; why Cole told Haeg he had to give a 5-hour statement to the state prosecution because he had been given immunity – and then told Haeg he could be prosecuted – and that the state could use Haeg's own statements to do so; why Cole told Haeg there was no hearing to protest the false warrants used to seize the airplane Haeg used to conduct provide a livelihood; why Cole told Haeg there was nothing Haeg could do to get the airplane back; why Cole told Haeg to give up a year of guiding for a plea agreement; why Cole told Haeg that there was nothing Haeg could do to enforce the plea agreement after the guide year was past and the state broke the plea agreement; and why Cole never obeyed the subpoena to Haeg's sentencing to

explain all of the forgoing. This proves Cole's sellout of Haeg and meets both Risher standards of deficient attorney performance and harm to client. *See* Haeg's original PCR memorandum/exhibits/affidavits for additional evidence and how this harmed Haeg.

(7) Cole testified that the state had agreed to give Haeg credit for the guide year given up before Haeg was convicted. Yet when Haeg demanded Robinson subpoena Cole to make sure he got credit for this year, Cole failed to appear in response to an airline ticket and subpoena and Haeg never received credit for this year. *See* Haeg's PCR exhibits. At the time Robinson told Haeg there was nothing Haeg could do about it but has since testified (at his deposition) that he decided that Cole did not have appear – yet never told any of this to Haeg who had absolutely demanded Cole testify, paid for Cole's subpoena, paid to have it served, paid for Cole's airline ticket, and then never got credit for the guide year because the state testified, UNOPPOSED, that they had no idea why Haeg had given up guiding for a whole year. *See* court sentencing record. This proves Cole and Robinson's sellout of Haeg and meets both Risher standards of deficient attorney performance and harm to client. *See* Haeg's original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

(8) Cole testified that Haeg had agreed to a forfeiting the PA-12 airplane on November 8, 2004. Yet Haeg has recordings of Cole while Cole was representing Haeg, along with numerous witnesses proving Haeg never agreed to forfeit the PA-12 airplane. See Haeg's PCR exhibits. This proves Cole's sworn

testimony to be irrefutably false, proven perjury by Cole, is an attempt to cover up his sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client. *See* Haeg's original PCR memorandum, exhibits, and affidavits for evidence and for how this harmed Haeg.

(9) Haeg asked if the state filed lesser charges, then backed out of the deal by filing harsher charges (*See* court record), if Cole protested that, and Cole testified "no" – and testified the reason why was that "it didn't make any difference". Yet to Haeg the difference was the preservation of his livelihood or the destruction of his livelihood. This proves Cole's sellout of Haeg and meets both Risher standards of deficient attorney performance and harm to client. *See* Haeg's original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

(10) Cole testified he thought there was a "deal" on the night of November 8, 2004. Yet Haeg has tape recordings of Cole at the time, along with numerous witnesses, proving Cole knew there was no deal on the night of November 8, 2004. See Haeg's PCR exhibits. This proves Cole's sworn testimony to be irrefutably false, proven perjury by Cole, is an attempt to cover up his sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client. *See* Haeg's original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

(11) Cole testified everybody was "happy" on the night of November 8, 2004. Yet Haeg has tape recordings of Cole at the time where Cole states

everybody, including himself, were so angry they were "burning". See Haeg's PCR exhibits. This proves Cole's sworn testimony to be irrefutably false, proven perjury by Cole, is an attempt to cover up his sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client. *See* Haeg's original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

(12) Cole testified he told Haeg he could enforce the open sentence plea agreement. Yet Haeg has tape recordings of Cole, while Cole was representing Haeg, along with numerous witnesses, proving that Cole never told Haeg he could enforce the plea agreement – that the only thing he could do was "call Leaders boss". See Haeg's PCR exhibits. This deprived Haeg of plea enforcement, proves Cole's sworn testimony to be irrefutably false, proven perjury by Cole, is an attempt to cover up his sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client. *See* Haeg's original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

(13) Cole, backed up by Peterson, refused to answer questions regarding Kevin Fitzgerald – who Cole has testified he worked closely with on Haeg's case. *See* court record and Haeg's PCR exhibits. This means there must be a hearing at which Haeg is allowed to question Cole on this matter and until this hearing takes place Haeg's PCR cannot be dismissed.

(14) Cole testified he had testified truthfully about Haeg's case in the past. This means Cole's testimony that Haeg had been given immunity in return for a statement is true – meaning Haeg could not be prosecuted for anything talked about in the statement. *See* Haeg's PCR exhibits. Yet not only did Cole let Haeg be prosecuted, he let the state use Haeg's statement to do so. *See* court record. This proves Cole's sellout of Haeg and meets both Risher standards of deficient attorney performance and harm to client. *See* Haeg's original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

(15) Cole testified that Haeg had been given immunity and required to give a statement - meaning Haeg could not be prosecuted for anything talked about in the statement. *See* Gonzalez and North below. Yet Cole on tape told Haeg he could be prosecuted for everything Haeg had talked about after he had been given immunity and that Haeg's statement could be used to do so – incredible harm to Haeg. *See* Haeg's PCR exhibits. This proves Cole's sellout of Haeg and meets both Risher standards of deficient attorney performance and harm to client. *See* Haeg's original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

(16) Cole testified that after Haeg was given immunity for his statement, Haeg could be prosecuted and that the immunized statement could be used to do so. This is exactly what Cole told Haeg when Haeg (while Cole was still representing him) asked how the state could use the immunized statement to prosecute Haeg. *See* Haeg's PCR exhibits. Yet in Alaska once you are given

immunity for a statement you cannot ever be prosecuted for what you talk about – let alone have your statement used to do so. *See* Gonzalez below. This proves Cole knowingly falsified his testimony under oath (perjury) to cover up that he let Haeg be prosecuted after the law prevented this – incredible harm to Haeg. Not only this, he let Haeg's statement be use to do so – another incomprehensible constitutional violation and harm to Haeg. This is deficient performance as an attorney; deficient performance that allowed Haeg to be prosecuted when the law prevented this, irrefutably proving the deficient performance affected the outcome of Haeg's case. In addition virtually all evidence used against Haeg was tainted by Haeg's immunized statement – rendering the prosecution "violated and corrupted". *See* caselaw below. This also proves Cole's sellout of Haeg and meets both Risher standards of deficient attorney performance and harm to client. *See* Haeg's original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

State of Alaska v. Gonzalez, 853 P.2d 526 (AK Supreme Court 1993):

> "We do not doubt that, in theory, strict application of use and derivative use immunity would remove the hazard of incrimination. Because we doubt that workaday measures can, in practice, protect adequately against use and derivative use, we ultimately hold that [former] AS 12.50.101 impermissibly dilutes the protection of article I, section 9.
>
> Procedures and safeguards can be implemented, such as isolating the prosecution team or certifying the state's evidence before trial, but the accused often will not adequately be able to probe and test the state's adherence to such safeguards.

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

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

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

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

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

Even the state's utmost good faith is not an adequate assurance

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

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

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

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

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

it is taking a great chance that the witness cannot constitutionally be indicted or prosecuted.

Finally, and most importantly, an ex parte review in appellate chambers is not the equivalent of the open adversary hearing contemplated by Kastigar. *See* United States v. Zielezinski, 740 F.2d 727, 734 (9th Cir.1984)

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

Where immunized testimony is used... the prohibited act is simultaneous and coterminous with the presentation; indeed, they are one and the same. There is no independent violation that can be remedied by a device such as the exclusionary rule: the...process itself is violated and corrupted, and the indictment [information or trial] becomes indistinguishable from the constitutional and statutory transgression. If the government has in fact introduced trial evidence that fails the Kastigar analysis, then the defendant is entitled to a new trial. If the same is true as to grand jury evidence, then the indictment must be dismissed." United States v. North, 910 F.2d 843 (D.C.Cir. 1990)

"The Government must do more than negate the taint; it must affirmatively prove that its evidence is derived from a legitimate source wholly independent of the compelled testimony." Kastigar v. United States, 406 U.S. 441 (U.S. Supreme Court 1972).

Even Haeg's jurors were undoubtedly tainted by Haeg's statement as the state, before trial, published Haeg's statement in every major Alaskan newspaper – including the Anchorage Daily News (*See* Haeg's PCR exhibits.)– and, even more bizarre, is it was the same prosecutor and Trooper who took Haeg's immunized statement as prosecuted and testified against Haeg at trial – and presented the map they required Haeg to make against Haeg at trial – and before trial they recorded

themselves using Haeg's map to prepare the state's other trial witnesses against Haeg - violating Haeg's right against self-incrimination. *See* Haeg's PCR exhibits.

> "We believe it self-evident that an indispensable component of the guarantee of effective assistance of counsel is the accused's right to be advised of basic procedural rights, particularly when the accused seeks such advice by specific inquiry. Without knowing what rights are provided under law, the accused may well be unable to understand available legal options and may consequently be incapable of making informed decisions." Smith v. State, 717 P.2d 402 (Ak 1986)

This proves Cole's sellout of Haeg and meets both Risher standards of deficient attorney performance and harm to client. *See* Haeg's original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

(17) Cole testified he did not know what law or rule allowed Haeg's statement to be used against Haeg – proving deficient performance (not knowing the law would protect his client from prosecution) and proving this harmed Haeg when he let Haeg be prosecuted and let Haeg's statement be used to do so when it could not. *See* charging informations, trial record, Gonzalez, North, and Kastigar above and Haeg's original PCR memorandum and exhibits.

> "In order to render "effective assistance"... counsel must be familiar with the facts of the case and the applicable law so that he can fully advise the defendant of the options available to him." Arnold v. State, 685 P.2d 1261, (Ak 1984)

> "A mistake made out of ignorance rather then from strategy cannot be later validated as being tactically defensible." Kimmelman v. Morrison, 477 U.S. 365 (U.S. Supreme Court 1986)

(18) When Haeg asked what kind of immunity was allowed to be given in Alaska, Cole testified that "transactional" immunity was the only immunity allowed to be given in Alaska.

> "Transactional immunity" affords immunity to the witness from prosecution for the offense to which the compelled testimony relates. *See* Black's Law Dictionary (9th Ed.2009).
>
> Transactional immunity – a grant of immunity to a witness by a prosecutor that exempts the witness from being prosecuted for the acts about which the witness will testify. *See* Webster's New World Law Dictionary, copyright 2010.

It is irrefutable that Cole allowing Haeg to be prosecuted when the law prevented prosecution absolutely meets Risher's deficient performance requirement and absolutely meets Risher's prejudice (harm to Haeg) requirement – as Haeg was convicted and sentenced to nearly 2 years in jail, fined $19,500, total destruction of the business that supported both he and his wife, and to the forfeiture of approximately $100,000 in business property. *See* court record and Haeg's original PCR application, memorandum, and exhibits for additional proof.

> "A mistake made out of ignorance rather then from strategy cannot be later validated as being tactically defensible." *See* Kimmelman v. Morrison, 477 U.S. 365 (U.S. Supreme Court 1986)
>
> "We believe it self-evident that an indispensable component of the guarantee of effective assistance of counsel is the accused's right to be advised of basic procedural rights, particularly when the accused seeks such advice by specific inquiry. Without knowing what rights are provided under law, the accused may well be unable to understand available legal options and may consequently be incapable of making informed decisions." *See* Smith v. State, 717 P.2d 402 (Ak 1986)

(19) Cole testified, "it didn't make any difference" when asked why he let Haeg's immunized statement be used to justify the charges against Haeg in every information filed. Haeg's statement was quoted in every charging information for just about the only evidence for most of the charges filed against Haeg and as primary evidence for the rest. *See* charging informations. Zellers (whose statement was also quoted in the information) and Zeller's attorney Kevin Fitzgerald have testified under oath that Zellers cooperation and statement was a direct result or "fruit" of Haeg's statement. *See* court record and Haeg's PCR exhibits. This proves Cole let Haeg be prosecuted in violation of Haeg's right against self-incrimination, with an invalid charging information, that Cole's sworn testimony is irrefutably false, proven perjury by Cole, is an attempt to cover up his sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client. *See* Haeg's original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

(20) Cole testified that he exercised Haeg's right not to have Haeg's statement used against Haeg. As proven by every information filed against Haeg, including the one forcing Haeg to trial, this is irrefutably false, more proven perjury by Cole, is another attempt to cover up his sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client – as Haeg could not be prosecuted this way. *See* charging informations and Haeg's original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

(21) Cole testified that Haeg's immunized statement was allowed to be used to justify the charges against Haeg. Gonzalez, North, and Kastigar above proves this is irrefutably false, more proven perjury by Cole, is another attempt to cover up his sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client – as Haeg could not be prosecuted this way. *See* Gonzalez and North above and Haeg's original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

(22) Cole testified that Haeg made a map during his statement and that he didn't think the state could use this map against Haeg. Yet this map was irrefutably used to taint the state's witnesses against Haeg and as the state's main exhibit against Haeg at trial. *See* Haeg's PCR exhibits, court record, exhibit #25. This proves Cole's sellout of Haeg and meets both Risher standards of deficient attorney performance and harm to client. *See* Haeg's original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

(23) Haeg asked Cole why he let the state release his statement to the media and be published in the Anchorage Daily News and all major Alaska newspapers. Cole testified that he was not Haeg's attorney then. Yet the Anchorage Daily News published Haeg's statement on November 10, 2004 and the most other papers published it within 2 days of this. *See* Haeg's PCR exhibits. Haeg hired Cole on April 11, 2004, gave the immunized statement on June 11, 2004, and fired Cole on December 7, 2004 – irrefutably proving Cole was Haeg's attorney when the state released Haeg's statement and it was published in the

newspapers. *See* Haeg's PCR memorandum and exhibits. This proves Cole let Haeg be prosecuted in violation of his right against self-incrimination, that Cole's sworn testimony is irrefutably false, proven perjury by Cole, is an attempt to cover up his sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client. *See* Haeg's original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

(24) In regard to the use of Haeg's immunized statement Cole testified he had no control over what Scott Leaders or the Troopers did; asked Haeg, "What could I do? Tell me what I could do?"; Haeg replied, "could you have filed a motion to suppress?"; and Cole testified, "No." Yet Criminal Rule 12, Pleadings and Motions Before Trial – Defenses and Objections states:

> (b) Pretrial Motions. Any defense, objection, or request which is capable of determination without the trial of the general issue may be raised before trial by motion. Any or all of the following shall be raised prior to trial: (1) Defenses and abjections based on defects in the institution of the prosecution; (2) Defenses and objections based on defects in the indictment or information; (3) Motions to suppress evidence on the ground that it was illegally obtained.
>
> (d) Effect of Failure to Raise Defenses or Objections. Failure by the defendant to raise defenses or objections or to make request which must be made prior to trial..... shall constitute waiver thereof....
>
> "'[Defendant] has everything to gain and nothing to lose' in filing a motion to suppress..." U.S. v. Molina, 934 F.2d 1440 (9th Cir. 1991).

This proves Cole's sworn testimony to be irrefutably false, proven perjury by Cole, is an attempt to cover up his sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client. *See* Haeg's

original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

(25) Cole testified that he could not file a motion suppress because it had to be filed at trial and he did not represent Haeg at trial. Yet Criminal Rule 12, Pleadings and Motions Before Trial – Defenses and Objections states:

> (c) Pretrial Motions. Any defense, objection, or request which is capable of determination without the trial of the general issue may be raised before trial by motion. Any or all of the following shall be raised prior to trial: (1) Defenses and abjections based on defects in the institution of the prosecution; (2) Defenses and objections based on defects in the indictment or information; (3) Motions to suppress evidence on the ground that it was illegally obtained.
>
> (e) Effect of Failure to Raise Defenses or Objections. Failure by the defendant to raise defenses or objections or to make request which must be made prior to trial..... shall constitute waiver thereof....

This proves Cole's sworn testimony that the motion had to wait until trial to be irrefutably false, more proven perjury by Cole, is another attempt to cover up his sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client – as Cole should have filed motions to suppress on Haeg was exempt from prosecution, Haeg's statement use, and the false evidence locations and its use on all the affidavits supporting the search and seizure warrants. In addition, the fact that if you wait until trial you "waive" your right to raise the defense irrefutably proves the incredibly harm Cole caused by not protesting Haeg's statement use before trial – as this would have irrefutably ended Haeg's prosecution. *See* Gonzalez, North, and Kastigar above.

(26) When Haeg asked if his statement could be used by the state to go and find other evidence before trial Cole testified, "I think that's a hypothetical....I don't know the answer to that." When asked if he should have known this when he was representing Haeg Cole testified,

> "That's a very complex question that is not easily discernable just sitting here." "You know as lawyers we like to think we know all the answers but there is just a lot of issues out there that I cannot give a definitive answer on that as we speak" "I don't know as I sit here right now what the answer to that question is."

Yet when Haeg specifically asked Cole about this when Cole was his attorney and Cole told him the state could use the statement before trial to find other evidence and that there was nothing Haeg could do about this. *See* Haeg's PCR exhibits.

> "A mistake made out of ignorance rather then from strategy cannot be later validated as being tactically defensible." Kimmelman v. Morrison, 477 U.S. 365 (U.S. Supreme Court 1986)

> "We believe it self-evident that an indispensable component of the guarantee of effective assistance of counsel is the accused's right to be advised of basic procedural rights, particularly when the accused seeks such advice by specific inquiry. Without knowing what rights are provided under law, the accused may well be unable to understand available legal options and may consequently be incapable of making informed decisions." Smith v. State, 717 P.2d 402 (Ak 1986)

This proves Cole harmed Haeg by letting the state obtain Zellers to use against Haeg (see Haeg's PCR exhibits), proves Cole's sworn testimony to be irrefutably false and proven perjury, is an attempt to cover up his sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to

client. *See* Gonzalez, North, and Kastigar above and Haeg's original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

(27) Cole testified that Haeg objected to him about the state using his statement and that the reason he (Cole) didn't do anything about it was that he thought the state could use Haeg's statement. Gonzalez, North, and Kastigar above prove Cole's sworn testimony to be irrefutably false, more proven perjury by Cole, is another attempt to cover up his sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client – as because of his erroneous belief in law Cole let Haeg's statement be used against him – violating Haeg's right against self-incrimination. *See* Haeg's original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

> "We believe it self-evident that an indispensable component of the guarantee of effective assistance of counsel is the accused's right to be advised of basic procedural rights, particularly when the accused seeks such advice by specific inquiry. Without knowing what rights are provided under law, the accused may well be unable to understand available legal options and may consequently be incapable of making informed decisions." Smith v. State, 717 P.2d 402 (Ak 1986).

(28) Cole testified that he could not have filed a motion of prosecutorial misconduct. Yet all caselaw holds this motion could have been filed:

> "Government must adhere strictly to the terms of agreements made with defendants—including plea, cooperation, and immunity agreements..." Santobello v. New York, 404 U.S. 257 (U.S. Supreme Court 1971)

> "Modern notions of due process have belied the notion that a prosecutor may invoke his discretion to evade promises made to a defendant or potential defendant as part of an agreement or bargain. That being the case, a defendant or witness does have more to rely upon than merely the "grace or favor" of the prosecutor... to allow the defendant some redress for prosecutorial reneging." Surina v. Buckalew, 629 P.2d 969 (Alaska 1981)
>
> "Counsel ineffective for failing to move to compel the state to comply with pretrial agreement and failing to advise the defendant of this option." State v. Scott, 602 N.W.2d 296 Wis. 1999

Santobello, Surina, and Scott prove Cole's sworn testimony to be irrefutably false, more proven perjury by Cole, is another attempt to cover up his sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client – since Cole never filed this motion because of his mistaken belief of the law. *See* Haeg's original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

(29) Cole testified he didn't know why the state used Haeg's map (the primary trial exhibit against Haeg) against him at trial. It is proven by the Rules and caselaw above and described in Haeg's original memorandum the reason is prosecutorial misconduct combined with the ineffective assistance of no one filing a motion to suppress on Haeg's behalf. This proves Cole's sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client – as this was a violation of Haeg's right against self-incrimination. *See* Gonzalez, North, and Kastigar above and Haeg's original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

(30) Cole testified that when he was Haeg's attorney, paid $200 per hour, that he told Haeg of his rights of what he could do. Yet Haeg has tape recordings, while Cole was still his attorney, of Cole telling Haeg nothing could be done about the state using Haeg's statement against him; that there was no way to protest the false evidence locations on all the warrants seizing evidence and Haeg's business property; that it was not a legal defense that the state told Haeg it was for the greater good to take wolves wherever he could and claim they were taken inside the wolf control area; and the state could break the plea agreement after Haeg had already given up a year of his only livelihood for it. *See* Haeg's PCR exhibits. This proves Cole's sworn testimony to be irrefutably false, proven perjury by Cole, is an attempt to cover up his sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client – as all Haeg's forgoing defenses were stripped away. *See* caselaw above and below and Haeg's original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

(31) Cole testified that while he was representing Haeg he had no idea if Haeg's statement was being used to build the case against Haeg. Yet Haeg has tape recordings of Cole proving that Cole knew the state was using Haeg's statement to build the case against Haeg. *See* Haeg's PCR exhibits. This proves Cole's sworn testimony to be irrefutably false, proven perjury by Cole, is an attempt to cover up his sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client – as Cole let the state violate

Haeg's right against self-incrimination. *See* Haeg's original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

(32) Cole testified that Haeg's statement was not used to force Tony Zellers to cooperate. Yet Haeg has sworn testimony from both Zellers and Zellers attorney Kevin Fitzgerald that Zellers cooperated because of Haeg's statement – and Zellers was one of the state's main witnesses against Haeg at trial. *See* Haeg's PCR exhibits. This proves Cole's sworn testimony to be irrefutably false, proven perjury by Cole, is an attempt to cover up his sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client – as Cole let the state violate Haeg's right against self-incrimination. *See* Haeg's original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

(33) When Haeg asked Cole why Chuck Robinson testified it was Cole's duty to file a suppression motion Cole testified,

> *Cole*: "Whyyy....meeee ha. I wasn't your attorney. You fired me. I couldn't.....ask Chuck Robinson about that."
> *Haeg*: "I have. He said it's your duty."
> *Cole*: "Well, then you should have kept..."
> *Haeg*: "Are you testifying it was his duty to file the motion?"
> *Cole*: "Yes. He was the one....he was the trial attorney."

Yet Rule 12 proves this motion was required to be filed before trial – and thus it was both Cole's and Robinson's duty to file it for Haeg before trial – as Gonzalez, North, and Kastigar above prove it was illegal to prosecute Haeg by using his statement in any way. And it is virtually certain that Haeg's statement

had tainted just about every last stitch of evidence the state had – even ignoring the fact that Gonzalez flat prevented Haeg from being prosecuted at all. *See* Haeg's PCR exhibits. This proves Cole's sworn testimony to be irrefutably false, proven perjury by Cole, is an attempt to cover up his sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client – as Cole let the state violate Haeg's right against self-incrimination. *See* Haeg's original PCR memorandum, exhibits, and affidavits for evidence and for how this harmed Haeg.

(34) Cole testified that the state did not use Haeg's statement to build the case against Haeg. Yet the charging informations and newspapers alone prove they were using Haeg's statement in everyway imaginable to build the case against Haeg. *See* charging informations and Haeg's original PCR memorandum/exhibits. This proves Cole's sworn testimony to be irrefutably false, proven perjury by Cole, is an attempt to cover up his sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client - – as Cole let the state violate Haeg's right against self-incrimination. *See* Haeg's original PCR memorandum, exhibits, and affidavits for evidence and for how this harmed Haeg.

(35) Cole testified that it was possible that because of enormous public and political fallout substantial pressure was brought to bear on Haeg's prosecutor and judge to give Haeg a very serious sentence. This is additional evidence Haeg had a biased judge and Cole didn't do anything about it. This proves Cole's sellout of Haeg and meets both Risher standards of deficient attorney performance and

harm to client - – as Cole let the state violate Haeg's right to an unbiased judge. *See* Haeg's original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

(36) Cole testified that it was a concern of his that if he advocated for Haeg by filing motions to suppress or enforcing the plea agreement that this would "piss Leaders off" and that filing a motion against prosecutor makes an enemy out of the last person you want to make an enemy of.

> "[Defendant] has a right to an attorney who wants to protect the defendant's 'rear end', not the attorney's." Anders v. California, 386 U.S. 738 (U.S. Supreme Court 1967)
> "Counsel had advised defendant that he, the attorney, would have to work with the federal people in the future and that, therefore, it was best not to make waves when there was little if any chance of fighting Federal Prosecutors." REVERSED AND REMANDED" United States v. Ellison, 798 F.2d 1102 (7th Cir. 1986).
>
> "[A] defendant who shows that a conflict of interest actually affected the adequacy of his representation need not demonstrate prejudice in order to obtain relief. An actual conflict of interest negates the unimpaired loyalty a defendant is constitutionally entitled to expect and receive from his attorney." Cuyler v. Sullivan, 446 U.S. 335 (U.S. Supreme Court 1980).
>
> "[I]n a case of joint representation of conflicting interests, the evil -- it bears repeating -- is in what the advocate finds himself compelled to refrain from doing, not only at trial but also as to possible pretrial plea negotiations and in the sentencing process…to assess the impact of a conflict of interests on the attorney's options, tactics, and decisions in plea negotiations would be virtually impossible." Holloway v. Arkansas, 435 U.S. 475 (U.S. Supreme Court 1978)
>
> "[T]he right to the assistance of counsel had been understood to mean that there can be no restrictions upon the function of counsel in defending a criminal prosecution in accord with the traditions of the adversary fact finding process that has been constitutionalized in the

> Sixth and Fourteenth Amendments." U.S. v. Cronic, 466 U.S. 648 (U.S. Supreme Court 1984)
>
> "[P]rejudice is presumed when counsel is burdened by an actual conflict of interest. In those circumstances, counsel breaches the duty of loyalty, perhaps the most basic of counsel's duties. Moreover, it is difficult to measure the precise effect on the defense of representation corrupted by conflicting interests." Strickland v. Washington, (U.S. Supreme Court)
>
> "Defense counsel ... must conscientiously protect his client's interest, undeflected by conflicting consideration." Risher v. State (Alaska Supreme Court)

The caselaw above proves Cole's concern that he would "piss Leaders off" by advocating for Haeg was automatic ineffective assistance of counsel without Haeg having to prove prejudice. Yet the prejudice is proven – this explains why Cole did not file motions to suppress because of the state's use of Haeg's statement and false evidence locations; why he told Haeg it was not a legal defense when the state told Haeg it was for the greater good of the people to do exactly what the state then charged Haeg with doing; why Cole never enforced Haeg's plea agreement; and why Cole never showed up to testify in response to a subpoena. This proves Cole's sellout of Haeg and meets both Risher standards of deficient attorney performance and harm to client – as Cole actively represented his own interests that were in conflict with Haeg's interests. *See* Haeg's original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

(37) Cole testified that he never told Haeg about what Haeg could do to oppose the state's prosecution. As this is exactly what Haeg hired Cole for and

specifically asked him about this is clear ineffective assistance of counsel. This proves Cole's sellout of Haeg and meets both Risher standards of deficient attorney performance and harm to client – as Cole let the state violate Haeg's rights to counsel, against self-incrimination, to due process, against unreasonable searches and seizures, to the equal protection of the law, etc. *See* Haeg's original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg. *See* also all caselaw above and below.

(38) Cole testified Haeg was concerned about spending money. Yet Haeg has tape recordings of conversations between Cole and Haeg while Cole was representing Haeg and the issue of money never once was mentioned. *See* Haeg's PCR exhibits. In addition Haeg went on to hire 2 more attorneys after Cole and paid them nearly $100,000 more then he paid Cole. *See* Haeg's PCR exhibits. This proves Cole's sworn testimony to be irrefutably false, proven perjury by Cole, is an attempt to cover up his sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client – as this violated Haeg's right to counsel along with nearly ever other right Haeg had. *See* Haeg's original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

(39) Cole testified that he told Haeg that he could file a motion to suppress Haeg's statement. Yet Haeg has tape recordings of Cole, while he was representing Haeg, stating that nothing could be done about the state using Haeg's statement. *See* Haeg's PCR exhibits. This proves Cole's sworn testimony to be

irrefutably false, proven perjury by Cole, is an attempt to cover up his sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client – as Cole let the state violate Haeg's right against self-incrimination. *See* above testimony and Haeg's original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

(40) Cole testified he told Haeg that he could file a motion to suppress evidence because of the false information on the search warrant. Yet Cole has testified under oath in prior proceedings that he never told Haeg he could file a motion to suppress because of the false warrants. *See* Haeg's PCR exhibits. This proves Cole's sworn testimony to be irrefutably false, proven perjury by Cole, is an attempt to cover up his sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client – as Cole could have suppressed very nearly every stitch of evidence the state had. *See* Haeg's original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

(41) Cole testified that a motion to suppress is not a viable motion. Yet Criminal Rule 12 above proves this false. This proves Cole's sworn testimony to be irrefutably false, proven perjury by Cole, is an attempt to cover up his sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client – as Cole allowed the state to violate Haeg's right against self-incrimination and against unreasonable searches and seizures because of this. *See*

Haeg's original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

(42) Cole testified he remembered seeing only one search warrant issued in Haeg's case. Yet there were 5 search warrants issued in Haeg's case and Cole could have had very nearly all the evidence in Haeg's case suppressed. *See* court record and Haeg's original PCR memorandum/exhibits. This proves Cole's complete lack of investigation and knowledge of Haeg's case and meets both Risher standards of deficient attorney performance and harm to client – as had Cole investigated he would have realized very nearly every stitch of evidence against Haeg could have been suppressed. *See* above and Haeg's original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

(43) Cole testified he thought there was false information on only one search warrant. But the false information (claiming the evidence was found in the Game Management Unit in which Haeg guided when the state's own GPS coordinates proved this was false – a false location which the state specifically used at trial to justify convicting Haeg) was located on ever single one of the 5 search warrants used to seize Haeg's business property and evidence used against Haeg. This proves Cole's complete lack of investigation and knowledge of Haeg's case harmed Haeg's defense and ability to make a livelihood and meets both Risher standards of deficient attorney performance and harm to client – as had Cole investigated he would have realized very nearly every stitch of evidence

against Haeg could have been suppressed. *See* Haeg's original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

(44) Cole testified he didn't think the falsehood on the search warrant was material. Yet the state used the false location (the Game Management Unit in which Haeg was allowed to guide) as the specific reason for the charges against Haeg and for their argument at trial that Haeg should be convicted of guiding crimes – arguing that Haeg's motive in taking wolves in his guide area was to benefit his guide business - because if Haeg took wolves where he guided they would not eat the moose Haeg sold hunts for. As further proof of how material this falsehood was is that Haeg's sentencing judge specifically cited the false location as the justification to sentencing Haeg (who had absolutely no prior criminal history) to nearly 2 years in jail, fine of $19,500, forfeiture of $100,000 in property, and complete destruction of Haeg's guide business. This proves Cole's sworn testimony to be irrefutably false, proven perjury by Cole, is an attempt to cover up his sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client – as Cole let the state convict Haeg with materially false evidence. *See* Haeg's original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

(45) Cole testified that the state telling Haeg it was in the best interest of the state for Haeg to take wolves outside the area was not a defense – just as Cole told Haeg on tape while he was representing Haeg.

> "Entrapment" is a complete defense to a criminal charge, on the theory that "Government agents may not originate a criminal design, implant in an innocent person's mind the disposition to commit a criminal act, and then induce commission of the crime so that the Government may prosecute." Mere suggestion without inducement is fatal to an entrapment defense, as is a predisposition to commit the crime - such as a prior conviction of the same or related crime. Jacobson v. United States, 503 U.S. 540 (U.S. Supreme Court 1992) Sorrells v. United States, 287 U.S. 435 (U.S. Supreme Court 1932).

The U.S. Supreme Court caselaw above proves that Haeg being told it was in the best interest of the state to take wolves outside the area was a defense – especially since Haeg had not prior criminal history of anything whatsoever – and especially when the state falsified all the evidence locations to corruptly manufacture a false motive. This proves Cole's sworn testimony to be irrefutably false, proven perjury by Cole, is an attempt to cover up his sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client – as Cole's mistake of the law deprived Haeg of an irrefutable defense. *See* Haeg's original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

46) Cole testified that a suppression motion would only extend to the evidence seized with the search warrants – not to the field evidence whose location was falsified to Haeg's guide area. Yet it is indisputable that any evidence that is falsified is subject to suppression whether it was seized with search warrant or not. This proves Cole's sworn testimony to be irrefutably false, proven perjury by Cole, is an attempt to cover up his sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client – as had Cole

understood the law correctly very nearly all evidence against Haeg could have been suppressed. *See* Haeg's original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

(47) Cole testified that the state falsifying the evidence to Haeg's guide area would not help them make a guide case against Haeg. Yet at trial the state's argument was this location proved Haeg's motive was to benefit his guide area and not help the Wolf Control Program – for which Haeg had a permit to shoot wolves from the air. And the effectiveness of this falsification was when Judge Murphy specifically cited the false locations as the specific reason for Haeg's devastating sentence. If Haeg's judge specifically used the false information to sentence Haeg it is clear Haeg's jury used the false information to convict Haeg. This proves Cole's sworn testimony to be irrefutably false, proven perjury by Cole, is an attempt to cover up his sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client – as Cole let the state use false material evidence to convict Haeg. *See* Haeg's original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

48) Cole refused to answer if he had an obligation to protest the state using evidence that had been falsified to Haeg's guide area. This requires a hearing during which Cole is required to answer this question and Haeg's PCR cannot be dismissed until this occurs.

(49) Cole testified that Leaders never told him he (Leaders) was not going to honor Haeg's immunity – and that it was not possible Leaders had ever told him that. Yet Cole called attorney Kevin Fitzgerald to testify on Cole's behalf at a prior proceeding and Fitzgerald testified under oath while he and Cole worked on Haeg's case Cole had told him that Leaders had told Cole that he (Leaders) would not be honoring Haeg's immunity. Cole accepted this sworn testimony from Fitzgerald and made no attempt to refute it. This proves Cole's sworn testimony to be irrefutably false, proven perjury by Cole, is an attempt to cover up his sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client – as had Cole informed Haeg that Leaders was going to knowingly violate Haeg's right against self-incrimination Haeg would have demanded his prosecution be terminated and had Leaders thrown in jail. *See* Haeg's original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

50) Cole testified that he could not say yes or no as to whether an attorney and client should discuss the materiality of anything that could be suppressed. Yet this is exactly why a client hires an attorney. This proves Cole's sworn testimony to be irrefutably false, proven perjury by Cole, is an attempt to cover up his sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client – as Cole failed to inform Haeg of the rights that would have irrefutably protected Haeg – when Haeg had hired Cole for this

specific purpose. *See* Haeg's original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

51) Cole testified that while he represented Haeg he discussed with Haeg the materiality of anything that might have been able to be suppressed. Yet Haeg has recordings of Cole, while Cole represented Haeg, along with witnesses proving this is false. *See* Haeg's PCR exhibits. In addition Cole has testified under oath in prior proceedings that he never told Haeg he could file a motion to suppress. This proves Cole's sworn testimony to be irrefutably false, proven perjury by Cole, is an attempt to cover up his sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client. *See* Haeg's original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

(52) Cole testified that the reason he and Haeg didn't go to McGrath on November 9, 2004 was because the case had been resolved. Yet Haeg has recordings of Cole just after November 9, 2004, while Cole was still representing Haeg, along with numerous witnesses, proving this is false. *See* Haeg's PCR exhibits.This proves Cole's sworn testimony to be irrefutably false, proven perjury by Cole, is an attempt to cover up his sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client – as Cole's perjury proves he has a conflict of interest. *See* Haeg's original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

(53) Cole testified that Leaders greatly increasing the severity of the charges at the last minute to also get the plane was not the reason he, Haeg, and all the witnesses did not go to McGrath on November 9, 2004. Cole also testifies that he never told Haeg this. Yet Haeg has tape recordings of Cole, while he still represented Haeg, along with numerous witnesses, proving this was the case and that he told Haeg this. *See* Haeg's PCR exhibits. This proves Cole's sworn testimony to be irrefutably false, proven perjury by Cole, is an attempt to cover up his sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client – as Cole violated Haeg's due process right to enforce the plea agreement and Cole's perjury proves his conflict of interest. *See* Haeg's original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

(54) Cole testified that Leaders did not renege on a deal after Haeg had placed reliance on it. Yet Haeg has tape recordings of Cole, while he still represented Haeg and just after he represented Haeg, along with numerous witnesses, proving Leaders reneged on a deal after Haeg had relied on it. *See* Haeg's PCR exhibits. This proves Cole's sworn testimony to be irrefutably false, proven perjury by Cole, is an attempt to cover up his sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client – as Cole violated Haeg's due process right to enforce the plea agreement and Cole's perjury proves his conflict of interest. *See* Haeg's original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

(55) Cole testified that he never told Haeg that what Leaders did was all about the airplane. Yet Haeg has tape recordings of Cole, while he still represented Haeg and just after he represented Haeg, along with numerous witnesses, proving Cole told Haeg what Leaders did was all about the airplane. *See* Haeg's PCR exhibits. This proves Cole's sworn testimony to be irrefutably false, proven perjury by Cole, is an attempt to cover up his sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client – as Cole's perjury proves his conflict of interest. *See* Haeg's original PCR memorandum, exhibits, and affidavits for evidence and for how this harmed Haeg.

(56) Cole testified that an entrapment defense required someone to either hold a gun to Haeg's head or be threatening Haeg's family.

Grossman v. State, 457 P.2d 226 (Alaska Supreme Court 1969):

> "It is plain enough that the underlying basis for entrapment is found in public policy, as discerned and announced by the courts. As Judge Learned Hand perceptively observed in United States v. Becker, 62 F.2d 1007, 1009 (2nd Cir. 1933),
>
> 'The whole doctrine derives from a spontaneous moral revulsion against using the powers of government to beguile innocent, though ductile, persons into lapses which they might otherwise resist'

A similar notion was expressed in Butts v. United States, 273 F. 35, 38 (8th Cir. 1921), where the court said,

> '(I)t is unconscionable , contrary to public policy, and to the established law of the land to punish a man for the commission of an offense of the like of which he had never been guilty, either in thought or in deed, and evidently never would have been guilty of if the officer of the law had not inspired, incited, persuaded and lured him to attempt to commit it.'

> The court emphasized that entrapment applies only when the criminal conduct is 'the product of the creative activity' of the government agents. It held that the determination in each case should focus on whether the particular defendant was predisposed to commit the crime or was an otherwise innocent person who would not have erred except for the persuasion of the government agents. This permits a searching inquiry into the conduct and motivations of both the officers and the defendant, including the past conduct of the defendant in committing similar crimes, and the general activities and character of the defendant.

Haeg, from childhood to when he was prosecuted at age 38, made his entire livelihood by fishing, hunting, trapping, and guiding – without any criminal history of anything whatsoever. Just before he participated in the wolf control program Haeg testified at an Alaska Board of Game (the state agency who created and ran the wolf control program) meeting in Fairbanks about the devastating effect uncontrolled wolf numbers were having on ungulates. At this meeting Board of Game member Ted Spraker (who had previously flown with Haeg out to survey the enormity of the wolf problem) told Haeg how important it was to the state that the wolf control program was not shut down; that the control program was likely going to be shut down because so far it was ineffective; that Haeg had to take more wolves to make sure the control program was not shut down; that it was far more important for Haeg to be killing wolves then testifying; and that if Haeg ended up taking wolves outside the control program area to mark them as being taken inside the control program area. Spraker also told Haeg that he was surprised that people were not poisoning wolves and explained exactly what kind of poison worked best and how and where to obtain it.

Haeg was then prosecuted for doing exactly as the state told and induced him to do. The state falsified all evidence locations to Haeg's guiding area and specifically used this to justify filing guiding charges against Haeg -- stating Haeg's intent in taking the wolves outside the wolf control program area was to benefit his hunting guide business by removing the wolves that were killing the moose he offered to clients. In newspaper articles the state claimed Haeg was just "a bad apple" and that the state had nothing to do with Haeg taking wolves outside the control area and claiming they had been taken inside. As proven by the Alaska Supreme Court caselaw Grossman above someone did not have to hold a gun to Haeg's head or threaten Haeg's family to entrap Haeg. This proves Cole's sworn testimony to be irrefutably false, proven perjury by Cole, is an attempt to cover up his sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client – as Cole's perjury proves his conflict of interest. *See* Haeg's original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

(57) Cole testified that, while he represented Haeg, he told Haeg that the law did not allow the seized airplane to be bonded out.

> Waiste v. State, 10 P.3d 1141 (Ak Supreme Court 2000) "This court's dicta, however, and the persuasive weight of federal law, both suggest that the Due Process Clause of the Alaska Constitution should require no more than a prompt postseizure hearing... The State argues that a prompt postseizure hearing is the only process due, both under general constitutional principles and under this court's precedents on fishing-boat seizures, whose comments were not dicta...But given the conceded requirement of a prompt postseizure hearing on the same issues, in the same forum, 'within

> days, if not hours' the only burden that the State avoids by proceeding ex parte is the burden of having to show its justification for a seizure a few days or hours earlier... The State does not discuss the private interest at stake, and Waiste is plainly right that it is significant: even a few days' lost fishing during a three-week salmon run is serious, and due process mandates heightened solicitude when someone is deprived of her or his primary source of income... As the Good Court noted, moreover, the protection of an adversary hearing 'is of particular importance [in forfeiture cases], where the Government has a direct pecuniary interest in the outcome.' An ensemble of procedural rules bounds the State's discretion to seize vessels and limits the risk and duration of harmful errors. The rules include the need to show probable cause to think a vessel forfeitable in an ex parte hearing before a neutral magistrate, to allow release of the vessel on bond, and to afford a prompt postseizure hearing."

The caselaw above proves Haeg could have legally bonded the airplane out so he could have continued making a livelihood for the years before he was convicted – meaning Cole had lied to him. This proves Cole's sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client – as Haeg would have been able to make a livelihood had Cole informed him of his rights as Haeg hired him to. *See* Haeg's original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

(58) Cole refused to answer Haeg's question if the state could use the map Haeg made during his statement to find other evidence. This requires a hearing during which Cole is required to answer this question and Haeg's PCR cannot be dismissed until this occurs.

(59) Cole testified that, while he represented Haeg, Haeg protested the state's use of Haeg's statement against Haeg and that after this he (Cole) didn't do anything about the state using Haeg statement against Haeg. This is irrefutable

proof of ineffective assistance of counsel, as had Cole done this it would have ended Haeg's prosecution. *See* Gonzalez, North, and Kastigar above.

> "We believe it self-evident that an indispensable component of the guarantee of effective assistance of counsel is the accused's right to be advised of basic procedural rights, particularly when the accused seeks such advice by specific inquiry. Without knowing what rights are provided under law, the accused may well be unable to understand available legal options and may consequently be incapable of making informed decisions." Smith v. State, 717 P.2d 402 (Ak 1986).

See Haeg's original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

(60) Cole testified that he cannot control the state releasing Haeg's immunized statement and that it didn't matter anyway. As shown in Gonzalez, North, and Kastigar above, Cole could have controlled the state releasing the statement by filing a motion to suppress, which would have effectively ended Haeg's prosecution – meaning it mattered a great deal to Haeg. This proves Cole's sworn testimony to be irrefutably false, proven perjury by Cole, is an attempt to cover up his sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client – as had Cole knew he could do something Haeg's prosecution would have ended. *See* Haeg's original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

(61) Cole testified the state's use of Haeg's immunized statement was not a violation of Haeg's right against self-incrimination. Gonzalez, North, and Kastigar above prove this was a direct violation of Haeg's constitutional right

against self-incrimination. This proves Cole's sworn testimony to be irrefutably false, proven perjury by Cole, is an attempt to cover up his sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client – as Cole let the state violate Haeg's right against self-incrimination. *See* Haeg's original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

(62) Cole testified that the state could use Haeg's immunized statement against Haeg as long as it wasn't at trial. Gonzalez, North, and Kastigar above prove this is not the case. This proves Cole's sworn testimony to be irrefutably false, proven perjury by Cole, is an attempt to cover up his sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client – as Cole let the state violate his right against self-incrimination. *See* Haeg's original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

(63) Immediately after Cole testified the state could use Haeg's statement against Haeg as long as it wasn't at trial, Cole testified that "as a practical matter" the state should not have used Haeg's statement to justify the charges against Haeg – proving Cole affirmatively knew the state was violating Haeg's rights but did nothing about it except lie to Haeg then and now lie under oath during his deposition. This proves Cole's sworn testimony to be irrefutably false, proven perjury by Cole, is an attempt to cover up his sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client – as Cole let

the state violate his right against self-incrimination. *See* court record and Haeg's original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

(64) Immediately after Cole admitted the state used Haeg's statement to justify the charges against Haeg Cole testified that the state did not use Haeg's statement against Haeg in the charging information the state wanted Haeg to plea to. Yet every one of the 3 charging informations ever filed against Haeg during his prosecution – including those the state wanted Haeg to plea to – specifically quoted Haeg's statement as justification for the charges against Haeg. This proves Cole's sworn testimony to be irrefutably false, proven perjury by Cole, is an attempt to cover up his sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client - as Cole let the state violate his right against self-incrimination.. *See* court record and Haeg's original PCR memorandum, exhibits, and affidavits for additional evidence and for how this harmed Haeg.

(65) Cole testified he there was no plea agreement when Haeg gave his statement and that the state used Haeg's statement to justify the charges they wanted Haeg to plea to. This is automatic ineffective assistance of counsel as with Haeg's statement they were able to over double the charges filed against Haeg (see charging informations):

> Wayrynen v. Class 586 N.W.2d 499 (S.D. 1998) Counsel ineffective for identifying client to police and having her confess to 15 arson charges without any prior attempt to negotiate a deal with the state.

(66) Cole testified that he has never stated that the state wanted Haeg's statement quickly because they wanted to go get more evidence. Yet Cole has previously testified under oath that this was the case. See Haeg's PCR exhibits. This proves Cole's sworn testimony to be irrefutably false, proven perjury by Cole, is an attempt to cover up his sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client – as Cole's perjury proves his conflict of interest. *See* Haeg's original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

(67) Cole refused to answer if the state knew why Haeg had given up guiding for a year before he was convicted. (Cole had told Haeg to give up a year of guiding for a plea agreement the state afterward broke). This means there must be a hearing during which Cole is required to answer and Haeg's PCR cannot be dismissed until this happens. Then Cole testified that Haeg was not going to get credit for the guide year given up. This is automatic ineffective assistance of counsel - for an attorney to tell his client to give up a whole year of his livelihood while not making sure he got something for it. (Haeg never got anything for the guide year he gave up in reliance on Cole's advice – proving both Risher standards of deficient attorney performance and harm to client.). *See* Haeg's original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

(68) Cole testified that he never told Haeg the number of charges initially filed was "kind of overwhelming". Yet Haeg has tape recordings of Cole telling Haeg this. See Haeg's PCR exhibits. This proves Cole's sworn testimony to be irrefutably false, proven perjury by Cole, is an attempt to cover up his sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client – as Cole's perjury proves his conflict of interest. *See* Haeg's original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

(69) Cole testified that, before he had Haeg give a statement, he never told Haeg that the state could use Haeg's statement to justify the charges they wished Haeg to plea to. This is automatic ineffective assistance of counsel.

> Wayrynen v. Class 586 N.W.2d 499 (S.D. 1998) Counsel ineffective for identifying client to police and having her confess to 15 arson charges without any prior attempt to negotiate a deal with the state.

This proves Cole's sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client. *See* Haeg's original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

(70) Cole testified that Haeg's statement did not increase the number of charges that the state wanted Haeg to plea to. Yet the charging informations prove that this is false. *See* charging information. This proves Cole's sworn testimony to be irrefutably false, proven perjury by Cole, is an attempt to cover up his sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client – as Cole let the state use Haeg's immunized statement against Haeg. *See*

Haeg's original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

(71) Cole testified that it was allowed for the state to use uncharged, unproven allegations to enhance Haeg's sentence by 3 times. At the time Cole told Haeg there was nothing he could do about this, agreed to let the state do this, and because of Cole's agreement the state successfully asked the court for and was able to do this at Haeg's sentencing after trial. See court record. Yet this is not allowed:

> Smith v. State, 531 P.2d 1273 (Alaska Supreme Court 1975)
> "[R]eferences to accusations or arrests which did not lead to convictions are not proper considerations in sentencing.

This proves Cole's sworn testimony to be irrefutably false, proven perjury by Cole, is an attempt to cover up his sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client – as the state presented uncharged, unproven allegations. *See* court record, Haeg's original PCR memorandum, exhibits, and affidavits for evidence and how this harmed Haeg.

(72) Cole testified that he didn't tell Haeg he could get the airplane back "because it wasn't your [Haeg's] only means." Yet Haeg has tape recordings of him telling Cole, while Cole was representing Haeg, that the airplane was the single most important item for Haeg to make a livelihood. This means Cole was placing his opinion of what was important in Haeg's life over what Haeg thought was important in Haeg's life – without telling Haeg he was doing this and without telling Haeg he could get the airplane back. This meets both Risher standards of

deficient attorney performance and harm to client – as Cole deprived Haeg of the single most important item for Haeg's livelihood. *See* Haeg's original PCR memorandum/exhibits for additional evidence and how this harmed Haeg.

(73) Cole testified that Haeg had asked him about going to trial because of entrapment and that Cole told him he shouldn't because the thought Haeg would lose on this issue. Yet Haeg has recordings of Cole, while Cole was representing Haeg, proving this never happened – with Cole stating entrapment was not a legal defense. See Haeg's PCR exhibits. This proves Cole's sworn testimony to be irrefutably false, proven perjury by Cole, is an attempt to cover up his sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client – as Cole deprived Haeg of a defense. *See* Haeg's original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

(74) Cole testified that on November 8 and 9 of 2004 Haeg was "celebrating" and "very happy" with the deal. Yet Haeg has tape recordings of Cole, while Cole was representing Haeg, stating that everyone was so angry on November 8 and 9, 2004, that they were "burning" and that there was no deal. See Haeg's PCR exhibits. This proves Cole's sworn testimony to be irrefutably false, proven perjury by Cole, is an attempt to cover up his sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client – as Cole's perjury proves his conflict of interest. *See* Haeg's original PCR memorandum, exhibits, and affidavits for evidence and how this harmed Haeg.

(75) Cole testified that Haeg had never told him that he (Haeg) was unhappy because Leaders had broke the deal and wanted the airplane to boot. Yet Haeg has tape recordings of himself telling Cole, while Cole was representing Haeg, that this was the case. See Haeg's PCR exhibits. This proves Cole's sworn testimony to be irrefutably false, proven perjury by Cole, is an attempt to cover up his sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client – as Haeg had a due process right to enforcement of the plea agreement that the state broke to get more. *See* Haeg's original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

(76) Cole testified that he told Haeg prior to November 8, 2004 that the state was going to increase the severity of the already filed charges. Yet Haeg has tape recordings of Cole, while Cole was representing Haeg, that Cole told Haeg on November 8, 2004 that the state was going to increase the severity of the already filed charges. See Haeg's PCR exhibits. In addition, Haeg has numerous witnesses, and a letter from Cole himself, proving Cole first told Haeg of this on November 8, 2004. See Haeg's PCR exhibits. This proves Cole's sworn testimony to be irrefutably false, more proven perjury by Cole, is another attempt to cover up his sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client – as Haeg had a right to be informed of the violation as soon as Cole knew about it. *See* Haeg's original PCR

memorandum/exhibits/affidavits for additional evidence and how this harmed Haeg.

(77) Cole testified that he never told Haeg that the only thing he could do to enforce the plea agreement was to call Leaders boss. Yet Haeg has tape recordings of Cole, while Cole was representing Haeg, along with many witnesses, that Cole told Haeg this. See Haeg's PCR exhibits. This proves Cole's sworn testimony to be irrefutably false, proven perjury by Cole, is an attempt to cover up his sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client – as Haeg had a due process right to enforcement of his plea agreement and Cole's perjury proves his conflict of interest. *See* Haeg's original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

(78) Cole testified that there was no reason to call Leaders boss after November 9, 2012 because the case had been negotiated. Then Cole testified there would not have been any conversations after that date in which Haeg brought up contacting Leaders. Yet Haeg has tape recordings of himself, well after November 9, 2012 and while Cole was still representing Haeg, asking Cole if he had talked to Leaders boss yet. (Cole responded that he had left a message.) See Haeg's PCR exhibits. This proves Cole's sworn testimony to be irrefutably false, proven perjury by Cole, is an attempt to cover up his sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client – as Cole's

perjury proves his conflict of interest. See Haeg's original PCR memorandum, exhibits, and affidavits for evidence and for how this harmed Haeg.

(79) Cole testified it was not deficient performance to tell Haeg that the only thing he could do to enforce the plea agreement was to call Leaders boss.

> "When the prosecution makes a 'deal' within its authority and the defendant relies on it in good faith, the court will not let the defendant be prejudiced as a result of that reliance." United States v. Goodrich, 493 F.2d 390, 393 (9th Cir. 1974).
>
> "The indictment upon which Garcia's convictions are based was obtained in violation of the express terms of the agreement and is therefore invalid. The upholding of the Government's integrity allows for no other conclusion." U.S. v. Garcia, 519 F.2d 1343 (9th Circuit 1975)
>
> "Government must adhere strictly to the terms of agreements made with defendants—including plea, cooperation, and immunity agreements…" Santobello v. New York, 404 U.S. 257 (U.S. Supreme Court 1971)
>
> "[A] court must carefully scrutinize the agreement to determine whether the government has performed; in doing so, court must strictly construe the agreement against the government." Stolt-Nielsen v, U.S., 442 F.3d 177 (3d. Cir. 2006)
>
> "Modern notions of due process have belied the notion that a prosecutor may invoke his discretion to evade promises made to a defendant or potential defendant as part of an agreement or bargain. That being the case, a defendant or witness does have more to rely upon than merely the "grace or favor" of the prosecutor… to allow the defendant some redress for prosecutorial reneging." Surina v. Buckalew, 629 P.2d 969 (Alaska 1981)
>
> "Where an accused relies on a promise… to perform an action that benefits the state, this individual…will not be able to "rescind" his or her actions. … In the plea bargaining arena, the United States Supreme Court has held that states should be held to strict compliance with their promises. …courts consider the defendant's detrimental reliance as the gravamen of whether it would be unfair

to allow the prosecution to withdraw from a plea agreement. Closson v. State, 812 P.2d 966 (Ak. 1991)

"Detrimental reliance may be demonstrated where the defendant performed some part of the bargain; for example, where the defendant provides beneficial information to law enforcement." Reed v. Becka, 333 S.C. 676, 511 S.E.2d 396 (Ct. App. 1999)

"Counsel ineffective for failing to move to compel the state to comply with pretrial agreement and failing to advise the defendant of this option." State v. Scott, 602 N.W.2d 296 Wis. 1999

The caselaw above proves that Cole could have filed a motion with the court to enforce the plea agreement for which Haeg had already given up a whole year of this livelihood. This proves Cole's sworn testimony to be irrefutably false, proven perjury by Cole, is an attempt to cover up his sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client – as Haeg had a due process right to enforcement of his plea agreement. See Haeg's original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

(80) Cole testified that he knew the return of the airplane was the only thing that would have made Haeg happy. Cole also testified that he never told Haeg he could legally get the airplane back. This is ineffective assistance of counsel.

"We believe it self-evident that an indispensable component of the guarantee of effective assistance of counsel is the accused's right to be advised of basic procedural rights, particularly when the accused seeks such advice by specific inquiry. Without knowing what rights are provided under law, the accused may well be unable to understand available legal options and may consequently be

incapable of making informed decisions." Smith v. State, 717 P.2d 402 (Ak 1986).

This proves Cole's sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client – as Cole prevented Haeg from the use of the primary property by which he provided a livelihood. *See* Haeg's original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

(81) Cole testified that after November 9, 2004, and while he was still representing Haeg, he was "ecstatic" with what Leaders had done. Yet Haeg has tape recordings after November 9, 2004, while Cole was still representing him, in which Cole states he was "burning" about what Leaders had done and Cole stated that Leaders "wanted to be a dick and it pisses me off." See Haeg's PCR exhibits. This proves Cole's sworn testimony to be irrefutably false, proven perjury by Cole, is an attempt to cover up his sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client – as Cole's perjury proves his conflict of interest.. *See* Haeg's original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

(82) When asked if it was true that he never discussed a motion to suppress with Haeg because he (Cole) never felt it was a good option, Cole testified "no". Yet Cole has previously testified under oath that he never discussed a motion to suppress with Haeg because he didn't think it was a good option. See Haeg's PCR exhibits. This proves Cole's sworn testimony to be irrefutably false,

proven perjury by Cole, is an attempt to cover up his sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client – as Cole's perjury proves his conflict of interest. *See* Haeg's original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

(83) Cole testified that he discussed a motion to suppress with Haeg. Yet Haeg has tape recordings of Cole, while Cole was still representing him, along with sworn testimony from Cole, proving this false. See Haeg's PCR exhibits. This proves Cole's sworn testimony to be irrefutably false, proven perjury by Cole, is an attempt to cover up his sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client – as Cole's perjury proves his conflict of interest. *See* Haeg's original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

(84) Cole testified that he did not remember Haeg, during the immunized statement Haeg gave, telling Cole, Leaders, and Trooper Gibbens that the evidence locations had been falsified. Yet Haeg has a tape recording of the immunized statement proving that, during his immunized statement, he told Cole, prosecutor Leaders, and Trooper Gibbens that the evidence locations had been falsified to his guide area. See Haeg's PCR exhibits. This proves Cole's sworn testimony to be irrefutably false, proven perjury by Cole, is an attempt to cover up his sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client – as Haeg had due process right not to be prosecuted with known false

evidence. *See* Haeg's original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

(85) When Haeg asked if Cole, Leaders or Gibbens had a duty to look into the false evidence locations once it was pointed out to them, Cole testified that Haeg was "asking the wrong person" – even though Haeg had asked if Cole himself had a duty to do something about the false evidence location. Cole then testified that since the Trooper who had falsified the locations was right there in Cole's office (Trooper Gibbens) that Cole thought he would remember Haeg telling him that he had falsified the evidence locations. Yet Haeg has a tape recording of himself getting into an argument with both Gibbens and Leaders about where the evidence was found – and Cole was sitting right there as Haeg's "statement" was given in Cole's own office. See Haeg's PCR exhibits. More importantly, at trial Trooper Gibbens continued to testify falsely about the evidence locations – and it was only because Haeg flat demanded he be forced to tell the truth did he admit that he knew the evidence locations were false when he testified – proving that all along he had known the evidence locations were false but continue to falsify them anyway. See court record. The state continued to argue that Haeg took the wolves where he guides (which was where the evidence had been falsified to). And the proof of the effectiveness of the false testimony is the fact Judge Murphy specifically cited the false evidence locations as the reason for Haeg's severe sentence (see sentencing record) – even after Gibbens had admitted the locations were false. (This is the same judge who had issued all the

warrants years before based on Gibbens affidavits falsifying the evidence locations and the same judge who Gibbens chauffeured full time during Haeg's trial and sentencing.)

> "[A]ll evidence obtained by searches & seizures in violation of the Federal Constitution is inadmissible in a criminal trial in a state. Nothing can destroy a government more quickly than its failure to observe its own laws, or worse, its disregard of the charter of its own existence." Mapp v. Ohio, 367 U.S. 643 (U.S. Supreme Court 1961)
>
> "Once defendant has shown that specific statements in affidavit supporting search warrant are false, together with statement of reasons in support of assertion of falsehood, burden then shifts to State to show that statements were not intentionally or recklessly made." Lewis v. State, 9 P.3d 1028, (Ak.,2000)
>
> "State & federal constitutional requirement that warrants issue only upon a showing of probable cause contains the implied mandate that the factual representations in the affidavit be truthful." State v. Davenport, 510 P.2d 78, (Ak.,1973)
>
> "Misstatements on warrants were material and intentional, justifying suppression of evidence obtained through use of the warrants." State v. White, 707 P2d 271 (Ak., 1985)
>
> "'[Defendant] has everything to gain and nothing to lose' in filing a motion to suppress..." U.S. v. Molina, 934 F.2d 1440 (9th Cir. 1991).

This proves Cole's sworn testimony to be irrefutably false, proven perjury by Cole, is an attempt to cover up his sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client – as Haeg had a due process right not to be prosecuted with false evidence and evidence seized with false warrants. *See* Haeg's original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

(86) Cole testified that if a prosecutor knows that something is intentionally false he has a duty under ethical rules to correct that. Yet in Haeg's case no one, not prosecutor Leaders, Trooper Gibbens, or Haeg's own attorneys, did anything to correct the evidence locations that they all knew had been falsified to Haeg's guide area. Even after Trooper Gibbens admitted on the stand in front of Haeg's jury that he had knowingly falsified the locations did anyone let Haeg's judge or jury know that this meant the wolves were not taken in Haeg's guide area – and prosecutor Leaders continued to argue that Haeg's took the wolves where he guide to benefit his guide business. This means that not only was there prosecutorial misconduct but that there was ineffective assistance of counsel:

> "Court found both prosecutorial misconduct and ineffective assistance which created the 'real potential for an unjust result.'" State v. Sexton, 709 A.2d 288 (N.J. 1998).

(87) Cole testified that only Haeg's trial counsel (Robinson), and not himself, had an obligation to correct the falsified evidence locations. This is exactly why Haeg hired Cole and paid him $200 per hour.

> "From counsel's function as assistant to the defendant derive... the more particular duties to consult with the defendant on important decisions and to keep the defendant informed...The reasonableness of counsel's actions may be determined or substantially influenced by the defendants own statements or actions. Counsel's actions are usually based, quite properly, on informed strategic choices made by the defendant and on information supplied by the defendant. In short, inquiry into counsel's conversations with the defendant may be critical to a proper assessment of counsel's ...litigation decisions." Strickland v. Washington

> "[T]he dignity of the U.S. Government will not permit the conviction of any person on tainted testimony. The government of a strong and

free nation does not need convictions based upon such testimony. It cannot afford to abide with them." Mesarosh v. U.S., 352 U.S. 1 (U.S. Supreme Court 1956)

"Conviction obtained through use of false evidence, known to be such by representatives of the State, is a denial of due process, and there is also a denial of due process, when the State, though not soliciting false evidence, allows it to go through uncorrected when it appears. Principle that a State may not knowingly use false evidence, including false testimony, to obtain a tainted conviction, implicit in any concept of ordered liberty, does not cease to apply merely because the false testimony goes only to the credibility of the witness." Napue v. Illinois, 360 U.S. 264 (U.S. Supreme Court 1959)

"Requirement of 'due process' is not satisfied by mere notice and hearing if state, through prosecuting officers acting on state's behalf, has contrived conviction through pretense of trial which in truth is used as means of depriving defendant of liberty through deliberate deception of court and jury by presentation of testimony known to be perjured, and in such case state's failure to afford corrective judicial process to remedy the wrong when discovered by reasonable diligence would constitute deprivation of liberty without due process." Mooney v. Holohan, 294 U.S. 103 (U.S. Supreme Court 1935)

"The principle that a State may not knowingly use false evidence, including false testimony, to obtain a tainted conviction, [is] implicate in any concept of ordered liberty..." Giles v. Maryland, 386 U.S. 66 (U.S. Supreme Court 1967)

"We hold the Due Process Clause of the Fifth Amendment is violated when a defendant has to stand trial on an indictment which the government knows is based partially on perjured testimony..." United States v. Basurto, 497 F.2d 781 (9th Cir. 1974)

"We believe it self-evident that an indispensable component of the guarantee of effective assistance of counsel is the accused's right to be advised of basic procedural rights, particularly when the accused seeks such advice by specific inquiry. Without knowing what rights are provided under law, the accused may well be unable to understand available legal options and may consequently be incapable of making informed decisions." Smith v. State, 717 P.2d 402 (Ak 1986)

> "It is a denial of the right to effective assistance of counsel for an attorney to advise a client erroneously on a clear point of law." Beasley v. U.S., 491 F2d 687 (6th Cir. 1971).

This proves Cole's sworn testimony to be irrefutably false, proven perjury by Cole, is an attempt to cover up his sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client – as Cole let Haeg be prosecuted with known false evidence and Cole's perjury proves his conflict of interest. *See* Haeg's original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

(88) Cole testified he didn't see any benefit in correcting the false evidence locations. As shown above and in Haeg's original PCR memorandum/exhibits/ affidavits the false location was devastating – providing the state with a false and compelling motive for Haeg's actions that would support a guide conviction even though Haeg had a permit to take wolves and was just doing as he had been told. This proves Cole's sworn testimony to be irrefutably false, proven perjury by Cole, is an attempt to cover up his sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client – as Cole let Haeg be prosecuted with known, false, and material evidence. *See* Haeg's original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

(89) Cole testified that it was concern of his that the state was going to make an example of Haeg because of the harm Haeg had caused the wolf-hunting

program. Then Cole testified that it was not possible that the state falsified the evidence locations to help make an example of Haeg. Yet because of what happened at Haeg's trial it is clear the state knew the evidence locations were false, pressed ahead with using the false locations anyway, and used it so effectively that Judge Murphy specifically cited the false locations to justify Haeg's severe sentence. See court record. This proves Cole's sworn testimony to be irrefutably false, proven perjury by Cole, is an attempt to cover up his sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client – as Cole let Haeg be subject to prosecutorial misconduct and be prosecuted with known, false, and material evidence. *See* Haeg's original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

(90) Cole testified that while representing Haeg, he told Haeg that if he wanted to fight he would have to put up more money. Yet Haeg has tape recordings of Cole, while Cole was still representing him, proving this is false. See Haeg's PCR exhibits. This proves Cole's sworn testimony to be irrefutably false, proven perjury by Cole, is an attempt to cover up his sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client – as Cole's perjury proves his conflict of interest. *See* Haeg's original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

(91) Cole testified that he knew of no reason why prosecutor Leaders and Trooper Gibbens could not prosecute Haeg after they took Haeg's immunized statement. Yet this is strictly forbidden.

State of Alaska v. Gonzalez, 853 P2d 526 (Ak Supreme Court 1993):

> "We do not doubt that, in theory, strict application of use and derivative use immunity would remove the hazard of incrimination. Because we doubt that workaday measures can, in practice, protect adequately against use and derivative use, we ultimately hold that [former] AS 12.50.101 impermissibly dilutes the protection of article I, section 9.
>
> Procedures and safeguards can be implemented, such as isolating the prosecution team or certifying the state's evidence before trial, but the accused often will not adequately be able to probe and test the state's adherence to such safeguards.
>
> The second basis for our decision is that the state cannot meaningfully safeguard against nonevidentiary use of compelled testimony. Nonevidentiary use "include assistance in focusing the investigation, deciding to initiate prosecution, refusing to plea-bargain, interpreting evidence, planning cross-examination, and otherwise generally planning trial strategy." United States v. McDaniel, 482 F.2d 305, 311 (8th Cir.1973). Innumerable people could come into contact with the compelled testimony, either through official duties or, in a particularly notorious case, through the media. Once persons come into contact with the compelled testimony they are incurably tainted for nonevidentiary purposes.
>
> This situation is further complicated if potential jurors are exposed to the witness' compelled testimony through wide dissemination in the media.
>
> When compelled testimony is incriminating, the prosecution can "focus its investigation on the witness to the exclusion of other suspects, thereby working an advantageous reallocation of the government's financial resources and personnel." With knowledge of how the crime occurred, the prosecution may refine its trial strategy

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

This proves Cole's sworn testimony to be irrefutably false, more proven perjury by Cole, is another attempt to cover up his sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client – as Cole let Haeg be prosecuted in violation of his right against self-incrimination. *See* Haeg's original PCR memorandum/exhibits/affidavits for additional evidence and how this harmed Haeg.

(92) Cole testified that the state didn't use Haeg's statement to get Zellers to cooperate with the state. Yet Zellers and Zellers attorney Fitzgerald have testified under oath in front of Cole that this was the case. This proves Cole's sworn testimony to be irrefutably false, more proven perjury by Cole, is another attempt to cover up his sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client – as Cole let Haeg be prosecuted

in violation of his right against self-incrimination. *See* Haeg's original PCR memorandum/exhibits/affidavits for additional evidence and how this harmed Haeg.

(93) Cole testified that Haeg gave up his right to go to trial. This is obviously false. *See* court record. This proves Cole's sworn testimony to be irrefutably false, more proven perjury by Cole, is another attempt to cover up his sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client – as Cole's perjury proves his conflict of interest. *See* Haeg's original PCR memorandum/exhibits/affidavits for additional evidence and how this harmed Haeg.

(94) Cole testified that he got a subpoena and airline ticket to Haeg's sentencing but didn't show up because Robison told him he did not have to show up. Yet Cole also testified he had been subpoenaed by Haeg to make sure Haeg got credit for the guide year he had given up. As a result of Cole not showing up Haeg never got credit for the guide year he had already given up at Cole's advice. This proves Cole and Robinson's sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client. *See* Haeg's original PCR memorandum/exhibits/affidavits for added evidence and how this harmed Haeg.

(95) Cole testified that it wouldn't make any difference for Haeg to get credit for year of guiding Haeg had already given up. This is obviously false, proves Cole's sworn testimony to be irrefutably false, more perjury by Cole, is another attempt to cover up his sellout of Haeg, and meets both Risher standards

of deficient attorney performance and harm to client – as Haeg never got credit for a whole year of his livelihood and Cole's perjury proves his conflict of interest. *See* Haeg's original PCR memorandum/exhibits/affidavits for additional evidence and how this harmed Haeg.

(96) Cole testified that it was Haeg's fault he didn't get credit for the guide year given up and it was Haeg's fault that Haeg was not told he would not get credit for the guide year already given up. This is obviously false and proves Cole's sworn testimony to be irrefutably false, more proven perjury by Cole, is another attempt to cover up his sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client – as Haeg never got credit for a whole year of his livelihood and Cole's perjury proves his conflict of interest. *See* Haeg's original PCR memorandum/exhibits/affidavits for additional evidence and how this harmed Haeg.

(97) Cole testified that he told Haeg that he might loose credit for the guide year given up if Haeg went to trial. Yet Haeg has tape recordings of Cole, while Cole was still representing him, proving this is false. This proves Cole's sworn testimony to be irrefutably false, more proven perjury by Cole, is another attempt to cover up his sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client – as Haeg never got credit for a whole year of his livelihood and Cole's perjury proves his conflict of interest. *See* Haeg's original PCR memorandum/exhibits/affidavits for additional evidence and how this harmed Haeg.

(98) Cole testified that he never told Haeg what was to keep Leaders from breaking any new deal after Leaders broke the first deal. This is ineffective assistance of counsel as this caused Haeg to believe he could never enforce any deal ever made with Leaders, no matter how much detrimental reliance was place on it.

(99) Cole testified that, while he was representing Haeg, Haeg might have told him that because of what Leaders did Haeg no longer trusted Leaders.

(100) Cole testified that after what Leaders did on November 8 and 9, 2004 he was "obviously" going to be more careful with his dealings with Leaders in the future.

(101) Cole testified that, while he represented Haeg, it was not his job to tell Haeg he could bond the seized airplane out. This is obviously false, ineffective assistance of counsel, and proves Cole's sworn testimony to be irrefutably false, more proven perjury by Cole, is another attempt to cover up his sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client – as this deprived Haeg of the use of the plane that was his primary means to provide a livelihood and Cole's perjury proves his conflict of interest. *See* Haeg's original PCR memorandum/exhibits/affidavits for additional evidence and how this harmed Haeg.

(102) Cole testified that even after Haeg made the airplane a central issue he (Cole) had no duty to tell Haeg he could bond the airplane out. This is obviously false, ineffective assistance of counsel, and proves Cole's sworn

testimony to be irrefutably false, more proven perjury by Cole, is another attempt to cover up his sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client – as this deprived Haeg of the use of the plane that was his primary means to provide a livelihood and Cole's perjury proves his conflict of interest. *See* Haeg's original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

(103) Cole testified that even after Haeg told him that the airplane was important for Haeg's livelihood Cole had no duty to tell Haeg he could bond it out. This is obviously false, ineffective assistance of counsel, and proves Cole's sworn testimony to be irrefutably false, more proven perjury by Cole, is another attempt to cover up his sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client – as this deprived Haeg of the use of the plane that was his primary means to provide a livelihood and Cole's perjury proves his conflict of interest. *See* Haeg's original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

(104) Cole testified that Haeg would never get the plane back. Yet Waiste above proves this is not true. This is irrefutably false, more proven perjury by Cole, is another attempt to cover up his sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client – as this deprived Haeg of the use of the plane that was his primary means to provide a livelihood and Cole's perjury proves his conflict of interest. *See* Haeg's original PCR memorandum/exhibits/affidavits for added evidence and how this harmed Haeg.

(105) Cole testified that even after Haeg told him he was thinking of going to trial Cole did not have a duty to tell Haeg he could bond the airplane out. This is irrefutably false, more proven perjury by Cole, is another attempt to cover up his sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client – as this deprived Haeg of the use of the plane that was his primary means to provide a livelihood and Cole's perjury proves his conflict of interest. *See* Haeg's original PCR memorandum/exhibits/affidavits for additional evidence and how this harmed Haeg.

(106) Cole testified that if Haeg wanted to fight he should have told him he wanted to fight. Yet Haeg has tape recordings of himself and Cole, while Cole was still representing him, proving he told Cole many times he wanted to fight. See Haeg's PCR exhibits. This proves Cole's sworn testimony to be irrefutably false, more proven perjury by Cole, is another attempt to cover up his sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client – as Cole's perjury proves his conflict of interest. *See* Haeg's original PCR memorandum/exhibits/affidavits for additional evidence and how this harmed Haeg.

(107) Cole testified that he never told Haeg about his right to a prompt postseizure hearing "because it never came up." Yet Cole irrefutably knew Haeg wanted the plane back, Haeg had hired Cole to tell him about his rights, and a prompt postseizure hearing was the legal way to ask for the plane back. This proves Cole's sworn testimony to be irrefutably false, more proven perjury by

Cole, is another attempt to cover up his sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client – as this deprived Haeg of the use of the plane that was his primary means to provide a livelihood and Cole's perjury proves his conflict of interest. *See* Haeg's original PCR memorandum/exhibits/affidavits for added evidence and how this harmed Haeg.

(108) Cole testified that Haeg had given him "no options as far as defenses." As shown above in Haeg's original PCR memorandum/exhibits/ affidavits this is irrefutably false, more proven perjury by Cole, is another attempt to cover up his sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client – as Cole's perjury proves his conflict of interest. *See* Haeg's original PCR memorandum/exhibits/affidavits for additional evidence and how this harmed Haeg.

(109) Cole testified that the reason he did not tell Haeg about being able to get the airplane back was because Haeg was almost comatose he was so depressed about the state taking the airplane. This is incredibly chilling and disturbing testimony by Cole, obviously ineffective assistance of counsel, and meets both Risher standards of deficient attorney performance and harm to client – as this deprived Haeg of the use of the plane that was his primary means to provide a livelihood and Cole's perjury proves his conflict of interest. *See* Haeg's original PCR memorandum/exhibits/affidavits for additional evidence and how this harmed Haeg.

(110) Cole testified that even if Haeg were so comatose about the state taking the property it would not be a good idea to tell Haeg how to get the property back. Again this is incredibly chilling and disturbing testimony by Cole, obviously ineffective assistance of counsel, and meets both Risher standards of deficient attorney performance and harm to client – as this deprived Haeg of the use of the plane that was his primary means to provide a livelihood and Cole's perjury proves his conflict of interest. *See* Haeg's original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

(111) State attorney Peterson prevented Cole from answering Haeg's question to Cole of why it would not be a good idea to tell comatose Haeg how to get the property back. This means there must be a hearing for Cole to be required to answer this question and this prevents Haeg's PCR from being dismissed.

(112) Cole testified it was reasonable for him, regardless of how much Haeg wanted the plane back and regardless of how depressed Haeg was to have the state take it, not to tell Haeg how to get the airplane back. Again this is incredibly chilling and disturbing testimony by Cole, obviously ineffective assistance of counsel, and meets both Risher standards of deficient attorney performance and harm to client – as this deprived Haeg of the use of the plane that was his primary means to provide a livelihood and Cole's perjury proves his conflict of interest. *See* Haeg's original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

> "We believe it self-evident that an indispensable component of the guarantee of effective assistance of counsel is the accused's right to be advised of basic procedural rights, particularly when the accused seeks such advice by specific inquiry. Without knowing what rights are provided under law, the accused may well be unable to understand available legal options and may consequently be incapable of making informed decisions." Smith v. State, 717 P.2d 402 (Ak 1986)

(113) Cole again testified that while he was Haeg's attorney he told Haeg that he could file motions to suppress his statement. Yet Haeg has tape recordings of Cole, while Cole represented Haeg, proving this is false. See Haeg's PCR exhibits. This proves Cole's sworn testimony to be irrefutably false, more proven perjury by Cole, is another attempt to cover up his sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client – as Cole's perjury proves his conflict of interest. *See* Haeg's original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

(114) Cole testified he never told Haeg that the state could use Haeg's statement against Haeg. Yet Haeg has tape recordings of Cole, while Cole was still representing him, proving that Cole told him the state could use his statement against him. See Haeg's PCR exhibits. This proves Cole's sworn testimony to be irrefutably false, more proven perjury by Cole, is another attempt to cover up his sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client – as Cole's perjury proves his conflict of interest. *See* Haeg's original PCR memorandum/exhibits/affidavits for additional evidence and how this harmed Haeg.

(115) Cole testified that while he represented Haeg he might have told Haeg "that the state changed the rules" and that "it's ethical for them (the state) to change the charges, demand we give them the plane, and then 'you can have your day in front of the judge'" Yet Goodrich, Garcia, Santobello, Stolt-Nielson, Surina, Closson, Reed, and Scott above prove this is not ethical or allowed. This proves Cole's sellout of Haeg and meets both Risher standards of deficient attorney performance and harm to client – as Haeg had a due process right to enforcement of his plea agreement. *See* Haeg's original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

(116) Cole testified that by not trying to enforce Haeg's plea agreement he was protecting his own interest (Cole's interest) in being able to make deals with the state after Haeg's case was over. This proves Cole had a conflict of interest with Haeg and that this conflict of interest affected how Cole represented Haeg. This is automatic ineffective assistance of counsel- without needing to show prejudice. Yet Cole not enforcing Haeg's plea agreement positively shows prejudice.

> "Counsel had advised defendant that he, the attorney, would have to work with the federal people in the future and that, therefore, it was best not to make waves when there was little if any chance of fighting Federal Prosecutors. REVERSED AND REMANDED" United States v. Ellison, 798 F.2d 1102 (7th Cir. 1986)
>
> "[T]he conflict itself demonstrated a denial of the right to have the effective assistance of counsel. Thus, a defendant who shows that a conflict of interest actually affected the adequacy of his representation need not demonstrate prejudice in order to obtain relief. Because it is in the simultaneous representation of conflicting

interests against which the Sixth Amendment protects a defendant, he need go no further than to show the existence of an actual conflict. An actual conflict of interest negates the unimpaired loyalty a defendant is constitutionally entitled to expect and receive from his attorney." Cuyler v. Sullivan, 446 U.S. 335 (U.S. Supreme Court 1980)

"[I]n a case of joint representation of conflicting interests the evil – it bears repeating – is in what the advocate finds himself compelled to refrain from doing....It may be possible in some cases to identify from the record the prejudice resulting from an attorney's failure to undertake certain trial tasks, but even with a record of the sentencing hearing available it would be difficult to judge intelligently the impact of a conflict on the attorney's representation of a client. And to assess the impact of a conflict of interests on the attorney's options, tactics, and decisions in plea negotiations would be virtually impossible." Holloway v. Arkansas, 435 U.S. 475 (U.S. Supreme Court 1978)

"[P]rejudice is presumed when counsel is burdened by an actual conflict of interest. In those circumstances, counsel breaches the duty of loyalty, perhaps the most basic of counsel's duties. Moreover, it is difficult to measure the precise effect on the defense of representation corrupted by conflicting interests." Strickland v. Washington, 466 U.S. 668 (U.S. Supreme Court 1984)

"Defense counsel must perform at least as well as a lawyer with ordinary training and skill in the criminal law and must conscientiously protect his client's interest, undeflected by conflicting considerations." Risher v. State
"[Defendant] has a right to an attorney who wants to protect the defendant's 'rear end', not the attorney's." Anders v. California, 386 U.S. 738 (U.S. Supreme Court 1967).

(117) Cole testified that Haeg was in the "mood to negotiate" and not in the "mood to fight" while he represented Haeg. Yet Haeg has tape recordings of Cole, while Cole was still representing him, proving that this is completely false and that Haeg wanted to fight in any way possible. See Haeg's PCR exhibits. This

proves Cole's sworn testimony to be irrefutably false, more proven perjury by Cole, is another attempt to cover up his sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client – as Cole's perjury proves his conflict of interest. *See* Haeg's original PCR memorandum, exhibits, affidavits for additional evidence and how this harmed Haeg.

(118) Cole testified that it was his impression while he represented Haeg that it was Haeg who broke the plea agreement. Yet Haeg has tape recordings of Cole, while Cole was still representing him and immediately after, along with numerous witnesses, proving that this is false and that it was the state that broke the plea agreement. See Haeg's exhibits. This proves Cole's sworn testimony to be irrefutably false, more proven perjury by Cole, is another attempt to cover up his sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client– as Cole's perjury proves his conflict of interest. *See* Haeg's original PCR memorandum, exhibits, affidavits for additional evidence and how this harmed Haeg.

(119) Cole testified he didn't put Haeg's plea agreement or immunity in writing because "was there was no need to.... we were working alone." Yet Haeg and Cole were not working alone – they were working with state prosecutor Leaders who Cole claims had immense pressure put on to make an example of Haeg - and who Cole no longer trusts.

There is no better way to secretly make an example of Haeg then to (a) lie to Haeg that it wasn't a legal defense that the state told and induce Haeg to do

exactly what the state charged him with doing; (b) lie to Haeg that he could not protest the evidence being falsified to his guide area; (c) lie to Haeg that he has to give a statement because the state gave him immunity; (d) lie to Haeg that the state can use Haeg's statement against him; (e) lie to Haeg that he can't get the airplane back; (f) lie to Haeg he has no right to a postseizure hearing to protest the false search and seizure warrants; (g) lie to Haeg that he has a plea agreement that does not include giving up the airplane but does include giving up a year of guiding; (h) lie to Haeg that he will get credit for a guide year if he gives it up before being sentenced; (i) lie to Haeg that the state can break the plea agreement after the guide year is past and demand the airplane be thrown in to boot – and then claim all the forgoing was Haeg's fault as there is nothing in writing to prove otherwise. It is only because Haeg and others made their own tape recordings at the time that there is evidence proving that Cole and Leaders lied and conspired to strip Haeg bare and are now lying under oath to cover it up.

> "From counsel's function as assistant to the defendant derive… the more particular duties to consult with the defendant on important decisions and to keep the defendant informed…The reasonableness of counsel's actions may be determined or substantially influenced by the defendants own statements or actions. Counsel's actions are usually based, quite properly, on informed strategic choices made by the defendant and on information supplied by the defendant. In short, inquiry into counsel's conversations with the defendant may be critical to a proper assessment of counsel's …litigation decisions." Strickland v. Washington, 466 U.S. 668 (U.S. Supreme Court 1984).

This proves Cole's sworn testimony to be irrefutably false, more proven perjury by Cole, is another attempt to cover up his sellout of Haeg, and meets both

Risher standards of deficient attorney performance and harm to client– as Cole's perjury proves his conflict of interest. *See* Haeg's original PCR memorandum, exhibits, affidavits for additional evidence and how this harmed Haeg.

(120) Cole testified that Haeg put his whole family at risk because he had to go out and kill wolves in an airplane. Yet Haeg was told by the state it was in the best interest of the state for Haeg to go out and kill wolves in an airplane where ever he could find them; given a permit by the state for a "game management" program that was specifically excluded from hunting or guiding – and so any violation of could not affect Haeg guide business. And to strip Haeg of the protection of the program (maximum $5000 fine for a violation – and by law no guide conviction) Cole and Robison let the state manufacture false evidence Haeg was not under the protection of the program, was a rogue guide, and hid the evidence Haeg was doing exactly as he had been told to make the program a success. That is what put Haeg's family at risk and why Haeg will go as far as it takes to get justice. This proves Cole's sworn testimony to be irrefutably false, more proven perjury by Cole, is another attempt to cover up his sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client– as Cole's perjury proves his conflict of interest. *See* Haeg's original PCR memorandum, exhibits, affidavits for additional evidence and how this harmed Haeg.

(121) Cole testified he didn't think the state ever gave Haeg a full copy of the statement he made and when Haeg asked Cole why he didn't record it Cole

testified that it wasn't his job to record it. Yet this is exactly why Haeg hired Cole. This proves Cole's sworn testimony to be irrefutably false, more proven perjury by Cole, is another attempt to cover up his sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client– as Cole's perjury proves his conflict of interest. *See* Haeg's original PCR memorandum, exhibits, affidavits for additional evidence and how this harmed Haeg.

(122) Cole testified that since the recording of Haeg's statement is missing this "was good for you [Haeg]" because "they had an obligation. They were the ones conducting the investigation and if they lost the tape that's bad on them....then they got to come in and defend what they're doing." Yet when Haeg asked Cole why they were never forced to do this Cole stated Haeg "didn't want to go down that avenue." Yet Haeg has tape recordings of Cole, while Cole was still representing him, proving that he specifically wanted to protest the use of his statement. See Haeg's PCR exhibits. This proves Cole's sworn testimony to be irrefutably false, more proven perjury by Cole, is another attempt to cover up his sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client– as Cole's perjury proves his conflict of interest. *See* Haeg's original PCR memorandum, exhibits, affidavits for additional evidence and how this harmed Haeg.

Yet Cole was correct it is very bad for the state to have lost the recordings of Haeg's statement – for now they cannot certify Haeg's statement was "canned" and didn't "taint" their evidence - and Haeg can already

affirmatively prove his statement tainted the charging informations; the state's main witnesses; prosecutor Leaders; the main exhibits used against Haeg at trial; and forced Haeg himself to testify at trial:

> "We do not doubt that, in theory, strict application of use and derivative use immunity would remove the hazard of incrimination. Because we doubt that workaday measures can, in practice, protect adequately against use and derivative use, we ultimately hold that [former] AS 12.50.101 impermissibly dilutes the protection of article I, section 9.
>
> Procedures and safeguards can be implemented, such as isolating the prosecution team or certifying the state's evidence before trial, but the accused often will not adequately be able to probe and test the state's adherence to such safeguards.
>
> The second basis for our decision is that the state cannot meaningfully safeguard against nonevidentiary use of compelled testimony. Nonevidentiary use "include assistance in focusing the investigation, deciding to initiate prosecution, refusing to plea-bargain, interpreting evidence, planning cross-examination, and otherwise generally planning trial strategy." United States v. McDaniel, 482 F.2d 305, 311 (8th Cir.1973). Innumerable people could come into contact with the compelled testimony, either through official duties or, in a particularly notorious case, through the media. Once persons come into contact with the compelled testimony they are incurably tainted for nonevidentiary purposes.
>
> This situation is further complicated if potential jurors are exposed to the witness' compelled testimony through wide dissemination in the media.
>
> When compelled testimony is incriminating, the prosecution can "focus its investigation on the witness to the exclusion of other suspects, thereby working an advantageous reallocation of the government's financial resources and personnel." With knowledge of how the crime occurred, the prosecution may refine its trial strategy to "probe certain topics more extensively and fruitfully than otherwise." Id. These are only some of the possible nonevidentiary advantages the prosecution could reap by virtue of its knowledge of compelled testimony.

Even the state's utmost good faith is not an adequate assurance against nonevidentiary uses because there may be "non-evidentiary uses of which even the prosecutor might not be consciously aware." State v. Soriano, 68 Or.App. 642, 684 P.2d 1220, 1234 (1984) (only transactional immunity can protect state constitutional guarantee against nonevidentiary use of compelled testimony). We sympathize with the Eighth Circuit's lament in McDaniel that "we cannot escape the conclusion that the [compelled] testimony could not be wholly obliterated from the prosecutor's mind in his preparation and trial of the case." McDaniel, 482 F.2d at 312. This incurable inability to adequately prevent or detect nonevidentiary use, standing alone, presents a fatal constitutional flaw in use and derivative use immunity." State of Alaska v. Gonzalez, 853 P2d 526 (Ak Supreme Court 1993)

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

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

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

Finally, and most importantly, an ex parte review in appellate chambers is not the equivalent of the open adversary hearing

contemplated by Kastigar. *See* United States v. Zielezinski, 740 F.2d 727, 734 (9th Cir.1984)

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

"Where immunized testimony is used... the prohibited act is simultaneous and coterminous with the presentation; indeed, they are one and the same. There is no independent violation that can be remedied by a device such as the exclusionary rule: the...process itself is violated and corrupted, and the indictment [or trial] becomes indistinguishable from the constitutional and statutory transgression. If the government has in fact introduced trial evidence that fails the Kastigar analysis, then the defendant is entitled to a new trial. If the same is true as to grand jury evidence, then the indictment must be dismissed." United States v. North, 910 F.2d 843 (D.C.Cir. 1990)

"The Government must do more than negate the taint; it must affirmatively prove that its evidence is derived from a legitimate source wholly independent of the compelled testimony." Kastigar v. United States, 406 U.S. 441 (U.S. Supreme Court 1972)

"It is a deprivation of due process of law to base a conviction in whole or in part on a [compelled] confession, regardless of its truth, and even though there may be sufficient other evidence to support the conviction." Jackson v. Denno, U.S. Supreme Court

(123) When Haeg asked if Cole ever went over with Haeg what it takes for a trial Cole testified "I ....I can't remember...*I never wanted a trial with you in the first place*." Cole testifying under oath that he never wanted a trial with Haeg proves Cole had a conflict of interest with Haeg and explains why Cole pursued a plea agreement only and never told Haeg of all the rights that Haeg could fight the state's case with. It explains every single thing Cole has done. And Alaska

caselaw proves why Cole is willing to lie under oath to help the state defeat Haeg's postconviction relief application:

> "[A] convicted criminal defendant must obtain post-conviction relief as a precondition to maintaining a legal malpractice claim against his or her attorney. [T]he legal standards for ineffective assistance of counsel . . . and for legal malpractice in this action are equivalent." Shaw v. Dept. of Administration, Public Defender Agency, 816 P 2d 1358 (Ak 1991)

If Haeg does not obtain post-conviction relief he is prevented from suing Cole. If he obtains post-conviction relief on ineffective assistance of counsel it is the same as proving malpractice – an incredibly potent motive for Cole to do lie under oath to cover up his sellout of Haeg to the state.

> "The Court found that reversal of Mathis's conviction could expose [defense attorney] Schofield to liability for his part in the delay since Mathis would have spent years in prison on an erroneous conviction; affirmance, on the other hand, would have served Schofield's interest in avoiding discipline or damages..." Mathis v. Hood, 937 F.2d 790 (2d Cir. 1991)

(124) Cole testified that a defendant does not have everything to gain and nothing to lose by filing a motion to suppress. Yet this is not true:

> "[Defendant] 'has everything to gain and nothing to lose' in filing a motion to suppress..." U.S. v. Molina, 934 F.2d 1440 (9th Cir. 1991).

This proves Cole's sworn testimony to be irrefutably false, more proven perjury by Cole, is another attempt to cover up his sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client– as Cole's perjury proves his conflict of interest. *See* Haeg's original PCR memorandum, exhibits, affidavits for additional evidence and how this harmed Haeg.

(125) Cole testified that the state could not necessarily make money out of property they seized from Haeg. Yet the state has falsified the law to the court and the court itself has broken the law in order to modify the judgment against Haeg just so the state can sell the airplane they seized from Haeg – proving Cole wrong. And caselaw proves the state making money from a defendant is of great concern:

> Waiste v. State, 10 P.3d 1141 (Ak Supreme Court 2000) "This court's dicta, however, and the persuasive weight of federal law, both suggest that the Due Process Clause of the Alaska Constitution should require no more than a prompt postseizure hearing... As the Good Court noted, moreover, the protection of an adversary hearing 'is of particular importance [in forfeiture cases], where the Government has a direct pecuniary interest in the outcome.' An ensemble of procedural rules bounds the State's discretion to seize vessels and limits the risk and duration of harmful errors. The rules include the need to show probable cause to think a vessel forfeitable in an ex parte hearing before a neutral magistrate, to allow release of the vessel on bond, and to afford a prompt postseizure hearing."

This proves Cole's sworn testimony to be irrefutably false, more proven perjury by Cole, is another attempt to cover up his sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client– as Cole's perjury proves his conflict of interest. *See* Haeg's original PCR memorandum, exhibits, affidavits for additional evidence and how this harmed Haeg.

(126) Cole testified that he didn't know if anyone involved with Haeg's prosecution was exposed to Haeg's immunized statement. Yet prosecutor Leaders and Trooper Gibbens were prosecuting Haeg and they were the very people who took Haeg's immunized statement in Cole's office with Cole himself helping do it.

The people prosecuting Haeg were not allowed to be exposed to his immunized statement:

> "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." State of Alaska v. Gonzalez, 853 P2d 526 (Ak Supreme Court 1993)

This proves Cole's sworn testimony to be irrefutably false, more proven perjury by Cole, is another attempt to cover up his sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client– as Cole let the state violate Haeg's right against self-incrimination and Cole's perjury proves his conflict of interest. *See* Haeg's original PCR memorandum, exhibits, affidavits for additional evidence and how this harmed Haeg.

(127) Peterson objected to Haeg asking Cole how Alaska v. Gonzalez applied to his case and Cole then refused to answer. This means there must be a hearing at which Cole is required to answer this and until this is done Haeg's PCR proceedings cannot be dismissed.

(128) Peterson objected to Haeg asking Cole if Leaders was required to justify the increasing the severity of the charges and Cole refused to answer. This means there must be a hearing at which Cole is required to answer this and until this is done Haeg's PCR proceedings cannot be dismissed.

(129) Cole testified that Haeg's actions did jeopardize the wolf control program; that he (Cole) had a "personal" interest in seeing the wolf control program continued; and that people across the state shared his view but that he

(Cole) "could set those interests aside and get you the best deal that I could." Yet when Haeg and Haeg's wife Jackie met with Cole before hiring him Cole claimed he had no conflicts of interest and placed a statement that he had no conflicts of interest in the contract he gave Haeg to represent him for $200 per hour. *See* attached contract. In other words Cole lied in the contract he provided Haeg so he could act as a double agent for the state and help crucify Haeg so the wolf control program would not be jeopardized – explaining why he filed no motions, never investigated, and never advocated for Haeg:

> "[A] defendant who shows that a conflict of interest actually affected the adequacy of his representation need not demonstrate prejudice in order to obtain relief. An actual conflict of interest negates the unimpaired loyalty a defendant is constitutionally entitled to expect and receive from his attorney." Cuyler v. Sullivan, 446 U.S. 335 (U.S. Supreme Court 1980).
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> "[I]n a case of joint representation of conflicting interests, the evil -- it bears repeating -- is in what the advocate finds himself compelled to refrain from doing, not only at trial but also as to possible pretrial plea negotiations and in the sentencing process...to assess the impact of a conflict of interests on the attorney's options, tactics, and decisions in plea negotiations would be virtually impossible." Holloway v. Arkansas, 435 U.S. 475 (U.S. Supreme Court 1978)
>
> "[T]he right to the assistance of counsel had been understood to mean that there can be no restrictions upon the function of counsel in defending a criminal prosecution in accord with the traditions of the adversary fact finding process that has been constitutionalized in the Sixth and Fourteenth Amendments." U.S. v. Cronic, 466 U.S. 648 (U.S. Supreme Court 1984)
>
> "[P]rejudice is presumed when counsel is burdened by an actual conflict of interest. In those circumstances, counsel breaches the duty of loyalty, perhaps the most basic of counsel's duties. Moreover, it is difficult to measure the precise effect on the defense

of representation corrupted by conflicting interests." Strickland v. Washington, (U.S. Supreme Court)

"Defense counsel ... must conscientiously protect his client's interest, undeflected by conflicting consideration." Risher v. State (Alaska Supreme Court)

[Defendant] has a right to an attorney who wants to protect the defendant's 'rear end', not the attorney's." Anders v. California, 386 U.S. 738 (U.S. Supreme Court 1967)

(130) When Haeg inquired of Cole if the exposing the state fraudulently running the wolf control program would jeopardize it, attorney Peterson jumped in and objected, claiming this had nothing to do with Haeg's PCR. This means there must be a hearing at which Cole is required to answer this and until this is done Haeg's PCR proceedings cannot be dismissed.

(131) Peterson claimed Haeg could only ask Cole questions about a defense and not about Cole's conflict of interest. Yet as proven by all caselaw above a proven conflict of interest is an absolute defense.

(132) Cole testified that he believed Haeg had given him a letter, explaining what the state had told Haeg, to give to the judge for her consideration and Cole sent the letter to the judge. Yet all that remains of this letter in the official court record is Cole's cover letter stating "comes now David Haeg, by and through counsel, and hereby submits his letter for the court's consideration" – with Haeg's letter nowhere to be now found in the official court record. See court record. This letter laid out the specific facts of who, why, when, where, and how Haeg had been told and induced by the state to take the exact actions he was then

prosecuted for taking. See Haeg's PCR exhibits. Haeg only found the official court record had been destroyed after he could no longer even bring this up on appeal – so this evidence that was removed out of the official record and destroyed harmed Haeg during both trial and appeal. *See* court record for proof and Haeg's original PCR memorandum/exhibits/affidavits for additional evidence and how this harmed Haeg.

(133) When Haeg asked Cole if it was true that Cole's tactic for Haeg was "falling on his sword" Cole testified "that was your decision" and then Peterson immediately jumped in and testified that Cole had "repeatedly" answered this question "without using that phrase." Yet Cole had never told Haeg anything about "falling on his sword." Cole had told Haeg the state telling him he had to take the very actions they prosecuted him for was no defense; there was nothing that could be done about the false evidence locations; that the state had given him immunity and he had to give a statement; nothing that could be done about the immunized statement use; that nothing that could be done about the breaking of plea agreement; that there was no way to get the airplane back; etc; etc; etc – nothing about "falling on his sword."

An analogy would be like Haeg was a Jew in 1943 and being told by Cole, 'hey, get on this train so you can be relocated for work' – when in fact Cole meant 'hey, get on this train so you can go to Auschwitz to be gassed and burned.' To Cole and Peterson the phrases "you can't do anything about the false evidence locations" (when this was being used to frame Haeg for guiding violations); "you

have to give an immunized statement" (when this meant confess to everything so we can hammer you); "this isn't a legal defense" (when it was and would prevent prosecution), "you can't get the airplane back" (so you go broke before we even charge you), or "make a plea agreement" (so the state can get you to give up a whole year of guiding, bankrupting you before trial, without ever giving you anything) may mean the same as "falling on your sword." But to ignorant Haeg had they used the term "falling on your sword" instead of the others he would have know exactly what was in store for him and bolted. Just as the Jews would have bolted had they been told "hey, get on this train so you can go to Auschwitz to be gassed and burned" instead of "hey, get on this train for work." Cole and the state are now claiming everything was "Haeg's" decision when they lied to him to make him believe there were no other options and what he was being led to do would do no harm. The realty was that Haeg's attorneys worked hand-in-glove with the state to mislead Haeg and destroy everything Haeg, his wife, and their two daughters has in life – just as the Jews were misled to destroy their lives.

(134) Haeg asked what the phrase "falling on your sword" means and Cole testified,

> Cole: "That means you……admit your guilt in order for leniency from the state……you fall on your sword."
>
> Haeg: "How come you never told me I was doing that?"
>
> Cole: "I did….you knew it from the beginning….we've gone over this……multiple times David."
>
> Haeg: "Really? And…..so…..there was no immunity then?"

Cole: "Its....it.....it....."

Peterson: "Its.....its asked and answered" (this had never been asked or answered)

Cole: ".....its asked and answered."

Peterson: ".....we've talked about the agree.....the plea agreement."

Haeg: "So.....let me just get this clear.....tell me exactly what the term of your...the description you gave for my tactic of 'we were falling on our sword.' Just tell me that again."

Cole: "I already did."

Haeg: "One more time please."

Cole: "No, I already did.....I'm not repeating things."

The above exchange proves that Cole had agreed behind Haeg's back to let the state use Haeg's statement against Haeg while telling and testifying under oath to Haeg and everyone else that Haeg had "immunity" for his statement – and that he never told Haeg any of this at the time. An attorney intentionally lying to his own client to deprive that client of the basic constitutional right against self-incrimination (and then committing perjury to cover this up) is gross ineffective assistance of counsel and a felony crime. Especially when Haeg specifically asked how the state could use the statement and the evidence that Haeg incriminated himself shows up everywhere in the state's case – in the charging informations, in Zellers and Fitzgerald's testimony, in the map presented to Haeg's jury (exhibit #25), etc, etc. See charging informations and court record.

Martin v. State, 517 P2d 1399 (AK 1974): "Denial of a constitutional right affects substantial rights. Plain error requiring reversal will be deemed present unless the defect is harmless beyond a reasonable doubt."

"Governments collaboration with defendant's attorney during investigation and prosecution violated defendants Fifth and Sixth Amendment right and required dismissal..." United States v. Marshank, 777 F. Supp. 1507 (N.D. 1991)

"[Counsel] so abandoned his overarching duty to advocate the defendant's cause that the state proceedings were almost totally non-adversarial. [T]he record supports the district court's finding that defense counsel turned against [defendant], and that this conflict in loyalty unquestionably affected his representation. Such an attorney, like unwanted counsel, 'represents' the defendant only through a tenuous and unacceptable legal fiction. A defense attorney who abandons his duty of loyalty to his client and effectively joins the state in an effort to attain a conviction... suffers from an obvious conflict of interest. In fact, an attorney who is burdened by a conflict between his client's interests and his own sympathies to the prosecution's position is considerably worse than an attorney with loyalty to other defendants, because the interests of the state and the defendant are necessarily in opposition. The performance of [defendant's] counsel was constitutionally unreasonable, but more importantly, the evidence presented overwhelmingly established that his attorney abandoned the required duty of loyalty to his client. [Defendant's] attorney did not simply make poor strategic choices; he acted with reckless disregard for his clients best interests and, at times, apparently with the intention to weaken his client's case. Prejudice, whether necessary or not, is established under any applicable standard." Osborn v. Shillinger, 861 F.2d 612 (10th Cir. 1988)

"Prejudice presumed because counsel did not serve as advocate – such that he was a 'second prosecutor' and defendant would have been 'better off to have been merely denied counsel.'" Rickman v. Bell, 131 F.3d 1150 (6th Cir. 1997)

Counsel ineffective in murder case for failing to investigate circumstances of taking of first confession prior to moving to suppress, for questioning the defendant in the presence of the police officers concerning the first confession, for encouraging the

defendant to go with police officers to find car and murder weapon, questioning the defendant during that trip to make incriminating statements which resulted in a second taped confession. All of this help to the police occurred without a deal and court presumed prejudice. Bess v. Legursky, 465 S.E.2d 892 (W. Va. 1995)

"The right to be heard would be, in many cases, of little avail if it did not comprehend the right to be heard by counsel. Even the intelligent and educated layman has small and sometimes no skill in the science of law. If charged with crime, he is incapable, generally, of determining for himself whether the indictment is good or bad. He is unfamiliar with the rules of evidence. Left without the aid of counsel he may be put on trial without a proper charge, and convicted upon incompetent evidence, or evidence irrelevant to the issue or otherwise inadmissible. He lacks both the skill and knowledge adequately to prepare his defense, even though he have a perfect one. He requires the guiding hand of counsel at every step in the proceedings against him. Without it though he not be guilty, he faces the danger of conviction because he does not know how to establish his innocence." Powell v. Alabama, 287 U.S. 45 (U.S. Supreme Court 1932)

"Where immunized testimony is used... the prohibited act is simultaneous and coterminous with the presentation; indeed, they are one and the same. There is no independent violation that can be remedied by a device such as the exclusionary rule: the...process itself is violated and corrupted, and the indictment [or trial] becomes indistinguishable from the constitutional and statutory transgression. If the government has in fact introduced trial evidence that fails the Kastigar analysis, then the defendant is entitled to a new trial. If the same is true as to grand jury evidence, then the indictment must be dismissed." United States v. North

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

"It is a denial of the right to effective assistance of counsel for an attorney to advise a client erroneously on a clear point of law." Beasley v. U.S., 491 F2d 687 (6th Cir. 1971)

(135) Haeg asked if he must obtain post-conviction relief before he could pursue an action for legal malpractice against an attorney and Peterson stopped Cole from answering by objecting it had nothing to do with Cole's representation. Yet Haeg had every right to ask questions to prove that Cole had a powerful motive to help the state keep Haeg convicted.

> "The Court found that reversal of Mathis's conviction could expose [defense attorney] Schofield to liability for his part in the delay since Mathis would have spent years in prison on an erroneous conviction; affirmance, on the other hand, would have served Schofield's interest in avoiding discipline or damages..." Mathis v. Hood, 937 F.2d 790 (2d Cir. 1991)

(136) Cole testified that he was not surprised that Haeg did not file motions to suppress at trial. Yet Haeg has a letter by Cole stating that he was surprised no motions to suppress were filed at trial. This proves Cole's sworn testimony to be irrefutably false, more proven perjury by Cole, is another attempt to cover up his sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client– as Cole's perjury proves his conflict of interest. *See* Haeg's original PCR memorandum, exhibits, affidavits for additional evidence and how this harmed Haeg.

(137) Cole refused to answer when questioned if he thought the court should have been informed the state had told Haeg it was for the greater good of the state for him to do exactly as he was charged with doing. This means there

must be a hearing at which Cole is required to answer this and until this is done Haeg's PCR proceedings cannot be dismissed.

(138) Cole refused to answer when questioned if he thought the court should have been told that the state had falsified all evidence locations to Haeg's guide area and then used the false locations as the justification for guide charges. This means there must be a hearing at which Cole is required to answer this and until this is done Haeg's PCR proceedings cannot be dismissed.

(139) Cole testified that Robinson could not blame him (Cole) for not filing all the motions to suppress, etc. (Robinson has testified under oath that it was Cole's responsibility to have filed the motions protesting all the constitutional violations.) This proves Cole and Robinson's sellout of Haeg and meets both Risher standards of deficient attorney performance and harm to client – as Haeg had aright fro one of his attorneys to file these motion in his defense. *See* Haeg's original PCR memorandum, exhibits, affidavits for additional evidence and how this harmed Haeg.

(140) Cole testified he didn't know if it was legal, ethical, and appropriate for two attorneys, one before trial and one at trial, to blame each other for not filing the motions to protect the same client both attorneys had.

(141) Cole testified that after he got the subpoena to Haeg's sentencing he called Robinson and said it would not good for him to testify and that Robinson told him "we don't need you." Yet Haeg has emails and letters proving he flat demanded Robinson subpoena and question Cole all about how Cole sold Haeg

out, with 56 written questions that Haeg had prepared, that Haeg paid Robinson to subpoena Cole and to buy him an airline ticket– and it is irrefutable it was Haeg's right for his demands be followed:

> *Jones v. Barnes,* 463 U.S. 745 (U.S. Supreme Court 1983) & *Brookhart v. Janis,* 384 U.S. 1 (U.S. Supreme Court 1966) ruled it is the defendant, not the attorney, who is captain of the ship: "Although the attorney can make some tactical decisions, the ultimate choice as to which direction to sail is left up to the defendant. The question is not whether the route taken is correct; rather, the question is whether [the defendant] approved the course."... "The defendant, and not his lawyer or the State, will bear the personal consequences of a conviction... And although he may conduct his own defense ultimately to his own detriment, his choice must be honored out of 'that respect for individual which is the lifeblood of the law.'" (Quoting *People v. Malkin*, 250 N. Y. I85, 350-51 (1970) Brennan, J. concurring).

This is irrefutable proof Cole and Robinson were conspiring to cover up Cole's sellout of Haeg to the state, proves Cole and Robinson's sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client. *See* Haeg's original PCR memorandum, exhibits, affidavits for additional evidence and how this harmed Haeg.

(141) Peterson prevented Haeg from additional attempts to establish Cole and Robinson worked together to deprive Haeg of constitutional rights to help the state frame Haeg. This means there must be a hearing at which Cole is required to answer this and until this is done Haeg's PCR proceedings cannot be dismissed.

Cole Deposition – Peterson Examining

(142) Peterson asks Cole to confirm the immunity Haeg received was against using Haeg's statement at trial and Cole answers, "Yep" but then says:

"and arguably more....I mean.....ssss....in my opinion the state.....erred by not putting it out there."

Yet it is irrefutable that the state could not use Haeg's statement in any way – and not just at trial. And in Alaska the only immunity allowed is transactional immunity – which Cole testified Haeg received – and transactional immunity prevents any and all prosecution for the actions and events discussed:

> One of the more notorious recent immunity cases, United States v. North, 910 F.2d 843 (D.C.Cir.) modified, 920 F.2d 940 (D.C.Cir.1990) illustrates another proof problem posed by use and derivative use immunity.
>
> First, the prosecution could use the compelled testimony to refresh the recollection of a witness testifying at North's criminal trial. The second problem, however, is more troublesome. In a case such as North, where the compelled testimony receives significant publicity, witnesses receive casual exposure to the substance of the compelled testimony through the media or otherwise. Id. at 863. In such cases, a court would face the insurmountable task of determining the extent and degree to which "the witnesses' testimony may have been shaped, altered, or affected by the immunized testimony." Id.
>
> The second basis for our decision is that the state cannot meaningfully safeguard against nonevidentiary use of compelled testimony. Nonevidentiary use "include assistance in focusing the investigation, deciding to initiate prosecution, refusing to plea-bargain, interpreting evidence, planning cross-examination, and otherwise generally planning trial strategy." United States v. McDaniel, 482 F.2d 305, 311 (8th Cir.1973). Innumerable people could come into contact with the compelled testimony, either through official duties or, in a particularly notorious case, through the media. Once persons come into contact with the compelled testimony they are incurably tainted for nonevidentiary purposes.
>
> This situation is further complicated if potential jurors are exposed to the witness' compelled testimony through wide dissemination in the media.
>
> Even the state's utmost good faith is not an adequate assurance

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

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

"[N]one of the testimony or exhibits...became known to the prosecuting attorneys...either from the immunized testimony itself or from leads derived from the testimony, directly or indirectly...we conclude that the use of immunized testimony by witnesses to refresh their memories, or otherwise to focus their thoughts, organize their testimony, or alter their prior or contemporaneous statements, constitutes evidentiary use rather than nonevidentiary use. This observation also applies to witnesses who studied, reviewed, or were exposed to the immunized testimony in order to prepare themselves or others as witnesses. From a prosecutor's standpoint, an unhappy byproduct of the Fifth Amendment is that Kastigar may very well require a trial within a trial (or a trial before, during, or after the trial) if such a proceeding is necessary for the court to determine whether or not the government has in any fashion used compelled testimony to indict or convict a defendant. If the government chooses immunization, then it must understand that the Fifth Amendment and Kastigar mean that it is taking a great chance that the witness cannot constitutionally be indicted or prosecuted.

Finally, and most importantly, an ex parte review in appellate chambers is not the equivalent of the open adversary hearing contemplated by Kastigar. *See* United States v. Zielezinski, 740 F.2d

727, 734 (9th Cir.1984) Where immunized testimony is used... the prohibited act is simultaneous and coterminous with the presentation; indeed, they are one and the same. There is no independent violation that can be remedied by a device such as the exclusionary rule: the...process itself is violated and corrupted, and the [information or trial] becomes indistinguishable from the constitutional and statutory transgression.

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

Where immunized testimony is used... the prohibited act is simultaneous and coterminous with the presentation; indeed, they are one and the same. There is no independent violation that can be remedied by a device such as the exclusionary rule: the...process itself is violated and corrupted, and the indictment [or trial] becomes indistinguishable from the constitutional and statutory transgression. If the government has in fact introduced trial evidence that fails the Kastigar analysis, then the defendant is entitled to a new trial. If the same is true as to grand jury evidence, then the indictment must be dismissed." United States v. North, 910 F.2d 843 (D.C.Cir. 1990)

Petersons theory that Haeg's statement can be used everywhere but at trial is nothing but a smoke screen to cover up the fact the state unconstitutionally prosecuted Haeg when he could not e prosecuted; used Haeg's statement to convict Haeg – and this is proven by the fact the law in Gonzalez, Kastigar, and North specifically and repeatedly states Haeg's statement may not be used in anywhere – not just at trial – and may not be use to find other evidence; to justify charges, to coerce witnesses into testifying; to get maps to use at trial; etc; etc. Gonzalez and North specifically state an immunized statement may not be used to: "prepare witnesses" or "include assistance in focusing the investigation,

deciding to initiate prosecution, refusing to plea-bargain, interpreting evidence, planning cross-examination, and otherwise generally planning trial strategy." All of these happen BEFORE trial. In addition and as already pointed out, in Alaska there can be no prosecution after being given immunity. This proves Cole's sworn testimony to be irrefutably false, more proven perjury by Cole, is another attempt to cover up his sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client– as Cole let the state violate Haeg's right against self-incrimination and Cole's perjury proves his conflict of interest. *See* Haeg's original PCR memorandum, exhibits, affidavits for additional evidence and how this harmed Haeg.

(143) Peterson asks Cole that because Haeg testified at trial this meant Haeg's immunity was "irrelevant" and Cole agreed. Yet after being given immunity no prosecution was valid and Haeg was told by Robinson the state was already using Haeg's statement against him, was going to present only the bad parts of it against Haeg at trial, and that for the jury to hear the "good" parts of the statement Haeg had to testify at trial. Robinson has testified under oath he told Haeg this. In other words Haeg's immunized statement itself was used to force Haeg to testify at trial – and now the state claims this cures all the use they made of it. This is like arguing that because Jews "willing" entered the gas chamber, because they were told if they didn't they would be shot, it was the Jews own fault they were gassed to death. What were they supposed to do, refuse to go in and

hope they didn't get shot? Haeg could not refuse to testify and just hope the state didn't use his statement against him when Robinson told him they were.

And caselaw holds that as soon as Haeg's immunized statement was used in anyway the rest of the prosecution is null and void:

> Where immunized testimony is used... the prohibited act is simultaneous and coterminous with the presentation; indeed, they are one and the same. There is no independent violation that can be remedied by a device such as the exclusionary rule: the...process itself is violated and corrupted, and the indictment [or trial] becomes indistinguishable from the constitutional and statutory transgression. If the government has in fact introduced trial evidence that fails the Kastigar analysis, then the defendant is entitled to a new trial. If the same is true as to grand jury evidence, then the indictment must be dismissed." United States v. North, 910 F.2d 843 (D.C.Cir. 1990)

In other words as soon as the state used Haeg's statement against Haeg it didn't matter what Haeg or anyone else may or may not have done afterward – the process was "violated and corrupted" and from that moment on Haeg's trial became "indistinguishable from the constitutional and statutory transgression.

And all this ignores the fact that only "transactional" immunity can be given in Alaska – as Cole himself testified. And transactional immunity prevents any prosecution for what is discussed in the immunized statement:

> "Transactional immunity" affords immunity to the witness from prosecution for the offense to which the compelled testimony relates. Black's Law Dictionary (9th Ed.2009)

> Transactional immunity – a grant of immunity to a witness by a prosecutor that exempts the witness from being prosecuted for the acts about which the witness will testify. Webster's New World Law Dictionary, copyright 2010

Yet now everyone is claiming that not only can Haeg be prosecuted after being given transactional immunity, his statement can be used to do so. This is so bizarre and completely corrupt it boggles the mind. What happened is everyone took the chance that Haeg could be railroaded and would never open up a law book to check up on what happened to him. This proves Cole's sworn testimony to be irrefutably false, more proven perjury by Cole, is another attempt to cover up his sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client– as Cole let the state violate Haeg's right against self-incrimination and Cole's perjury proves his conflict of interest. *See* Haeg's original PCR memorandum, exhibits, affidavits for additional evidence and how this harmed Haeg.

Cole Deposition – Haeg Re-Direct

(144) Cole testified that Haeg agreed to a plea agreement in which all terms were negotiated and which included giving up the airplane. Yet Haeg has tape recordings of Cole, while Cole was still representing him and immediately after, proving that this is completely false. This proves Cole's sworn testimony to be irrefutably false, more proven perjury by Cole, is another attempt to cover up his sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client– as Cole's perjury proves his conflict of interest. *See* Haeg's original PCR memorandum, exhibits, affidavits for additional evidence and how this harmed Haeg.

(145) Cole testified that the reason the state could use his statement before trial is because "that's not the time when your guilt or innocence is proven." As shown in Gonzalez, North, and Kastigar above this is false. This proves Cole's sworn testimony to be irrefutably false, more proven perjury by Cole, is another attempt to cover up his sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client– as Cole's perjury proves his conflict of interest. *See* Haeg's original PCR memorandum, exhibits, affidavits for additional evidence and how this harmed Haeg.

(146) Cole testified he didn't know how to stop the state from using Haeg's statement before trial. Yet Gonzalez, North, and Kastigar above prove you ask for a hearing to suppress and require the state to show that they are complying with the law – something that Cole, the attorney Haeg hired for his counsel, is required to know. This proves Cole's sworn testimony to be irrefutably false, more proven perjury by Cole, is another attempt to cover up his sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client – as it is irrefutable that the state used Haeg's statement and map against him. *See* court record, charging informations, and Haeg's original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

> "Of all the rights that an accused person has, the right to be represented by counsel is by far the most pervasive for it affects his ability to assert any other rights he may have." United States v. Cronic, 466 U.S. 648 (U.S. Supreme Court 1984)

"We believe it self-evident that an indispensable component of the guarantee of effective assistance of counsel is the accused's right to be advised of basic procedural rights, particularly when the accused seeks such advice by specific inquiry. Without knowing what rights are provided under law, the accused may well be unable to understand available legal options and may consequently be incapable of making informed decisions." Smith v. State, 717 P.2d 402 (Ak 1986)

State v. Sexton, 709 A.2d 288 (N.J. Super. CT. App. Div. 1998): "Court found both prosecutorial misconduct and ineffective assistance which created the 'real potential for an unjust result'."

Owens v. United States 387 F.3d 607 (7th Cir. 2004)
Counsel was ineffective in drug case for failing to adequately move to suppress evidence seized pursuant to a search of the defendant's house. The evidence was seized pursuant to a warrant based on a barebones affidavit, signed by a detective, that stated that an informant had bought some crack from the defendant at the house three months earlier. There was no indication of the quantity of crack or the reliability of the informant.

State v. Scott 602 N.W.2d 296 (Wis. Ct. App. 1999)
Counsel ineffective for failing to move to compel the state to comply with pretrial agreement and failing to advise the defendant of this option.

"a fortiori ... a failure to seek enforcement of this constitutional right is unfair and constitutes prejudice to the defendant". State v. Paske, 121 Wis. 2d 471, 360 N.W.2d 695 (Ct. App. 1984)

Wayrynen v. Class, 586 N.W.2d 499 (S.D. 1998) Counsel ineffective for identifying client to police and having her confess to 15 arson charges without any prior attempt to negotiate a deal with the state.

Jones v. Barnes, 463 U.S. 745 (U.S. Supreme Court 1983) & Brookhart v. Janis, 384 U.S. 1 (U.S. Supreme Court 1966) ruled it is the defendant, not the attorney, who is captain of the ship: "Although the attorney can make some tactical decisions, the ultimate choice as to which direction to sail is left up to the defendant. The question is not whether the route taken is correct; rather, the question is whether [the defendant] approved the

course."... "The defendant, and not his lawyer or the State, will bear the personal consequences of a conviction... And although he may conduct his own defense ultimately to his own detriment, his choice must be honored out of 'that respect for individual which is the lifeblood of the law.'" (Quoting People v. Malkin, 250 N. Y. I85, 350-51 (1970) Brennan, J. concurring).

State v. Jones 759 P.2d 558 Alaska App.,1988: The reasonableness of counsel's actions may be determined or substantially influenced by the defendant's own statements or actions.... [W]hen a defendant has given counsel reason to believe that pursuing certain investigations would be fruitless or even harmful, counsel's failure to pursue those investigations may not later be challenged as unreasonable. In short, inquiry into counsel's conversations with the defendant may be critical to a proper assessment of counsel's investigation decisions, just as it may be critical to a proper assessment of counsel's other litigation decisions. Of course, a mistake made out of ignorance rather than from strategy cannot later be validated as being tactically defensible.

"Prejudice presumed because counsel did not serve as advocate – such that he was a 'second prosecutor' and defendant would have been 'better off to have been merely denied counsel.'" Rickman v. Bell, 131 F.3d 1150 (6th Cir. 1997)

"Defendant was denied his right to counsel because he was forced to choose between incompetent counsel or no counsel at all." Crandell v. Brunnell, 144 F.3d 1213 (9th Cir. 1998)

"Governments collaboration with defendant's attorney during investigation and prosecution violated defendants Fifth and Sixth Amendment right and required dismissal..." United States v. Marshank, 777 F. Supp. 1507 (N.D. 1991)

"[Counsel] so abandoned his overarching duty to advocate the defendant's cause that the state proceedings were almost totally non-adversarial. [T]he record supports the district court's finding that defense counsel turned against [defendant], and that this conflict in loyalty unquestionably affected his representation. Such an attorney, like unwanted counsel, 'represents' the defendant only through a tenuous and unacceptable legal fiction. A defense attorney who abandons his duty of loyalty to his client and effectively joins the state in an effort to attain a conviction... suffers from an obvious

conflict of interest. In fact, an attorney who is burdened by a conflict between his client's interests and his own sympathies to the prosecution's position is considerably worse than an attorney with loyalty to other defendants, because the interests of the state and the defendant are necessarily in opposition. The performance of [defendant's] counsel was constitutionally unreasonable, but more importantly, the evidence presented overwhelmingly established that his attorney abandoned the required duty of loyalty to his client. [Defendant's] attorney did not simply make poor strategic choices; he acted with reckless disregard for his clients best interests and, at times, apparently with the intention to weaken his client's case. Prejudice, whether necessary or not, is established under any applicable standard." Osborn v. Shillinger, 861 F.2d 612 (10th Cir. 1988)

Arthur Robinson Deposition

On September 9, 2011 Haeg's second attorney was deposed (sworn under oath to tell the truth under penalty of perjury) at the Office of Special Prosecutions and Appeals, 310 K Street, Anchorage Alaska, 99501.

(1) Robinson testified that he never told Haeg that nothing could be done about what Cole (Haeg's first attorney) had done. Yet Haeg has recordings of Robinson, along with affidavits and witnesses, proving Robinson told Haeg nothing could be done about what Cole had done and that it was all "water under the bridge." See Haeg's PCR exhibits. This proves Robinson's sworn testimony to be irrefutably false, more proven perjury by Robinson, is another attempt to cover up his sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client – as Robinson's perjury proves his conflict of interest. *See* Haeg's original PCR memorandum/ exhibits/affidavits for additional evidence and how this harmed Haeg.

(2) Robinson testified that he told Haeg he could try to enforce the plea agreement that Cole had made. Yet Haeg has recordings of Robinson, along with affidavits, witnesses, and documents from Robinson proving that Robinson told Haeg they could not enforce the plea agreement. See Haeg's PCR exhibits. This proves Robinson's sworn testimony to be irrefutably false, more proven perjury by Robinson, is another attempt to cover up his sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client– as Robinson's perjury proves his conflict of interest. *See* Haeg's original PCR memorandum/ exhibits/affidavits for additional evidence and how this harmed Haeg.

(3) Robinson testified that it was Haeg that wanted to pursue going to trial. Yet Haeg has recordings of Robinson, along with affidavits and witnesses, proving that it was Robinson who wanted to pursue trial. See Haeg's PCR exhibits. This proves Robinson's sworn testimony to be irrefutably false, more proven perjury by Robinson, is another attempt to cover up his sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client – as Robinson's perjury proves his conflict of interest. *See* Haeg's original PCR memorandum/ exhibits/affidavits for additional evidence and how this harmed Haeg.

(4) Robinson testified that there was a defect in the information because it was never sworn to under oath by either the police officers or the prosecutor. Yet Rule 7 holds an information only has to be signed by the prosecutor unless an

arrest warrant is issued - and the information charging Haeg was signed by prosecutor Scott Leaders and an arrest warrant was never issued in Haeg's case - he voluntarily showed up in court. *See* court record and Rule 7(c)(1):

> The indictment or the information shall be a plain, concise and definite written statement of the essential facts constituting the offense charged. It shall be signed by the prosecuting attorney.
>
> *See* also Albrecht v. United States, 273 U.S. 1 (U.S. Supreme Court 1927):
>
> The claims mainly urged are that, because of defects in the information and affidavits attached, there was no jurisdiction in the District Court and that rights guaranteed by the Fourth Amendment were violated.
>
> As the affidavits on which the warrant issued had not been properly verified, the arrest was in violation of the clause in the Fourth Amendment, which declares that 'no warrants shall issue but upon probable cause, supported by oath or affirmation.' *See* Ex parte Burford, 3 Cranch, 448, 453; United States v. Michalski (D. C.) 265 F. 839. But it does not follow that, because the arrest was illegal, the information was or became void.

Judge Murphy, in denying Robinson's motion, used the indisputable rule and law above. This proves Robinson's sworn testimony to be irrefutably false, more proven perjury by Robinson, is another attempt to cover up his sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client – as Robinson's perjury proves his conflict of interest. *See* Haeg's original PCR memorandum/ exhibits/affidavits for additional evidence and how this harmed Haeg.

(5) Robinson testified that the district court did not have subject-matter jurisdiction over Haeg's case. Yet subject-matter jurisdiction is established by

statute and it is indisputable that the district court had subject-matter jurisdiction over Haeg being charged with misdemeanors.

> AS 22.15.060 Criminal Jurisdiction (a) The district court has jurisdiction (1) of the following crimes: (A) a misdemeanor

This proves Robinson's sworn testimony to be irrefutably false, more proven perjury by Robinson, is another attempt to cover up his sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client – as Robinson's perjury proves his conflict of interest. *See* Haeg's original PCR memorandum/ exhibits/affidavits for additional evidence and how this harmed Haeg.

Further proof of Robinson's ineffectiveness is that Robinson originally told Haeg that the court would not have "personal" jurisdiction. But when Haeg proved this false Robinson stated, "well, they may have personal jurisdiction but the would not have subject-matter jurisdiction."

(6) Robinson testified that the he filed a motion to dismiss the information because it was not sworn to, the court denied the motion, and then the court allowed Leaders to amend the information which cured the defect. Yet Robinson never told Haeg the defect had been cured and continued to represent Haeg as if he still thought it was valid, and even filed an appeal based entirely on it. See court record and Haeg's PCR exhibits. This is incredible proof of Robinson's ineffectiveness, deceit, and sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client – as Robinson was

pursuing a "tactic" he knew was not valid and not pursing those that were valid. *See* Haeg's original PCR memorandum/ exhibits/affidavits for additional evidence and how this harmed Haeg.

(7) Robinson testified that the state had not falsified the evidence locations to Haeg's guide area, they had only "miss numbered" them. Yet the "miss numbering" was of the Game Management Unit (GMU) in which they were found – a "miss numbering" that them put them in the same GMU number as where Haeg guided and the state specifically pointed this out affidavits seizing all the evidence and property. See court record and Haeg's PCR exhibits. Then the state presented to Haeg's judge and jury the false GMU numbers and argued that because Haeg was taking wolves where he guided to benefit his guide area he must be convicted of guide crimes. And to irrefutably prove the effectiveness of this Judge Murphy specifically cited the falsified GMU number to justify Haeg's devastating sentence. See court sentencing record. This proves Robinson's sworn testimony to be irrefutably false, more proven perjury by Robinson, is another attempt to cover up his sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client – as Haeg was prosecuted with material evidence the state knew was false and Robinson's perjury proves his conflict of interest. *See* Haeg's original PCR memorandum/ exhibits/affidavits for additional evidence and how this harmed Haeg.

(8) Robinson testified that it wasn't true that he had told Haeg nothing could be done about the all the search and seizure warrants that falsified the

evidence location to Haeg's guide area. Yet Haeg has recordings and witnesses proving Robinson told him nothing could be done about the false warrants. See Haeg's PCR exhibits. This proves Robinson's sworn testimony to be irrefutably false, more proven perjury by Robinson, is another attempt to cover up his sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client – as Robinson's perjury proves his conflict of interest. *See* Haeg's original PCR memorandum/ exhibits/affidavits for additional evidence and how this harmed Haeg.

(9) Robinson testified that it wasn't true that he never told Haeg that he didn't have a right to a prompt post seizure hearing. Yet Haeg has recordings and witnesses proving Robinson never told him he had a right to a prompt post seizure hearing. See Haeg's PCR exhibits. In addition Robinson never asked for the plane or other property back because Haeg was never given a prompt post seizure hearing – even though Robinson admits that Haeg was adamant in getting the plane back so he could work. *See* Haeg's PCR exhibits and Waiste below. This proves Robinson's sworn testimony to be irrefutably false, more proven perjury by Robinson, is another attempt to cover up his sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client – as Haeg was deprived of hearing required by due process and Robinson's perjury proves his conflict of interest. *See* Haeg's original PCR memorandum/ exhibits/affidavits for additional evidence and how this harmed Haeg.

Waiste v. State, 10 P.3d 1141 (Ak Supreme Court 2000) "This court's dicta, however, and the persuasive weight of federal law, both suggest that the Due Process Clause of the Alaska Constitution should require no more than a prompt postseizure hearing... The State argues that a prompt postseizure hearing is the only process due, both under general constitutional principles and under this court's precedents on fishing-boat seizures, whose comments were not dicta...But given the conceded requirement of a prompt postseizure hearing on the same issues, in the same forum, 'within days, if not hours' the only burden that the State avoids by proceeding ex parte is the burden of having to show its justification for a seizure a few days or hours earlier... The State does not discuss the private interest at stake, and Waiste is plainly right that it is significant: even a few days' lost fishing during a three-week salmon run is serious, and due process mandates heightened solicitude when someone is deprived of her or his primary source of income... As the Good Court noted, moreover, the protection of an adversary hearing 'is of particular importance [in forfeiture cases], where the Government has a direct pecuniary interest in the outcome.' An ensemble of procedural rules bounds the State's discretion to seize vessels and limits the risk and duration of harmful errors. The rules include the need to show probable cause to think a vessel forfeitable in an ex parte hearing before a neutral magistrate, to allow release of the vessel on bond, and to afford a prompt postseizure hearing."

(10) Robinson testified that since Haeg's plane was like the "cases concerning boats for commercial fishermen [who] use their boats for a livelihood" Haeg should have been able to get the plane back that he used to guide with. Yet it was Haeg who found the commercial fisherman cases that required property, used as the primary means to provide a livelihood, to be allowed to be bonded out so a person was not financially devastated before even being charged or taken to trial. *See* Waiste directly above. The proof that it was Haeg who found this caselaw is the fact Robinson when he finally filed a motion for Haeg to bond out the plane, never put in a single citation to the clear caselaw that required Haeg to be allowed

to bond the plane out – and never protested when the state falsely claimed the law did not allow the plane to be bonded out. And finally, when Judge Murphy never ruled on Haeg's motion to bond out the plane - ever- Robinson did nothing about it. This proves Robinson's sworn testimony to be irrefutably false, more proven perjury by Robinson, is another attempt to cover up his sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client – as Haeg was deprived of his property he needed as his primary means to provide a livelihood and Robinson's perjury proves his conflict of interest. *See* Haeg's original PCR memorandum/ exhibits/affidavits for additional evidence and how this harmed Haeg.

(11) Robinson testified that before he could pursue the fact that the state told and induced Haeg to take wolves outside the area but claim they were taken inside he needed a witnesses to corroborate. Yet at the time he told Haeg that this was not a legal defense and could not be pursued. See Haeg's PCR exhibits. And there were two witnesses. Haeg himself was a witness and also Ted Spraker, a sitting member of the Alaska Board of Game (the state agency who created and ran the Wolf Control Program) - the one who told Haeg. This proves Robinson's sworn testimony to be irrefutably false, more proven perjury by Robinson, is another attempt to cover up his sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client – as Haeg was deprived of defense and Robinson's perjury proves his conflict of interest. *See* Haeg's original

PCR memorandum/ exhibits/affidavits for additional evidence and how this harmed Haeg.

(12) Robinson testified that he could not ask Spraker at Haeg's trial if he (Spraker) told and induced Haeg to take wolves outside the area "because it'd seem almost like he was admitting to the jury that he had in fact took them outside." Yet Robinson had Haeg himself get up in front of the jury and had Haeg himself admit he took wolves outside the area. So Robinson's excuse for not asking Spraker this is COMPLETELY invalid. This proves Robinson's sworn testimony to be irrefutably false, more proven perjury by Robinson, is another attempt to cover up his sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client – as Haeg was deprived of a defense and Robinson's perjury proves his conflict of interest. *See* the court record and Haeg's original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg. In other words Robinson sabotaged all defenses Haeg had to devastating guide charges – by having Haeg admit to taking wolves outside the area, never refuting the state's claim he was taking them in is guide area and thus must be found guilty of guiding crimes (when the state's own GPS coordinates proved they had falsified the evidence to Haeg's guide area); and by never exposing how the state itself was responsible for Haeg's action's and motive. This changed the entire evidentiary picture from Haeg was a knight in shining armor charging in to save the Wolf Control Program at the state's request to Haeg was an outlaw guide out to benefit his business.

(13) Robinson testified that even though Haeg specifically asked he never discussed with Haeg that he was not going to ask Spraker if Spraker told and induced Haeg to take wolves outside the area but claim they were taken inside. Yet all caselaw holds it is the attorney's duty to discuss this with a client:

> "We believe it self-evident that an indispensable component of the guarantee of effective assistance of counsel is the accused's right to be advised of basic procedural rights, particularly when the accused seeks such advice by specific inquiry. Without knowing what rights are provided under law, the accused may well be unable to understand available legal options and may consequently be incapable of making informed decisions." Smith v. State, 717 P.2d 402 (Ak 1986).

This proves Robinson's sellout of Haeg and meets both Risher standards of deficient attorney performance and harm to client– as Haeg was deprived of a defense and Robinson's perjury proves his conflict of interest. *See* the court record and Haeg's original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg

(14) Robinson testified that he never said Haeg could not tell anyone that the state had told and induced him to take wolves outside the area but claim they were taken inside. Yet Haeg has recordings and witnesses proving Robinson told him he could not tell anyone. See Haeg's PCR exhibits. This proves Robinson's sworn testimony to be irrefutably false, more proven perjury by Robinson, is another attempt to cover up his sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client– as Haeg was deprived of a defense and Robinson's perjury proves his conflict of interest. *See* the court record

and Haeg's original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

(15) Robinson testified that he never said that Haeg could not get anything for all he had done for the failed plea agreement (year of guiding given up, witnesses flown in from around the country, etc). Yet Haeg has recordings and witnesses proving Robinson told him he could get nothing for all he had done for the failed plea agreement and it "was all water under the bridge." See Haeg's PCR exhibits. This proves Robinson's sworn testimony to be irrefutably false, more proven perjury by Robinson, is another attempt to cover up his sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client – as Haeg was deprived of plea agreement enforcement and Robinson's perjury proves his conflict of interest. *See* Haeg's original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

(16) Robinson testified he never said nothing could be done about enforcing the plea agreement. Yet Haeg has recordings and witnesses proving Robinson told said nothing could be done about enforcing the plea agreement and it "was all water under the bridge." See Haeg's PCR exhibits. This proves Robinson's sworn testimony to be irrefutably false, more proven perjury by Robinson, is another attempt to cover up his sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client – as Haeg was deprived of plea agreement enforcement and Robinson's perjury proves his

conflict of interest. *See* Haeg's original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

(17) Robinson testified that he didn't know if Haeg knew that if he went to trial he could not force the state to honor the plea agreement. Yet the ruling caselaw makes it perfectly clear Robinson was required to inform Haeg of this.

> "We believe it self-evident that an indispensable component of the guarantee of effective assistance of counsel is the accused's right to be advised of basic procedural rights, particularly when the accused seeks such advice by specific inquiry. Without knowing what rights are provided under law, the accused may well be unable to understand available legal options and may consequently be incapable of making informed decisions." Smith v. State, 717 P.2d 402 (Ak 1986)

This deprived Haeg of plea agreement enforcement. *See* Haeg's original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

(18) Robinson testified that he never told Haeg that his statement could be used against him. Yet Haeg has recordings and witnesses proving Robinson told Haeg that this statement could be used against him and was being used against him. See Haeg's PCR exhibits. In addition Robinson own reply states that the state "should not" use Haeg's statement, not that the state "could not" use Haeg's statement. *See* court record. This proves Robinson's sworn testimony to be irrefutably false, more proven perjury by Robinson, is another attempt to cover up his sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client – as Haeg was deprived of his right against self-

incrimination and Robinson's perjury proves his conflict of interest. *See* Haeg's original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

(19) Robinson testified that he told Haeg that his statement could not be used because it was part of a plea agreement. Yet as Haeg already proved above this is not what Robinson told Haeg – backed up by the fact Robinson himself wrote a reply brief stating it "should not" be used (which is permissive) instead of "could not" be used (which is not permissive).

> Evidence Rule 410(a), Inadmissibility of Plea Discussions in Other Proceedings proves this distinction: "Evidence of.... statements or agreements made in connection with any of the foregoing pleas or offers, is not admissible in any civil or criminal action, case or proceeding.....

See court record. This proves Robinson's sworn testimony to be irrefutably false, more proven perjury by Robinson, is another attempt to cover up his sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client – as Haeg was deprived of his right against self-incrimination and Robinson's perjury proves his conflict of interest. *See* Haeg's original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

(20) Robinson testified that he argued he argued at trial that Haeg's statement could not be used against Haeg. The court record of Haeg's trial irrefutably proves this is false. *See* court record. This proves Robinson's sworn testimony to be irrefutably false, more proven perjury by Robinson, is another attempt to cover up

his sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client – as Haeg was deprived of his right against self-incrimination and Robinson's perjury proves his conflict of interest. *See* Haeg's original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

(21) Robinson testified that Leaders did not use Haeg's statement against Haeg in the state's case in chief. Yet Haeg's statement could not be used ANYWHERE by the state, not just in its case in chief. *See* Gonzalez, North, and Kastigar above and Evidence Rule 410(a):

> "Evidence of.... statements or agreements made in connection with any of the foregoing pleas or offers, is not admissible in any civil or criminal action, case or proceeding.....

And it is indisputable that Leaders, in the state's case in chief, presented to the jury the map that Leaders required Haeg to make during his statement. See court record, exhibt #25. When Haeg later cross-examined Robinson on this Robinson admitted Haeg's map was used by the state in its case in chief. This proves Robinson knowing testified falsely about the state not using Haeg's statement against Haeg during its case in chief – by definition felony perjury. This proves Robinson's sworn testimony to be irrefutably false, more proven perjury by Robinson, is another attempt to cover up his sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client – as Haeg was deprived of his right against self-incrimination and Robinson's perjury proves

his conflict of interest. *See* Haeg's original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

(22) Robinson testified that he advised Haeg the risk of taking the stand, that Haeg wanted to testify, and that he did not recommend Haeg taking the stand. Yet Haeg has recordings and witnesses proving Robinson never told Haeg of the risks of taking the stand and that Haeg did not what to take the stand. See Haeg's PCR exhibits. In addition Haeg has recordings and witnesses proving Robinson told Haeg that he had to take the stand because the state was going to present only the "bad" parts of Haeg's statement to the jury and for the "good" parts to be heard Haeg had to testify. On cross-examination Robinson admitted this was the case. This proves Robinson's sworn testimony to be irrefutably false, more proven perjury by Robinson, is another attempt to cover up his sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client – as Haeg was deprived of his right against self-incrimination and Robinson's perjury proves his conflict of interest. *See* Haeg's original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

(23) Robinson testified that he never said Haeg would lose at trial because Cole had given the state everything. Yet Haeg has recordings and witnesses proving Robinson told Haeg that he would lose at trial because Cole had given the state everything. See Haeg's PCR exhibits. This proves Robinson's sworn testimony to be irrefutably false, more proven perjury by Robinson, is another attempt to cover up his sellout of Haeg, and meets both Risher standards of deficient attorney

performance and harm to client – as Robinson's perjury proves his conflict of interest. *See* Haeg's original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

(24) Robinson testified that Cole could not have done anything about Zellers being used by the state against Haeg. Yet overwhelming caselaw proves this is not true – as Cole has testified Haeg was given immunity for his statement, affirmatively presented Haeg's statement to Zellers, used Haeg's statement to force Zellers to cooperate, and Zellers (and Zellers attorney Fitzgerald) have testified under oath that this was the case.

> State of Alaska v. Gonzalez, 853 P.2d 526 (AK Supreme Court 1993) "We do not doubt that, in theory, strict application of use and derivative use immunity would remove the hazard of incrimination. Because we doubt that workaday measures can, in practice, protect adequately against use and derivative use, we ultimately hold that [former] AS 12.50.101 impermissibly dilutes the protection of article I, section 9.
>
> Procedures and safeguards can be implemented, such as isolating the prosecution team or certifying the state's evidence before trial, but the accused often will not adequately be able to probe and test the state's adherence to such safeguards.
>
> One of the more notorious recent immunity cases, United States v. North, 910 F.2d 843 (D.C.Cir.) modified, 920 F.2d 940 (D.C.Cir.1990) illustrates another proof problem posed by use and derivative use immunity.
>
> First, the prosecution could use the compelled testimony to refresh the recollection of a witness testifying at North's criminal trial. The second problem, however, is more troublesome. In a case such as North, where the compelled testimony receives significant publicity, witnesses receive casual exposure to the substance of the compelled testimony through the media or otherwise. Id. at 863. In such cases, a court would face the insurmountable task of determining the extent

and degree to which "the witnesses' testimony may have been shaped, altered, or affected by the immunized testimony." Id.

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

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

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

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

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

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

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

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

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

> This burden may be met by establishing that the witness was never exposed to North's immunized testimony, or that the allegedly tainted testimony contains no evidence not "canned" by the prosecution before such exposure occurred.
>
> Where immunized testimony is used... the prohibited act is simultaneous and coterminous with the presentation; indeed, they are one and the same. There is no independent violation that can be remedied by a device such as the exclusionary rule: the...process itself is violated and corrupted, and the indictment [or trial] becomes indistinguishable from the constitutional and statutory transgression. If the government has in fact introduced trial evidence that fails the Kastigar analysis, then the defendant is entitled to a new trial. If the same is true as to grand jury evidence, then the indictment must be dismissed." United States v. North, 910 F.2d 843 (D.C.Cir. 1990)
>
> "The Government must do more than negate the taint; it must affirmatively prove that its evidence is derived from a legitimate source wholly independent of the compelled testimony." Kastigar v. United States, 406 U.S. 441 (U.S. Supreme Court 1972)

This proves Robinson's sworn testimony to be irrefutably false, more proven perjury by Robinson, is another attempt to cover up his sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client – as Haeg was deprived of his right against self-incrimination and Robinson's perjury proves his conflict of interest. *See* Haeg's original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

(25) Robinson testified that he never told Haeg that he would no doubt win on appeal. Yet Haeg has recordings and witnesses proving Robinson told Haeg that he would no doubt win on appeal. See Haeg's PCR exhibits. This proves Robinson's sworn testimony to be irrefutably false, more proven perjury by

Robinson, is another attempt to cover up his sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client – as Robinson's perjury proves his conflict of interest. *See* Haeg's original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

(26) Robinson testified that he still thought the subject matter jurisdiction issue was still valid for Haeg's appeal. Yet Robinson himself had previously testified that the state had "cured" this defect prior to trial. This proves Robinson's sworn testimony to be irrefutably false, more proven perjury by Robinson, is another attempt to cover up his sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client – as Robinson was pursuing an invalid "tactic", ignoring valid tactics, and Robinson's perjury proves his conflict of interest. *See* Haeg's original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

(27) Robinson testified that he never said Haeg couldn't tell anyone about the plea agreement because that would be "admitting" to the court they had subject matter jurisdiction. Yet Haeg has recordings and witnesses proving Robinson told Haeg that he couldn't tell anyone about the plea agreement because this would "admit" the court had subject matter jurisdiction. See Haeg's PCR exhibits. This proves Robinson's sworn testimony to be irrefutably false, more proven perjury by Robinson, is another attempt to cover up his sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client – as Haeg

was deprived of his right to plea agreement enforcement and Robinson's perjury proves his conflict of interest. *See* Haeg's original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

(28) Robinson testified that he never heard Haeg had been granted immunity for his statement. Yet Cole has testified that Haeg had immunity for his statement and Robinson claims that he talked to Cole about the statement. So either Robinson is lying that he never heard that Haeg had immunity for the statement or Cole lied to Robinson that Haeg didn't have immunity for the statement. In either event this is ineffective assistance of counsel, as Haeg could not be prosecuted after being given immunity (*See* Gonzalez and North above) – proving the harm to Haeg. And since this was the case Robinson had a duty to find this out and both Cole and Robinson had a duty to use this in Haeg's defense.

(29) Robinson testified that Haeg's statement could not be used because of the evidentiary rules. Yet these rules hold that Haeg's statement could not be used anywhere for anything – yet Robinson keeps testifying that the evidentiary rules only exclude Haeg's statement from being used in the state's case in chief. *See* Evidence Rule 410(a):

> "Evidence of.... statements or agreements made in connection with any of the foregoing pleas or offers, is not admissible in any civil or criminal action, case or proceeding....."

This proves Robinson's sworn testimony to be irrefutably false, more proven perjury by Robinson, is another attempt to cover up his sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client – as

Haeg was deprived of his right against self-incrimination and Robinson's perjury proves his conflict of interest. *See* Haeg's original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

(30) Robinson testified that why would Haeg make a plea agreement and take a deal if Haeg had immunity. Yet Haeg has recordings and witnesses proving Cole and Robinson told Haeg that he could be prosecuted after being given immunity and that the state could use his statement to do so. See Haeg's PCR exhibits. This explains why Haeg agreed to be prosecuted after being given immunity – he didn't know that being given immunity meant he could not be prosecuted. It was for this information that he hired his attorneys for hundreds of thousands of dollars and why they are guilty beyond any doubt of ineffective assistance of counsel – they let Haeg be prosecuted when the law prevented Haeg from being prosecuted. This proves Robinson's and Cole's sworn testimony to be irrefutably false, more proven perjury by Robinson and Cole, is another attempt to cover up their sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client – as Haeg was deprived of his right not to be prosecuted, against self-incrimination, and Robinson's perjury proves his conflict of interest. *See* Haeg's original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

(31) Robinson testified that he did not believe Haeg had been given immunity. Yet Cole has twice testified under oath that Haeg had been given immunity and a witness that Cole called to testify on Cole's behalf, attorney Kevin Fitzgerald, has

also testified that Haeg had been given immunity. This proves Robinson's sworn testimony to be irrefutably false, more proven perjury by Robinson, is another attempt to cover up his sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client – as Haeg was deprived of his right not to be prosecuted, against self-incrimination, and Robinson's perjury proves his conflict of interest. *See* Haeg's original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

(32) Robinson testified that Judge Murphy allowed the state to "correct" the subject matter jurisdiction defect prior to trial. Yet Robinson's trial and appeal "tactic" was based on this "defect" and not on the use of Haeg's statement, the knowing falsification of the evidence locations to Haeg's guide area, or the fact state told Haeg that for the greater good of the state he must do exactly as they charged him with doing. This proves Robinson's sellout of Haeg and meets both Risher standards of deficient attorney performance and harm to client – as Haeg was deprived of these defenses for a defense that had no merit becaeu it had been corrected.. *See* Haeg's original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

(33) Robinson testified that Leaders never took Haeg's statement out of the charging information even after Robinson protested this. Yet Robinson never said a word about this continued and specific violation of Evidence Rule 410 (not to mention the additional violation of Haeg's immunity). See court record. Everything that happened after this was "fruit of the poisonous tree" – or null and

void – including Haeg's trial and conviction. This proves Robinson's ineffectiveness and meets both Risher standards of deficient attorney performance and harm to client. *See* the Haeg's original PCR memorandum, exhibits, and affidavits for evidence and for how this harmed Haeg.

(34) Robinson testified that there was nothing improper with the state using Haeg's statement to cross-examine Haeg. Yet Evidence Rule 410(b) (which prevents the use of plea agreement statements) specifically states:

> This rule shall not apply to (1) the introduction of voluntary and reliable statements made in court on the record in connection with any of the forgoing plea when offered in subsequent proceedings as prior inconsistent statements, and (2) proceedings by a defendant to attack or enforce a plea agreement.

Haeg's statement was made in Cole's office and was not on the record – thus the state could not use Haeg's statement to cross-examine Haeg. This proves Robinson's sworn testimony to be irrefutably false, more proven perjury by Robinson, is another attempt to cover up his sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client – as Haeg was deprived of his right against self-incrimination and Robinson's perjury proves his conflict of interest. *See* Haeg's original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

(35) Robinson testified that he did not object to Leaders use of Haeg's statement to cross-examine Haeg after he took the stand because Haeg's statement could be used for this. As shown above, Evidence Rule 410(b) prevented this use as Haeg's statement was not made in court (it was made in Cole's office) and was not made

on the record. This proves Robinson's ineffectiveness, proves his sworn testimony to be irrefutably false, is more proven perjury by Robinson, is another attempt to cover up his sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client – as Haeg was deprived of his right against self-incrimination and Robinson's perjury proves his conflict of interest. *See* Haeg's original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

(36) Robinson testified that he had no grounds to protest Zellers testimony. Yet Zellers and Kevin Fitzgerald have testified that Haeg's statement was used to force Zellers to testify. See Haeg's exhibits. As no use could be made of anything or anyone tainted by Haeg's statement Robinson had irrefutable grounds to object to Zellers testimony. *See* Gonzalez, North, Kastigar, and Evidence Rule 410 above. This proves Robinson's ineffectiveness, proves his sworn testimony to be irrefutably false, is more proven perjury by Robinson, is another attempt to cover up his sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client – as Haeg was deprived of his right against self-incrimination and Robinson's perjury proves his conflict of interest. *See* Haeg's original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

(37) Robinson testified that nothing needed to be done about the irrefutable violation of Haeg's constitutional right against self-incrimination. Yet

all caselaw hold that a violation of the right against self-incrimination means the conviction is invalid – period – end of story:

> "[A] defendant in a criminal case is deprived of due process of law if his conviction is founded, in whole or in part, upon an involuntary [statement], without regard for the truth or falsity. . . even though there is ample evidence aside from the [statement] to support the conviction." Jackson v. Denno, 378 U.S. 368 (U.S. Supreme Court 1964).
>
> "The Government must do more than negate the taint; it must affirmatively prove that its evidence is derived from a legitimate source wholly independent of the compelled testimony." Kastigar v. United States, 406 U.S. 441 (U.S. Supreme Court 1972).

This proves Robinson's ineffectiveness, proves his sworn testimony to be irrefutably false, is more proven perjury by Robinson, is another attempt to cover up his sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client – as Haeg was deprived of his right not to be prosecuted, his right against self-incrimination, and Robinson's perjury proves his conflict of interest. *See* Haeg's original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

(38) Robinson was non-responsive when asked if there was a reason to challenge the state's theory that Haeg was killing wolves in his guide area to benefit his guide business. Yet Haeg had told Robinson that the state had falsified the wolf kill locations to Haeg's guide are on every warrant used to seized Haeg's property; used the false locations to justify guiding charges against Haeg; testified falsely to Haeg's judge and jury about the wolf kill locations; and then argued to Haeg's judge and jury this justified Haeg being found guilty of devastating guide

charges – when all along the state's own GPS coordinates proved the wolves were not killed in Haeg's guiding area – and Haeg had told the state this years before trial during Haeg's statement. This proves Robinson's ineffectiveness, is another attempt to cover up his sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client – as Haeg was deprived of his right not to be prosecuted with material evidence known to the state to be false and Robinson's perjury proves his conflict of interest. *See* Haeg's original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

In addition, when the state falsified the Game Management Unit numbers during trial Haeg flat demand Robinson confront the state on this. Only after the state knew they had been found out did they admit they had testified falsely about the GMU numbers. But then no one, not Robinson and not the state, told Haeg's judge and jury that this meant the state's whole theory that Haeg was killing wolves where he guide was false. And because the state (Trooper Gibbens) owed up to the falsehood only after he knew he was caught, this is proven perjury by the state, which is not allowed:

> AS 11.56.200. Perjury
> (a) A person commits the crime of perjury if the person makes a false sworn statement which the person does not believe to be true.
> (b) In a prosecution under this section, it is not a defense that
> (1) the statement was inadmissible under the rules of evidence; or
> (2) the oath or affirmation was taken or administered in an irregular manner.
> (c) Perjury is a class B felony.

AS 11.56.235. Retraction as a defense.
(a) In a prosecution under AS 11.56.200 or 11.56.230, if the false statement was made in an official proceeding, it is an affirmative defense that the defendant expressly retracted the false statement
(1) during the course of the same official proceeding;
(2) before discovery of the falsification became known to the defendant;
(3) before reliance upon the false statement by the person for whom it was intended; and
(4) if the official proceeding involved a trier of fact, before the subject matter of the official proceeding was submitted to the ultimate trier of fact.

"[T]he dignity of the U.S. Government will not permit the conviction of any person on tainted testimony. The government of a strong and free nation does not need convictions based upon such testimony. It cannot afford to abide with them." Mesarosh v. U.S., 352 U.S. 1 (U.S. Supreme Court 1956)

"Conviction obtained through use of false evidence, known to be such by representatives of the State, is a denial of due process, and there is also a denial of due process, when the State, though not soliciting false evidence, allows it to go through uncorrected when it appears. Principle that a State may not knowingly use false evidence, including false testimony, to obtain a tainted conviction, implicit in any concept of ordered liberty, does not cease to apply merely because the false testimony goes only to the credibility of the witness." Napue v. Illinois, 360 U.S. 264 (U.S. Supreme Court 1959)

"Requirement of 'due process' is not satisfied by mere notice and hearing if state, through prosecuting officers acting on state's behalf, has contrived conviction through pretense of trial which in truth is used as means of depriving defendant of liberty through deliberate deception of court and jury by presentation of testimony known to be perjured, and in such case state's failure to afford corrective judicial process to remedy the wrong when discovered by reasonable diligence would constitute deprivation of liberty without due process." Mooney v. Holohan, 294 U.S. 103 (U.S. Supreme Court 1935)

"The principle that a State may not knowingly use false evidence, including false testimony, to obtain a tainted conviction, [is]

implicate in any concept of ordered liberty..." Giles v. Maryland, 386 U.S. 66 (U.S. Supreme Court 1967)

"We hold the Due Process Clause of the Fifth Amendment is violated when a defendant has to stand trial on an indictment which the government knows is based partially on perjured testimony..." United States v. Basurto, 497 F.2d 781 (9th Cir. 1974)

And the proof of the effectiveness of the perjury even after the state admitted to it is the fact that Judge Murphy specifically cited the false evidence locations as justification for Haeg's sever sentence. And if Judge Murphy used the perjury to sentence Haeg it stands to reason Haeg's jury used the perjury to convict him. This proves Robinson's ineffectiveness, is another attempt to cover up his sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client – as Haeg was deprived of his right not to be prosecuted with perjury by the state and Robinson's perjury proves his conflict of interest. *See* Haeg's original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

(39) Robinson testified that he had no further reason to look at whether or not Trooper Gibbens search warrant affidavits were correct when Trooper Gibbens was caught at trial admitting he had knowingly falsified the evidence locations. (The false evidence locations were placed on every last search warrant affidavit – and it was now proven Gibbens was knowingly falsifying this.) See court record and Haeg's PCR exhibits. Yet all caselaw holds that intentional or reckless falsification on a warrant affidavit renders it null and void:

"[A]ll evidence obtained by searches & seizures in violation of the Federal Constitution is inadmissible in a criminal trial in a state. Nothing can destroy a government more quickly than its failure to observe its own laws, or worse, its disregard of the charter of its own existence." Mapp v. Ohio, 367 U.S. 643 (U.S. Supreme Court 1961)

"Once defendant has shown that specific statements in affidavit supporting search warrant are false, together with statement of reasons in support of assertion of falsehood, burden then shifts to State to show that statements were not intentionally or recklessly made." Lewis v. State, 9 P.3d 1028, (Ak.,2000)

"State & federal constitutional requirement that warrants issue only upon a showing of probable cause contains the implied mandate that the factual representations in the affidavit be truthful." State v. Davenport, 510 P.2d 78, (Ak.,1973)

"Misstatements on warrants were material and intentional, justifying suppression of evidence obtained through use of the warrants." State v. White, 707 P2d 271 (Ak., 1985)

"'[Defendant] has everything to gain and nothing to lose' in filing a motion to suppress..." U.S. v. Molina, 934 F.2d 1440 (9th Cir. 1991)

When Trooper Gibbens admitted to knowingly falsifying the evidence locations at trial it is clear he had to know the search warrant affidavits were also false. And the state's own case at trial and Judge Murphy's specific use of the false evidence locations proves it was material. In other words not only would have Gibbens perjury at trial ended Haeg's prosecution – so would his falsification of the evidence locations on all the search warrant affidavits – because virtually all evidence was tainted by the materially false locations. This proves Robinson's ineffectiveness, proves his sworn testimony to be irrefutably false, is more proven perjury by Robinson, is another attempt to cover up his sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client – as

Haeg was deprived of his right not to be prosecuted with evidence obatined in violation of Haeg's right against unreasonable searches and seizures, his right not to be prosecuted with perjury by the state, and Robinson's perjury proves his conflict of interest. *See* Haeg's original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

(40) Robinson testified that he raised the issue that Haeg should be charged under the Wolf Control Program law. Yet Robinson never protested when Judge Murphy (who was being chauffeured full time by Trooper Gibbens) granted the state's protection order that Haeg could not argue that he should have been charged under the Wolf Control Program – stripping Haeg of the protection of the law. *See* court record. And to justify stripping Haeg of this protection the state had falsified all evidence locations to Haeg's guide area and Robinson told Haeg it wasn't a legal defense that the state officials running the Wolf Control Program told Haeg it was in the best interest of the state to do exactly as Haeg was charged with doing. And Robinson never brought this up in his points of appeal. *See* court record. This proves Robinson's ineffectiveness and meets both Risher standards of deficient attorney performance and harm to client– as Haeg was deprived of his right to the equal protection of the law and Robinson's perjury proves his conflict of interest. *See* Haeg's original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

(41) Robinson testified that he discussed a pretrial motion to suppress with Haeg. Yet Haeg has recordings and witnesses proving this is false. See

Haeg's PCR exhibits. This proves Robinson's sworn testimony to be irrefutably false, more proven perjury by Robinson, is another attempt to cover up his sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client– as Haeg was deprived of his right against self-incrimination, right against unreasonable searches and seizures, right not to be prosecuted with perjury by the state, and Robinson's perjury proves his conflict of interest. *See* Haeg's original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

(42) Robinson testified that the only way to suppress evidence seized with a search warrant was if the "misstatement" on the affidavit were reckless or intentional and that he did not know if Gibbens falsifying the evidence location was reckless or intentional. Yet, as shown above, Gibbens knew the evidence locations on his affidavits were false at trial yet continued to falsify the evidence locations so they would conform to his affidavits that were used to seize all the evidence. And only after he knew his falsification had been discovered did he admit he had falsified the evidence locations. This proves the "misstatement" was intentional. Yet even after he admitted this Haeg's trial went on without anyone informing the judge or jury this meant all the search warrants were false and that the state's case Haeg was taking wolves to benefit his guide business was false. And the proof everything was still tainted was the fact Judge Murphy specifically used the false locations to justify Haeg's sentence. And more

disturbing then this is the fact prosecutor Leaders had to know the evidence locations on the warrants had been falsified yet did nothing about it and later, when he solicited Gibbens testimony at trial, knew Gibbens trial testimony was also false and did nothing about it. Leaders had to know all this years ahead of time because Haeg and Zellers, during the statements they gave Leaders and Gibbens, stated and proved the evidence locations were false.

> "[T]he dignity of the U.S. Government will not permit the conviction of any person on tainted testimony. The government of a strong and free nation does not need convictions based upon such testimony. It cannot afford to abide with them." Mesarosh v. U.S., 352 U.S. 1 (U.S. Supreme Court 1956)
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> "Conviction obtained through use of false evidence, known to be such by representatives of the State, is a denial of due process, and there is also a denial of due process, when the State, though not soliciting false evidence, allows it to go through uncorrected when it appears. Principle that a State may not knowingly use false evidence, including false testimony, to obtain a tainted conviction, implicit in any concept of ordered liberty, does not cease to apply merely because the false testimony goes only to the credibility of the witness." Napue v. Illinois, 360 U.S. 264 (U.S. Supreme Court 1959)
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> "Requirement of 'due process' is not satisfied by mere notice and hearing if state, through prosecuting officers acting on state's behalf, has contrived conviction through pretense of trial which in truth is used as means of depriving defendant of liberty through deliberate deception of court and jury by presentation of testimony known to be perjured, and in such case state's failure to afford corrective judicial process to remedy the wrong when discovered by reasonable diligence would constitute deprivation of liberty without due process." Mooney v. Holohan, 294 U.S. 103 (U.S. Supreme Court 1935)
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> "The principle that a State may not knowingly use false evidence, including false testimony, to obtain a tainted conviction, [is]

implicate in any concept of ordered liberty..." Giles v. Maryland, 386 U.S. 66 (U.S. Supreme Court 1967)

"We hold the Due Process Clause of the Fifth Amendment is violated when a defendant has to stand trial on an indictment which the government knows is based partially on perjured testimony..." United States v. Basurto, 497 F.2d 781 (9th Cir. 1974)

This proves Robinson had to have known that Gibbens knew the statements he made on the affidavits were false – requiring all the evidence to be suppressed. This proves Robinson's sworn testimony to be irrefutably false, more proven perjury by Robinson, is another attempt to cover up his sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client– as Haeg was deprived of his right not to be prosecuted with evidence obatined in violation of Haeg's right against unreasonable searches and seizures, his right not to be prosecuted with perjury by the state, and Robinson's perjury proves his conflict of interest. *See* Haeg's original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

Commonwealth v. Bowie, 243 F.3d 1109 (9th Cir. 2001):
The ultimate mission of the system upon which we rely to protect the liberty of the accused as well as the welfare of society is to ascertain the factual truth, and to do so in a manner that comports with due process of law as defined by our Constitution. This important mission is utterly derailed by unchecked lying witnesses, and by any law enforcement officer or prosecutor who finds it tactically advantageous to turn a blind eye to the manifest potential for malevolent disinformation. *See* United States v. Wallach, 935 F.2d 445 (2nd Cir. 1991) ("Indeed, if it is established that the government knowingly permitted the introduction of false testimony `reversal is virtually automatic.' ") (citations omitted); In Napue v. Illinois, 360 U.S. 264 (1959), Chief Justice Warren reinforced this constitutional imperative. "A lie is a lie, no matter what its subject, and, if it is in any way relevant to the case, the district attorney has

the responsibility and duty to correct what he knows to be false and elicit the truth."

A prosecutor's "responsibility and duty to correct what he knows to be false and elicit the truth," Napue, 360 U.S. at 269-270, requires a prosecutor to act when put on notice of the real possibility of false testimony. This duty is not discharged by attempting to finesse the problem by pressing ahead without a diligent and a good faith attempt to resolve it. A prosecutor cannot avoid this obligation by refusing to search for the truth and remaining willfully ignorant of the facts.

What appears clearly from this record is a studied decision by the prosecution not to rock the boat, but instead to press forward with testimony that was possibly false. What emerges from this record is an intent to secure a conviction of murder even at the cost of condoning perjury. This record emits clear overtones of the Machiavellian maxim: "the end justifies the means," an idea that is plainly incompatible with our constitutional concept of ordered liberty. *See* Rochin v. California. 342 U.S. 165, 169 (1952). Such false testimony and false evidence corrupts the criminal justice system and makes a mockery out of its constitutional goals and objectives.

The authentic majesty in our Constitution derives in large measure from the rule of law -principle and process instead of person. Conceived in the shadow of an abusive and unanswerable tyrant who rejected all authority save his own, our ancestors wisely birthed a government not of leaders, but of servants of the law. Nowhere in the Constitution or in the Declaration of Independence, nor for that matter in the Federalist or in any other writing of the Founding Fathers, can one find a single utterance that could justify a decision by any oath-beholden servant of the law to look the other way when confronted by the real possibility of being complicit in the wrongful use of false evidence to secure a conviction in court. When the Preamble of the Constitution consecrates the mission of our Republic in part to the pursuit of Justice, it does not contemplate that the power of the state thereby created could be used improperly to abuse its citizens, whether or not they appear factually guilty of offenses against the public welfare. It is for these reasons that Justice George Sutherland correctly said in Berger that the prosecution is not the representative of an ordinary party to a lawsuit, but of a sovereign with a responsibility not just to win, but to see that justice

be done. 295 U.S. at 88. Hard blows, yes, foul blows no. The wise observation of Justice Louis Brandeis bears repeating in this context: "In a government of laws, existence of the government will be imperiled if it fails to observe the law scrupulously. Our government is the potent, the omnipresent teacher. For good or for ill, it teaches the whole people by its example . . . . If the government becomes a lawbreaker, it breeds contempt for the law; it invites every man to become a law unto himself."

All due process demands here is that a prosecutor guard against the corruption of the system caused by fraud on the court by taking whatever action is reasonably appropriate given the circumstances of each case. The Attorney General's faulty decision and calculated course of non-action in this case deprived Bowie of the fair process that was his due under our Constitution before he could be deprived of his liberty.

(43) Robinson testified that if there was proof that Gibbens had committed perjury he would have asked for sanctions that may have included a mistrial. Robinson then testified that since Gibbens "corrected" his testimony this meant Gibbens was not guilty of perjury. Yet Robinson testified that Gibbens corrected his testimony only after Gibbens knew his falsification had been discovered – meaning that Gibbens had to have known at the time he gave the testimony it was false and waited until he knew he had been caught before fessing up – and if he had never been caught he would have never "corrected" his false testimony. This is by definition perjury – which would have ended Haeg's prosecution:

AS 11.56.200. Perjury
(a) A person commits the crime of perjury if the person makes a false sworn statement which the person does not believe to be true.
(b) In a prosecution under this section, it is not a defense that
(1) the statement was inadmissible under the rules of evidence; or

(2) the oath or affirmation was taken or administered in an irregular manner.

(c) Perjury is a class B felony.

AS 11.56.235. Retraction as a defense.

(a) In a prosecution under AS 11.56.200 or 11.56.230, if the false statement was made in an official proceeding, it is an affirmative defense that the defendant expressly retracted the false statement

(1) during the course of the same official proceeding;

(2) before discovery of the falsification became known to the defendant;

(3) before reliance upon the false statement by the person for whom it was intended; and

(4) if the official proceeding involved a trier of fact, before the subject matter of the official proceeding was submitted to the ultimate trier of fact.

This proves Robinson's ineffectiveness, proves his sworn testimony to be irrefutably false, is more proven perjury by Robinson, is another attempt to cover up his sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client – as Haeg was deprived of his right not to be prosecuted with evidence obatined in violation of Haeg's right not to be prosecuted with perjury by the state and Robinson's perjury proves his conflict of interest. *See* Haeg's original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

(44) Robinson testified that since Haeg admitted to violations the state's case could not have been based upon material false evidence. Yet Haeg never admittd to vilations. See court record and Haeg's PCr exhibits. And it is irrefutable that the state falsified the evidence to Haeg's guide area on all the warrants used to seize property and evidence; falsified the evidence locations to Haeg's guide area

during trial; and that Haeg's judge specifically used the false location to justify Haeg's severe sentence – proving the evidence falsification was material. This proves Robinson's sworn testimony to be irrefutably false, is more proven perjury by Robinson, is another attempt to cover up his sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client – as Haeg was deprived of his right not to be prosecuted with evidence obatined in violation of Haeg's right not to be prosecuted with perjury by the state and Robinson's perjury proves his conflict of interest. *See* Haeg's original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

(45) Robinson testified that Haeg's statement was not used in the state's case in chief. Yet the map the state required Haeg to make during his statement was presented to Haeg's jury during the state's case in chief and Robinson has testified under oath that he knew this. *See* trial exhibit #25 and the court record. In addition, as proven by Evidence Rule 410, a plea statement could not be used anywhere or anytime by the state – not just excluded from its case in chief. In addition, Haeg had immunity for his statement so it prevented any prosecution whatsoever. This proves Robinson's sworn testimony to be irrefutably false, is more proven perjury by Robinson, is another attempt to cover up his sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client – as Haeg was deprived of his right against self-incrimination and Robinson's perjury proves his conflict of interest. *See* Haeg's original PCR

memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

(46) Robinson testified that the only time Haeg's statement was used against Haeg was after he had testified and that it was allowed to be used to impeach Haeg after Haeg had testified. Yet as shown in Evidence Rule 410(b) above a statement can only be used for this if it is made in court and on the record. Haeg's statement was not made in court, was not made on the record and had the additional protection of immunity- which prevents any prosecution whatsoever. This proves Robinson's sworn testimony to be irrefutably false, is more proven perjury by Robinson, is another attempt to cover up his sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client – as Haeg was deprived of his right against self-incrimination and Robinson's perjury proves his conflict of interest. *See* Haeg's original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

(47) Robinson testified that he was not sure if he told Haeg about the risks of testifying. Yet just minutes previously in his deposition Robinson testified that he had told Haeg about the risks of testifying. This is perjury by inconsistent statements, proves Robinson's sworn testimony to be irrefutably false, is more proven perjury by Robinson, is another attempt to cover up his sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client – as Haeg was deprived of his right against self-incrimination and Robinson's perjury proves his conflict of interest. *See* Haeg's original PCR

memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

(48) Robinson testified that he did not advise Haeg to testify. Yet later on in the deposition, when during cross-examination Robinson knew his falsification had been discovered, he admitted he had told Haeg that because the state was going to use the "bad" parts of Haeg's statements against Haeg at trial Haeg had to testify to bring in the "good" parts of his statement. This proves Robinson's sworn testimony to be irrefutably false, is more proven perjury by Robinson, is another attempt to cover up his sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client – as Haeg was deprived of his right against self-incrimination and Robinson's perjury proves his conflict of interest. *See* Haeg's original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

(49) Robinson testified that Haeg was absolutely determined to testify. Yet Haeg has recordings and witnesses proving this is false. See Haeg's PCR exhibits. This proves Robinson's sworn testimony to be irrefutably false, more proven perjury by Robinson, is another attempt to cover up his sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client – as Haeg was deprived of his right against self-incrimination and Robinson's perjury proves his conflict of interest. *See* Haeg's original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

(50) Robinson testified the charging information was defective since it was not sworn to. Yet Criminal Rule 7 does not require an information be sworn to:

> The indictment or the information shall be a plain, concise and definite written statement of the essential facts constituting the offense charged. It shall be signed by the prosecuting attorney.

Since the informations charging Haeg were signed by Leaders, the attorney prosecuting Haeg, and all authorities hold a prosecutor's signature represents his oath of office, it is irrefutable the information was not defective because it was not sworn to. This proves this "tactic" by Robison was unreasonable and nothing more than a decoy to keep Haeg from pursuing the real defenses of the false evidence locations, prosecution after being given immunity, statement used to do so, perjury by state, entrapment, etc, etc. This proves Robinson's sworn testimony to be irrefutably false, more proven perjury by Robinson, is another attempt to cover up his sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client – as Haeg was deprived of the numerous defenses above. *See* Haeg's original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

(51) Robinson testified that he could see no other potential defense that Haeg could use other than the charging information was not sworn to. As shown above and in more detail in Haeg's original PCR memorandum, exhibits, and affidavits there were numerous defenses – any one of which would have ended Haeg's favorably for Haeg. And it is irrefutable that Robinson recognized most of

these defenses – such as the use of Haeg's immunized statement, because Robinson himself brought it up in a reply brief (where it was not required to be acted up and was not acted upon) and the state's falsification of the evidence locations (which Robinson confronted the state on when Haeg flat demanded he do so). And the power of these defenses is stated over and over in Gonzalez, North, Napue, Mesarosh, Mooney, Giles, and Basurto above. This proves Robinson's sworn testimony to be irrefutably false, more proven perjury by Robinson, is another attempt to cover up his sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client – as Haeg was deprived of the numerous defenses above – any one of which would have changed the outcome in Haeg's case. *See* Haeg's original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

(52) Robinson testified that he subpoenaed Cole because Haeg wanted Cole to testify at Haeg's sentencing. Robinson then testified that Cole never showed up as subpoenaed and that he (Robinson) did not try to compel Cole's presence because he didn't see any relevant basis for having Cole testify. Yet Haeg has recordings and witnesses proving he had given Robinson a written list of 56 questions that Haeg flat demanded Cole be asked at Haeg's sentencing – questions that would have proved the state and Cole had Haeg had give up a year of guiding for charges less severe than what Haeg had gone trial on, that Haeg was promised credit for this year, and then Cole and the state refused to give Haeg his end of the bargain. This would have proved Haeg's conviction on the severe

charges was unconstitutional and would have proved Haeg had to be given credit for the year of guiding he had already given up. This proves Robinson's sworn testimony to be irrefutably false, more proven perjury by Robinson, is another attempt to cover up his sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client – as Haeg never got credit for the whole year of guiding he had given up because he had been promised he would get credit for it. *See* Haeg's original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

(53) Robinson first testified that he could see no up side or downside to having Cole testify at Haeg's sentencing but afterward agreed with Peterson's suggestion that it would hurt to have Cole testify it he admitted that Haeg had told him he had taken wolves outside the area. Yet Robinson himself had Haeg admit this very thing at trial in front of everyone including Haeg's sentencing judge. *See* court record. No harm whatsoever could come of Cole saying Haeg had also told him this. Moreover, what good could come from Cole's testimony? Proof Cole had committed ineffective assistance of counsel and malpractice, reversal of Haeg's conviction, and credit for the guide year Haeg had given up. This proves Robinson's sworn testimony to be irrefutably false, more proven perjury by Robinson, is another attempt to cover up his sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client – as Haeg was deprived of credit for the guide year already given up and Robinson's perjury

proves his conflict of interest. *See* Haeg's original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

(54) Robinson testified that he was not trying to protect Cole and that his allegiance to Haeg was never impacted by a desire to protect another attorney. Yet Haeg has recordings of Robinson, along with witnesses, proving Robinson was protecting Cole. See Haeg's PCR exhibits. This proves Robinson's sworn testimony to be irrefutably false, more proven perjury by Robinson, is another attempt to cover up his sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client – as Robinson's perjury proves his conflict of interest. *See* Haeg's original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

(55) Robinson testified that Fitzgerald was not subpoenaed because Fitzgerald did not know about the dispute between Haeg and Leaders over the plea agreement. Yet Haeg has sworn testimony from Fitzgerald that he knew nearly everything about the dispute. See Haeg's PCR exhibits. This proves Robinson's sworn testimony to be irrefutably false, more proven perjury by Robinson, is another attempt to cover up his sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client – as Haeg was deprived of his right to plea agreement enforcement and Robinson's perjury proves his conflict of interest. *See* Haeg's original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

(56) Robinson testified that he didn't remember telling Haeg that there was nothing that could be done about Cole not showing up at Haeg's sentencing. Yet Haeg has recordings of Robinson, along with witnesses, proving Robinson told Haeg nothing could be done about Cole not appearing as subpoenaed. See Haeg's PCR exhibits. This proves Robinson's testimony to be false, more perjury, is another attempt to cover up his sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client – as Haeg was deprived of credit for the guide year already given up and Robinson's perjury proves his conflict of interest. *See* Haeg's original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

(57) Robinson testified that because Cole had disobeyed the subpoena he could have asked the court to have the troopers go pick up Cole. This proves Robinson lied to Haeg to protect Cole, proves his sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client – as Robinson's lie to Haeg proves his conflict of interest. *See* Haeg's original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

(58) Robinson testified that he told Haeg that he was not going to enforce Cole's subpoena. Yet Haeg has recordings of Robinson, along with witnesses, proving Robinson had said there was nothing he could do to force Cole to appear – not that he chose not to enforce Cole's subpoena. See Haeg's PCR exhibits. This proves Robinson's sworn testimony to be irrefutably false, more proven perjury by

Robinson, is another attempt to cover up his sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client – as Haeg was deprived of credit for the guide year already given up and Robinson's perjury proves his conflict of interest. *See* Haeg's original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

(59) Robinson testified that it was his (Robinson's) right to decide whether or not to enforce Cole's subpoena – irregardless of the fact Haeg demanded Cole be subpoenas and forced to answer the 56 written question Haeg had prepared. Yet the ruling caselaw state's that it is HAEG who decides what to do, not Robinson.

> Jones v. Barnes, 463 U.S. 745 (U.S. Supreme Court 1983) & Brookhart v. Janis, 384 U.S. 1 (U.S. Supreme Court 1966) ruled it is the defendant, not the attorney, who is captain of the ship: "Although the attorney can make some tactical decisions, the ultimate choice as to which direction to sail is left up to the defendant. The question is not whether the route taken is correct; rather, the question is whether [the defendant] approved the course."... "The defendant, and not his lawyer or the State, will bear the personal consequences of a conviction... And although he may conduct his own defense ultimately to his own detriment, his choice must be honored out of 'that respect for individual which is the lifeblood of the law.'" (Quoting *People v. Malkin*, 250 N. Y. I85, 350-51 (1970) Brennan, J. concurring).

It is clear why Robinson never told Haeg he did not intend on calling Cole to testify about everything Cole and the state had Haeg do for a plea agreement they took away after Haeg had paid for it. Haeg would have fired Robinson and hired an attorney who would do as Haeg demanded - call Cole and expose his sellout of Haeg to the state. In addition, if Haeg could not find an attorney willing

to do this Haeg would have done it on his own - just as Haeg is now representing himself. This proves Robinson's conflcit of interest.

(60) Robinson testified that Judge Murphy allowed in "irrelevant and unneeded charges" at Haeg's sentencing, "we spent hours going over that", and that "once the bell is rung it's kind of hard to un-ring it." Yet Robinson never pointed out the caselaw that prevents this, brought this issue up on appeal, and in fact told Haeg he could not appeal his severe sentence that was specifically based upon proven false testimony from the state. *See* court record.

> Smith v. State, 531 P.2d 1273 (Alaska Supreme Court 1975)
> "[R]eferences to accusations or arrests which did not lead to convictions are not proper considerations in sentencing.

This proves Robinson's deficient attorney performance and harm to Haeg. *See* the Haeg's original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

(61) Robinson testified the only recourse he had for something prejudicial that Leaders said was to make a counter argument. Yet this is not true. After Leaders knowingly accepted Gibbens testimony falsifying the evidence locations and then continued to argue Haeg had taken the wolves where he guides to benefit his guide area Robinson could have filed a motion of prosecutorial misconduct and asked, as part of the sanctions imposed, that the charges against Haeg be dismissed:

> "[T]he dignity of the U.S. Government will not permit the conviction of any person on tainted testimony. The government of a strong and free nation does not need convictions based upon such testimony. It

cannot afford to abide with them." Mesarosh v. U.S., 352 U.S. 1 (U.S. Supreme Court 1956)

"Conviction obtained through use of false evidence, known to be such by representatives of the State, is a denial of due process, and there is also a denial of due process, when the State, though not soliciting false evidence, allows it to go through uncorrected when it appears. Principle that a State may not knowingly use false evidence, including false testimony, to obtain a tainted conviction, implicit in any concept of ordered liberty, does not cease to apply merely because the false testimony goes only to the credibility of the witness." Napue v. Illinois, 360 U.S. 264 (U.S. Supreme Court 1959)

"Requirement of 'due process' is not satisfied by mere notice and hearing if state, through prosecuting officers acting on state's behalf, has contrived conviction through pretense of trial which in truth is used as means of depriving defendant of liberty through deliberate deception of court and jury by presentation of testimony known to be perjured, and in such case state's failure to afford corrective judicial process to remedy the wrong when discovered by reasonable diligence would constitute deprivation of liberty without due process." Mooney v. Holohan, 294 U.S. 103 (U.S. Supreme Court 1935)

"The principle that a State may not knowingly use false evidence, including false testimony, to obtain a tainted conviction, [is] implicate in any concept of ordered liberty..." Giles v. Maryland, 386 U.S. 66 (U.S. Supreme Court 1967)

This proves Robinson's sworn testimony to be irrefutably false, more proven perjury by Robinson, is another attempt to cover up his sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client – as Haeg was prosecuted with perjury by the state and Robinson's perjury proves his conflict of interest. *See* Haeg's original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

(62) Robinson testified that he had no idea if Leaders would give Haeg credit for the year guiding if Haeg decided to accept "the state's original offer of forfeiting the airplane and 1 year off". Yet Haeg has a copy of a letter from Leaders to Robinson stating that Haeg would NOT be given credit for the year Haeg was told to give up for the plea agreement. This proves Robinson's sworn testimony to be irrefutably false, more proven perjury by Robinson, is another attempt to cover up his sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client – as Haeg was deprived of the credit he was promised for the guide year given up and Robinson's perjury proves his conflict of interest. *See* Haeg's original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

(63) Robinson testified that there was no question that the state's theory was that Haeg was taking wolves where he guide to benefit his guide business. Yet Robinson did nothing to point out the state was knowingly using false evidence and testimony to do this. See court record and Haeg's PCR exhibits. This would have ended Haeg's trial:

> "[T]he dignity of the U.S. Government will not permit the conviction of any person on tainted testimony. The government of a strong and free nation does not need convictions based upon such testimony. It cannot afford to abide with them." Mesarosh v. U.S., 352 U.S. 1 (U.S. Supreme Court 1956)

This proves Robinson's sellout of Haeg and meets both Risher standards of deficient attorney performance and harm to client – as Haeg was prosecuted with

perjury by the state. *See* Haeg's original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

(64) Robinson testified that the court denied his motion that Haeg be allowed to bond the airplane out. Yet the court never ruled on this motion. *See* court record. This proves Robinson's sworn testimony to be irrefutably false, more proven perjury by Robinson, is another attempt to cover up his sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client – as Haeg was deprived of the priamry means by which he provided a livelihood and Robinson's perjury proves his conflict of interest. *See* Haeg's original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

(65) Robinson testified that since sentencing went until 2 in the morning he was tired but not unconscious or delirious. Yet Haeg has tape recordings of Robinson stating that he "was barely there by 11 [pm]". This proves Robinson's sworn testimony to be irrefutably false, more proven perjury by Robinson, is another attempt to cover up his sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client – as Haeg was entitled to effective assistance of counsel and Robinson's perjury proves his conflict of interest. *See* Haeg's original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

In addition Haeg told Robinson he was so wore out by that time he didn't know what was going on and then Robinson told Haeg he had no right to appeal

his severe sentence. *See* Haeg's original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

(66) Robinson testified that "she [Judge Murphy] drug this thing [Haeg's sentencing] out longer than she should have – I mean there's no doubt about that." Yet Robinson never protested this, asked for a new sentencing, placed this in Haeg's points of appeal, and in fact told Haeg nothing could be done about the sentencing or Haeg's severe sentence – when Criminal Rule 32.5 and Appellate Rule 215 specifically allowed Haeg to appeal the sentencing and sentence. Compounding this misinformation from Robinson was Judge Murphy's failure to inform Haeg he could appeal his sentence – as she was required to do under Criminal Rule 32.5 and Appellate Rule 215. This proves Robinson's sellout of Haeg and meets both Risher standards of deficient attorney performance and harm to client – as Haeg would have appealed his sentence had Robison told him the truth or Judge Murphy informed Haeg as she was required to. *See* Haeg's original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

(67) Robinson testified that the reason he didn't appeal Haeg's sentence was that if Haeg overturned his conviction Haeg wouldn't a have a sentence. Yet if Haeg can't overturn his sentence (as he has been unable to do for the last 7 years) he will have to live with an illegal, unjust, and devastating sentence. And it was Haeg's right to decide if he wanted to appeal his sentence or not – not Robinson's decision. Since Robinson lied to Haeg that the sentence could not be

appealed Robinson unconstitutionally took this decision away from Haeg. This proves Robinson's sellout of Haeg and meets both Risher standards of deficient attorney performance and harm to client – as Haeg would have appealed his sentence had Robison told him the truth or Judge Murphy informed Haeg as she was required to. *See* Haeg's original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

(68) Robinson testified that Haeg did not have immunity for his statement and that this was "just [Haeg's] rendition of what he thinks happened." Yet Cole, who was Haeg's attorney when Haeg gave the statement, and Fitzgerald, who was helping Cole at this time, have both testified under oath that Haeg had transactional immunity for his statement. This proves Robinson's sworn testimony to be irrefutably false, more proven perjury by Robinson, is another attempt to cover up his sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client – as Haeg should have never been prosecuted and Robinson's perjury proves his conflict of interest. *See* Haeg's original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

(69) Robinson testified that Haeg's statement was not used against Haeg until Haeg got on the stand. Yet Robinson himself protested the use of Haeg's statement in a reply brief long before trial. *See* court record. This proves Robinson's sworn testimony to be irrefutably false, more proven perjury by Robinson, is another attempt to cover up his sellout of Haeg, and meets both

Risher standards of deficient attorney performance and harm to client – as Haeg was prosecuted in violation of his right against self-incrimination and Robinson's perjury proves his conflict of interest. *See* Haeg's original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

(70) Robinson testified that he never told Haeg that Cole gave Haeg false advice. Yet Haeg has tape recordings of Robinson, along with witnesses, proving Robinson told Haeg that Cole had given him false advice. See Haeg's exhibits. This proves Robinson's sworn testimony to be irrefutably false, more proven perjury by Robinson, is another attempt to cover up his sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client – as Haeg was entitled to effective assistance of counsel and Robinson's perjury proves his conflict of interest. *See* Haeg's original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

(71) Robinson testified that Haeg had not hired him to claim ineffective assistance of counsel of Cole. Yet Haeg had hired Robinson to advocate for him in a criminal prosecution that included pretrial, trial, sentencing, and on appeal – and an ineffective assistance of counsel claim can be used during any one of these phases to advocate for a defendant:

> "Particularly where, as here, it is the pretrial and post-trial performance of counsel as well as the performance during trial that is specifically alleged to have been inadequate, it is not sufficient that the trial judge found counsel's performance as observed in the course of trial to be adequate." Wood v. Endell, 702 P.2d 248 (AK 1985)

At any time he represented Haeg Robinson could have claimed Cole's ineffectiveness violated Haeg's constitutional right to effective assistance of counsel and asked for all damage done by Cole to be repaired. Instead, Robinson pressed on with a case that had already been hopelessly sabotaged by Cole. And Robinson has told Haeg why he never claimed ineffective assistance – a successful claim of ineffective assistance is the same as proving malpractice. This proves Robinson's sworn testimony to be irrefutably false, more proven perjury by Robinson, is another attempt to cover up his and Cole's sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client – as Haeg was entitled to effective assistance of counsel and Robinson's perjury proves his conflict of interest. *See* Haeg's original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

(72) Robinson testified that Haeg would have had to hire him on a separate "civil issue" to claim ineffective assistance of counsel. Yet effective assistance of counsel was Haeg's mightiest criminal right, for it is through counsel that all other rights are raised:

> "Of all the rights that an accused person has, the right to be represented by counsel is by far the most pervasive for it affects his ability to assert any other rights he may have." United States v. Cronic, 466 U.S. 648 (U.S. Supreme Court 1984)

Robinson testifying under oath he did not have to use Haeg's mightiest criminal right in Haeg's defense is proof Robinson himself was ineffective in Haeg's case – and proof he was protecting Cole at Haeg's expense. This proves

Robinson's sworn testimony to be irrefutably false, more proven perjury by Robinson, is another attempt to cover up his and Cole's sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client – as Haeg was entitled to effective assistance of counsel and Robinson's perjury proves his conflict of interest. *See* Haeg's original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

(73) Robinson testified that he never told Haeg that troopers and prosecutors can lie with immunity. Yet Haeg has tape recordings of Robinson, along with witnesses, proving Robinson told Haeg that troopers and prosecutors can lie with immunity. This proves Robinson's sworn testimony to be irrefutably false, more proven perjury by Robinson, is another attempt to cover up his sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client – as Haeg was entitled to effective assistance of counsel and Robinson's perjury proves his conflict of interest. *See* Haeg's original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

(74) Robinson testifies that Cole would not have been relevant for sentencing purposes. Yet Cole could have proved the state promised Haeg would get credit for the guide year Haeg had given up. SeeHaeg's PCR exhibits. Moreover, as Cole was the one that made the deal with the state on Haeg's behalf, Cole's testimony was critical. So Cole was incredibly relevant for Haeg to get credit for a whole years income from both he and his wife Jackie (she worked

fulltime for the guide business at the time). Who would not agree a whole years income from both adults in a family of 4 is not relevant? This proves Robinson's sworn testimony to be irrefutably false, more proven perjury by Robinson, is another attempt to cover up his and Cole's sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client – as Haeg was entitled to effective assistance of counsel, should have received credit for the guide year already given up, and Robinson's perjury proves his conflict of interest. *See* Haeg's original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

(75) Robinson testified that he never objected to Judge Murphy riding with Trooper Gibbens because "not when she was commandeered." Yet, one of the most basic rights a defendant like Haeg has is to have an "independent" and "unbiased" judge. A judge that can be "commandeered" by the main witness against a defendant is anything but "independent". The right to an independent judge has been a fundamental right of the people since the Magna Carta.

> "A trial judge's involvement with witnesses establishes a personal, disqualifying bias." Bracy v. Gramley, 520 U.S. 899 (U.S. Supreme Court 1997)

Robinson's not objecting to this is more proof on his sellout of Haeg and meets both Risher standards of deficient attorney performance and harm to client – as Haeg had an absolute right to an unbiased judge and if not his convicton is invalid. *See* Haeg's original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

(76) Robinson testified that he personally witnessed Trooper Gibbens chauffeuring Judge Murphy while Judge Murphy presided over Haeg's case. Yet, Judge Murphy and Trooper Gibbens have testified to the Alaska Commission on Judicial Conduct that they never rode together while Judge Murphy presided over Haeg's case. However, the official court record of Haeg's case itself captured both Judge Murphy and Trooper admitting the chauffeuring was taking place while Judge Murphy presided over Haeg's case. Since Judge Murphy is proven to have testified faslely about her being chauffeured by the main witness against Haeg this is proof of actual bias – requiring Haeg's conviction to be overturned

(77) Robinson testified that no one with the state ever contacted him about the chauffeuring of Judge Murphy by Trooper Gibbens. Yet the only investigator of judges in Alaska for the last 25 years, Marla Greenstein, has testified under oath the she contacted Robison about Judge Murphy being chauffeured by Trooper Gibbens and that no one other than Haeg had witnessed Trooper Gibbens chauffeuring Judge Murphy while she presided over Haeg's case. This proves Judge Murphy and Trooper Gibbens conspired with Alaska Commission on Judicial Conduct investigator Greenstien and that Greenstein falsifed her investigation to cover up for Judge Murphy, proof of Judge Murphy's actual bias – requiring Haeg's conviction to be overturned.

(78) Robinson testified that it would have been really beneficial if his deposition had happened sooner before his memory faded. Yet Haeg had continuously filed for expedited consideration of his case and been denied every

COUNSEL OF RECORD

CASE NO. 4NC-09-5 CI

KEEP ON TOP OF FILE

NAME	MAILING ADDRESS & PHONE NUMBER	FOR WHOM
David Haeg	PO Box 123 Soldotna AK 99669	Applicant
OSPA - Arch. Andrew Peterson	310 K St. Ste 308 Anch AK 99501	Resp. Oak: 269-7950
PD dismissed on record 6-15-11		
~~Mr Matt Flanigan~~	1029 W 3rd Ste. 350 AK 99501	D. Hoag LEOA
	Haeg fax 262-8867	

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IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT KENAI

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

ORDER ON MOTION TO DISMISS

This post-conviction relief ("PCR") proceeding follows the Alaska Court of Appeals' decision on the merits of two direct appeals by David Haeg ("Haeg"). The Court of Appeals issued its decision in September 2008. Haeg v. State, 2008 WL 4181532, *1 (Alaska App. 2008). This PCR proceeding is bound by rulings on the merits of issues appealed by Haeg. Some of the issues appealed by Haeg were resolved against him because they were not raised first at the trial court level. Some of those are raised by Haeg in the PCR among the ineffective assistance of counsel claims.

On March 5, 2010, the State moved to dismiss the Haeg PCR claims. The State argued that Haeg failed to plead a prima facie case of ineffective assistance of counsel or any other grounds that would justify relief. On March 30, 2010, Haeg filed a 33-page opposition. The PCR proceeding got mired down as the judge assigned to hear the PCR, Margaret Murphy, was challenged and ultimately disqualified by Superior Court Judge Joannides. The case got re-assigned to the undersigned in due course. Proceedings were stayed for hearings on status and counsel at public expense. Although counsel was appointed at public expense for Haeg, he

ultimately decided to discharge counsel and represent himself. Haeg was permitted to conduct additional discovery and to supplement his PCR claims bearing the standards established in Risher v. State, 523 P.2d 421 (Alaska 1974),[1] in mind as well as the Alaska Court of Appeals rulings on his appeals. Haeg deposed his former trial counsel Arthur Robinson in September 2011 and deposed his initial defense counsel, Brent Cole, in February 2012. Haeg filed a 245-page Memorandum on Ineffective Assistance of Counsel on March 19, 2012, detailing discrepancies between prior testimony, prior recorded comments, and deposition testimony as regards the representation his counsel provided.

The State filed a memorandum in support of dismissal. The parties argued issues at length on April 30, 2012. The alleged ineffective assistance of counsel issues raised by Haeg in his PCR filing and in his briefing include the following summary from pages 236-43 of his Supplemental Memorandum.

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[1] In a recent, unpublished and therefore non-precedental opinion, the Alaska Court of Appeals affirmed a trial court grant of a State motion to dismiss a PCR claim, stating that,

> Under Risher v. State, to obtain relief based on a claim that an attorney was incompetent, an applicant must plead and prove that the attorney's performance was so deficient that no competent attorney would have done the same, and that the applicant was prejudiced by this incompetence. The attorney's performance is judged in light of the circumstances at the time, not in hindsight. There is a strong presumption that an attorney was competent, and that the attorney's actions were motivated by sound tactical considerations. Reasonable tactical decisions are "virtually immune from subsequent challenge even if, in hindsight, better approaches could have been taken."

Hughes v. State, MOJ June 27, 2012 (Alaska App. 2012) (footnotes omitted). Similarly, in another unpublished and therefore non-precedental Memorandum Opinion and Judgment ("MOJ"), Morkal v. State, MOJ July 18, 2012, (Alaska App. 2012), the court stated,

> "In order to establish prejudice from ineffective assistance of counsel, a post-conviction applicant must show "that counsel's incompetence had some actual, adverse impact on the case – that is, the accused must prove 'some effect of [the] challenged conduct on the reliability of the trial process.'"

A. Ineffective/inaccurate advice re the entrapment defense;

B. Ineffective advice re transactional immunity;

C. Ineffective advice re falsified evidence locations;

D. Ineffective advice re credit for the year of missed guiding;

E. Inaccurate advice re bonding out the seized plane;

F. Ineffective/inaccurate advice re the Judge & Trooper Gibbens contact; and

G. Inaccurate advice re a subject matter jurisdiction defense.

The detailed allegations of ineffective or inaccurate legal advice include those set forth in the original PCR and the following illustrative points from the Supplemental Memorandum (not intended to list each point).

- Haeg claims he was given immunity to make statements in response to questions, which he did for five hours on June 11, 2004, in the presence of prosecutor Leaders, Trooper Gibbens, and his attorney Cole, which statements were recorded, but the recording was allegedly lost, but his statement was thereafter allegedly used against him in violation of Evidence Rule 410, and his attorneys did nothing.

- The first attorney for Haeg, Brent Cole, refused to answer pertinent questions in his deposition on February 7, 2012, and did not testify truthfully in response to other questions.

- Haeg contends Cole represented him at $200 per hour from April 11, 2004 to December 9, 2004, but did not provide competent or effective legal advice on key issues, including the viability of an entrapment defense, use of his 5-hour June 11 statement to police investigators for which Haeg thought he had immunity, use of the map Haeg provided, failed plea negotiations, and others.

- Haeg claims Cole testified that Haeg agreed to forfeiture of the PA-12 airplane on November 8, 2004, which Haeg refutes.

- Haeg claims Cole testified that he thought a deal was reached on the night of November 8, 2004, which Haeg refutes and asserts he has tape recordings to prove.

- Haeg claims Cole testified that he told Haeg that Haeg could enforce the open sentence plea agreement, which Haeg denies.

- Haeg claims Cole testified that Haeg had been given immunity and required to give a statement but he told Haeg he could be prosecuted for everything he said in the statement, which Haeg denies.

- Haeg claims Cole testified that he did not know what law or rule authorized use of Haeg's statement against him.

- Haeg claims Cole testified that he exercised Haeg's right not to have the statement used against him, but Haeg claims the statement was the basis of the information filed against him as well as preparation of state witnesses.

- Haeg claims Cole testified that he thought the map drawn by Haeg could not be used against him, but it was allegedly used to prepare state witnesses and as an exhibit at trial.

- Haeg claims Cole testified that he believed he could not file a motion to suppress prior to trial and no longer represented Haeg by the time of trial, so it was the trial attorney's obligation to do so.

- Haeg claims Cole testified that he did not know if the State could use Haeg's statement to go and find other evidence before trial.

- Haeg claims Cole testified that Cole did not do anything in response to the state's use of the Haeg statement because he thought the state could use it and that he could not file a motion for prosecutorial misconduct.

- Haeg claims Cole testified that he believed filing motions to suppress or to enforce the plea agreement would ire the prosecutor and backfire.

- Haeg claims Cole testified that he informed Haeg that he could file a motion to suppress and a motion to dismiss, which Haeg refutes and asserts he has tape recordings to prove that Cole told him then that nothing could be done about the State using his statement, and that Cole testified in prior proceedings that he never told Haeg he could move to suppress based on false statements.

- Haeg claims Cole testified that he could remember only one search warrant, when five were actually issued, and that Cole thought the false information was not material.

- Haeg claims Cole testified a suppression motion would only reach the evidence seized, not to the evidence found in the field, which was falsely located to Haeg's hunting area.

- Haeg claims Cole testified that Leaders never told him he was not going to honor Haeg's immunity, but Kevin Fitzgerald testified for Cole in a prior proceeding that while he and Cole worked on the case, Cole told Fitzgerald that Leaders told Cole that Leaders would not be honoring Haeg's immunity.

- Haeg claims Cole testified that he told Haeg that the law did not allow the seized plane to be bonded out.

- Haeg claims Cole refused to answer if the state knew why Haeg gave up guiding for a year before he was convicted, which Haeg claims was for the plea agreement that the state broke.

- Haeg claims Cole falsely testified that there was no reason to contact Leader's boss after November 9, "2012" (sic, 2004) because the case had been negotiated.

- Haeg claims Cole did not remember Haeg telling Cole, Leaders, and Gibbens during his June 11 statement that evidence locations had been falsified to his guide area, and saw no benefit in correcting the locations.

- Haeg claims Cole testified the State did not use the Haeg statement to get Zellers cooperation, but Zellers and his attorney Kevin Fitzgerald have testified under oath to the contrary.

- Haeg claims Cole testified that he did not honor the subpoena to appear at the sentencing of Haeg because attorney Robinson told him he did not have to show up. Cole was subpoenaed to make sure Haeg got credit for the guide year he had given up. Cole is said to have testified the credit would not make any difference and that it was Haeg's fault he did not get the credit because he went to trial.

- Haeg claims Cole testified that while he represented Haeg, Haeg wanted to negotiate, not fight, but then broke the plea agreement.

- Haeg claims Cole testified that he did not put the plea agreement or immunity in writing because there was no need to do so.

- Haeg claims Cole was not concerned that the state allegedly lost the recording of his June 11 statement.

- Haeg claims Cole agreed on questioning by state attorney Peterson that the issue of immunity was irrelevant because Haeg took the stand.

- Arthur Robinson Deposition: Haeg claims Robinson testified that he never told Haeg that nothing could be done about what Cole had done as his first counsel, which Haeg claims to be false and contrary to recorded conversations with Robinson.

- In the same vein there are multiple Robinson-testified-in-his-deposition versus Robinson-said-on-tape-recordings disputes regarding aspects of the case.

A. Alleged ineffective representation/inaccurate advice re the entrapment defense.

Has Mr. Haeg made a prima facie showing that he received ineffective assistance of counsel or inaccurate legal advice from his counsel regarding the entrapment defense? The short answer is "no."

Haeg lists himself and Board of Game member Ted Spraker as witnesses to his allegation that Mr. Spraker told Haeg to take wolves outside the wolf control program area but report them inside the area to demonstrate results to preserve the program. Mr. Spraker was a member of the Board of Game. In his briefing Mr. Haeg refers to Mr. Spraker as the "State," but private statements by Spraker do not qualify as "State" action, nor was Spraker a "public law enforcement official or a person working in cooperation with the official[.]" See AS 11.81.450. The Alaska Supreme Court analyzed the defense of entrapment in 1977 in Batson v. State, 568 P.2d 973 (Alaska 1977). The court ruled that entrapment is an issue to be ruled upon by the trial court, without submission to the jury. The purpose of the defense is "deterrence of impermissible police conduct." Id. at 976. The court reiterated its prior determination in 1969 that the "objective" standard for the entrapment defense should be applied in Alaska, not the "subjective" standard applied by the U.S. Supreme Court in 1932 and 1958. The objective standard focuses on the conduct of the police. The "subjective" standard which is applied in some jurisdictions focuses on the conduct and propensities of the defendant. With regard to the burden of proof for an entrapment defense, the Alaska Supreme Court held:

> Although resolution of the issue is extremely difficult, and there are sound arguments for placing the burden on the prosecution to prove beyond a reasonable doubt that entrapment did not occur, we think that, on balance, the better reasoned position is to require the defendant to prove entrapment by a preponderance of the evidence. Given this court's prior adoption of the objective theory of entrapment and our concomitant holding that entrapment issues are for the decision of the court, not the jury, we conclude that the burden of proving by a preponderance of the evidence that entrapment took place should rest with the accused. The focus of any entrapment inquiry under Alaska's objective test is upon the particular conduct of the police with a view to

deterrence of impermissible conduct through articulation of explicit standards by the court.

Batson v. State, 568 P.2d 973, 978 (Alaska 1977).

The Alaska Court of Appeals discussed entrapment in depth in State v. Yi, 85 P.3d 469, 471-72 (Alaska App. 2004). The trial court ruled Yi established entrapment; the State appealed. Yi had traded two bottles of Crown Royal for a bear gall bladder offered by an undercover Trooper, on two separate occasions. Although Yi knew that selling whiskey was illegal in the then "damp" community of Bethel and he knew that selling gallbladders was illegal, he said the undercover Trooper led him to believe that barter was legal. The Trooper said he told Yi the trade would be "fine" but did not say it would be legal. The Court of Appeals noted that Yi had no idea the undercover barterer was a Trooper and reversed the entrapment defense decision, with the following discussion:

> Alaska's entrapment statute is codified at AS 11.81.450:
>
> > In any prosecution for an offense, it is an affirmative defense that, in order to obtain evidence of the commission of an offense, a public law enforcement official or a person working in cooperation with the official induced the defendant to commit the offense by persuasion or inducement as would be effective to persuade an average person, other than one who is ready and willing, to commit the offense. Inducement or persuasion which would induce only a person engaged in an habitual course of unlawful conduct for gain or profit does not constitute entrapment.
>
> Entrapment is a defense to criminal charges, and the purpose of the defense is to deter law enforcement activities that go beyond the bounds of sound public policy.[FN6] Because AS 11.81.450 defines entrapment as an affirmative defense, a defendant bears the burden of establishing it by a preponderance of the evidence.[FN7] Entrapment is an issue for the court to decide rather than the jury.[FN8] Alaska employs an objective test for entrapment.[FN9] This means that "the court considers the nature of the police activity involved, without reference to the predisposition of the defendant." [FN10]
>
> FN6. *Evans v. State,* 550 P.2d 830, 843–45, 845 n.51 (Alaska 1976).
> FN7. AS 11.81.900(b)(1); *Bachlet v. State,* 941 P.2d 200, 206 (Alaska App. 1997).

FN8. *Folsom v. State,* 734 P.2d 1015, 1017 (Alaska App.1987).
FN9. *Grossman v. State,* 457 P.2d 226, 229 (Alaska 1969).
FN10. 21 Am.Jur.2d *Criminal Law* § 265 (1998).

We have previously stated:

> In order to prevail on [an entrapment] defense, [the defendant is] required to prove that the police employed fundamentally unfair or dishonorable practices calculated to induce someone to commit the crime in question so that he might be arrested and prosecuted for the offense.... And while [the defendant does] not need to negate a predisposition to engage in similar conduct, [the defendant must show] that the dishonorable police practices were a substantial factor in inducing him to commit the charged offenses — that his commission of the offenses was "the direct result of inducement by law enforcement officials." [FN11]

FN11. *Washington v. State,* 755 P.2d 401, 405 (Alaska App.1988) (quoting *Anchorage v. Flanagan,* 649 P.2d 957, 961–62 (Alaska App. 1982)).

> We conclude that Judge Curda erred in concluding that Yi established the defense of entrapment. In his findings, Judge Curda was equivocal in condemning the police conduct. At one point, he stated that he did not believe that Trooper Pacolt's actions were egregious or that it was the trooper's intent to entrap Yi into committing a crime. Looking objectively at Trooper Pacolt's conduct, the evidence does not show that the trooper engaged in fundamentally unfair or dishonorable practices which were calculated to induce someone to commit a crime, other than a person who was willing. Judge Curda did not resolve whether Trooper Pacolt or Yi first suggested a trade of the bear gallbladder for the alcohol. Even if Trooper Pacolt suggested the trade, this conduct, looked at objectively, does not constitute a fundamentally unfair or dishonorable practice calculated to induce an innocent person to commit a crime. Even if Trooper Pacolt had suggested the exchange and even if he had suggested that it would be lawful to trade the alcohol for the bear gallbladder, it would be unreasonable for Yi to rely on this representation. As Yi admitted, he had no suspicion that Trooper Pacolt was a police officer or was anyone other than an ordinary visitor to Bethel.

State v. Yi, 85 P.3d 469, 471-72 (Alaska App. 2004). Judges Mannheimer and Stewart joined in a concurring opinion in which they emphasized that the entrapment defense, by statute, is defined as "*law enforcement conduct*" defined as "law enforcement officers or those working in cooperation with them." State v. Yi, 85 P.3d at 473, quoting from AS 11.81.450.

A review of the trial transcript in the case against Haeg shows that Ted Spraker was called at trial as a witness for the defense. He was examined on direct by Mr. Haeg's attorney,

Mr. Robinson, and cross-examined by the prosecutor. Spraker testified he was familiar with the predator control program for game management unit 19-D East, the McGrath area. He described the wolf management predator control program as a "control program." He said, "This 19-D East is an experiment, very controlled experiment." (Tr. at 697) On cross examination Mr. Spraker clarified that in no way was his testimony for the Board of Game, he was speaking for himself, not the Board. Although passed by two previous Boards, he testified that past State administrations would not allow the predator control program to go forward. The aerial shooting of wolves in areas 13-A and 19-D East was the first, so the Department and the Board were "all kind of testing the water on this one." (Tr. at 707-08) After testifying generally about the predator control program and the public controversy regarding the program, Mr. Spraker was asked about his discussions with Mr. Haeg. He testified in pertinent part as follows:

> A. [H]e [Haeg] knew that we were very concerned [about the fragile nature in some ways of this program]. As a board member that I was very concerned that we had a program that resulted in good clean results. He was very aware of that.
>
> ....
>
> Q. So what did you communicate to him about his participation in this program?
>
> A. Well, I don't recall the exact words, but in essence that, you know, do a good job. Depend on you to take some wolves out of this area, and don't do anything you shouldn't do. I mean bottom line, it was just a general discussion that you're going to have a spotlight on – on your head, you know, when you participate. There's only three permits so it's not like there's a lot of people out there, and do a good job.
>
> Q. Do a good job, but don't mess up?
>
> A. Don't mess it up. That was clearly implied.
>
> Q. The – based on the fragile nature of the public perception issues is the program taking wolves outside of the program boundaries is that risk messing it up?
>
> A. It certainly has a potential to do that. It's – there's a lot of people watching this decision. We all are.
>
> Q. This case here?

A. This case.

Mr. Haeg has not presented a scintilla of evidence that Spraker was working in cooperation with law enforcement officers to entrap Haeg. The Court of Appeals held in the Yi case, as cited and quoted above. "Even if Trooper Pacolt suggested the trade, this conduct, looked at objectively, does not constitute a fundamentally unfair or dishonorable practice calculated to induce an innocent person to commit a crime." Applying the Court of Appeals' logic in Yi to the Spraker/Haeg setting, it follows that even if Spraker suggested Haeg take wolves outside the predator control program area, that does not constitute a fundamentally unfair or dishonorable practice calculated to induce an innocent person to commit a crime.

Because the entrapment defense had no chance of success as a matter of law under the factual circumstances alleged by Haeg, it follows that Haeg has not met his burden of showing a prima facie case of ineffective assistance of counsel for failure to raise an entrapment defense. The motion to dismiss the PCR on this issue is therefore granted.

The reference to the fragile nature of the wolf control program may have included concerns beyond whether enough wolves would be taken. Some individuals have aggressively advocated against any aerial taking of wolves. Life and property threats were made in 1993/94 to ADF&G employees and private contractors involved in the wolf control program, as well as their families. The Alaska Wildlife Alliance filed suit to require disclosure under the Public Records Act of the names and time sheets of the Department employees and the private contractors involved in wolf control. The court refused the demand on privacy and safety grounds. Alaska Wildlife Alliance v. Rue, 948 P.2d 976 (Alaska 1997). More recent versions of predator control programs have been challenged by conservation advocacy groups. In one

Alaska constitution sustained-yield based challenge to the 2006 predator control program, the Alaska Supreme Court held,

> [W]e hold today that the sustained yield clause in Alaska's constitution applies to both predator and prey populations, including populations of wolves and bears.

West v. State, Bd. of Game, 248 P.3d 689, 696 (Alaska 2010).

B. Alleged ineffective assistance/inaccurate advice re transactional immunity.

Mr. Haeg argues that he was offered immunity before consenting to give a recorded interview to the State and that the only permissible form of immunity in Alaska is transactional immunity. Haeg has repeatedly cited State v. Gonzalez, 853 P.2d 526, 528 (Alaska 1993), for the proposition that the only permitted form of immunity is transactional immunity. Mr. Haeg contends he received ineffective assistance of counsel from attorney Cole for not getting the immunity deal in writing and ineffective assistance of counsel from attorney Robinson for permitting the case to proceed against him in the face of the alleged grant of immunity.

The Gonzales case involves immunity, but in the context of a witness who invokes the fifth amendment on the witness stand and refuses to testify in a criminal proceeding against someone else. The court in Gonzales explained that to compel a witness to testify in that setting, the immunity must be transactional:

> [A] witness who is compelled to testify must be granted some type of immunity from prosecution.
>
> There are two types of immunity from prosecution in current usage. Transactional immunity, the more protective type, prohibits prosecution of a compelled witness for a crime concerning which the witness is compelled to testify. The narrower form, use and derivative use immunity, allows prosecution of the witness for the crimes referred to in the compelled testimony, but prohibits the use of the compelled testimony and its fruits in such prosecutions. *Surina,* 629 P.2d at 971, n. 2. In *Surina* and *Serdahely,* pursuant to our supervisory powers, we approved of transactional immunity as a matter of practice but expressed no view as to whether use and derivative use immunity might also be constitutionally permissible.

> Alaska Statute 12.50.101, enacted after *Surina* and *Serdahely* were decided, authorizes an order compelling testimony based on a grant of use and derivative use immunity. In the present case this statute has been challenged as unconstitutional under article I, section 9 of the Alaska Constitution. The superior court and the court of appeals have concluded that the statute is unconstitutional. We granted the state's petition and now affirm the decision of the court of appeals.

State v. Gonzalez, 853 P.2d 526, 528 (Alaska 1993).

The interview with the police which Haeg agreed to do was, as explained by attorney Cole, done as a legal tactic, a show of good faith, to encourage a favorable resolution of the case for Haeg. The interview was not compelled. A deal was offered by the prosecution to Haeg by which Haeg could have resumed work that Fall under his Master Guide's License. The deal required forfeiture of the plane, which Haeg ultimately rejected. No form of immunity was offered by the State for the interview. No form of immunity was offered by the State to Haeg at any point in the negotiations prior to trial. The Assistant District Attorney states by affidavit that he lacked authority to offer immunity and did not do so. Although a rogue or unauthorized offer of immunity is possible, it appears Mr. Haeg participated voluntarily in the interview under the cloak of privilege, not immunity, as part of settlement negotiations. The privilege accorded settlement negotiations by the Rules of Evidence is not "immunity."

As to the alleged ineffective assistance of counsel for failure to raise immunity, the court finds that Haeg has not met his burden of showing a prima facie case. The motion to dismiss the PCR on this issue is therefore granted.

C. Alleged ineffective assistance/inaccurate advice re falsified evidence locations.

Mr. Haeg claims that Trooper Gibbens made intentional false material representations, i.e., lies in the affidavits by which he obtained search warrants against Haeg. He

further claims that he brought the lies to the attention of both of his counsel, who were both ineffective because, among other things, they did not move to suppress the evidence.

The criminal case against Mr. Haeg had a pretrial deadline for motions such as a motion to suppress. The pretrial deadline in the case against Haeg was twenty days prior to the date scheduled for Calendar Call, as established by the Trial and Calendar Order entered by Superior Court Judge Dale Curda effective November 9, 2004, distributed December 30, 2004, with trial call on January 7, 2005. Attorney Cole did not file a motion to suppress. Cole contends not filing a motion to suppress was a matter of legal strategy because the filing of such a motion would have jeopardized settlement negotiations. Robinson contends he came into the case after the deadline for pretrial motions, and, in addition, there was no basis for a motion to suppress on material misrepresentation grounds because there was ample probable cause in the application for the search warrant even if a portion were expunged. The Robinson and State position is that Trooper Gibbens made a GMU boundary mistake on the map he used, Trial Exhibit 25,which he corrected at trial in front of the jury.

The court has reviewed the applications for four search warrants in this case: 4MC-04-001 SW, 4MC-04-002 SW, 4MC-04-003 SW, and 4MC-04-004 SW. Each will be addressed in turn.

4MC-04-001 SW was based on a typed affidavit by Trooper Gibbens to which he swore on the record on March 29, 2004. His affidavit states as follows (**the statements challenged by Mr. Haeg are underlined and bolded**):

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 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 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 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.

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.

4MC-04-002 SW. The foregoing paragraphs from the March 29, 2004 application by Trooper Gibbens for the first search warrant were reiterated in his March 31, 2004 application for the second search warrant, with additional information. The additional information included the following addition to paragraph 2:

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.

There were also the following additions to paragraph 3:

3. ... they would be operating from Trophy Lake Lodge, ... If not based at the lodge, they planned on basing out of McGrath (which did not end up being the case.) .... 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.

Information was added to paragraph 4, which is restated here in full as modified:

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 for this area. Out of all 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 reat 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.

Information was added to paragraphs 6, 7, 8, and 9, and paragraphs 10-15 were added to the Gibbens' affidavit for the second search warrant, each of which is restated here in full:

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 airplance. 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 specific 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 coordinate 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 determined 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 or freezer to prevent spoilage.

15. Landing gear, ski's, and tail wheels can be rapidly removed from an aircraft.

4MC-04-003 SW. On March 31, 2004, in support of his application for a third search warrant, Trooper Gibbens submitted the same affidavit as he submitted for the second search warrant.

4MC-04-004 SW. On April 1, 2004, Trooper Todd Mountain applied for and obtained a fourth search warrant based on his affidavit and based on a print out of Trooper Gibbens' affidavit in support of the first search warrant. Trooper Mountain affied:

> Your affiant is an Alaska State Trooper with over six years of 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, SFT Godfrey, Trooper Hedlund and USFW Officer Neeley, 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 to 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 be around 8 or 9 wolf skulls at Kenny Jones'. Haeg also said the skulls are from wolves killed this year.

The questions are whether Haeg has presented a prima facie case that he received ineffective legal representation because his counsel did not move to suppress, dismiss, or otherwise preclude evidence obtained as a result of the search warrants that he contends were obtained through intentional material untruthful misrepresentations (lies) by Trooper Gibbens. The information presented by Trooper Gibbens which Haeg claims was wrong is that the kill site which Trooper Gibbens reported as being in GMU 19**C** was in GMU 19**D**. Trooper Gibbens

described the location of the kill sites in his affidavit in support of the search warrants as being in GMU 19C. Trooper Gibbens testified as follows during his direct examination testimony at the trial: "Q. These wolf kills that you investigated there, they were where? A. 19-C and B." (Tr. 418) There was further discussion in front of the jury on direct when Trooper Gibbens was asked to approach the map and asked if he put the game unit boundaries on the map. He answered, "Yes, I've got some of the boundaries put in there. ...I may have to go look where the meet boundary is there. It's – pause Yeah, some of it occurred in 19-C, and I would have to look up the legal definition and make positive before I go on record as far as A or B. As far as the sub unit." (Tr. 420)

Trooper Gibbens continued, "19-D is up here. 19-C is over here, and as far as the A and B boundary we can look up the legal definition and show people where that boundary over in here is, because this is fairly close to an A/B boundary. Q. Do you have that readily accessible? A. I can come up with it in five minutes. Right. See, this is the C boundary running east there. D up here. This is going to be A or B." (Tr. 421)

On cross examination by Robinson, the following exchange with Trooper Gibbens occurred: "Q. Now it's your testimony that all four of those kill sites part of which were in 19-D and part of which was in 19-B? A. No, sir. Actually I'll – I'll correct that if you like. Q. Sure. A. Those -- those four kill sites are in the corner of 19-D. Q. All right. So they're all within 19-D? A. Yes, sir. Q. Not 19-C, not 19-B, not 19-A, correct? A. No, sir. Q. Correct? A. Correct."

Game Management Unit 19 has subunits 19A, 19B, 19C, and 19D. Within 19D is 19D-East, which is the area in which the wolf control program was authorized. The four primary subunits in GMU 19 have the following general boundary descriptions according to ADF&G

public information on-line and in hunting regulation pamphlets (emphasis added to the 19C description):

> **GMU 19:** Game Management Unit 19 consists of the Kuskokwim River drainage upstream from Lower Kalskag;
>
> **GMU 19A**
>
> Unit 19(A) consists of the Kuskokwim River drainage downstream from and including the Moose Creek drainage on the north bank and downstream from and including the Stony River drainage on the south bank, excluding Unit 19(B);
>
> **GMU 19B**
>
> Unit 19(B) consists of the Aniak River drainage upstream from and including the Salmon River drainage, the Holitna River drainage upstream from and including the Bakbuk Creek drainage, that area south of a line from the mouth of Bakbuk Creek to the radar dome at Sparrevohn Air Force Base, including the Hoholitna River drainage upstream from that line, and the Stony River drainage upstream from and including the Can Creek drainage;
>
> **GMU 19C**
>
> Unit 19(C) consists of that portion of Unit 19 south and east of a line from Benchmark M#1.26 (approximately 1.26 miles south of the northwest corner of the original Mt. McKinley National Park boundary) to the peak of Lone Mountain, then due west to Big River, including the Big River drainage upstream from that line, **and including the Swift River drainage upstream from and including the North Fork drainage**;
>
> **GMU 19D**
>
> Unit 19(D) consists of the remainder of Unit 19.

The four subunits in GMU 19 nearly have a common point somewhat east from Lime Village. A review of Exhibit 25 shows that the wolf kill sites in question were located north/northeast from Lime Village, up the Swift River. The ADF&G description of the boundary of GMU 19(C) mentions the Swift River drainage upstream from and including the North Fork drainage. Trooper Gibbens was using an aeronautical map, not an ADF&G GMU map. See Trial Exh. 25. The southern portion of the penciled line on Trial Exhibit 25 depicting the southern boundary line for 19D appears inaccurate.

Had either of Haeg's counsel challenged the search warrants on the basis that Trooper Gibbens lied about the kill sites being in 19C, they could have requested or the court could have ruled on its own that Haeg was entitled to a Franks hearing, referring to the United States Supreme Court decision in Franks v. Delaware, 438 U.S. 154, 98 S.Ct. 2674, 57 L.Ed.2d 667 (1978). The Ninth Circuit explained the Franks holding in 2002,

> Under *Franks*, if a defendant makes a substantial preliminary showing that a false statement knowingly and intentionally, or with reckless disregard for the truth, was included by a police officer in his application for a search warrant, and also establishes that the allegedly false statement was necessary to the court's finding of probable cause, the defendant is entitled to a hearing on the validity of the warrant. Franks, 438 U.S. at 155-56, 98 S.Ct. 2674; United States v. Fisher, 137 F.3d 1158, 1164 (9th Cir.1998). At the hearing, if the defendant proves by a preponderance of the evidence that the police officer did deliberately or recklessly make false statements that were material to the probable cause finding, the search warrant must be voided and the fruits of the search excluded.

U.S. v. Flake, 30 Fed.Appx. 736, 737, 2002 WL 187172, 1 (9th Cir. 2002). In a prior Ninth Circuit decision, the court explained the applicable standard:

> "A district court must suppress evidence seized under a warrant when an affiant has knowingly or recklessly included false information in the affidavit." *United States v. Dozier,* 844 F.2d 701, 705 (9th Cir.), *cert. denied,* 488 U.S. 927, 109 S.Ct. 312, 102 L.Ed.2d 331 (1988). In the absence of evidence that Elliott *knowingly* misused the spreadsheet, the issue is whether his mistakes constitute *reckless* or merely *negligent* disregard for the truth. *See United States v. Davis,* 714 F.2d 896 (9th Cir.1983). The district court found that Elliott did not act recklessly. We review the district court's finding that these statements were not made with reckless disregard for the truth under the clearly erroneous standard. *Dozier,* 844 F.2d at 705.
>
> A comparison between the facts of this case and the facts of *Dozier* shows that the district court's finding in this case is not clearly erroneous. In *Dozier,* the affiant stated that the suspect had been convicted of multiple drug violations, when in fact, the suspect had been convicted of only one violation fifteen years ago as a juvenile, and that conviction had been set aside under state law. The affiant's explanation was that he did not know how to read the rap sheet correctly. The affiant also alleged that cars on the suspect's property belonged to certain persons although the affiant had earlier performed a DMV search that showed that the cars did not belong to those persons. *See Dozier,* 844 F.2d at 706. On these facts, we held that it was not clearly erroneous for the district court to find that the false statements arose from negligence rather than recklessness.

United States v. Kyllo, 37 F.3d 526, 528-29 (9th Cir. 1994). The Alaska Court of Appeals discussed the framework for addressing a misstatement allegation as follows:

> In *State v. Malkin,*[FN4] the Alaska Supreme Court established the framework for evaluating a defendant's claim that an application for a search warrant included material misstatements or omissions.[FN5]
>
> FN4. 722 P.2d 943 (Alaska 1986).
>
> FN5. *Id.* at 946 (citing *Franks v. Delaware,* 438 U.S. 154, 155–56, 98 S.Ct. 2674, 57 L.Ed.2d 667 (1978)).
>
> [O]nce a misstatement or omission is established, the burden of proving that it was neither reckless nor intentional shifts to the state. A failure to meet this burden will vitiate the warrant if the misstatement or omission is material, that is, if deletion of the misstated information from or inclusion of the omitted information in the original affidavit would have precluded a finding of probable cause. A non-material omission or misstatement—one on which probable cause does not hinge—requires suppression only when the court finds "a deliberate attempt to mislead [the magistrate]."[FN6]
>
> FN6. *Lewis v. State,* 862 P.2d 181, 186 (Alaska App.1993) (quoting *Malkin,* 722 P.2d at 946 n. 6) (footnotes omitted).

Stavenjord v. State, 66 P.3d 762, 765 (Alaska App. 2003). The Malkin decision provides for the excision of misstatements from the police officer's affidavit. The remainder of the affidavit is then reviewed to determine if there was probable cause for the search warrant. The Malkin court held:

> We hold, therefore, that the proper way to strike the balance between societal interests in the use of reliable evidence and in protection from unreasonable invasions of privacy is to excise misstatements from the police officer's affidavit if he cannot show that they were not made intentionally or recklessly.

State v. Malkin, 722 P.2d 943, 948 Alaska 1986).

Mr. Haeg has not made a prima facie showing that the failure to file a motion to suppress or to request a Franks hearing contributed to his conviction. Mr. Haeg argues that Trooper Gibbens could and should have used a GPS to locate precisely where the kill sites were located. But there is no dispute where the kill sites were located; the challenge by Haeg is to the

representation that the kill sites were in 19C. Haeg has not established a prima facie case that the characterization of the kill sites in question as being within 19C, 19B, and/or 19A versus all being within 19D was material to the issue of probable cause for the issuance of the search warrants.[2] Mr. Haeg acknowledged during the oral argument that there is no dispute between the two sides as to the actual location of the kill sites on the ground. Haeg does not challenge that the kill sites were roughly 25 miles from Trophy Lake Lodge and over 40 miles from the closest portion of 19D-East for which he had a permit for the aerial taking of wolves. From a materiality perspective with regard to the search warrant applications, it does not matter if the kill sites were within 19A, 19B, 19C, or 19D because what is material is the undisputed fact that the kill sites were outside 19D-East.

The standard for probable cause for a search warrant is whether reliable information was presented in sufficient detail to persuade a reasonably prudent person that criminal activity or evidence of criminal activity will be found in the place or person to be searched. Williams v. State, 737 P.2d 360, 362 (Ak. App. 1987). The Williams court noted:

---

[2] The Alaska Court of Appeals made the following ruling in the Haeg appeal,

> "In Haeg's view, had Gibbens's affidavit stated that the wolves were killed in unit 19D, instead of unit 19C, then the State could only charge him with violating his predator control permit.
>
> But Haeg misrepresents what his permit allowed. The record shows that Haeg was permitted to take wolves same day airborne only in unit 19D-East. He had no authority to take the wolves same day airborne in any other part of unit 19D. Gibbens's affidavit states that the four kill sites he found were well outside of unit 19D-East, the only area where Haeg and Zellers were permitted to take wolves same day airborne. In addition, Haeg acknowledged at his trial that he and Zellers killed all nine wolves outside of the permitted area. In short, the information in the affidavit did not result in Haeg being wrongly charged."

Haeg v. State, 2008 WL 4181532, 6 (Alaska App. 2008).

> The reviewing court gives great deference to the issuing magistrate's probable cause finding and doubtful or marginal cases are usually resolved in favor of upholding the warrant. *Johnson v. State*, 617 P.2d 1117, 1122 (Alaska 1980); *Snyder v. State*, 661 P.2d 638, 646 (Alaska App.1983).

Williams v. State, 737 P.2d at 362.

It is clear that even if the bolded portion referencing GMU 19C in Trooper Gibbens' first affidavit had been expunged, the substantive content of the remaining portions of the affidavit provide probable cause for the issuance of the search warrant. The same follows for the other search warrants. The search warrant for the lodge did not depend on the kill sites being attributed to GMU 19C. The Gibbens' affidavit includes references to the lodge being one of the two bases for operations designated by Haeg in his application for the permit for the aerial taking of wolves. See Gibbens' Affidavit at ¶ 3. See also ¶ 7 and ¶ 9.

As to the alleged ineffective assistance of his counsel for failure to challenge the search warrants, the court finds that Haeg has not met his burden of showing a prima facie case. The motion to dismiss the PCR on this issue is therefore granted.

Haeg has argued in this PCR proceeding that he had to take the stand to testify on his own behalf to counter the false testimony given by Trooper Gibbens and knowingly presented by the prosecutor. However, the trial transcript shows that during the opening statement, before any trial testimony by Trooper Gibbens or any other witness, Robinson informed the jury that Haeg would be taking the stand to explain "his intent, his purpose for shooting wolves, same day airborne even though he shot them outside the permitted area." (Tr. 112)

With regard to the Haeg argument that the prosecutor presented perjured testimony through Trooper Gibbens, the court notes that Tony Zellers also testified that as to the first four

wolf kill sites, three were out of 19-C, "just south of the border of – the one was just south of the border of 19-D." (Tr. 595)

D. Alleged ineffective assistance re credit for the year of missed guiding.

A year of voluntarily not guiding was part of an enticement by the defense to achieve a Rule 11 agreement. The Rule 11 agreement was achieved, but eschewed by Mr. Haeg. Mr. Haeg has shown no credit entitlement given his rejection of the Rule 11 agreement.

E. Alleged ineffective advice re bonding out the seized plane.

This issue does not go to the validity of the conviction nor to the propriety of the sentencing. The issue is outside the scope of PCR jurisdiction.

F. Alleged ineffective advice re the Judge & Trooper Gibbens contacts.

Mr. Haeg contends there were numerous contacts between the trial judge and the lead witness for the State, Trooper Gibbens during the trial and during the sentencing. Mr. Haeg has not made a prima facie showing that any contacts between the judge and Trooper Gibbens during the trial contributed to his conviction by the jury. The Court of Appeals held in the Haeg appeal that the admissions during his own testimony were sufficient to convict him.

Haeg contends the ex parte contact outside the courtroom between Judge Murphy and Trooper Gibbens, the lead Trooper witness for the prosecution, was improper and sufficient to set aside his conviction by the jury and his sentence. In other contexts in other cases, Alaska courts have concluded that improper ex parte communications can create an appearance of impropriety resulting in the disqualification or sanction of a judge or person in the position of a judge. For example, last year the Alaska Court of Appeals wrote:

> The State argues that Judge Suddock should be disqualified from further participation, alleging that he engaged in a series of improper ex parte communications with William Hogan, the Commissioner of the Department of Health and Social

> Services (DHSS). We conclude that Judge Suddock's ex parte communications were not authorized by law and that these communications created an appearance of impropriety that requires his disqualification from this case.

State v. Dussault, 245 P.3d 436, 437 (Alaska App. 2011).

In reviewing an appearance of bias challenge to a child custody investigator, the Alaska Supreme Court indicated that consideration of the Code of Judicial Conduct was appropriate. The court observed,

> [T]he Code of Judicial Conduct provides a helpful analytical framework. The Code states: "In all activities, a judge shall ... avoid impropriety and the appearance of impropriety." The commentary to the Code defines appearance of impropriety by an objective standard - one that asks not whether a judicial officer displayed actual bias but "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."

Ogden v. Ogden, 39 P.3d 513, 516 (Alaska 2001) (footnotes omitted).

In a judicial disciplinary proceeding, the Alaska Supreme Court reviewed the findings of the Judicial Conduct Commission in context of ex parte communications between the judge and a Trooper called as a witness by the prosecution. The court accepted and agreed with the Commission finding that the ex parte communications and the passing of a written note from the judge to the Trooper during the trial created an appearance of impropriety. See In re Cummings, 211 P.3d 1136, 1139 (Alaska 2009).

Haeg has not come forward with a prima facie showing of any discussion of the case or other impropriety between Judge Murphy and Trooper Gibbens before the acknowledged contact. Unlike the setting in In re Cummings, there is no evidence of a written note being passed from the judge to the Trooper regarding testimony. Unlike the setting in Dussault the trial judge here did not undertake an independent, ex parte investigation into the case.

Nor is the setting in this case close to the setting in Smock v. State, not reported, 1986 WL 1165536 (Alaska App. 1986), in which Trooper Jimerfield was living with Magistrate Thomsen and was at home at times when a Ketchikan Police Department officer came to the home to obtain a warrant. Numerous search warrants were issued by the Magistrate as part of a large drug investigation by the Ketchikan Police Department. One of the convicted defendants appealed on the grounds the search warrants were improperly issued due to the appearance of impropriety. The Court of Appeals commented that the relationship between the Magistrate and the Trooper:

> did not render the magistrate vulnerable to police influence. The ties between Thomsen and Jimerfield were personal, not professional. Jimerfield played no part in the investigation that led to Smock's convictions. Although Jimerfield was a law enforcement officer, he was employed by the Alaska State Troopers, a law enforcement agency that is entirely independent of the Ketchikan police department, the agency that employed McIntosh and conducted the drug investigation. Under these circumstances, neither the personal relationship between Thomsen and Jimerfield nor the limited social and professional contacts that Thomsen and Jimerfield had with McIntosh is sufficient to create an appearance of impropriety. *See, e.g., Sanders v. State,* 260 S.E.2d 504 (Ga.App.1979), *cert. denied,* 444 U.S. 1047, 100 S.Ct. 737, 62 L.Ed.2d 734 (1980).

Smock v. State, 1986 WL 1165536, 2 (Alaska App. 1986). Here the contact between Judge Murphy and Trooper Gibbens appears to be matters of convenience/necessity in McGrath in the absence of public transportation.

The case referenced by the Alaska Court of Appeals in Smock involved the issuance of a search warrant by a magistrate who also served as a coroner and who maintained personal relationships with law enforcement officials. The Georgia Appellate Court held:

> Appellant was indicted on six counts of the offense of theft by receiving stolen property. ... We granted this interlocutory appeal to review the trial court's denial of appellant's motion to suppress. The question presented here is whether Mr. Rex Reeves, the justice of the peace who issued the search warrant involved in this case, was a neutral and detached magistrate. Appellant asserts that Mr. Reeves was not a neutral and detached magistrate (1) because he was serving as both justice of the peace and

> coroner when he issued the search warrant and (2) because he maintained some personal associations with law enforcement officials. We conclude that a justice of the peace is not precluded from issuing a search warrant solely because he is also a coroner. In addition, we do not believe the facts presented in the record require this court to disturb the trial court's determination that personal associations did not prevent the justice of the peace from being a neutral and detached magistrate.

Sanders v. State, 260 S.E.2d 504, 505 (Ga.App. 1979). Magistrate/Coroner Reeves was a former deputy sheriff, still spent substantial time around the Early County Sheriff's Office, and was on good terms with individuals in that office and the county jail. The appellate court affirmed the trial court determination following a suppression hearing that the justice of the peace in question was able to act as a neutral and detached magistrate.

The Alaska Judicial Conduct Commission issues formal ethical opinions based on actual Commission complaints, reported in a way to protect confidentiality. The following formal ethical opinion was issued sometime after 2005:

Opinion # 025:

> A judicial officer who accepted rides from law enforcement while on duty in a small village without any form of public transportation did not violate the Code of Judicial Conduct where no ex parte communication concerning the pending criminal matter occurred. The circumstances in rural Alaska often create a need for accommodations that would not be suitable if there were other alternatives. Where these accommodations include assistance by law enforcement officers, great care should be given to avoiding any discussion of official matters while outside the courtroom. The best practice would be to disclose the special needs and accommodations on the record at the beginning of the court proceeding to avoid appearance of impropriety questions.

The ex parte contact(s) between Judge Murphy and Trooper Gibbens in McGrath have been described by both as innocent, transportation convenience. Haeg has not made a prima facie showing that any appearance of impropriety contributed to his conviction by the jury or that he received ineffective assistance of counsel regarding the contacts.

F. The appearance of impropriety issue as regards the sentencing. A related issue, separate from the issue of ineffective assistance counsel and the lack of a prima facie showing of any impact on the conviction, is whether Mr. Haeg has made a prima facie showing that his sentence should be set aside due to an appearance of impropriety arising from the Judge Murphy/Trooper Gibbens contact(s). This analysis starts with a review of the sentencing remarks by Judge Murphy.

A transcript of the sentencing shows that the sentencing began about 1 p.m. on Thursday, September 29, 2005, in McGrath, and lasted until after midnight, meaning the sentencing was not completed until September 30. Roughly seven hours of the sentencing hearing was devoted to testimony about an uncharged offense regarding Haeg having allegedly assisted in the taking of moose, same day airborne, in September 2003. After the sentencing arguments of counsel were completed, Mr. Haeg made an extended allocution, toward the end of which he expressed concern about the court not having time to hear him out. (Tr. at 1432). The judge responded that time was not a problem for her and that she usually works at night. At about 11:45 p.m. the judge indicated she wanted about a half hour off the record to reflect before rendering her sentencing remarks and imposing sentence, so she scheduled the parties to return at 12:15 a.m. Once back on the record, the Judge first ruled that the State had not carried its burden of showing the uncharged crime by a preponderance of the evidence. As to the convictions at hand, the judge began her comments by saying, "there are several things in this case that are extremely disturbing to the court, and the actions that were taken." The Judge noted that before taking the first illegal wolf, Mr. Haeg had learned that his proposal to expand the wolf predator program into GMA 19C was not accepted by the Board of Game. The Court then made the following comment:

That may have had some bearing, and it – the actions indicate that it did, since the majority, if not all the wolves were taken in 19-C.

....

[B]ased on your actions in this case that's what it looks like you decided to do, and it was a primary importance apparently, again, based on the evidence presented both at trial and today, that it being the area you felt it was your entitlement, for lack of a better word, to kill the wolves in the area where you were hunting. Even though others had decided that area should not be open to a predator control program.

For search warrant probable cause purposes it was not material in which game unit the wolves were taken so long as it was outside 19D-East. For conviction purposes, there is no dispute the wolves were taken over 40 miles from the nearest border of 19D-East, which renders the 19A, B, C, or D attribution immaterial. For sentencing purposes, however, the location issue merits additional review. The 19-C location was sworn to by Trooper Gibbens in his search warrant affidavit, and repeated under oath during his testimony on direct at trial. Trooper Gibbens was not the only witness to place some of the kills in 19-C. Tony Zellers did so as well. Tony Zellers testified that three of the first kills were in 19-C just south of the border – the one was just south of 19-D. (Tr. 595)

The Court of Appeals considered and rejected the Haeg challenge in his direct appeal to the kill site location, and the trial court's conclusion that he was taking wolves for his own commercial benefit. The Court of Appeals concluded that the trial court did not commit clear error when she found that Haeg had illegally killed wolves for his own commercial benefit. That conclusion appears consistent with the testimony of Haeg at trial with regard to his familiarity with one pack of wolves that "kind of lives where we guide in our southern area, kind of the – the upper Stony River. I would say it takes a loop that's at least 80 miles around it." (Tr. 750) Haeg was asked on cross examination by the prosecutor whether the wolves in 19-D East affect directly his hunting range. The answer by Haeg was "They most certainly do." (Tr. 794-95).

The prosecutor asked, "So the biologist indicated their range was – that they believe in the predator control program boundaries and you're saying the biologist is wrong, the boundary of these packs range down into 19-B and C in your hunting grounds?" The answer by Haeg was "There's no doubt about that. Especially when the prey population gets scarce they have to eat." (Tr. 795)

The sentencing statement by Judge Murphy about Haeg taking wolves for his own commercial benefit, a conclusion affirmed by the Alaska Court of Appeals, appears based at least in part on Haeg's own testimony, not solely on the alleged falsified kill locations by Trooper Gibbens.

These conclusions, however, do not end the inquiry. Early in this PCR case Judge Joannides reviewed and reversed Judge Murphy's denial of Haeg's motion that she be disqualified from handling his PCR. Judge Joannides wrote on March 25, 2011,

> At the conclusion of my review I granted Mr. Haeg's request to disqualify Judge Murphy from the Post Conviction Relief case because I found that, at a minimum, there was an appearance of impropriety.

Judge Joannides had previously ruled on August 25, 2010, as follows:

> Nevertheless, the affidavits raising questions over the extent of her contact with prosecution witness Gibbens during the trial raise a sufficient appearance of impropriety that will negatively affect the confidence of the public, and Haeg himself, in the impartiality of the judiciary.

Bearing the rulings of Judge Joannides in mind, and notwithstanding this court's findings of some support for some of the challenged sentencing comments by Judge Murphy, the court notes that Judge Murphy made no credibility findings regarding Haeg's testimony during trial nor his allocution statement. The judge did not directly address the Haeg argument that he took wolves to benefit local subsistence moose hunters/users. The judge did not directly address

the Haeg argument that his intentions were to show results to bolster the wolf predator control program. Nor did the judge directly address his argument that the nature of his conduct was something other than the type of same day airborne conduct by a hunting guide that justifies forfeiture of the airplane involved.

The testimony of Trooper Gibbens included considerable attention to the details of the special "Batcub" purple and silver plane that Haeg used. (Tr. at 308-09) The contact between Trooper Gibbens and Judge Murphy over time during the trial and the sentencing, the Trooper's focus on the Haeg Batcub plane during the trial, the Judge's personal safety concerns the night of the sentencing and reliance upon Trooper Gibbens for protection, and the lack of findings noted above contribute to a possible lack of public confidence in the sentence arising from the appearance of possible partiality or influence.

Conducting an evidentiary hearing or a trial on the issue of appearance of impropriety would serve no purpose. Having one or more members of the public testify they observed contact would be cumulative to the acknowledged contact and the concerns expressed by Judge Joannides. No reason has been advanced sufficient to reject Judge Joannides' determination that there was an appearance of impropriety under the circumstances. The acknowledged contact, notwithstanding innocent intentions, is sufficient to set aside the sentence.

G. Alleged ineffective advice re a subject matter jurisdiction defense.

Not every defense raised in a criminal case prevails. The trial counsel for Mr. Haeg pursued a defense at trial that did not prevail. Mr. Haeg pursued a similar line of argument on appeal, and did not prevail. He now claims his attorney was incompetent or ineffective for raising a defense that did not prevail. The Risher case standards involve a two-pronged test: first, that the defense counsel's conduct either generally or in one or more specific instances did

not conform to the standard of competence established by the court (which is that the decisions of counsel, when viewed in the framework of trial pressures, be within the range of reasonable actions which might have been taken by an attorney skilled in the criminal law, regardless of the outcome of such decisions), and, second, there is a reasonable doubt that the incompetence contributed to the outcome. Raising a defense that does not prevail does not establish that a defense attorney was incompetent. Here, the second prong of Risher is determinative. Mr. Haeg has not established a prima facie case that the ineffective defense pursued by his counsel contributed to his conviction. From the logic of the Risher case, to satisfy the second prong, a defendant would need to show that the defense counsel did something or failed to do something that contributed to the conviction. Mr. Haeg has not made a prima facie showing that the unsuccessful subject matter defense contributed to the jury conviction.

H. Miscellaneous.

1. Cole Not Appearing for Sentencing. Haeg's trial counsel excused the prior counsel, Cole, from appearing and testifying at the sentencing. Haeg wanted Cole to testify. Whether to call a witness to testify during sentencing is a tactical decision as to which Haeg has not made a prima facie showing of ineffective assistance of counsel. The Alaska Court of Appeals reasoned as follows in 2007:

> The division of authority between an attorney and client is addressed in Alaska Professional Conduct Rule 1.2(a). As we explained in *Simeon v. State,* 90 P.3d 181 (Alaska App. 2004), this rule declares that, in a criminal case, the client has the final authority to decide what plea to enter, whether to waive jury trial, whether to testify, and whether to take an appeal. *Id.* at 184. We then concluded: "Since the rule limits the client's authority to those decisions, it follows that the lawyer has the ultimate authority to make other decisions governing trial tactics...." *Id.*
>
> Our decision in *Simeon* strongly suggests that Noreen could decide to concede aggravator (c)(5) without LaBrake's express authorization. LaBrake's petition

> does not address *Simeon* or provide any other legal authority on this point. Accordingly, Judge Steinkruger could properly dismiss this claim.

LaBrake v. State, 152 P.3d 474, 484-85 (Alaska App. 2007).

2. Trial Court Not Inquiring into Plea Negotiations. Haeg raised this issue on his direct appeal to the Alaska Court of Appeals, and the court ruled that "we are aware of no requirement that a trial court in a criminal case, without a motion or request from the parties, must ask why plea negotiations failed." In March 2012 the United States Supreme Court issued two decisions that bear on the role of the court as far as inquiring about plea negotiations. Missouri v. Frye, – U.S. —, 132 S.Ct. 1399, 182 L.Ed.2d 379 (2012); & Lafler v. Cooper, – U.S. —, 132 S.Ct. 1376, 182 L.Ed.2d 398 (2012). The Frye case involved a failure by defense counsel to communicate a formal, written plea offer before it expired. Haeg has not shown an equivalent failure by either of his counsel. The Lafler case involved a trial and conviction of a defendant who rejected an agreement, on advice of counsel. The court in Lafler concluded the advice of counsel was ineffective because it led to the rejection of a 4.25 to 7 year imprisonment sentence and the defendant was sentenced after a jury conviction to roughly 15 to 30 years. The attorney believed intent to murder could not be found because his client shot the victim below the waist.

Haeg has not come forward with any evidence that either of his counsel failed to communicate a formal plea offer to him or advised him not to accept a deal offered by the prosecution. The contrary occurred. The offers were communicated with recommendations to accept, which Haeg chose to reject, as he had the right to do. The Eleventh Circuit recently concluded that neither Frye nor Lafler create new rules of constitutional law because both cases "were dictated by Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674

(1984)[.]" In re Perez, __ F.3d __, 2012 WL 1889150 (May 25, 2012). See also Gabe v. United States, 2012 WL 2153946, 1 (S.D.Ga. 2012). So although a trial judge may inquire whether formal plea offers have been communicated by counsel to the defendant, and whether counsel recommended acceptance or rejection, no obligation to inquire at the time and under the circumstances of this case has been brought to the court's attention. No showing has been made that an inquiry in line with the Frye/Lafler decisions, such as (a) were all plea offers communicated to the defendant, and (b) were the risks of trial versus plea explained to the defendant, would have persuaded the defendant to take a plea agreement that involved forfeiture of the plane, which he did not want to do.

CONCLUSION

Mr. Haeg was permitted to add information to supplement and to make oral arguments to bolster and explain the points in his PCR application. The court concludes that a prima facie showing has not been made that any of the points raised by Haeg are sufficient to overturn the jury conviction.

As explained above, the court concludes that the sentence should be, and hereby is, set aside due to an appearance of impropriety. The case is remanded to the District Court in McGrath for re-sentencing. This is a final ruling in the PCR proceeding, which shall then be closed.

Dated at Kenai, Alaska, this 23rd day of July, 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:
Peterson, Haeg
7-24-12 Roberts
Date Clerk

Faxed to Ariak Court
re: 4MC-04-24 CR

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

NOTICE OF CHANGE OF CASE NUMBER
AFTER CHANGE OF VENUE
AND
ASSIGNMENT OF JUDGE

To: Clerk of Court or Magistrate at Homer, Alaska

We have received your case file and change of venue order in your case number 3HO-10-64 CI, entitled David S Haeg vs. State of Alaska.

The venue of this case is now Kenai, Alaska.

The new case number is **3KN-10-01295CI**.

All documents filed in this case in the future should contain the new case number.

☒ The case remains assigned to Judge Carl Bauman

☐ By authority of the Presiding Judge of this district, this case is now reassigned to Judge ___

12/29/2010
Date

DChappell
Deputy Clerk

I certify that on 12/30/2010
copies of this notice were distributed as follows:
☒ Original Court
☒ New Court
☒ Parties/Attys Haeg
Clerk: DChappell

FILE COPY

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. 3HO-10-64 CI

ORDER ON MOTION FOR

Motion for Change of Venue From Homer to Kenai

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:

12-28-2010
Date

Carl Bauman
Judge's Signature

CARL BAUMAN
Type or Print Judge's Name

I certify that on 12-29-10
a copy of this order was mailed to (list names): Haeg / OSPA

Clerk: Roberts

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

Civil Rules 7(b) & 77

02761

11/26/10

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

NOTICE OF CHANGE OF CASE NUMBER
AFTER CHANGE OF VENUE
AND
ASSIGNMENT OF JUDGE

To: Clerk of Court or Magistrate at McGrath, Alaska

We have received your case file and change of venue order in your case number 4MC-09-5CI, entitled David S Haeg vs. State of Alaska.

The venue of this case is now Homer, Alaska.

The new case number is **3HO-10-00064CI**.

All documents filed in this case in the future should contain the new case number.

☒ The case remains assigned to Judge Murphy

☐ By authority of the Presiding Judge of this district, this case is now reassigned to Judge ___

3/17/2010
Date

DTredway
Deputy Clerk

I certify that on 3/18/10
copies of this notice were distributed as follows:
☒ Original Court
☒ New Court
☒ Parties/Attys
Clerk: DTredway

FILE COPY

FILED
In District Court
State of Alaska
at McGrath
Date 11-30-09
Magistrate/Clerk

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

In the Matter of the Application for Post Conviction Relief of:

David S. Haeg
(Name of Applicant)

FOR COURT USE ONLY
CASE NO. 4MC-09-00005 CI

APPLICATION FOR POST CONVICTION RELIEF FROM CONVICTION OR SENTENCE (CRIMINAL RULE 35.1)

CERTIFICATION

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

I, David S. Haeg, hereby apply for relief under Criminal Rule 35.1.

PART A

(Please type or print neatly. Also, if possible, please attach a copy of your judgment of conviction.)

The conviction (sentence) from which I seek relief is as follows:

1. Full original case number: 4MC-04-024CR
   Case name: State of Alaska (plaintiff) David Haeg (defendant)
2. Court which imposed sentence: x District Court ☐ Superior Court
   Court Location: McGrath Name of Judge Margaret Murphy
3. Date shown in clerk's certificate of distribution on the judgment: 10-05-05
4. Date of sentencing and terms of sentence: 9-30-05 (see copy of Judgment)
5. Crime or crimes of which I was convicted: AS 8.54.720 (a)(15) Unlawful Acts a Guide; Same Day Airborne; 5AAC 92.140(a) Unlawful Possession of Game; AS 11.56.210(a)(2) Unsworn Falsification; 5 AAC 84.270 (14) Trapping in Closed Season

Faxed to Fairbanks Court July 10 W. 12/3/09.

6. I am now x not in custody ☐ in custody at

7. Mailing address: P.O. Box 123 Soldotna Alaska 99669

8. The finding of guilty was made after a plea of

☐ guilty x not guilty ☐ nolo contendere

9. Finding was made by x a jury ☐ a judge

10. Name and address of my lawyer: Brent Cole 821 N. St. Suite 208 Anchorage AK 99501; Arthur Robinson 35401 Kenai Spur Hwy, Soldotna AK 99669; Mark Osterman 105 Trading Bay Dr. Suite 105 Kenai, AK 99611.

☐ I was not represented by a lawyer.

11. Lawyer was x employed by me ☐ appointed by the court

12. Did you appeal your conviction (or sentence)? Yes

13. If you answered "yes" to question No. 12 above, state the following:

a. the name of each court to which you appealed: Alaska Court of Appeals; Alaska Supreme Court; United States Supreme Court

b. the result in each court to which you appealed and the date of such result: Conviction affirmed on 9/10/08; review denied on 12/1/08; review denied on 4/27/09

c. Did a lawyer represent you on the appeal(s)? At first.

State the name(s) and address(es) of your lawyer(s) on the appeal(s):

Arthur Robinson 35401 Kenai Spur Hwy, Soldotna AK 99669

Mark Osterman 105 Trading Bay Dr. Suite 105 Kenai, AK 99611

Lawyer was: x employed by you ☐ appointed by the court

14. Have you filed a previous application for post conviction relief in this case? No

15. Did you seek any other review of or relief from this conviction or sentence (for example, by filing a motion to modify or correct the sentence, or a petition for habeas corpus or coram nobis in this court or any other state or federal court)? Yes

16. If you answered "yes" to No. 14 or No. 15, state the following:

a. each ground for relief which you previously presented:

That my sentence revoking my hunting guide license was illegal and not allowed by law.

b. the proceedings in which each ground was raised:

Motion to Alaska Court of Appeals when I was appealing my conviction.

c. the results of each proceeding and the date of such results:

Sentence was modified to a suspension of my hunting guide license on September 10, 2008.

d. the name and address of lawyers(s), if any, who represented you in these proceedings (separately for each proceeding) None

e. lawyer was ☐ employed by me ☐ appointed by the court

PART B

I believe I have grounds for relief from the conviction and sentence described in Part A.

1. My grounds for relief are as follows: (State which parts of Criminal Rule 35.1(a) you believe apply to your case.)

(1) That Haeg's conviction and the sentence was in violation of the Constitution of the United States and the constitution and laws of this state;

(4) That there exists evidence of material facts, not previously presented and heard by the court, that requires vacation of Haeg's conviction and sentence in the interest of justice;

(9) That Haeg was not afforded effective assistance of counsel at trial or on direct appeal.

2. The specific facts which support each of the grounds set out above are: (Put in specific references to the record) Legend: TR-trial record; AR-appellate court record; MR-motion record; RH-representation hearing

A. Hunting guides Haeg and Zellers were permitted to help the State of Alaska (SOA) conduct the WCP (WCP) that used the extremely controversial practice of shooting wolves from airplanes. The WCP by law prevented permittees from being charged with hunting or guiding violations. (See 5AAC 92.039(h) and 92.110(m)) Just prior to Haeg's March 2004 permitted participation in the WCP, Ted Spraker, a member of the Alaska Board of Game (the government agency that created and ran the WCP), told Haeg at a Board of Game meeting in Fairbanks, Alaska: (1) the WCP was in jeopardy of being shut down because it was ineffective; (2) Haeg had to take more wolves so the WCP would not be shut down because it was ineffective; and (3) if Haeg ended up taking wolves outside the WCP area to claim they were taken inside the area. Spraker also told Haeg he couldn't believe people weren't poisoning wolves, what poison worked best, and how to obtain it. Spraker later stated, "it was absolute bullshit [Haeg was] charged as a guide."

B. The SOA then prosecuted Haeg and Zellers for taking wolves outside the WCP area, but falsified all wolf kill evidence locations to Haeg's hunting guide area, locations that were material to the charges filed. [See all trial court record, search warrant affidavits, and search warrants.]

C. The SOA used the materially false evidence locations, falsely moving the evidence to GMU 19C, on affidavits to obtain search and seizure warrants for Haeg's home and property. [Exhibit 1]

D. The SOA used materially false warrants to search and seize Haeg's property. [Exhibit 1]

E. The SOA failed to provide a hearing "within days if not hours" after seizure of Haeg's property he used as his primary means to provide a livelihood. [Exhibit 2]

F. The SOA told Haeg "never" when Haeg asked, "When can I get my plane back because I have clients coming in tomorrow and I have to set up bear camp?" [Exhibit 3]

G. Weeks after property seizure Haeg hired attorney Brent Cole, who told Haeg: (1) Haeg's case was going to be huge, animal rights activists would be threatening Haeg, and that "immense pressure" was being applied to Haeg's prosecutor and judge to make an example of Haeg because he jeopardized the WCP; (2) Haeg could do nothing about the SOA falsifying all evidence of wolf kill locations to Haeg's hunting guide area – after Haeg specifically asked Cole what could be done; (3) Haeg could do nothing about all the search and seizure warrants which falsified the evidence location to Haeg's hunting guide area – after Haeg specifically asked Cole what could be done; (4) Haeg had no right to a postseizure hearing – after Haeg specifically asked Cole what could be done; (5) there was no way to ask for or bond the property out – after Haeg specifically asked Cole what could be done; (6) Alaska law prevented Haeg from getting the property back – after Haeg specifically asked Cole what could be done; (7) it was not a legal defense that the SOA told and induced Haeg to take wolves outside the WCP area but claim they were taken inside – after Haeg specifically asked Cole what could be done; (8) Haeg should tell no one that the SOA told and induced Haeg to take wolves outside the WCP area but claim they were taken inside – after Haeg specifically asked Cole what could be done; (9) Haeg should be charged with hunting and guiding charges; (10) Haeg had no defense to hunting and guiding charges – after Haeg specifically asked what could be done; (11) Haeg should make a plea agreement to hunting and guiding charges; and (12) **the SOA was giving Haeg immunity in order to compel a statement from Haeg and that Haeg was to be "king for a day" for this statement.** [Exhibit 4]

H. On June 11, 2004, Cole present, Haeg gave an immunized statement to the SOA (prosecutor Leaders and trooper Gibbens). This statement implicated Tony Zellers, referred to all of Haeg's actions that he was later prosecuted for, and produced a map, marked by Haeg of where all the wolves were that he and Zellers had killed. [Exhibit 5] **This same map was used against Haeg at trial.** [TR 280-286, 331-612, 645-646, 914]

I. The SOA used Haeg's compelled and immunized statement in numerous ways to investigate and build their case against Haeg. The SOA directly and indirectly obtained witnesses, evidence, and testimony. [See all record.]

J. **On June 23, 2004, because Haeg's statement implicated him, Zellers gave a statement to the SOA (prosecutor Leaders and trooper Gibbens) and agreed to cooperate with them.** [Exhibit 6] The SOA showed Zellers the map upon which Haeg had marked the locations of the wolves he and Zellers had taken outside the WCP area and asked Zellers to confirm that Haeg's locations were correct. [Exhibit 7]

K. During their statements both Haeg and Zellers evidenced to the SOA (prosecutor Leaders and trooper Gibbens) the SOA had falsified the evidence locations to Haeg's hunting guide area. Cole was present during this. [Exhibit 5 and 7]

L. In August 2004 Cole billed Haeg for finalizing a PA that only required a 1-year loss of guide license and in September 2004 billed Haeg for scheduling the PA to be presented to Court on November 9, 2004. [Exhibit 8]

M. Because Cole told him prosecutor Leaders promised to give credit for it, Haeg cancelled the 2004 fall and the 2005 spring hunting guide season. [Exhibit 4]

N. On November 4, 2004 prosecutor Leaders filed an information containing the PA charges agreed to - charges allowing Haeg to receive the 1 year guide license suspension. **The information specifically used Haeg's statement as probable cause for all charges.** [Exhibit 9]

O. On November 8, 2004, over Cole's objection, Haeg submitted to the Court and SOA a written statement of what his PA testimony would be the next day in McGrath. This statement explained what the SOA had told Haeg just before Haeg's participation: that the WCP was in jeopardy of termination if more wolves were not taken; that Haeg had to take more wolves so this did not happen; that if Haeg took wolves outside the area to claim they were taken inside the area; that they could not believe people were not poisoning wolves; what kind of poison worked best, and where to obtain it. The statement also evidenced Haeg had done all required for the PA. [Exhibit 10]

P. On November 8, 2004 Haeg drove to Anchorage to meet with Cole and to fly to McGrath on November 9, 2004 to finalize the PA. Haeg had flown PA witnesses in from as far away as Illinois because Cole said they were required. [Exhibit 4]

Q. When Haeg and witnesses arrived Cole stated he "just received bad news" and showed everyone an amended information, dated November 8, 2004 1 PM, that changed the charges so they required a minimum 3-year guide license loss, violating the PA that only required a 1-year loss. No reason was given for increasing the severity of the already filed charges. [Exhibit 4 and 11]

R. **All amended informations specifically used Haeg's statement as probable cause for the new and more severe charges that violated the PA.** [Exhibits 11 and 12]

S. The information, nor any that was ever filed against Haeg, gave notice the SOA would seek forfeiture of Haeg's property. [Exhibits 9, 11, and 12]

T. Repeatedly Haeg and the witnesses asked Cole what could be done. Repeatedly Cole told Haeg and the witnesses: (1) **the only thing he could do about prosecutor**

Leaders breaking the PA was to "call Leaders boss, a lady I used to work with" and that he called her, left a message, and she never called back; (2) it was legal and ethical for the SOA to break Haeg's PA after Haeg had already given up a year of guiding and flown in all the witnesses for it; (3) the SOA could use Haeg's compelled statement against Haeg and there was nothing he could do about it; (4) "I can't piss Leaders off because I have to be able to make deals with him after you're done"; (5) "just suck it up"; and (6) "when Leaders screwed you he really screwed me." [Exhibit 4]

U. Sometime after November 8, 2004 Haeg's statement, documenting the SOA had told and induced him to do what they then prosecuted him for, was removed from the Court record while proof documenting it was submitted remained in the record. [Exhibit 13] Years after, when discovered, Haeg asked the Court of Appeals to reconstruct the record with the statement before his appeal brief was due. Although the SOA did not oppose, the Court of Appeals, for reasons never explained, failed to do so.

V. Haeg's immunized and incriminating statement was released to the press, where it was printed in the Anchorage Daily News and numerous other state and national papers. [Exhibit 14] Cole told Haeg it was legal and ethical for the SOA to do this and that there was nothing that could be done about it. [Exhibit 4] The SOA stated in the news articles Haeg was just "a bad apple" and that the SOA had nothing to do with Haeg taking wolves outside the WCP area and claiming they had been taken inside. [Exhibit 14]

W. Haeg fired Cole and hired attorney Arthur Robinson, who told Haeg: (1) nothing could be done about anything Cole had done – when Haeg specifically asked what could be done; (2) there was nothing Haeg could do about the SOA falsifying all evidence locations to Haeg's hunting guide area – when Haeg specifically asked what could be done; (3) there was nothing Haeg could do about all the search and seizure warrants which falsified all evidence locations to Haeg's hunting guide area – when Haeg specifically asked what could be done; (4) Haeg had no right to a prompt postseizure hearing; (5) Haeg had no right to bond the property out; (6) it was no defense that the SOA told and induced Haeg to take wolves outside the WCP area but claim they were taken inside – when Haeg specifically asked what could be done; (7) Haeg could tell no one that the SOA told and induced Haeg to take wolves outside the WCP area but claim they were taken inside; (8) Haeg could get nothing for all he had done for the PA – when Haeg specifically asked what could be done; (9) the SOA did not have to honor the PA or the charges they had agreed to – when Haeg specifically asked what could be done; (10) the SOA could use Haeg's statement against Haeg – when Haeg specifically asked what could be done; (11) Haeg would lose at trial because Cole had given the SOA everything; (12) because the SOA did not support the informations with an affidavit Haeg should go to trial where he would lose, but then would "no doubt win on appeal" since this deprived the Court of jurisdiction; and (13) Haeg should tell no one about the PA and all Haeg had done for it because this would "admit" to the Court they had jurisdiction over Haeg. [Exhibit 15]

X. **Prosecutor Leaders and trooper Gibbens, the very people who compelled Haeg to give them an immunized statement, were people who then prosecuted Haeg at trial for the same actions they required Haeg to refer to and incriminate himself for in his immunized statement.** [See all record] Gibbens was a primary trial witness against Haeg and chauffeured Judge Murphy everywhere during Haeg's prosecution. [Exhibit 16 – TR 1262-63]

Y. On May 6, 2005, Robinson, in a reply to the SOA's opposition to Robinson's motion that never brought up Haeg's statement use, claimed prosecutor Leaders was, by reciting Haeg's statement to support the informations, violating Evidence Rule 410 - which prohibits any use of statements made during plea negotiations if a plea negotiations do not end in a plea agreement. Robinson did not also protest Haeg's statement had been compelled by a grant of immunity. Robinson did not protest the innumerable other ways Haeg's immunized statement was being used against Haeg – just the obvious use which, if he did not also protest other use like Zellers testimony, would do absolutely nothing – it would only cover up the written acknowledgement Haeg's statement was being directly used. Although this reply and affidavit was given to both the Court and to prosecutor Leaders nothing was done about the irrefutable violation of Haeg's constitutional right against self-incrimination. [Exhibit 17]

Z. Even though the SOA's argument was "the great economic benefit Haeg received by killing wolves where he guides" Robinson never told Haeg's judge or jury that this argument was a fruit of the SOA's falsified evidence locations and that not a single wolf was killed where Haeg guides. Robinson never told Haeg's judge or jury the SOA told and induced Haeg to take wolves outside the area but claim they were taken inside the area. Without ever knowing any of this Judge Murphy ruled that Haeg should be charged with hunting and guiding violations instead of WCP violations and granted the SOA's protection order that Haeg be prevented from arguing at trial he could not be convicted of hunting violations because the WCP law specifically prevented these charges. [See all record – especially TR 21-84]

AA. **From his opening statement on prosecutor Leaders trial case was based almost entirely upon Haeg's immunized statement.** The argument for conviction was: Haeg's intent in killing the wolves was to benefit Haeg's business, how much Haeg charges for a moose hunt, how many hunters Haeg took each year, how successful Haeg was on moose hunts, and how Haeg killing wolves that killed the moose he sold to clients benefited Haeg. And that because Haeg's intent was to benefit his hunting guide business Haeg should be found guilty of hunting/guiding crimes. [See all record]

BB. **The SOA, through prosecutor Leaders questioning trooper Gibbens, falsely testified at trial that the evidence was found in GMU 19C (the GMU in which Haeg guided and which Gibbens had placed on all search and seizure warrants). Only at Haeg's instance was Gibbens cross-examined on this, where he admitted the evidence was all found in GMU 19D, the GMU in which the WCP was taking place**

– a GMU in which Haeg was not allowed to guide. In other words the SOA had known all along the evidence locations were being falsified to where Haeg guided - supporting their hunting/guiding case against Haeg. [Exhibit 18 – TR 418-479]

CC. Robinson never demanded a mistrial for trooper Gibbens proven perjury – or for the fact Judge Murphy had made numerous prior decisions based entirely on the SOA's now admitted false evidence locations – from issuing search and seizure warrants (upon Gibbens falsified affidavits) to deciding Haeg should be charged with hunting and guiding violations instead of WCP violations. No one, including Robinson, ever explained to Haeg's judge or jury Haeg was not allowed to guide in GMU 19D - and that this meant Haeg's intent in killing the wolves could not have been to benefit his business. Robinson never told Haeg's judge or jury the SOA told and induced Haeg to take wolves outside the area yet mark them as being taken inside the area. Robinson never protested that the SOA's entire case was based upon material false evidence locations. [See all record]

DD. The SOA used Haeg's immunized statement against him at trial to devastating effect – without Robinson preventing this. **All main witnesses, testimony, and evidence used against Haeg at trial were obtained through the use of Haeg's statement. Tony Zellers and his attorney testified Zellers cooperated and testified against Haeg at trial because of Haeg's statement. Prosecution witness Toby Boudreau proved beyond any doubt his testimony had been tainted by Haeg's immunized statement – repeatedly and mistakenly referring to "Tony Lee" instead of "Tony Zellers". Before Haeg's statement neither the SOA nor Boudreau knew a "Tony Lee" was involved. Trial witness trooper Gibbens and trial prosecutor Leaders were the very people who took Haeg's immunized statement. Trial exhibit #25 was a map on which, during his immunized statement, Haeg marked the locations of all wolf kills that he was now being prosecuted for. This map and marks on it were specifically and repeatedly referred to throughout Haeg's entire trial. When Haeg again asked if the SOA could use his statement Robinson again told Haeg they could use, and were using, his statement against him at trial and that since the SOA would only present the prejudicial portions of his statement Haeg had to testify at trial to bring in the exculpatory parts of his statement.** Afterward Robinson stated Haeg should not have testified. [Exhibits 5, 6, 7, and 19 - TR 280-286, 331-612, 645-646, 914]

EE. Haeg was convicted and before sentencing he researched Robinson's "jurisdiction" tactic and found this was last successful in two 1909 cases: Salter and Ex. Parte Flowers. Since then it has been held a prosecutors oath of office sufficed to verify informations. When confronted Robinson said two "fresher" cases supported his tactic: Gerstein v. Pugh and Albrecht. Haeg researched and proved they irrefutably proved the Court had jurisdiction. When confronted Robinson admitted the Court may have "personal jurisdiction" but claimed the Court would not have "subject-matter jurisdiction". Haeg researched subject-matter jurisdiction and found subject-matter jurisdiction is

provided by statute and since he was charged with misdemeanors in district court AS 22.15.060 irrefutably provided the court with subject-matter jurisdiction. [Exhibit 15]

FF. Haeg told Robinson he did not want to throw away all he had done for the PA and asked Robinson to subpoena Cole and Fitzgerald (Zellers attorney) to testify at sentencing about the PA that guaranteed lesser charges, all Haeg had done for it, and that Cole claimed it could not be enforced. [Exhibit 15] Robinson stated since Cole knew more of the PA reliance Haeg should just subpoena Cole and not Fitzgerald. [Exhibit 15]

GG. Haeg paid for a subpoena, witness fees, airline ticket, and hotel room for Cole to travel to, and testify in, McGrath. [Exhibits 4 and 15] Haeg typed up and delivered to Robinson 56 questions he demanded Robinson ask of Cole while he was on the witness stand. Haeg also typed up and delivered to Robinson questions he demanded be asked of the witnesses that were present when the SOA broke the PA. [Exhibit 20]The questions were almost exclusively of all Haeg had done for the PA and how Cole said it could not be enforced after prosecutor Leaders broke it.

HH. Cole never showed up to Haeg's sentencing in response to the subpoena, airline ticket, and witness fees. [Exhibit 15] When Haeg asked what could be done Robinson told Haeg there was nothing that could be done about Cole not appearing in response to the subpoena. [Exhibit 15]

II. **At sentencing the SOA testified they did not know why Haeg had not guided for a year previous, yet Cole testified on tape and under oath that the SOA had previously agreed that this year was being given for the PA and that Haeg would get credit for it .** [Exhibit 21 – TR 1335] This was why Haeg subpoenaed Cole to testify at his sentencing. Although Robinson knew all this he did not object or cross-examine the SOA on this false testimony. At Haeg's sentencing Robinson refused to ask Haeg's witnesses anything about all Haeg had done for the PA, how the SOA broke it, or how Cole said nothing could be done about it. Robinson refused to ask these questions even though he had agreed to do so when he had went over all these typed questions with Haeg and the witnesses the night before. Robinson refused to do so even when Haeg, sitting next to Robinson at sentencing, asked him to. [See all TR]

JJ. The SOA's specific justification for asking for a severe sentence: "Haeg's intent through taking of the wolves was an intent to eliminate wolves from his guiding area, an attempt to eliminate wolves that directly preyed upon the game populations that he hunted in order to better enhance his prospects as a guide and those of his clients." [TR 1382] Although the SOA had previously admitted under oath this was false Robinson never protested or proved again this was false. [See TR]

KK. When Haeg's property was forfeited without constitutionally adequate notice in the charging information Robinson did not protest. [See TR] When **the Court's specific justification for Haeg's severe sentence was: "since the majority, if not all the wolves were taken in 19C – where you were hunting"** [Exhibit 22 - TR 1437-1441]

Robinson did not protest – even though he knew this was completely false and **even though the SOA had admitted under oath at trial cross-examination this was false – after claiming it to be true for years on all search warrant affidavits, search warrants, and during their trial testimony.** [See TR] The other reasons the Court gave for Haeg's severe sentence were "the politics involved" and "the effects to the wolf kill program". [TR 1441]

LL. Robinson told Haeg: "I was barely there by like 11 [PM]" but failed to object to Haeg being sentence at nearly 2 AM. The Court failed to give Haeg the notice he could appeal his sentence - as required by Alaska Rule of Criminal Procedure 32.5 and Appellate Rule 215(b). [See TR and AR] When Haeg asked if he could appeal his sentence Robinson told Haeg he could not appeal his sentence.

MM. Robinson filed an appeal docketing statement on which he checked the box "conviction only" instead of "conviction and sentence" – even though Haeg had asked if he could appeal his sentence. [See TR and AR]

NN. When Haeg asked if they should appeal the fact the SOA's entire case was based upon the false evidence location and on Haeg's immunized statement Robinson told Haeg that the only issue worth appealing was that the court lacked subject-matter jurisdiction. [Exhibit 15] Robinson then filed a statement of points on appeal that "the court lacked subject-matter jurisdiction" – without mentioning Haeg's immunized statement was used to prosecute Haeg or that the SOA's whole case was based upon the fact they falsified all evidence locations to Haeg's guiding area – and that even Haeg's Court specifically used the false location as justification for Haeg's sentence. [Exhibit 23 -see AP]

OO. Haeg told Robinson he found a defense called ineffective assistance of counsel (IAOC) and asked if Cole gave him IAOC. Robinson admitted that Cole giving false advice was IAOC – but claimed Haeg was not paying him (Robinson) for an IAOC defense and he had no obligation to use this defense for Haeg. [Exhibit 15]

PP. Robinson told Haeg the troopers and prosecutor Leaders could lie with immunity to convict and sentence Haeg because they were in "the fold... the good old boys system... the group they protect and don't do anything against... in the good boy network you have not only the prosecutors and the cops, but you also have the judges and magistrates... the old boy system – they take care of their own." [Exhibit 15]

QQ. Haeg asked Robinson why Cole didn't show up at sentencing as subpoenaed and Robinson replied, "there was no need to call him because what he had to say is not relevant to your guilt" [Exhibit 15] (Haeg had subpoenaed Cole to his sentencing, not trial where guilt is determined). Haeg, "It would have been relevant to my sentence and you know it". **Robinson, "Why would it have been relevant to your sentence David?" Haeg, "Because we had a deal that I had given up a year of my freaking guide license for... and I wanted that man to be asked that and I wanted him to be**

asked why he never stood up for my deal and I wanted that judge to know that I'd been sold down the river. And it never happened and I paid for it." Robinson, "Well David I think that you obviously think that I was ineffective so we have a conflict of interest so I am goanna have to withdraw from your case." [Exhibit 15] **Haeg said he was going to sue his attorneys; Robinson said Haeg could not, that Alaska law prevents convicted defendants from suing attorneys.** [Exhibit 15]

RR. Haeg's business attorney (former criminal attorney Dale Dolifka), who had followed Haeg's case from the very beginning, told Haeg that Alaska's criminal defense attorneys were banding together against Haeg and that Haeg must hire an attorney from outside Alaska. Because of this Haeg fired Robinson and tried hiring numerous attorneys outside Alaska. When the situation was explained all refused. Against Dolifka's advice Haeg looked for another attorney inside Alaska. Nearly all said, "big State, small attorney pool" and refused to represent Haeg after Haeg told them what his first 2 attorneys had done.

SS. Alaska attorney Mark Osterman, after looking at Haeg's file for a week, told Haeg it was the biggest "sellout" of a client he had ever seen, that a motion to suppress should have been filed and would have been granted because of the falsified evidence locations on all search warrants/affidavits, that Haeg's PA should have been enforced, and that it was an illegal conviction because Haeg's immunized statement was used. Osterman told Haeg the Court of Appeals would immediately reverse Haeg's conviction when they seen the sellout and he and Haeg would sue Robinson and Cole for millions – **that Haeg didn't know his first attorneys "were goanna load the dang dice so the State would always win."** [Exhibit 24]

TT. Osterman told Haeg that he charged $3000 to $5000 per point on appeal but that he would just charge Haeg a fixed sum of $12,000 for the entire appeal, that he wanted it all up front because he didn't want Haeg to run out of money halfway through the appeal, and that he wanted Haeg to help write the appeal brief after Haeg requested he be allowed to help. Haeg paid Osterman the entire $12,000 up front. [Exhibit 24]

UU. After Haeg hired him Osterman refused to let Haeg help write or even see the brief until just before it was due and Haeg threatened to fire him. When Haeg examined the brief he found nothing that Osterman had agreed was the "sellout". **Osterman said this was because he could do nothing that would affect the livelihoods of Haeg's first 2 attorneys and that if Haeg claimed his attorneys "sold him out" the Court of Appeals "would laugh like hell and through out the appeal"**, and that Haeg already owed him another $24,000 because he charged $8000 per point on appeal plus expenses. [Exhibit 24]

VV. Haeg fired Osterman and moved to represent himself. [TR and AR] At the representation hearing Osterman testified under oath that he told Haeg he charged $8000 per point on appeal with no fixed cost and that Haeg owed him another $24,000 on top of the $12,000 already paid. [Exhibit 24 and RH] Only after Haeg sought to admit

tape recordings of Osterman did Osterman admit that his prior sworn testimony was false. Osterman did not refute telling Haeg he had been "sold out" by his own attorneys, that he was going to use this for Haeg's appeal, and that later he told Haeg he could not use the "sell out" because he could not do anything that would affect the livelihoods of Haeg's first two attorneys. [Exhibit 24 and RH]

At Haeg's August 15, 2006 representation hearing the SOA specifically admitted they used Haeg's immunized statement against Haeg at trial [Exhibit 25 and RH]

The SOA filed a 14-page opposition to Haeg representing himself. [Exhibit 26 and MR]

The Court stated Haeg had delusions of conspiracy, was "out in the ozone", and ordered a psychological examination. [Exhibit 27 and RH] Psychologist Tamara Russell concluded Haeg had no deficits and there was almost certainly a conspiracy to deny Haeg fair proceedings. [Exhibit 28] Court granted self-representation. [RH]

WW. While on appeal Haeg filed fee arbitration against Cole with the Alaska Bar Association. **Cole testified the SOA gave Haeg immunity to compel the statement from Haeg and for this statement Haeg was made "king for a day."** [Exhibit 4]

To justify not filing motions Cole testified that for the PA he promised prosecutor Leaders he would not file any motions to suppress - but never sought to file these motions after prosecutor Leaders broke the PA - and that he never told any of this, or that a motion to suppress could ever be filed, to Haeg. [Exhibit 4] In other words Cole, without telling Haeg and in return for absolutely nothing, threw away the incredible defenses that the SOA was falsifying evidence to manufacture a case against Haeg, was using false warrants to search and seize Haeg's property, and was using Haeg's immunized statement against Haeg. [See TR]

In response to Haeg's question, "Did you think my airplane was important for my livelihood?" Cole testified under oath, **"You thought so. I didn't."** [Exhibit 4]

Cole testified "I thought [Haeg] was goanna commit suicide" when the SOA took Haeg's airplane and that Haeg had no right to a postseizure hearing or to bond the airplane out in order to continue to make a living before trial. When it was proved Haeg had to be provided a prompt postseizure hearing and that Haeg had an absolute right to bond his property out Cole testified that "the time to make these decisions was in the beginning" and that Haeg was "almost comatose because you were so depressed about the State walking in and taking all this stuff." [Exhibit 4] **In other words Cole, knowing the law allowed Haeg to get his property back and the pressure the loss of property had on Haeg, would rather have seen Haeg commit suicide then to inform Haeg that he could get his property back.**

Cole testified that the SOA had used immense pressure to make an example of Haeg; that the SOA thought Haeg should not be a guide anymore; that it is almost impossible

for a guide to come back after a 5-year license loss; **that the SOA had promised to give Haeg credit for the year guiding if Haeg cancelled the fall 2004 and spring 2005 hunts; and then testified prosecutor Leaders never gave Haeg credit for this year at sentencing - and that because of this Haeg effectively lost his license for 6 years instead of 5.** [Exhibit 4]

Fitzgerald, Zellers attorney, testified to that both Haeg and Zellers were required to give statements **and that both had "transactional immunity" for the statements.** [Exhibit 29] This meant, just as State of Alaska v. Gonzalez, 853 P2d 526 (1993) and AS 12.50.101 hold, that Haeg and Zellers could not be prosecuted for anything referred to during their statements – as happened. In addition, Fitzgerald testified that the last thing a defense attorney would do is make an enemy out of a prosecutor and trying to enforce a PA or advocate for a client would make an enemy out of a prosecutor. [Exhibit 29]

Finally, Cole testified his "tactic" for Haeg's defense was **"we were falling on our sword."** [Exhibit 4]

XX. Haeg sought affidavits from Cole, Robinson, Osterman, Fitzgerald, Gibbens, Leaders, Malatesta, Burger, Rom, Fayette, Doerr, Godfrey, Spraker, SA Seale, Greenstein, Dolifka, and Murphy to include in his PCR application as required by Criminal Rule 35.1(d). These people refused to provide affidavits.

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

In deciding his appeal the Alaska Court of Appeals ruled Haeg's attorneys "waived" or "forfeited" numerous claims before trial, at trial, and on appeal by not asserting them in the correct way or in a timely manner: (1) Haeg's right to challenge, by motions to suppress, the SOA's falsification of evidence locations on all search and seizure affidavit/warrants; (2) Haeg's right to challenge, by motions to dismiss, the SOA's use of known false testimony at trial and sentencing; (3) Haeg's right to challenge, by motions to enforce, the SOA breaking his PA; (4) Haeg's right to challenge, by motions to suppress, the SOA's use of his immunized testimony; (5) Haeg's right to challenge, by motions to dismiss, the SOA's and court's failure to give the required jury instruction that Zellers testimony against Haeg was a required as part of his PA; (6) Haeg's right to challenge, by motions to enforce, Cole's failure to obey a subpoena; and (7) Haeg's right to challenge, by motions for return of property, the lack of due process after the seizure of his property. As shown the erroneous and inadequate advice by Haeg's attorneys did not just prejudice him pretrial, trial, and sentencing - it has now prejudiced him on appeal. [Exhibit 31 – AR]

The Court of Appeals decided they could not address Haeg's IAOC claim (that his attorneys gave him false counsel and had conflicts of interest that prejudiced Haeg's case) on appeal because there might have been a legitimate tactic for this – that Haeg would have to develop the record in a post conviction relief hearing so his attorneys could explain their actions. The Court of Appeals also claimed Robinson's reply protest that prosecutor Leaders was using Haeg's statement in violation of his rights did not have to be addressed because the Court can disregard issues first raised in a reply – that Robinson should have filed a new motion asking that this be addressed. In other words the Court of Appeals ruled Robinson failed to protest the violation of Haeg's constitutional right against self-incrimination in an "effective" way. [Exhibit 31 – AR]

After witnessing the Court of Appeals oral arguments the Anchorage Dailey News wrote an article expressing concern about the corruption in Haeg's case. [Exhibit 36]

Haeg appealed to the Alaska Supreme Court and later to the United States Supreme Court – both who so far declined review, apparently relying on the Court of Appeals ruling that Haeg's claims must first be addressed during this post conviction relief proceeding. [AR]

ZZ. Haeg talked to Special Agent Colton Seale of the Federal Bureau of Investigation in Anchorage, Alaska about the evidence of corruption in Haeg's case. SA Seale told Haeg that the FBI has investigated a "number of complaints nearly identical" to Haeg's involving judicial corruption and "in every case the investigation expanded rapidly and implicated more and more people until a call came from D.C. to pull the plug." Haeg supplied this and other evidence to the Department of Justice in Washington D.C. and they agreed to investigate.

AAA. Haeg filed a complaint about trooper Gibbens chauffeuring Judge Murphy everywhere during Haeg's prosecution. Marla Greenstein of the Alaska Commission on Judicial Conduct dismissed the complaint and stated that both trooper Gibbens and Judge Murphy testified this never happened – even though the official record documented this happened. [Exhibit 32]

BBB. Haeg filed a complaint with the Alaska Bar Association about prosecutor Leaders conduct – including using Haeg's immunized statement. Prosecutor Leaders, in a certified response, testified that Haeg provided the SOA a statement that could not be used against Haeg. [Exhibit 2] Prosecutor Leaders testified the SOA did not use Haeg's statement [Exhibit 2] and the proof of this was that if it was used Haeg's attorneys would have filed a motion to suppress evidence. [Exhibit 2] Prosecutor Leaders testified that Haeg had no right to an immediate hearing after the seizure of Haeg's property, used as the primary means to provide a livelihood. [Exhibit 2] Prosecutor Leaders testified that it was correct that the court would be "usurping executive authority " by allowing Haeg to bond his property out before trial. [Exhibit 2] Prosecutor Leaders testified the fact Haeg's attorneys never filed a motion to enforce Haeg's PA was proof the SOA never

violated the PA. [Exhibit 2] Prosecutor Leaders testified the PA required only a 1-year suspension of Haeg's guide license. [Exhibit 2]

Yet Robinson's reply brief, certified it was copied to prosecutor Leaders, proved that prosecutor Leaders used Haeg's statement [Exhibit 17] – alone making Leaders sworn response proven perjury.

CCC. The Alaska Big Game Commercial Services Board stated they would likely be additionally suspending Haeg's guide license for between 0 and 100 years. In addition, the BGCSB told Haeg that since a guide license must be renewed every 4 years and cannot be renewed while they are suspended, Haeg would have to start all over at the bottom in order to get a license because of his 5-year suspension. In other words a 5-year "suspension" is in reality a revocation. Also, because of a guide use concession system that will be implemented in the near future, Haeg will almost certainly be excluded from guiding as, without a license and with a guiding conviction, he will not be able to apply for, or be qualified to receive, a concession to guide. In other words Haeg, after he receives his guide license in approximately 56 years (approx. 50 years from the BGCSB and the 6 already taken), will own a hunting lodge but will not have a concession to guide on the land around it.

DDD. Haeg's attorneys actively represented interests in conflict with Haeg's: the SOA's interest in not jeopardizing the WCP; the SOA's interest in making an example of Haeg; the SOA's interest in concealing that they had told and induced Haeg to do exactly what they afterward charged Haeg with doing; the SOA's interest in fabricating, by falsifying the evidence locations, the motive that Haeg took wolves where he guides to benefit his business – in order to justify hunting/guiding charges; the SOA' interest in falsifying affidavits and warrants in order to illegally search Haeg's home and illegally seize Haeg's property; the SOA's interest in preventing Haeg from a prompt postseizure hearing so he could protest the illegal search, seizure, and being put out of business before being charged, convicted, or sentenced; the SOA's interest in not allowing Haeg to bond his property out to make a livelihood before being charged, convicted, or sentenced; the SOA's interest in being able to unjustly and illegally forfeit many thousands of dollars of property; the SOA's interest in compelling Haeg to give a statement and then use it to prosecute him; the SOA's interest in getting Haeg to give up making a livelihood for a PA; the SOA's interest in breaking the PA after they had already got the year of livelihood from Haeg; the SOA's interest in denying that Haeg had given the year of livelihood for a PA; their own interest in not jeopardizing their future relationship with the SOA; their own interest in not being questioned as to how they represented Haeg; and their own interest in not being found to have committed IAOC – which is "prima facie" evidence of malpractice. [See all exhibits, and records]

EEE. A summary of the basic rights that Haeg's attorneys deprived him of when Haeg specifically asked to be advised of these basic rights and his attorneys affirmatively misinformed him:

(1) **The right to due process,** when Haeg's attorneys told him could be prosecuted for crimes referred to in his compelled statement; when Haeg's attorneys told him it was not a legal defense that the SOA told and induced him to do exactly what he was charged with; there was nothing he could do about the SOA testifying under oath evidence was found where Haeg guided when it was not – when this specific evidence location was their justification for the charges against Haeg; there was no right to a prompt hearing to contest the seizure and deprivation of property he used as the primary means to provide a livelihood; there was no right to bond out the property, that he used as his primary means to provide a livelihood, before being charged, prosecuted, or convicted; that there was nothing that prevented hunting/guiding charges; there was nothing that could be done when the SOA broke the PA after Haeg had given a year of guiding for it; there was nothing Haeg could do about the SOA using his immunized statement to prosecute him; there was nothing Haeg could do about his attorneys not obeying subpoenas; and that Haeg could not appeal his sentence.

(2) **The right against unreasonable searches and seizures,** when Haeg's attorneys said nothing could be done about the SOA materially falsifying search and seizure warrants/affidavits and then using the false warrants to search Haeg's home and seize Haeg's property.

(3) **The right that no warrants shall issue, but on probable cause, supported by oath or affirmation,** when Haeg's attorneys told him the SOA could use false oaths to obtain warrants.

(4) **The right against self –incrimination,** when Haeg's attorneys told him that he could be prosecuted after being given immunity to compel a statement, when they told him the compelled and immunized statement could be used to prosecute him, and when Haeg's compelled and immunized statement was used to prosecute Haeg.

(5) **The right to compel witnesses in your favor,** when Haeg's attorneys told him nothing could be done when Cole failed to appear when subpoenaed.

(6) **The right against double jeopardy,** when Haeg's attorneys told him the SOA did not have to give him credit for the year of livelihood given up after they had promised to give Haeg credit for it.

(7) **The right to be informed of the nature and cause of the accusation,** when Haeg's attorneys failed to tell Haeg the SOA, in order forfeit property, had to include the intent to forfeit property in the charging information - which was never done.

(8) **The right to the equal protection of the laws,** when Haeg's attorneys failed to tell Haeg that AS 12.50.101 and State of Alaska v. Gonzalez, 853 P2d 526 (1993) prohibited Haeg from being prosecuted for crimes referred to in his compelled statement

and when Haeg's attorneys told Haeg WCP law did not protect Haeg from hunting/guiding violations.

(9) **The right that no state shall deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws,** when Haeg's attorneys told him the SOA could do all of the above.

3. I have personal knowledge of the following facts among those listed in paragraph 2: (false statements with regard to facts stated upon your personal knowledge are subject to penalties for perjury.)

I, David S. Haeg, have personal knowledge of facts A though EEE listed in paragraph 2 and swear, under penalty of perjury, that they are true.

4. What evidence, other than your own statements, do you have to prove the facts you stated in paragraph 2 above? (You must attach all affidavits, records or other evidence supporting your allegations or state why they are not attached.)

A. I have tape recordings of my attorneys that prove facts A though EEE are true.

B. I have tape recordings of the SOA that prove facts A through EEE are true.

C. I have affidavits from witnesses that prove facts in A through EEE listed are true.

D. I have court records that prove facts in A through EEE are true.

E. I have billing statements that prove facts in A through EEE are true.

F. I have letters and emails that prove facts in A through EEE are true.

G. I have the record made during Fee Arbitration, which includes sworn testimony from attorneys/witnesses involved, that prove facts in A through EEE are true.

H. I have sworn Grievance responses that prove facts in A through EEE are true.

I. I **DO NOT** have the affidavits required from attorneys and some of witnesses above because they refused to provide them when asked. I **DO** have affidavits from some witnesses. [Exhibit 37]

5. I, David S. Haeg, request a hearing so that I may subpoena attorneys and other witnesses, who refused to provide affidavits, to prove facts in A through EEE. Nichols v. State, 425 P2d 247 (AK 1967); Steffensen v. State, 837 P2d 1123 (AK 1992)

6. I, David S. Haeg, waive attorney-client privilege and MAY wish to have assistance of counsel ONLY as co or standby counsel and ask that a hearing be held, with the right to subpoena witnesses, so the Court can determine if I willingly, intelligently, and knowingly forgo my right to representation or if I may benefit from the assistance of counsel.

I certify under penalty of perjury I have personal knowledge of the facts above and that the foregoing is true and correct. 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.

Executed on November 21, 2009 in Browns Lake, Alaska.

David S. Haeg
P.O. Box 123
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OSPA Haeg 4/30/12 gm

In the Superior Court at Kenai Alaska

Media No:	KN1	**Judge:**	C. Bauman
Date:	Monday, April 30, 2012	**Clerk:**	jmatson
Case No:	3KN-10-1295CR		
Case Title:	David Haeg Vs.		State of Alaska
Type of Proceeding:	Oral argument on Second Motion to Dismiss		
Counsel Present:			
Plaintiff:	Pro Per		
Defendant:	OSPA: Andrew Peterson		

Court Orders:
Court takes matter under advisement
Exhibit 25 admitted
OSPA may reply to last motions

Summary of Proceedings:

2:31:38 PM
On record
Court inquires

2:31:57 PM
OSPA
Did not get memorandum from Mr Haeg on Friday

Court
Just received it, did not complete reading it
Among other things requesting a special investigator

2:32:44 PM
Haeg
Did not talk to OSPA about this
Was working around the clock

2:33:14 PM
OSPA
Have original exhibit
Copy also
The exact document that the jury used
Describes map
Nothing on the map place by David Haeg
Was original document utilized by troopers in investigation

2:35:04 PM
Court
Scheduled for two hours of argument on motion to dismiss
State's motion, Mr Peterson goes first
Equal time for each

2:35:44 PM
Oral Argument by OSPA
Not going to respond to recent filing
Sent copy to Mr Haeg by email also
He may serve me by email also

	Most of arguments are in state's opposition
	Starting with statement made on 6/11 by Mr Haeg
	The overwhelming evidence is that Mr Haeg took wolves outside the predator control area
	When licensed big game guide, for any violation they are charged with guiding violation
	When significant violation there will be emergency action to revoke big game license
	Immediate, have 30 days to appeal
2:38:00 PM	Did not happen in this case, explaining the case
	Cole was concerned that they would revoke license or say could not guide
	Started negotiating
	Wanted to resolve the case
	Reason Mr Cole doing this is Mr Haeg had bear hunters coming
	Without license would not be able to do anything
	From negotiations, see Mr Cole was successful in not having Mr Haeg shut down
	Allegations that Brent Cole failed to challenge
	Believed there was sufficient evidence for conviction
	Describes evidence, map
2:41:21 PM	In troopers affidavit he says right on boundary, indicated that it happened in 19C, was really 19D
	Clarified in trial
	Mr Cole said inadvertent misstatement
	Trooper said kill sites 25 miles from Mr Haeg's lodge
	Even with misstatement still sufficient probable cause
	Said goal was negotiation,
	Did not want to be in trial strategy
2:42:58 PM	Brent Cole and Arthur Robinson chose not to challenge the search warrants
	Would not have impact, Mr Haeg had admitted to killing wolves outside
2:43:40 PM	Mr Robinson said evidence overwhelming against him
	Could challenge, but had also admitted to doing it
	Don't know if Robinson talking about interview
	Never grant of immunity
2:44:28 PM	Leaders clearly says no grant of immunity
	Cole made same statement
	Tape of interview, Trooper stops and says non-custodial interview, never grant of immunity
	Was a plea negotiation
	State can't use statements in plea negotiation against him, never did that
2:45:56 PM	At time Leaders filed amended information there was a Rule 11
	Chuck Robinson asked that PC statement not be submitted to the jury, it wasn't
	In deposition Robinson said there was no violation by Leaders
	All the evidence indicates there was never a grant of immunity, just plea negotiations
	8/18 following the interview, Leaders sent a Rule 11 offer, exhibit 3
	Calls for plea to 5 counts
	No jail time, suspension of license left open to court, forfeiture of airplane
	Mr Cole thought he could get a better deal, did get a better deal
	Mr Haeg started arguing for open sentencing
	State rejected idea of open sentencing on reduced charges
	State was not going to file reduced charges for open sentencing
	Then modification of original offer
2:49:04 PM	District Attorney sent email to troopers about offer
	There would have been jail time
	In that amended offer the revocation would be retroactive, date fluctuates
	What was going to happen is he would plead in November, the revocation would go back to when he voluntarily stopped guiding
	Mr Cole advised him to stop guiding, Cole recommended
	Was a new idea for retroactive suspension

	That was the offer
	11/4 Leaders files original information based on the plea agreement
	Will have retroactive suspension, forfeit airplane
	Then District Attorney told that Haeg was going to plead open, on the amended charges
2:51:39 PM	Leaders in deposition said amended charges based on Rule 11
	Haeg trying to violate that
	Entitled to plead open, but would be for original charges filed
	In arraignment Cole wants arraignment on original charges, Leaders said on amended
	Said still getting offer if to take it
	Following arraignment will see that at that point, he is still not certain he will accept Rule 11
	Still going back and forth with Mr Cole
	Clear that offer is still available
2:54:02 PM	Haeg wants judge to decide
	He thinks judge will understand his position
	He said not with client, killing wolves because his future was disappearing
	Benefit to him killing wolves
	Cole asked if wanted to take that risk
	Haeg says threaten District Attorney with trial if doesn't get airplane
	Mr Haeg unwilling to give up plane, why wanted open sentencing
	Wanted to argue that court ought to give his plane back
2:55:39 PM	Haeg ultimately got open sentencing after trial
	But he wanted reduced charges, didn't understand that only get reduced charges if accept Rule 11
	Wanted plane, was forfeit
	One other map produced at trial, exhibit 22
	If look at transcript, was admitted for predator control area
	After 11/22 Mr Cole notified District Attorney that Mr Haeg did not want him to represent him
	The Rule 11 was still available
	Mr Haeg chose not to accept it, terminated Mr Cole
	Succeeded in persuading state not to shut him down
	Succeeded in retroactive revocation
	Was an incredible Rule 11 given what was at risk if went to trial
2:59:17 PM	The Rule 11 was very favorable
	Mr Cole in deposition said begged Mr Haeg to accept offer
	State never made offer that did not include forfeiture
	Never acceptance of state of the counter offer by Mr Cole
	Then there were changes on Rule 11
	State never considered not asking for forfeiture of airplane
	Mr Haeg's impression that the District Attorney said could go open on reduced charges
	But if listen to arraignment, clear that Leaders indicates that the offer is still there
	Never found any document that supports that the District Attorney was ever willing to accept open sentencing on reduced charges
	Only person who says so is Mr Haeg
	Different statutes, one had shorter revocation and permits forfeiture of airplane
	Other longer and permits forfeiture of airplane
	Pretty clear how District Attorney handles these cases
	State always seeks to forfeit the airplane
3:04:46 PM	Believe that under law when immunity is granted it is not limited
	Grant of immunity comes from AG or designee
	This was plea negotiation
	There was nothing to suggest grant of immunity
	Would defeat purpose of what the state was doing
	Mr Zellers pled guilty, testified against Mr Haeg

Offer of immunity was king for the day
On that day statements would not be used against you
Cole sent email to District Attorney about statement not being used in evidence rules
Clearly Mr Fitzgerald would not have Zellers make a statement and then plead guilty if there was immunity
3:08:06 PM State tries to use caution about statements made in negotiation
Don't use term immunity for that purpose, because different kinds of immunity
Have seen in Mr Haeg's filings after terminating Mr Cole where he said it was protected
Had to know the statements could
Had t recognize that he would not walk away a free man, had to recognize he would be prosecuted
Mr Cole told him reason they did it was to negotiate a better deal
Would not do that if understood would be immune from prosecution
3:10:25 PM Higher charges filed when he decided to go open
Issue is penalty provision
Investigation from beginning was same day airborne
Whether or not he made statement to troopers is irrelevant
3:13:05 PM Common at sentencing to bring in other aspects of history in fish and game case
If other fish and game violations the state will give evidence
Judge said not considering it, state did not meet burden
Don't know why presented, would have to ask Leaders
Did the same thing in recent sentencing
What was very interesting about Robinson's deposition is he went through the arguments line by line and refuted them
Mr Haeg made allegations that Robinson was ineffective because did not question Sprague, but there was good reason not to ask
Would be admitting to taking wolves outside area
Robinson deposed in 2011
Said gave best representation he could
3:18:14 PM He indicated he knew Mr Haeg a long time
From beginning he said it was clear that Mr Haeg wanted to go to trial, wanted to tell his side of the story
Said he had to do something
Affidavit from Judge Murphy and Trooper Gibbons
Judge Joneides said there was a possibility of appearance of impropriety
Judge Murphy said never socialized
Said ate meals at same locations from time to time, did not eat with them
Never got a ride
Trooper said there was diet Coke in building, got her one
Only ride was following sentencing, it went late, trooper gave her a ride
3:21:37 PM Judicial conduct commission found no inappropriate conduct
Was a small community
Judge Murphy never received ride, defense never objected to one ride requested
Only ride was following sentencing, case is over
Trooper said he would give anyone a ride at that hour
Judge and Trooper said rides never happened
Factual issue
Robinson and Leaders don't recall seeing anything
If issue needs further examination, need evidentiary hearing

3:23:56 PM **Oral Argument by Haeg**
8 years ago I was a master guide, zero criminal history
Mr Spacher, flew him around

	He said have to do something about this
	Because of this I decided to join wolf control program
	Went to meeting
	He said get out and shoot wolves, program going down the tubes
	He said if shoot out of area mark them
	So because I am dumb I went and shot wolves
3:25:31 PM	What state, my attorneys did, was an abomination
	What happened to Ted Stevens is nothing like what happened to me
	He had attorneys not stabbing him in the back, no judge with integrity
	They had a SWAT team waiting for me
	There will be an investigation of my case
	What happened here defies description
	There were errors on seizure of my plane
	Court of appeals said notice is notice my property is taken
3:27:34 PM	Reads rule
	They have to notify you that you can protest
	State never did it, attorneys never did it
	Cole said he thought I was so comatose I would commit suicide
	He wanted me to commit suicide
	Robinson said didn't tell me because it is too late
	Think with Spracher, he is a mentor
	When I was a kid, when he told me what was needed I did it
3:30:16 PM	Cole said don't bring this up, said not legal defense
	Whether defense or not, told Dolifka because I was so upset
	He said you put that before the judge, reasons for action
	Gave Cole letter, he testified that he mailed it to the court
	My letter explaining is missing from court file
	This is evidence put in court record
	Who has control of that, you do, your secretary
	I put date, time, person
	Was in court record, now it aint
	My defense taken out
3:32:05 PM	All know it was a confession
	Cole said could not be used against me
	I had immunity
	Transactional immunity
	Fitzgerald testified that Cole said Leaders came over and was going to violate immunity
	Baited us in, then lowered the boom
	Used interview against me, illegal
	Attorneys committed malpractice
	You can't pull my stuff out of record, pick and choose
	Don't know if letter out of file when sentenced by Murphy
	Found it missing on appeal
	Supposedly goes in, there is a cover letter, all that is left
	Could have been one of things
	Went through trial on moose thing, because I had zero criminal history
3:36:23 PM	State gave me a permit, told me to shoot wolves
	Why brought in moose thing
	Found that they can't bring uncharged things, things never convicted of
	If they could prove it they would charge it
3:37:22 PM	Reads trooper's affidavit
	They are tying 19D and 19C to my business
	Told him most taken in 19D

	Told them in interview that affidavit was false, Leaders heard that it was false
3:38:58 PM	Zellers said did not benefit from killing of wolves
3:39:42 PM	Gibbons and Leaders at my and Zellers interviews told that affidavits are false
	Reads
	Now know that when prosecutor and trooper told of error they are supposed to stop
	They have to fix error, that did not happen
	They went, sworn in, Gibbons said happened in 19C
	Said to Robinson that he needed to challenge or I would take a chair and kill him on the stand
	It goes on with testimony
	Need to protect my family
	I said do something or I would
3:41:50 PM	He admitted it was false when asked
	He committed perjury, he knew when testified
	If government agent testifies falsely, they don't get to back out
	It was felony perjury by a trooper
	Suborned perjury by Leaders
	They are going to jail
3:43:35 PM	If you are going to take my livelihood, you don't get a second chance when harm me and family
	If they are wrong I go free
	I had permit for wolf program, maximum $500 fine
	But got my life as know it ended
	I Will see Peterson disbarred, knows what happened
3:44:35 PM	Reads from Trooper testimony
	Don't know where I got it
	Could be trial testimony, could be from report
	Reads from Leader's argument
	It is interrelated
	It doesn't matter, state can't knowingly falsify evidence
3:47:08 PM	Clear that they can't do that
	Sentencing by Judge she said that they were shot in 19C
	They falsified all the wolves shot in D to see, to say that shot in my area
	I could have been in the wolf control area
	Wolves travel, anywhere you show them will have an affect
	That is the admission they are using
3:49:24 PM	They say that if the perjury known to the state, trooper knowing falsified testimony
	It is over
	Went to credibility of witness and the case
	Judge used the testimony against me
	It is over
	Whether you give me justice or not I will have justice
	Reads perjury statutes
	He admitted when he was cornered like a rat
3:51:12 PM	He waited until cross, cornered, then said you got me
	We aint' going to lose everything to a crooked trooper, prosecutor, and judge
	Peterson will be disbarred, he knows there was another map
	At my interview, Gibbons brought that map
	Reads from interview
	Reads from Zeller's interview
3:54:34 PM	I put marks on there, then it was admitted
	Those are my marks I made during my immunized interview
	Then shows up in my trial to be used against me and my family
	Had transactual immunity, can't be prosecuted
	My statement being used to haunt me

3:56:23 PM	Massive cover up to frame Dave Haeg
	It aint going to happen
	He said my interview was not admissible
	Problem with hoodwinking is I put the marks where wolves were killed
	Cover up is so bad that during Robinson's deposition he said that I put the marks on, but Zellers pointed to it so it made it Zeller's map
3:59:08 PM	My lawyer, I was paying him but he was working for Peterson and the state
	Don't know
	Happened 8 years ago
	Been a long time
	Remember interview, maps, writing on them
	Know I put numbers on map
4:00:05 PM	Have their recording, it is my map
	Cole wanted a map
	Leaders references it
	If he says Dave's map it is over
	Everyone goes around and around about the evidence rule
	That is wrong, another cover up
	Reads evidence rule
4:01:27 PM	I never pled out, had a trial
	Robinson protested that in reply
	Official document, second amended information
	It was printed in the Daily News for everyone to read
	You were tainted, you could not be my juror
	Lowered boom on me and my family
	It is 8 years later, can't pay bills
4:05:32 PM	There is no real dispute now about where wolves killed
	There isn't now
	Now know 19D
	Telling you that they intentionally falsified them to my guide area at the time to get conviction
	They knowing manipulated the location because they knew it would harm me
	It is over
	There is nothing in charges that ties it to my hunting area
	Spending my money for no financial gain when told by Ted Spracher
	Same argument as if someone is charged with murder, then trooper says to someone there is a bad person out there, shoot them but make sure he is in your house first
	Then it happens, then you are charged with murder
	But troopers say he was outside your house
	May be murder either way, but sure looks bad
	Evidence taken out
	Shows I shot him outside of house, but not that shot inside the house
	Makes job a little easier
	And get rid of evidence that state told him to shoot the guy
4:09:56 PM	Had a clean record
	Never would have been there without permit or if state didn't tell me
	The dog feces is so deep that during deposition of Cole, I asked about FBI
	He said nothing
	Letters from Cole to FBI saying here is the information about Dave Haeg you wanted
	My attorneys lying under oath, more perjury
4:12:34 PM	As far as my statement, it was all over in the charging information
	Reads from Daily News story
	One of most interesting things is Robinson filed a reply
	Reads from reply

4:14:25 PM	Interesting thing is that it was certified served on Leaders
	Five days later Robinsons office faxed my pleading to Leaders
	Notified in three different ways that he was violating the rule
	He would remember that
	Filed complaint with bar association, he robbed me of fair trial
	Reads from affidavit
4:16:41 PM	Charging document says Haeg made statements
	Committed perjury
	His days are numbered, will see him in federal pen with others
	Will get justice
	Cole said I had to give a statement, did not say voluntary
	He was professional, not me
	Then I questioned why happened, he testified I had immunity
	That means I had immunity, if I didn't and he let me make statement to be used against me he is so incompetent it is unbelievable
	If didn't have it he committed felony perjury
	Fitzgerald testified that Leaders said he would violate my immunity
	I paid these people hundreds of thousands of dollars
	Do you have any idea what I will do to these people
	I will have some ass
4:19:40 PM	He did not tell me I could get plane back
	He wanted me to commit suicide
	He said state sanctions attorneys that stand up for clients
	Conflict of interest, it is all over
	Attorneys were lying to me, negotiations null and void
	Aint going to happen
	It is so bad that I subpoenaed Cole at my sentencing
	Cole doesn't show up, Robinson said nothing we can do
4:21:27 PM	Now he testified that he knowing did not call him
	He knew I would have fired him
	Gave up my constitutional right, get credit for that
	Credit was for charges less severe, the trial would be null and void
	Find letter years later that Cole said would not show
	I was not told that
4:23:52 PM	Airplane that flies to McGrath starts in Anchorage
	Every single time Murphy was on the plane, with me and my wife, trooper Gibbons was there to pick her up
	She is fairly large woman
	She was in truck with Gibbons
	Have Robinson on tape saying that he saw it too
	But in deposition he said didn't remember
	Every decision Murphy made was against me
	She ruled that wolf protection law could protect me
	No jury instruction about me having a permit
	Trooper committed perjury in front of her, did nothing and then used it against me in sentencing
	There is duty if violation of constitutional rights
	Judge Murphy did not lift a finger
4:26:58 PM	Why did she side with state on everything
	Can't associate, take that into account when person gives her a ride
	Mr Peterson would object if I offered you a ride
	Saw them having meals together
	Murphy, Gibbons, and Leaders affidavits are proof of perjury
	Will ask for Greenstein to come in, have right to have people come in that saw she lied

Not confidential if using it to cover up a crime
Everything went against me
Saw judge riding around with trooper

4:29:52 PM **Rebuttal argument by OSPA**
Court of appeals ruled on seizure
Robinson and Cole both had reasons
Appears that letter sent
Had plenty of time to represent the letter later
Mr Haeg wrote letter, wanted it submitted
Not clear why not submitted, could be because inculpatory
Mr Haeg right, search warrant does not reference lodge
Warrant application says 19C
Trooper did clarify on the stand
Not perjury
And did not change anything

4:34:07 PM OSPA
Can give court original exhibit

4:34:26 PM Court
Will keep original
Mr Haeg may have copy

OSPA
Will make copy first

4:34:49 PM **Rebuttal Argument by OSPA**
Mr Haeg wanted to go into FBI investigation
Cole said not talking about that
Believe when I objected made it clear that we were just talking about representation
No statements made by Mr Haeg, nothing presented to jury that Mr Haeg made the marks
He said should be given credit for time he took off
Cole said if go to open sentencing, it would up for grabs
State agreed in Rule 11 to make retroactive
Mr Haeg would have had license back before sentencing
When rejected it, open sentencing
Strategy Mr Robinson made not to call Mr Cole

Court
Will keep exhibit

OSPA
Would like time to respond to last motion

Court reads last motion

4:41:36 PM Court
May respond to the motions

4:42:02 PM Haeg
He is wrong when he claims the false statement
If intentional they go bye-bye

	Interview used to force me to testify at trial Robinson admitted that At sentencing Gibbons perjured himself Said did not know why I was not guiding for that year During sentencing
4:44:35 PM	Off record

In the Superior Court at Kenai Alaska

Media No:	KN1	**Judge:**	C. Bauman
Date:	Thursday, March 22, 2012	**Clerk:**	K. Gdula
Case No:	3KN-10-1295CI		
Case Title:	David Haeg Vs.		State of Alaska
Type of Proceeding:	Oral Argument		
Counsel Present:			
Plaintiff:	Pro se		
Defendant:	OSPA – Andrew Peterson (telephonic)		
Court Orders:	Oral Argument re: 2nd Motion to Dismiss: 4/30/12 @ 2:30pm		

Summary of Proceedings: Case is taken under advisement

2:31:42 PM

On record
Court id's

Haeg
Just want to remain standing if I can

Court
If anyone in the courtroom has a cellphone, please turn it off now, don't want to get disrupted while we're underway
Here regarding State's motion to dismiss
Peterson prepared to open?
Also, there is one hour today
Other matters set for 3:30
If want to reserve time, do that time

2:33:24 PM

OSPA
I anticipate using maybe 10 minutes now and the remainder for rebuttal
Set position out fairly clearly in motion to dismiss
Trial court clearly forfeit the airplane in question

Court
Want to be sure we're talking about the same motion to dismiss
I'm talking about the 2010 motion
You sound like you're talking about the recent motion

OSPA
you have that right
That's what I was anticipating the oral argument to be about
Original motion was granted as to most everything and then he was given opportunity to amend
I just received his amended PCR the other day
I was under the only assumption that the only thing pending was the 2nd motion to dismiss
Believe it is the only thing out there

	Court
2:35:16 PM	Believe you have that wrong
	Permitted him to conduct additional discovery for petition to revoke
	Ineffective counsel
	I was expecting you to address the 245 page memorandum
	OSPA
	you might ask Haeg
	In conversations with him, both of us believed we were addressing the 2nd motion
	I was on leave for 2 weeks
2:36:23 PM	I just got back to the office
	I either received this yesterday or the day before
	First should be providing written response to the court
	It's dated 3/19/12
	Absolutely unprepared to respond to 245 pages
	Just received it
	Court
	What is your understanding?
2:37:09 PM	Haeg
	Oral argument on the state's 2nd motion to dismiss
	I'm not an attorney
	Oral argument was denied on the first motion to dismiss
	We've had litigation about that
	Have filed complaints against you and whatnot
	You recommended that I ask for oral argument
	Then state came with second motion to dismiss
	Said I didn't qualify the first time because wasn't timely
	No one can say I didn't have this one in on time
	One of the first times I agree with Mr. Peterson, oral argument on the state's 2nd motion to dismiss
	Court
	Order dated 2/21
2:38:33 PM	OSPA
	I don't mean to interrupt…
	Court
	Hold on a moment
	Oral argument was granted on the second motion to dismiss
	I'm going to talk a for a bit
	It was not the court's intention to preclude oral argument on the 1st motion
	I issued a lengthy decision on the first motion in January of this year
	I did permit additional discovery, deposition of Cole, allowed supplemental briefing
2:39:39 PM	Alleged ineffective assistance of counsel
	Thought there would be oral argument
	Frankly surprised that the state didn't make any argument to respond
	It was agreed to be extended by both sides, unopposed
	What we need to do today is set a deadline if state wants to respond to the 245 page memorandum
	We will set a deadline for state and will set oral argument now on the first motion to dismiss
	It was not entirely dismissed

Areas regarding counsel remain open
2:40:59 PM I requested supplemental briefing by Haeg on that subject
Let's deal with the timing
How much time to respond?

OSPA
assumed minimum time would be granted
I have a briefing due before court of appeals on April 9th
Would ask until April 20th to respond to Haeg's supplemental memorandum
Should give me a week and a half to focus

Haeg
That's fine

Court
April 20th deadline for that document

Haeg
Do I get a chance to respond to that?

Court
State is entitled to the last word
You included a lot of words in your 245 page document
Get your key points in line to make at oral argument regarding the first motion to dismiss
How much time?

2:43:08 PM □□□□□April 1st will be 8 years since this nightmare
April 1st will be 8 years since this nightmare
I would say a week?
Would also like to express my confusion on the memorandum
Didn't really focus on Judge Murphy and Trooper Gibbons
2:43:43 PM I felt the court was ordering memorandum on ineffective assistance of counsel
I did not depose Judge Murphy and Trooper Gibbons, thought that needed to happen for me to make the prima facia case
I put an enormous amount of effort into that memorandum
I know you said it should be concise and brief but there are big problems in my case
Thought would have to depose Judge and Trooper to make case against them, that was my impression

Court
I thought you did depose them

Haeg
I subpoenaed them
I'm trying to become a lawyer
If you have to depose by written questions, it prepares the people
Takes away the effectiveness of a deposition
If that was the case, prefer not to do depositions and do a hearing
Them was the first time they would see the questions, your honor could gage their credibility
Then could have follow up questions to prove they are lying
What happened with my attorneys is unbelievable

Court

	Oral argument on motion to dismiss number 1
2:46:39 PM	Haeg Ineffective assistance of counsel, Judge Murphy and Trooper Gibbons The court put words in my mouth I said Trooper chauffeured Judge Limited to sentencing
	Court Need to do more than say they had chauffeured contact That's what I was expecting, the details
	Haeg I had put in motions to supplement that they lied in an official investigation Everyone had said if they lied at my trial then it's over, I get a new trial Are they sleeping together? Is that what I need to put in there? Why would they lie about it? I don't know exactly what they did If they lie during an investigation, it means that something horrible happened in my trial I could put in that they're sleeping together I don't know if that happened
	Court I gave you opportunity to do more
2:49:16 PM	Haeg I appreciate that but I'm not an attorney I don't know what I need to put before the case to rise to a prima facia case
	Court I've read a number of affidavits, there was chauffeuring during and after trial
2:50:05 PM	Haeg What more would I have to prove?
	Court To answer that would be giving legal advice, cannot do that
2:52:02 PM	Can set for 2:30 on Monday, April 30th
2:52:10 PM	OSPA No problem Same conference line?
	Court Same line for all participants
	Haeg I don't have my calendar It'll be fine
2:52:57 PM	OSPA Haeg's airplane was forfeit as part of the trial Airplane is forfeit, valid judgment

2:53:22 PM We go through literally years of litigation
In his appeal, court of appeals denied request
They upheld it all the way along
Once appeals process was over, state sought order from FAA requesting change of title
Learned FAA needed more specific information to change the title
I did exactly what I would in a similar situation
I filed on June 9, 2010 to modify the judgment so we could title the plane
Law of forfeiture is clear
State v. Wright
It is forfeit as to all owners
If innocent 3rd party, they are entitled to file for remission hearing and present evidence why not negligent in lending out plane
If can meet their burden, could be entitled to the value, not necessarily the plane itself
State also provided court with argument that did not believe CR 35 did not apply in this situation
Were seeking modification of a clerical mistake
I would ask court to take a look at CR 36, allows court at any time to correct a clerical mistake
No question that plane was forfeit and court of appeals upheld decision
Plane is being validly held by state
It was forfeit as to all owners, was the intent of the court
State has repeatedly invited Haeg to file a motion for remission
If he requests, not going to oppose
Will simply make him meet his burden that his corporation was not negligent in allowing him to use the plane
2:57:48 PM Bottom line, state didn't commit any prosecutorial misconduct
When an asset is forfeit, will utilize them in one format or another
Because plane is sitting there does not mean he gets it back
Whether or not it gets titled does not give it back to Haeg
This plane belongs to the state
Does not seem to be a basis for his allegations of prosecutorial misconduct
There have been a substantial number of motions that were outstanding or not ruled upon
No responses filed and court ultimately ruled in State's favor
Urge you to dismiss his PCR claim with respect to misconduct

2:59:43 PM Haeg
It's all well and nice what the state is saying
What they're trying to do is called illegal
Statute, modification of sentence
Reads statute
That law is backed up by Supreme Court
I just read you the statute
State wants to modify the judgment against me 5 years after the fact
I don't care what reason the state uses
It's the law of the land
It's going to be obeyed because it is the law of the land
Validly forfeited?
No one notified me or the corporation when it was seized
Cites statute, opportunity for hearing required
3:01:24 PM When they seized the plane from my house, I asked Troopers when I could get plane back
Had bear hunters coming in tomorrow
Troopers told me I could never get it back
No notice of a hearing
Reads statute
I never got any of that

On the warrant seizing plane, state falsified all evidence locations to my guide area
They used that to justify guiding charges
3:02:51 PM High level of fines, couldn't justify forfeiting
Falsified the law to do what they did to me
Didn't give me a hearing when I asked for one
False evidence locations were never addressed
To prove the unimaginable consequences to me, my attorneys told me I'd been given immunity
Gave statement
Told Troopers and prosecutor the locations were false
Could be proven with their own equipment
Nothing was done about it
A year later at trial, state continued to falsify the evidence locations
Whole case was that I was a rogue guide
I had a wolf control permit in my pocket, was told to shoot wolves from the air
State testified under oath that they found all this evidence of where I guide
I told my attorney to make that guy admit he lied
Said I was going to come unglued, would pick up a chair and kick that guys ass
Chuck Robinson asked Trooper Gibbons
Trooper said he had to recant
It was proven perjury by the state
Robinson said there was nothing I could do about it
Sentenced to nearly 2 years in jail
20,000 fine
Took guide license for 5 years
The wolves were shot in area where I guide
Tainted my whole trial
3:06:05 PM For Peterson now being allowed to break the law, to fix a valid forfeiture?
Never was a valid forfeiture
Required hearing to be held within days if not hours
I never got a hearing, was never notified
I had nothing but a speeding ticket on my record at that time
Life as I knew it was over
Started my business when I was 18, it was gone, just gone
They never followed due process of the hearings, is required by statute
Never notified corporation of right to a hearing
Never notified me
I told everyone it was my primary source of putting food in my family's mouth
Will read you the US Supreme court case, cites case
Can't falsify the law in taking my property
3:08:37 PM I can show they perjured all the evidence to ruin my life
Had the due process been followed, would be an enormous difference in outcome
Want warrants thrown out
You understand what I'm saying?
The evidence seized from warrants would be thrown out
Everything would have ended
US v. VF Grace, reads case
3:10:16 PM My wife and kids are here, they bore a brunt that no family should bear
The truth of this document happened to me
If due process had happened on April 1, 2004, we wouldn't be sitting here today
At one time I said I would rip the state in two
It won't be me, it'll be the public when they find out what the state is doing to the common citizen
State told me to go out and kill wolves, I did that
Then they falsified evidence and ripped my family apart

They used my own attorneys
3:11:44 PM Talk about pissed
I've just started
If nothing happens here, I'll go on
I talked to the FBI for an hour yesterday
I'll go through the proper channels
Put dates on my motions now to see when they're ruled on
You ruled on it, 1/17/12
One year and 12 days after I made the motion
Right here you have an affidavit stating everything presented to you was decided in 6 months
I know that your honor stayed my case for 69 days
It was in your lap for 377, minus 69 days, over 4 months past 6 month deadline
My wife says we can't keep doing this
It just keeps happening and happening
I've looked at your calendar, I know you're busy
When they took my plane 8 years ago, ended my business
Very angry and very bitter man
I want some justice
I want to lash out at my attorneys, the troopers, the prosecutors
When court validates what they do, they become a part of the injustice
Anger in me is not solely at the court but at everything that broke down in the process
If the state would have put who owned the plane and given the owners due process, we wouldn't be here today
But they didn't do that
The reason why there were no hearings, they didn't want their falsification of evidence to be seen
Think about it
3:15:14 PM Why else would they violate the statute that requires a hearing
The cover up is now coming out 8 years later

Court inquires of Haeg

3:16:44 PM Haeg
Can I take a minute?

Court
You may
One more question
Wrote the fair market value
You've been telling me it's a hundred thousand dollars plus, not tracking
Also said it's a rust bucket, not properly maintained

3:18:05 PM Haeg
I didn't write that affidavit, I hired an attorney
Chuck Robinson
Paying the professional $250 an hour, he said sign it, so I signed it
Corporation owned it and I own the corporation
I didn't see the significance
The corporation is there for a reason, to protect us
Corporation would be attacked and not me, you have to know that
I bet half the people here have had a corporation or a business
As far as my knowingly saying it was my plane, it was my attorney's duty to find out
He never came to me before he wrote it out
Even the state knew the corporation owned it

I'm just a guide
3:19:50 PM I grew up out in the wilderness
All I knew was that my life was coming to an end, I hired a professional
The plane has unique modifications that can never be duplicated
FAA will not authorize them anymore
Some of them were in conflict
When we had it appraised, appraiser found out, would have to do additional paperwork to find out the true value
Value is considerably less without the paperwork
Maybe $1000 worth of paperwork by a licensed mechanic would increase value by $90,000
There are two competing values, actual and legal
Probably a quarter of the people here own planes
Could have been sold at the time, just like that
That is why the values look skewed

Court
Understand
Peterson argued that corporation did not take opportunity to argue innocent owner
Response?

Haeg
Also made argument that I would never prevail
I own corporation, fighting losing battle
I was so busy on all these other fronts
The plane has been sitting there for so long
Mechanic said the whole thing will have to be rebuilt, Phil Cochran told me that
3:23:45 PM Can look at things one way and you can look at them another
Seemed state had an argument
If corporation was owned by me, can't say wife had an innocent third party interest
Once you go past 180 days past judgment, no modification no matter if claim is fraud
They ain't even claiming fraud
They want to go back and fix it
Hey Andrew, you can do that
Lets just go back in time to 2004, I'm flying around shooting wolves
They can sell the plane
After we're bankrupt, Robinson said, we might be able to bond it out
3:25:06 PM Scot Leaders, our wonderful District Attorney, said was against the law
Usurping the law to put food in my family's law
What the hell is the state doing now?
They want to sell the plane
They're trying to get rid of my plane, so if I win, then I lose
Dave Haeg cannot ever have that plane back because he might sell it
State is falsifying a law
What kind of world do we live in?

Court
I did issue an order
Ultimately if you do prevail in the PCR, state could potentially be liable for value of plane at time of seizure

3:26:28 PM Haeg
I want the plane
Had modifications I can never get again

Purple plane with a bat symbol

3:26:51 PM Court
Read in one of your pleadings that you did not want the plane
It was now a rust bucket

Haeg
I want it rust bucket or not
After 8 years, should have had it maintained
They don't want to give it back, or give it back as a rust bucket
I want it put back in the same condition
I want the money back that I should have made
I want the backseat filled with hundred dollar bills up to the ceiling
3:27:52 PM When the plane comes back, I want it in the same condition
That is all that is acceptable
AS28.05.131
Waste v State

Court
Need to interrupt
I need to hear from Peterson in his reserve time for a reply
Did spend a fair amount of time reviewing the 245 page document
I do want to have Peterson address and recreate, if one does not exist, the terms of the immunity agreement that Haeg and lawyers have referenced
3:29:41 PM Content, details, terms of the immunity agreement
Also, content, terms, and details of the plea agreement in its last formulation
Understand it might not have been finalized
Not trying to get into the negotiations but the memorandum is replete with references

Haeg
Also want the map

Court
Was it returned to state after the trial?

OSPA
yes

Court
Will also want the map

3:31:35 PM OSPA
Will address the last issue he talked about, the statute and Waste v State
Arguing Failure to give notice
Please take a look at the court of appeals ruling, they addressed this very issue and denied his claim
This matter has already been resolved
This is not the appropriate place to address this issue
He keeps saying no authority to modify judgment
Not only filed affidavit in 2006, also in 2005, both times claiming he was the owner of the plane
They were signed under penalty of perjury
State believes it had a good faith basis for clarifying the judgment
Forfeit as to all owners

State does not have an obligation to go out to all possible owners
3:33:36 PM It is their obligation
He was there when Troopers seized the plane
No question he knew
All he needed to do was file a request for remission

Haeg
I'm not a lawyer

OSPA
can file a request now, I will not oppose it
Regardless of the outcome, if judgment is clarified, no effect on whether the plane was forfeit
The airplane will sit indefinitely in storage and nothing will happen
Will ultimately be carted out
Forfeit as to all owners
Haeg has not shown a prima facia case regarding prosecutorial misconduct
Will use this asset in the same way they would use any forfeit asset
Appreciate your time and consideration today

3:35:31 PM Court
Can make a point, no more argument

Haeg
2 points
Said I did not oppose application, I did oppose
I have the returned green card signed by the magistrate himself
His claim is invalid, signed on 4/19/11
Peterson says that when they seized my plane I knew
Yeah, my life as I knew it was flying off
He said all I had to do was ask for a hearing
U.S. supreme court case
They came to my home and took my stuff
3:37:26 PM I had clients show up the next day
Do you think I was opening up this law book to see if I had a right for a hearing?
I was trying to service my clients
Seizure was on 4/1/04
I never got notice of a hearing, never got a hearing
Retained Cole 13 or 14 days later
I have sworn testimony from Cole
My attorneys told me I had no right to anything

Court
Understand
That is in the ineffective assistance of counsel arguments
Wanted to know if you were represented by counsel at time of seizure
Will take the motion under advisement
Not promising I'll rule before the oral argument on the oral argument regarding the first motion to dismiss

3:39:17 PM Haeg
Can I address one thing?
When I wrote the memorandum, I was focused entirely on the attorneys
Can I file an addition to that focusing on Judge Murphy and Trooper Gibbons

Court
If want to add something in that arena, may do so
3:39:54 PM Try to get it done within a week
You referenced it but not in relation to what I was specifically asking you to do

Haeg
Telling me I do not have to depose them?

Court
No obligation to depose
Need to make prima facia
You addressed why you took the stand
You did take the stand
With regard to Murphy and Gibbons, point to anything, judge palling around with a key witness
Haven't cited any case like that
If you have something in that arena…

Haeg
I found something but it's so shocking
I would think it wouldn't be tolerated

Court
Want to address it
Not uncommon at turn of the century, lots of places in the bush didn't have judges, attorneys, or courtrooms
Would have trial on the beach, everyone would come
Merely travelling together, by itself it not necessarily improper

Haeg
I know but then they lied about it
They're lying for a reason
They discuss their whole plan on how to frame me

3:43:17 PM Court
Not going to make assumptions
Address prima facia case if you can make one, difference to the jury

Haeg
I know what you're saying
Unbiased judge
If you don't have an unbiased judge…
She made ruling that there could be no arguing that wolf control permit could protect me

OSPA
Would like copy of the document accepted from other side

3:44:29 PM Off record

In the Superior Court at Kenai Alaska

Media No:	KN1	**Judge:**	C. Bauman
Date:	Wednesday, July 06, 2011	**Clerk:**	K. Gdula
Case No:	3KN-10-1295CI		
Case Title:	David Haeg Vs.		State of Alaska
Type of Proceeding:	Status Hearing		
Counsel Present:			
Plaintiff:	Pro se		
Defendant:	OSPA – Andrew Peterson (telephonic) Jan Deyoung – Limited entry for Marla Greenstein (telephonic) Peter Maassen – Limited entry for Judge Margaret Murphy (telephonic)		

Court Orders:
Haeg to file pleading re: Judge Murphy Deposition by close of business on 7/7/11;
Subpoena for Marla Greenstein is QUASHED;
Haeg may do a written deposition of Greenstein;
Court to get back to parties regarding a deposition taking place in the Kenai Courthouse;
Court to review pleadings re: State's Motion to Dismiss

Summary of Proceedings:

4:07:13 PM
On record
Court id's
Will take these in reverse order
Set hearing to be status in regard to all pending motions to get a sense of the sides and the priority of matters
Presumably, you've received the decision I entered with regard to the Master's license

Haeg
Did get it

OSPA
I got it and forwarded it to occupational licensing
They should be issuing the license and contacting Haeg
Believe he has filled out the renewal application that all have to fill out
If he pays his fees, license should be issued
Should be ready shortly

Court
Did sign order for expedited consideration with regard to deposition of Greenstein

Deyoung
Thank you

4:09:53 PM
Haeg
I just received a letter, not a motion
This is what I received with my check returned
Is this what you mean?

Court
No
Talking about a motion that was filed and signed earlier today
Greenstein is covered under confidentially and asking subpoena to be quashed
4:11:07 PM Similar motion filed by Maassen in regards to Judge Murphy

Deyoung
I did speak to Haeg earlier today and he provided me with a fax and email address
We provided documents to both those places
He should have gotten it provided the equipment was working
Surprised to hear he hasn't seen it
Guess it was around 2 or 2:30
My assistant did it
Don't have the exact time but it would have been the same time Maassen and Peterson received theirs

Maassen
I received the email at 2:33pm

4:12:41 PM Haeg
My daughter had band practice at 1:30, I had left around 1 pm

Court
Orally mention the key points of the motion

Deyoung
The key point is that a statute protects from disclosure any proceedings any reports or proceedings
She is protected and prohibited by the statute from giving any information out
We have asked for subpoena to be quashed and for protective order to be issued, protecting her from any discovery efforts
There is exception that provides for some information to be given out
She can confirm a complaint was filed
Even if she can answer those questions, that information would not have relevance in the case
Any investigation by the commission has no bearing on the fairness or appropriateness at trial
Not admissible and not relevant

Court
Why couldn't he effectively use her and her office as the unofficial investigator?

Deyoung
Could file the allegations
Statute prohibits him from using the office in that regard

4:16:17 PM Haeg
Don't know if I have questions but I have a list of responses to her claim that there is a privilege to what Greenstein has done
Two different referrals were issued, stated it was relevant to my case
I have things I would like to talk about, why it's relevant and should be in
Should be no privilege

Court

Will quash the deposition of Marla Greenstein that is currently scheduled
Will permit Haeg to submit Deposition upon Written Questions
Write out your questions for Greenstein and send them off, service on her through attorney
She would then be able to object to particular questions in writing
4:18:50 PM It may be that she cannot answer any questions
Until they see the questions, they won't know
I'll give you a chance to respond and I'll make a determination
I'm not going to do that in an expedited fashion
Quashing in person deposition for next week
Permitting Rule 31 procedure in lieu of

Haeg
That's pretty clear
I can go over my position fairly quickly
Want you to listen to my position
Very pertinent case law I want you to consider

Court
Will give you the opportunity; hit the nail on the head, key points

4:20:42 PM Haeg
I have a constitutional right to compel witnesses in my favor
She is a material witness
Greenstein has talked about this case freely in recorded conversations with me and my wife
She never said it was confidential
She has talked about everything I wish to bring out anyways
Its in the public record in my case over and over
Judge said we had both brought it up in a non-confidential manner
Entitled to confidentiality but not observed, it was waived in essence
I am very adamant about this and very concerned
They are using the confidentiality to perpetrate a crime
United States Auto v Whirley, Alaska 1974
5 lines are pertinent
Reads from case
4:24:21 PM A number of the witnesses Greenstein told me she contacted are sitting in this room at this moment
Greenstein falsified what their testimony would have been
Perpetration to cover up
Presiding judge was obtaining rides from an individual while presiding over my case
Federal government says they are now claiming it didn't happen because it's not allowed
Trooper and Murphy admitted the rides were taking place and Greenstein now says the rides didn't take place until after I was sentenced
I filed a complaint
You've probably read enough
There is overwhelming evidence there
I filed a complaint with bar association
I taped recorded Arthur Robinson, he says absolutely no he was not contacted
Said we all saw Murphy riding around with the Trooper during my case

Court
Hold up
You are into the argument zone now
With regard to the deposition of Greenstein, the ruling stands, it is quashed

I am giving you the opportunity to ask questions in writing
Not going back to issue
Deyoung may hang up

Deyoung
Thank you, I will

Deyoung disconnects

4:27:49 PM Court
Maassen filed motion in regards to Margaret Murphy

Maassen
Murphy is sitting Judge in Homer
There isn't any evidence showing her testimony is crucial and unobtainable from other sources
The evidence he wants is in regards to the rides Trooper gave the Judge
My suggestion is that Trooper be deposed first
Following that, make a showing of why he didn't get the information he wanted

Court
Not intending to decide now
Request was decision to issue by noon on Friday
Can you file something by close of business tomorrow?

Haeg
I believe so
I'm new to this
When the same issue came up before, I'm sure you have the record, said absolutely the Judge's are allowed to be subpoenaed, that is my allegation of wrongdoing
It was granted one time
That was just over whether Judge Murphy should preside over my case or not
Her actions are a crucial part that could explain why innumerable other actions took place and were never addressed
4:31:06 PM I'm not an attorney, doing the best I can

Court
Helpful if you could reference the particular dates that the Judge said on record the things you indicated
I don't have command of every piece of paper in the file

OSPA
There is a subpoena for Gibbons
Am representing him
I didn't move to quash it
Moved to continue it
4:32:42 PM He is currently out in Bristol Bay, not schedule to be back until 15th of July
He is working in Delta
Could have the location be the courthouse as opposed to some community center

Haeg
Did choose location
Sterling Court Reporters, her name escapes me
She is expensive

There is a court rule
You have the authority to appoint someone to take depositions
Ask you to appoint Tom Stepanosky to do it
I am not financially able to do ti
As far as doing deposition in courthouse, fine with that
4:34:14 PM If moving the dates, ask for an order, ordering the state to produce Gibbons
Big ol' burden on me
I am not opposed to come to the courthouse
What Gibbons has done wears on me and my family every day
I don't want to lose control where I do something stupid
Doing it in the courthouse may be better
I've been beat for 7 years and I'm weary
I want him to be deposed before Murphy
Those are some concerns I have

Court
Understand what is behind Peterson's request to have the deposition in courthouse
When I speak to Clerk of Court, I am told this is very rare
What is available, in terms of space, very tiny space, attorney/client conference room
That doesn't seem appropriate

OSPA
I was under the impression there was a large room where the bar exam was taken
I was hoping to use that facility
Could potentially look for other locations to accommodate state's concerns
Courthouse is the most neutral ground

Court
Inclined to defer Trooper's deposition until he is back in the area
Want to land on a date

OSPA
I will be representing him
He is under subpoena if he's been served
I will make sure he's there
Set a date when room is available?

4:38:39 PM Court
There are occasionally other meetings in the room, is the jury assembly room
Monday the 18th or 19th of July?

OSPA
Ask for 19-22
Ask it not be the 18th to give him that day to drive all the way from Delta

Haeg
I would prefer the 19th

OSPA
Absolutely not a problem
3 hours is the limit
I might try and fly down the morning of
Request 9 am so I don't have concerns about arrival

Haeg
Trooper Gibbons was the main witness in my case
I would like that because he is such a critical witness that he not be limited to 3 hours
I would like to ask that the depositions not be limited in length
4:41:33 PM Rules say I can only subpoena 3 witnesses without getting authorized by court
I have a number of other witnesses I would like to depose also
It is a complex case

Court
The word complex means different things in different contexts
I am sort of biting my tongue
Everyone thinks their case is the most important and complex
While this has it's complexities, doesn't rise to a complex case, not saying its simple but doesn't necessarily carry the same meaning
Problem with enhancing Gibbons time to 6 hours?

OSPA
I think that's fair, I guess
I don't think he testified for more than an hour at the trial
6 hours seems rather lengthy
Limit to 6 and state has no objections

Court
Will set limit on 6 hours
Ask questions the witness can understand, not questions that go on and on and on
Not suggesting you do that but I have attorney's that do that
Expecting clear, cogent questions
4:46:06 PM Expect Peterson to adhere to appropriate standards
6 hours on that deposition
I do not know if I have court authority to have this transcriber paid for at court expense
Court reporter needs to be independent
There are some reporters who are stenographic and those who record

Haeg
They said they record with tape recorder
Don't believe they do stenographic
Rules allow for videotaping by the parties, basically doubles the charge
Someone working for the parties can run a video camera
I envisioned having the court reporter swear in the witness, run the recorder and I would additionally have a video going
Did note it was audio/visual

4:48:01 PM OSPA
No concern provided that a copy is provided to the state

Haeg
No problem

Court
Will get back to the parties with regard to a precise room location
Will try to have it in the courthouse
Will hear from Haeg no later than close of business tomorrow

In all likelihood will defer the deposition of Murphy
May do it the same as Greenstein, written questions

Haeg
Would prefer Greenstein first, then Gibbons, and then Murphy
4:50:03 PM Do I go forward and write the questions for the written deposition immediately and ship them off?

Court
That is at your convenience
Don't have to wait to do that
It is your freedom to do when you get around to id
Will be ruling before noon on Friday having received whatever Haeg has filed by close of business tomorrow
If was to file a reply, do it first thing on Friday
I have an all day hearing on Friday
Maassen can hang up

4:51:14 PM Maassen disconnects

OSPA
I have two issues
With respect to other depositions, if end of scheduling a deposition with Murphy, ask that it happen in a similar timeframe following Gibbons so that I don't have to fly back down
Generally these depositions are not necessarily a public hearing
Assuming he will want some folks there

Haeg
I hadn't really thought about it
We'll have the court reporter, I'll be there, Mr. Stepnosky on the video camera and notes, maybe someone to do the camera
There has to be a court reporter there

OSPA
No problem

Court
What I have observed is that you have sometimes had an entourage come to court for hearings
Nothing wrong with that
In a deposition, that doesn't work so well
Not inappropriate to request sequestration of witnesses
I see no problem in what you have outlined
No entourage

4:54:40 PM Haeg
I didn't even think of that

Court
So no problem there
What's next?

OSPA
That's it

Court
There are a slew of motions in this case
I put a stay on these motions to get a handle on things
I ruled on one of the most pressing motions, giving the Master's Guide License back
Next motion to have priority is the Peterson motion on behalf of the state to dismiss the post conviction relief petition
4:55:47 PM It is a common motion
I haven't reviewed it yet
Opposition filed?

Haeg
I have and the state has replied to my opposition

Court
Oral argument on that motion?

Haeg
I would like to have oral argument
Because if its granted then it's over
I would greatly like to have oral arguments on that
There are a number of motions I submitted since to supplement the arguments or case with both evidence and claims
It has continued to generate very disturbing instances
There are ongoing problems that I have asked to have addressed
Evidence has come to light after I have filed

Court
Think I understand what you are saying

OSPA
don't think need for oral argument
Pointing out certain claims were fully addressed on his appeal
It's a matter of law
Dealt with the issue so not to be addressed in PCR
Dismiss claims that were appropriately addressed on appeal
Would narrow and focus this PCR, give it a nice focus of where we are headed

4:59:35 PM Court
At this point, it is my intention to review that motion, opposition, and reply
Take into account the supplemental motions of Haeg
Will be looking at it with an eye of what has been addressed by court of appeals
I had actually hoped that an attorney for Haeg would be helping the court with that exercise
I don't have the benefit of that
That is what I will be doing
If I get through that exercise and feel I need benefit of oral argument, I'll schedule it on fairly short notice

Haeg
I called down there to work around her calendar
They said to schedule it for whenever and they would work around it
I did make effort to accommodate whatever they have going on
I was writing something here that I didn't want to forget

Court
Problem with setting deposition of Murphy the day after Gibbons?

Haeg
No

Court
Need to go off record

5:02:35 PM Off record

In the Superior Court at Kenai Alaska

Media No:	KN1	**Judge:**	C. Bauman
Date:	Thursday, June 16, 2011	**Clerk:**	K. Gdula
Case No:	3KN-10-1295CI		
Case Title:	David Haeg Vs.		State of Alaska
Type of Proceeding:	Motion Re: Guide License		
Counsel Present:			
Plaintiff:	Pro se		
Defendant:	OSPA – Andrew Peterson (telephonic)		

Court Orders: Motion is taken under advisement – written decision to issue
Calendaring notice to issue for status hearing regarding other pending motions

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Summary of Proceedings: Peterson is unavailable the weeks of 7/11/11 and 7/18/11

10:09:04 AM

On record
Court id's
Haeg's motion, you may go first

Haeg
Have something I would like to clarify
My impression this hearing is to address my January motion to go back to guiding immediately
My concern is that I filed that on 1/19, the state opposed
On 1/31 I filed a reply
A couple days ago I received another opposition from State
I haven't replied because I just got it
It's over 130 days past the 10 day deadline
Ask court strike the opposition
I don't believe they have a right to have a 2nd opposition

OSPA
I filed it in response to your court order
Ordered to file a new opposition, that was my understanding
That is why I did it
It's probably irrelevant at this point, we're going to make argument
Anything in my opposition I can raise orally
You didn't want to be re-hashing the filings but rather make arguments that would help clarify the issue
Seems that maybe court didn't realize there was an original opposition filed

Court
Motion to Strike is denied
You can take into account this opposition

Haeg
I just got it and was just working on my oral argument
I am not prepared to address it
I want it on the court record that it was filed after the deadline and no authority to do so

10:12:29 AM Court
You have had a chance
It came into court file on June 10th
Its not a hard read
I have lightly read through it
The board is telling you to file a complete initial application and pass the test

Haeg
That's correct

Court
Take that into account in your arguments

Haeg
I'll try but I am not prepared
I have been precluded on doing exactly what the state just did

Court
I've ruled so get to the motion
You get more than 5 minutes today, not holding you

Haeg
I've been held strictly to it and have been cut off in the past
I was convicted and sentencing in 2005, state argued for 660 days in jail and that license be taken for 5 years
10:14:17 AM Scot Leaders prosecuted me
Reads from document
I was sentenced to 2 years in jail and license was suspended for 5 years
After sentencing, I appealed and asked for sentence to be stayed
State opposed anything being stayed
Imprisonment is stayed if appeal
Stayed imprisonment but refused to stay my license suspension
Crystal clear that there was no question that I would be able to go back to guiding 5 years from that moment
That was at 2 am
My sentencing went for 14 hours straight
Court required me to spend over a month in jail
I couldn't guide until a year after appeal and released from jail
I asked to guide again and state said no
I filed this motion protesting
State claims I am barred from guiding for 5 years after imprisonment
No credit for the years before that I couldn't guide
Now increased to 9 years because I appealed my conviction
At sentencing they specifically claimed it was for 5 years after being sentenced
Ban starts from when someone is convicted
Court ordered suspension cannot be increased administratively for the same offense
What new crime have I committed?
State refuses to allow me to provide for my family
Quotes Andrew Hamilton
State already unjustly took a year of guiding
I gave up a year of guiding, they changed my charges to justify taking my license for 5 years
Falsified evidence and conspired to convict me of something I am not guilty of

That was my oral argument for the state's original opposition
10:19:22 AM If you would let me I could open the book and tell you what I think about their second opposition
State now claims in opposition filed 130 days past time limit, basically says if your license is suspended you cannot renew it
They take your guide license
Statute says you can't run down and renew it
Supposed to renew every 2 years
Another statute says if you do not renew, it expires
I have talked to legislators and senators
They said if someone is not guiding, don't pay to keep renewed, the license expires
Problem is, they took two different statutes, written in two different places in the book
Very creative interpretation
If license is suspended, not allowed to renew
Legislature specifically wrote a law, discipline of guides and transporters
Reads from document
10:24:20 AM Says what the board may do in addition to what the court does
The board may now have me go in for remedial training, may have a civil fine, and other things
When I went to legislature, they said its clear that I should immediately file a court action
They said if I paid my dues, I should immediately go back to guiding as everyone understood at the time I was sentenced
I asked for the law to be changed or something to happen
They consider the laws to be correct
State should not be creatively interpreting the law
At the time I was sentenced, it was an incredible leap for them to sentence me to 5 years
I was out with the wolf control program
Some horrendous things happened for me to be convicted
I was licensed to do what I did, I have evidence
I have this huge penalty on me and it is so wrong on so many levels
I think of all the pain we've been through
We have a lodge that still sits out there
Pay thousands of dollars a year
Every day we can't use it, further to where we can't fight
We have hunting camps, lots riding on this

Court
Reads from appeal
Question to you is, so far as you know, did the court modify the judgment to show suspension for 5 years?

Haeg
Absolutely, that did happen

Court
Why shouldn't his license be reinstated?

OSPA
Let me start by answering the last question with regard to suspension
Haeg is correct
District modified the judgment, license was suspended
Standard judgment forms have the word revocation
May be semantics or may be important
Title 8 says the license may be suspended for a minimum of 3 years
10:29:14 AM Names section of Title 8

Court
Reads from document
5 year suspension was not less than 3 years

OSPA
10:30:00 AM Court appeals made clear in oral argument
Not intended to permanently revoke
That is why court changed it

Court
Ordered the board to do the suspension?
Or did she directly suspend?

OSPA
Guiding license is revoked for 5 years, just directly revoked it

Court
Board took action to suspend or revoke?

OSPA
Took action to suspend
They would have done that effective, should have been, date of conviction in 2005
Has absolutely been more than 5 years
The initial assumption that I made, first to admit I was wrong, thought he would be barred from getting license back
Bar from reinstating from license
Issue really is, took a closer look, Judge Murphy crafted his judgment so that he didn't serve more than 5 on a fish and game conviction
Served 10 days on falsification charge
Haeg is not barred from reapplying because he did not serve more than 5 days on any single charge
Haeg is barred by statute from reinstating his license
If not renewed within 4 years, must file an initial application
10:34:06 AM Idea is when someone has been out of guiding industry and not filing paperwork or meeting requirements, they have to file an initial application
That is not to say he is not qualified
May be qualified
Need to ensure that the individual still meets the requirements
Sent him a letter saying that he needed to submit an application and it would be evaluated
He is absolutely entitled to reapply
This hearing we are having now is getting the cart before the horse
He needs to follow the correct procedures
if denied, he could appeal it
After administrative judge, he could appeal it to Superior court, that is the appropriate method to get this in front of your honor
10:37:56 AM This would provide before you, an entire record
Right now, we have no idea
The question really is, are you eligible to be reinstated? Do you meet requirements? Are you in good standing?
This is what we don't know with Haeg
I assume he will be relicensed
Haeg was a Master big game guide

Licensed to contract and run their hunt and business
Allowed to use the Master title if they met certain requirements
10:39:21 AM One of those is not having been convicted of a fish and game violation
The term was eventually phased out
A registered guide and a master guide are basically identical to run their own hunt and operation
The bottom line is this, he needs to reapply and go through the proper procedure
Would look at errors that took place throughout his trial
Not denials of reinstatements 5 years after the fact
Hasn't submitted a new application
First need to determine if he is still qualified and submit the proper qualifications
If any questions for me, happy to try and answer them

Court
Time served in jail is not an impediment?

OSPA
Correct, not a bar to reapplying
It will not bar him from reapplying
Individual days served, not cumulative days
10:43:55 AM Provided he still meets requirements, if he reapplies he will be relicensed as a big game guide
Don't know if they will reissue him the title of Master guide
Believe they are phasing out this title
Just going to "registered guide"
The eligibility to maintain the title of a Master title is subject to not having convictions in a certain number of years
When a master guide is convicted and doesn't have a suspension, may result in a loss of the use of the title

Court
Regulation that may preclude him from being relicensed as big game?

OSPA
No
If he reapplies, provided he meets qualifications, will be licensed as a registered big game guide
I am not the one to make that determination
He hasn't reapplied
Don't see anything about his conviction that would have him barred but I don't know if they will give him the title of Master
According to statute, has the same effect for operating a business, no difference

Court
Want to go through requirements of 610(a)

OSPA
Want to clarify, I am the statewide fish and game prosecutor, I do not represent licensing
That is the AG's
I utilize statutes for purposes of prosecution
I have stepped a little bit outside my area of expertise but happy to continue

Court
Reads through requirements

10:48:58 AM Haeg

I passed the exam

Court
Continues reading

Haeg
Because I passed it the first time means I'll have to take it again, doesn't mean I'll pass again

Court
Trying to go through the list
10:49:49 AM Continues reading

OSPA
Yes, missing section
Directs court to section

Court
Reads requirements

10:53:18 AM OSPA
If a license is suspended or revoked, having title of Master is a big deal, when someone has had it suspended or revoked, don't think entitled to have that title
Still presumably, it appears once he submits applications will meet the requirements to be a registered guide again
Needs to submit the application
He can ask for the Master title again
He may get it and he may not

Haeg
This whole case was not about guiding
It was about Alaska's wolf control program
I will explain very clearly what happened to me and my family
I have been a guide since I was 18
Killed first moose when 13
Killed first brown bear when 16
This is my life we're talking about
What everyone fails to inform you is that I talked to the big game board, when you apply you have to wait many months before you are allowed to take the test
You have to be investigated after you pass the test
The backlog was nearly 2 years long
State is saying, lets do the back door approach and take his license for 2 more years
I run my own show, was a Master guide
As far as I'm concerned, I still am
I work hard
10:56:18 AM Have to be a registered guide for 13 years to become a master guide
Proud to be a master guide in this state
My whole life has been stripped away from me
State wants me to reapply
It will take over 2 years
I had assistant guides working for me
I don't know if I could get all those people, the recommendations and stuff, very difficult to do
Been 7 years out of the business
State is trying to say that we told the judge, had to get 5 years on license, Scot Leaders is a

District Attorney in town
10:57:46 AM Judge said would give me 5 years
Screwed me out of a plea deal
We did not guide for a whole year
My anger is coming out now, not in any way directed at your honor
It is directed at the position my family has been put in, life is so very short
Leaders asked the Troopers if he knew anything about me not guiding for a year, said he didn't know why
I filed a bar complain against Leaders
He lied to the court, conspired with Trooper
Screwed me out of a year of livelihood
He said he knew I had given up the year for the plea agreement
I didn't get credit for that year
While Peterson makes a great eloquent argument, I am just a guide, he says it's self explanatory that I have to do this
At the time I was sentenced, fighting tooth and nail
State wants to revoke my license
That is whats happening here
Minimum of 2 years process to get license back
So unfair
I feel like grabbing the State and ripping it apart
I shouldn't
I should sit here and say we'll go back
11:00:20 AM I'm 45 years old now, this started when I was 38
Please give me my guide license back, let me go back to work
Occupational licensing told me if I was sentenced to 5 years and didn't guide, should be immediately be able to go back to doing what I love to do
Those were exact words
Yet now, he says there is all this other stuff
License is expired
Same as taking your license to practice law, when wanted it back , have to go back to law school
It is incredibly unfair
At the time it was decided, it was crystal clear that I would go back to guiding
If it wasn't clear, I very likely would have been sentenced to soemthign different
How can we go back and change what I was sentenced to?
I am not going to get a Master's guide license back
It is a big deal
Purple air plane
Tried to bond it out before I was convicted
Leaders said I couldn't because it's a unique plane and would send the wrong message
There are things that people are not playing fairly with and it affects people like me that have a family
Used to be a successful, thriving business
Now we are one our knees
It is so unfair, indescribable

Court inquires of seasons of guiding

Haeg
11:03:32 AM Started in August with caribou and brown bear, September is moose, October is brown bear, spring brown bears in April and May
No sheep or goats, no deer
Right here and now, hypothetical, if I asked you to go on a hunt, I would be guilty of a felony for

soliciting services
Even if you gave it back right now, no way
11:04:39 AM Do you know how hard it is to get hunters to come to Alaska to hunt?
Book customers years in advance

Court
Realize it is highly competitive

Haeg
I was a high-end business
We have a lodge
A lot of guides use tents
11:05:54 AM This was our whole income
Hunts are booked 2 – 4 years in advance
We cater to very wealthy clients
If I get my license back, I don't go back
That's when I start trying to get clients

Court
Will take this under submission
Will write a decision and will address it as promptly as I can
Not making a ruling as we speak

Haeg
Back when sentenced, everyone knew how much hurt it would be to me to have 5 years suspended
That was the assumption
Crystal clear, everyone recognized I would go back to guiding in 5 years
How now can I be sentenced to more?
I paid my dues
11:07:51 AM Even if I had no concerns, guilty or not, I was sentenced and I paid the price
How much more egregious will it be if I pay more than the price and then find out I shouldn't' have paid the price at all?
Appreciate your insight into what I am dealing with
Guiding business isn't like a lot of others
When I get license back, it just means I can start crawling

Court
Do understand that
Ask you to hold
Not ruling today
In all likelihood, will be issuing some sort of status hearing with regard to the other motions and issues
Don't have a list with me
Have general sense that in this case, the priorities go: license/job, plane, and then conviction
Missing something in terms of big picture or key points, bring that to my attention in due course
I will issue a calendaring order for status hearing to prioritize issues and to move forward in a logical fashion
Think still a stayed motion to dismiss, not overlooking
Not certain of the best time in court's calendar
Half hour status hearing
Some of the motions may have fallen by the wayside for lack of action
11:11:00 AM Or simply the passage of time

	Focus now is on getting a decision out on this motion, guide license
11:11:36 AM	OSPA There will be a couple weeks in July that I won't be in the office 7/11 and 7/18, won't be in the office Just to give a head's up for calendaring purposes Court Typically JA would contact both sides and try to get a mutually convenient time
11:12:34 AM	Off record

In the Superior Court at Kenai Alaska

Media No:	KN1	**Judge:**	C. Bauman
Date:	Wednesday, June 15, 2011	**Clerk:**	K. Gdula
Case No:	3KN-10-1295CI		
Case Title:	David Haeg Vs.		State of Alaska
Type of Proceeding:	Status		
Counsel Present:			
Plaintiff:	Public Defender – David Seid (telephonic) Public Defender – Whitney Glover (telephonic)		
Defendant:	OSPA – Andrew Peterson (telephonic)		

Court Orders: Public Defender's Agency is released from representing Haeg
Haeg will now be representing self
Argument on Motion Re: Master's Guide License: 6/16/11 @ 10am - CJB

Summary of Proceedings:

4:09:04 PM

On record
Court id's

Public Defender – Glover
As far as hybrid representation, want to stress that Public Defender agency does not do that as a policy
Object to that type of representation here
I think Seid might want to add something, not sure

Public Defender – Seid
I am going to object to hybrid form of representation
Its against agency policy
Also not authorized by statute
Can file something or argue more if the court wants
All these cases are going to come my way, think Glover had asked for 3 weeks to respond
All I can say is that I will do my best
I don't have the file, have seen the most recent pleadings

4:11:34 PM

OSPA
I represent the state in PCR cases only in which I have tried, essentially
I have a full trial calendar, a couple appeals and this PCR with Haeg
I only handle a couple a year
I've spoken with our appellate division
My understanding is that there is quite a back log
I can't imagine having 56 PCRs at the same time
I suspect I could see about getting someone to appear on the line if you want to discuss that further
I would just like some clarification
On Monday you stated that Haeg was able to contact me and communicate with me
Both are objecting to the hybrid counsel and I am uncomfortable in communicating with Haeg
But he is filing pleadings on his own behalf

Public Defender claims they are the representing agency
Maybe this should be clarified before we proceed
4:13:45 PM I am a little unsure and uncomfortable on how to proceed

Court
Appreciate concerns
Would opt to represent self?

Haeg
Correct

Court
Hearing from Glover and Seid that as a matter of policy the Public Defender's office will not go with hybrid representation

Public Defender – Seid
Would also submit as a matter of law, that is correct
If you want me to argue further, I will
Trying to summarize
There are 2 constitutional rights at play
Constitutional right to counsel
Constitutional right to self-representation
No right to hybrid representation
Just not a constitutional right
As a matter of law, under enabling statute, does not authorize hybrid representation or stand by counsel
Must be clearly authorized by law
Persons eligible for representation under Public Defender statute
Constitutional right to counsel supports this as well, choice of representation or self-representation
Not a right to hybrid or advisory counsel
It is a choice of the client, to be represented with full representation of the agency
4:18:06 PM Limited resources and supposed to act like private lawyer
Don't have absolute right to choose counsel
Or if not satisfied, no right to new appointment
Can represent self
I've read the pleadings, whether or not I agree, he certainly satisfied Indiana v Edwards for a pro se Defendant
Hybrid exceeds the mandates
Also policy arguments, but court orders are court orders
What is it that the court wants me to address?

Court
Haeg's position, Public Defender is ordered to provide hybrid representation in McCracken

Public Defender – Seid
There have been cases
Court has not specifically said no hybrid representation
Should only allow hybrid when counsel and Defendant can coherently work together
1988 Alaska court of appeals case

Court
Provide meaningful legal service?

Public Defender – Seid
Would have to speak to Glover

4:22:21 PM Public Defender – Glover
When talked to him, said if he wanted us to represent him, we would but would be time before we would get to it

Haeg
Glover is correct
She did say at times she could assist fully
I said only wanted her help
She said only after she reviewed the case would she know if that could happen
She said that review was years away from now
I said that wasn't acceptable to me
Talked to Joe Montague
Have a right to do depositions before hearings
In depositions, much of this would be ironed out without your involvement
There may be concessions by the state that things went wrong
Costs a lot of money to submpoena people
I don't know how to do depositions
Montague said Kenai office would be happy to have an attorney help me depose people
4:25:21 PM Would ask the outstanding motions to be ruled on and then start a big hearing in front of your honor
Cold turkey without depositions
I do know I have the right to do it
I do have the pertinent quote from McCracken, can show it to you
Reads from case
Basically the attorneys don't want me running off half-cocked
There was a concern by somebody, if I am leading the charge and things go haywire, I can file ineffective assistance
If that is the case, I will waive my right to that
I am not that interested in the representation part of it as the deposition and using the resources in addition to counsel
Does that make any sense whatsoever?

Court
It does
Am familiar with McCracken
One of the most dangerous offenders
No one wanted to let him out of Department of Corrections
You filed a lot of pleadings
4:29:51 PM Assuming Seid and Glover are not prepared to make any arguments with regard to motion to do with Master Guide License

Public Defender – Seid
Not familiar
Just looked at McCracken case
Don't know if you want me to respond
Right now he is our client
I feel uncomfortable
What was cited to the court is from the summary of the case
McCracken is a case where he did not want counsel but the court basically said there needs to be

in some respects
Issue was whether he could represent himself or whether it was ok to give him an advisory counsel
Would just say that later cases more fleshed that out
4:32:29 PM What Haeg is asking for, he can ask court to provide fees
That is not an authorized representation of us
Decisions on who to depose, when to depose, who to subpoena
Those are decisions that counsel makes
Certain absolute rights Haeg would have, but we would make those decisions
Not within that right to have counsel

4:34:04 PM Public Defender – Glover
Would like a ruling in this hearing if we are going to represent Haeg or if he will represent himself
Ask that we not be in a position where he is making arguments on his own behalf until this has been determined
If you want us to represent him fully, then renew my request to be given until middle of July to respond
Would give chance to review and respond on his behalf

Court
Coming back to Haeg
Understood your comments
Montague is in charge of local office
Glover was assigned
Seid is getting the baton with regard to your case and others
Can give additional time to see if you can come to a landing
This is not a situation where they will be declaring a conflict of interest
They have an overworked schedule and don't have the time to get on your case in the fashion you would have
Want additional time or come to a landing now?
Hybrid counsel is not going to be available

4:36:50 PM Haeg
I would like to move forward on my own without any help
Pretty apparent Glover couldn't handle it
I will represent myself from here on out

Court
Certainly have a right to do so
Prepared to honor that right
But once you exercise that right, the door is closed

Haeg
I understand
I do know that I found a case where someone representing themselves was allowed to have a friend assist
This case is very complicated, a lot of issues intertwined
I have a lot of people who have put in an enormous amount of time and effort
If I could possibly have someone up here to help move along, I would appreciate that

Court
Like legal assistant? Marking exhibits? Taking notes and generally support you?
As opposed to speaking on your behalf

Haeg
Not speaking on my behalf but may remind me of things I have forgotten

4:39:17 PM OSPA
No concern

Court
Will ask Haeg and Peterson to figure out time for argument on the Master's Guide issue
Have time Friday or tomorrow morning

OSPA
Have trial call at 8:30 and then meeting at 9am
Friday would not work for me
Tomorrow is best at 9am

Clerk
10am is available

OSPA
That is fine

Haeg
That is fine

Court
Last chance, Mr. Haeg, I will excuse the Public Defender's office

Haeg
No problem on that
I am curious about the comment on monetarily doing something
Do you know what they were talking about?
Appeared to be a way to maybe recoup my money from the court?

Public Defender - Seid
4:41:51 PM It is my understanding that he can make application to the court to issue subpoenas and help with those things
Allowing indigent people
Suggestion to Haeg, I think there are provisions in the administrative rule
That is where I would start if I were him

Public Defender – Glover
First thought is Rule 12

Public Defender – Seid
Agree

Court
Tomorrow at 10am
Public Defender is excused from representation

4:43:05 PM Off record

In the Superior Court at Kenai Alaska

Media No:	KN1	**Judge:**	C. Bauman
Date:	Monday, June 13, 2011	**Clerk:**	K. Gdula
Case No:	3KN-10-1295CI		
Case Title:	David Haeg	Vs.	State of Alaska
Type of Proceeding:	Status		
Counsel Present:			
Plaintiff:	Public Defender - Whitney Glover (telephonic)		
Defendant:	OSPA – Andrew Peterson (telephonic)		

Court Orders: Status hearing: 6/15/11 @ 4pm
Court orders title transfer of forfeit plane to be put on hold, pending motion
Haeg and OSPA may communicate directly

Summary of Proceedings: Public Defender David Seid to be present telephonically for next hearing

4:03:58 PM On record
Court id's

Public Defender
I can tell you that I received your order requesting counsel respond to something Haeg filed in January
Another attorney will be taking this case over for me, I am resigning
Request court grant us until July 14th for him to respond
New attorney is David Seid
That would give him about 3 weeks to respond
His number is 465-3909
I have talked to Haeg about this and gave him his phone number I believe
I don't think I have given him address and fax, happy to do that

Court
Emergency motion filed on June 10th
Also the state filed something the same day, opposition to return to guiding and master guide license
Preventing the state from disposing of the property disputed in this case until it is included

4:07:20 PM Public Defender
Have not had time to speak about that and have not received the State's oppositions either

Court
According to this was only sent to Haeg

OSPA
I don't think we knew who was representing him
Oversight on our part
I will copy the Public Defender today, will get it out via email or hard copy, either way
I've already sent an email to Haeg, that is a bit confusing
Normally when counsel is involved we don't talk to a Defendant

He contacted me directly last week and was going to file the motion himself
He asked what my position was and I told him I wouldn't oppose request for expedited consideration
4:09:13 PM 5 working days to file an opposition
No problem with him seeking expedited consideration however we will oppose the motion
In 2004, the airplane was forfeit as to all owners
That is the state's position
We have held on to it but we intend to transfer title at this time, the appeal in the criminal matter is over
The only way a plane can be disposed of by the state is if a title has been transferred to the state
Have been holding this plane since 2004
At this point, state is going to ask FAA to transfer title to the state
What the state will do with it, I don't know
Do intend to ask that the title be transferred
I have no idea how long it would take the FAA to transfer the title
Suspect the individual who would apply for the transfer is on leave for most of the month
If filed in July, think would be before the end of July
Don't know the timing
I believe that is correct
When the trial court signed recent order, plane was forfeit as to all owners
I forwarded that to the Troopers and that person is on leave

Court
Order that the state put the title transfer on hold until I have ruled substantively on the pending motion
Don't mean to suggest that I will grant the motion in the end but I want to clearly have the ability to act on it without having things already transpired

OSPA
I understand
I'll send an email to the state and make sure that is clear

4:12:55 PM Court
Just an oral order at this point
If you need an order, happy to do one
Basically am swamped with other work, in midst of a long civil trial in a wrongful death case
Any problem with requested extension by the Public Defender to have until July 13th?

Haeg
I do have a problem
I filed, its been nearly 7 years since I've been able to work my business
I filed that motion in January
5 year guide license suspension was up nearly a year ago
Although it doesn't affect anyone except me and my family, it hurts like not much else can
You gave Public Defender's 20 days to file
Should be fairly easy for them to put their 2 cents in
When I came here and asked for assistance from Public Defender, I thought I was clear that I was asking for co-counsel so that I could keep things moving
It appears that is not the case
I have a huge concern
4:15:06 PM After what happened with my first 3 attorneys, I refuse to have someone represent me
Just a trust issue on my end
Turns into a timing issue too

In my discussions with Glover, she flat told me there is no way she could review my case inside of 6 months
She said it might be 6 years before she reviews it
4:15:50 PM That ain't good enough
The rules say within 60 days
We have had enough
I can't wait and my family can't wait
If I can't have the help of a Public Defender on my terms, help with deposing of witnesses, I request that I represent myself again
If they can't follow the rules to help me, we can't have them help us

Court
The problem with what you just said, it comes to conditions
These are decisions you have to make and come to a landing
Either terminate your attorney and represent yourself or you don't

Haeg
I thought it may come to that
I found the case law that says you can have both or there is a case that says that you can, in some cases, your rights may be best indicated by allowing a Defendant to represent himself with the assistance of a Public Defender
I thought I pointed that out
That's what I want just so I can keep things moving
Don't want to get hijacked by an attorney
I don't mean to paint all attorneys as bad
McCracken v State, 1974
Just a short thing
Reads from document
I know what I am asking is not the usual, fully understand
4:19:24 PM I think this may be an unusual case, I believe it is
If I can't have that, thought it was pretty clear at the representation hearing
Only would accept counsel if I could remain in control, my motion made that clear
If I can't have that counsel, I want to represent myself again

Court
Will go back and review where we were
You made it clear that you were hopeful to have a hybrid counsel situation
You did qualify for counsel at public expense
That was over objection that OSPA expressed
I did appoint Public Defender
I expected you and whoever assigned would have a discussion to see if the hybrid setting could be worked out
I would have expected that if that were something the Public Defender's would not engage in, I would hear about that
Public Defender could have declared conflict and Office of Public Advocacy might be willing to serve

Public Defender
Typically the Public Defender never agrees to that type of an arrangement
As far as that creating a conflict, doesn't create a conflict of interest
That is the typical position the Public Defender agency takes, don't normally agree to hybrid situations
I can't agree at this point to that type of arrangement with Haeg

4:23:04 PM He would like things to happen very quickly
Haeg misheard me or there was a miscommunication about the amount of time it would take
His case will probably be addressed within 18 months
4:23:31 PM I have been very careful with him, haven't had an opportunity to review his case

Court
60 days to review?

Public Defender
That is correct
There is a tremendous backlog in the PCRs now
There is a very large backlog and he is my newest case
I just received an actual file in my office 2 weeks ago
Very new to my caseload

Court
Hard time understanding why it would take so long to review

Public Defender
I have 53 pending PCRs
Some resolve quickly and some have 10 boxes of material to be reviewed

Court inquires of Public Defender

Public Defender
I haven't reviewed his case so I don't know a lot about the time it would take to address it
It's the newest case and we take them in order
Its the last in the case load
We have discussed this
It would be around 18 months before can get something filed
July 13th was to respond to your order requesting we respond to motion
That is separate from filing an amended application
4:27:30 PM You requested that we respond to that motion

Court
I did but I also appointed the Public Defender on April 20th
Not understanding
Hear that you have a heavy caseload but you have statutory responsibilities
Not understanding why you are not meeting those

Public Defender
I have explained my situation as best I can
Not sure what else I can say
Huge backlog and there is only one of me
Newest case that I have

Clerk attempts to reach Public Defender Seid – voicemail

Court
4:32:05 PM Will squeeze this in on Wednesday afternoon
Very short hearing, argument with regard to pending motion for the Master guide license
Expect to hear from Mr. Seid to see if he will be able to work with Haeg, hybrid capacity or otherwise, policy wise and as a practical matter

OSPA
Call on the conference line again?

Court
Yes
Same procedure at 4pm
Glover to let Seid know

4:32:55 PM Not expecting him to be able to make the argument, will permit Haeg to make the argument as to the Master's Guide license
Not a rehash of what is written in the motion
Very succinct
Hit the nail on the head opportunity for both sides
If, as a practical matter or policy wise, the Public Defender cannot serve, need to hear of consequences of remaining in the case

Public Defender
Will certainly let him know

OSPA
one more question
I would like some clarification
Ethical allowance when it comes to communicating with Haeg
It is my position that I can communicate with him directly since it is hybrid

Corut
Is unusual
Clear that Haeg wants to move forward with things
He can contact you directly and not unethical for you to contact him
With pleadings, in limbo, serve both Haeg and Seid

OSPA
My assistant will serve Glover and Seid with pleading as soon as hearing is over

Court
If Seid has a different view on the ethics can hear on Wednesday

Public Defender
It is my understanding that we do not have hybrid situation at this time
I do object to OSPA having contact with him until this is resolved

Court
Understand but expected something from your office before now
All I am getting is extension requests
We are in limbo land and I have ruled
I will hear from Seid on Wednesday at 4pm

4:36:16 PM Off record

In the Superior Court at Kenai Alaska

Media No: KN1 **Judge:** C. Bauman

Date: Tuesday, February 15, 2011 **Clerk:** K. Gdula

Case No: 3KN-10-1295CI

Case Title: In the Matter of: David S. Haeg vs State of Alaska

Type of Proceeding: Representation

Counsel Present:

Petitioner: Pro se
Defendant: OSPA - Andrew Peterson (telephonic)

Court Orders: Petitioner to file pleading by close of business 2/22/11 in regards to Mr. Dolifka appearing as hybrid counsel

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Summary of Proceedings:

3:06:34 PM

On record
Court Id's

Tom Stepanosky
I'm here to keep records for Dave
Like a polish Paralegal

Court
Here to see about representation
There is a fair volume of materials
Trying to approach this in a somewhat logical fashion
There was a hearing scheduled like this in the post conviction case and it never happened
Interesting in being represented by an attorney

3:08:24 PM

Petitioner
I want the assistance of an attorney but do not want to be represented by one because of what has happened in the past
Other Judges have said that I appear to be capable
I'm a professional
I'm a master guide
I would like to have a professional help
I am in a unique situation maybe that hasn't occurred
I would like to have help, don't want the reigns taken from me
There were points in time where I wanted something done and they said they would do whatever they wanted to do
Everything I've worked for since I was 18 was on the line
This is 7 years later
Not a cut and dried answer but this is where I'm at
Alaska Case Law says a Petitioner for Post Conviction Relief has the right to represent himself as long as the waiver is knowing and voluntary
It's knowing but this is anything but voluntary
That's because of what happened with the last 3 attorneys in a row
Dale Dolifka was my business attorney, has been for my whole life

He says by no means should I hire another attorney because of whats happened
3:11:12 PM I've had clients of mine trying to find one, couldn't find out
Dolifka says by no means should I represent self
I went with Marc Osterman and tape recorded every conversation I ever had with him

Court
Aware of that
Have read some but not all of your attachments
Included some transcripts of your conversations
I know Mr. Osterman from being here in court

Petitioner
My very real concern, my wife's and a lot of people that are here now, my business attorney said my third attorney may represent my first attorney rather than me because of what happened
Osterman said he was going to reverse conviction and sue those attorneys to saying there was nothing that could be done
He handed me a bill
He did that while he was under oath
What we feared had come to pass
Tried to hire attorney that maybe didn't have allegiance to other attorneys up here
But after 7 years, I may not have went to law school but I've gotten an education that allows me to look at the law and the facts and see that something horribly wrong has happened here
Willing to spend 7 years of my life and my family's life
I don't want to do it myself because I'm a flight instructor, bush pilot, master game guide.
3:14:45 PM I know the value of having someone who has went to school and has the knowledge and experience but because of the past I am scared to death
Maybe can have some help but not be taken out of the equation
Want co-counsel or hybrid counsel
Someone that could help me in a courtroom, this is where I need the help most
I am capable of writing briefs
I have never objected or presented evidence
This is it
Have run appeal clear up to the US Supreme Court
I don't want to blow my chance

Court
With regard to hybrid counsel, can you afford it on your own behalf?

Petitioner
We are barely getting by at this point
We may be able to
At one point we put together a financial statement and sent it in, not one ever ruled on that
It should be in the record
If you could look at that and see if you could appoint me counsel
It almost seems like it would be better to get someone to help me if they were appointed

3:17:23 PM Court
Want to interrupt for a moment
I need to look at a particular statute
I think I saw the document you are referring to with regard to your finances
I'll see if I can zero in on that
3:20:03 PM Looks like your motion for a REPH was granted but never happened
Filed motion with regard to Peter Maassen?

Petitioner
He was going to represent Murphy

3:23:35 PM Court
I see a document from 8/25 and then things jump to a Judicial Reassignment in October 29
Cannot find your document
Can see if you qualify for a Public Defender appointment
They may be reluctant to cede any portion of their normal purview as attorneys
Assuming that you qualify financially, reflect on that for a bit
Hybrid counsel has different meanings
As I understand it, you want the benefit of the advice of counsel
Problem with adiministrative Rule 12 appointment, compensation is limited to $75 per hour
They basically are appointed by court and zeal may be tempered by the hourly rate

3:29:19 PM Petitioner
Are you limited to what attorney you could appoint as to Rule 12?

Court
Interesting question that I am contemplating in another matter

Petitioner
I imposed on my friendship with Dolifka but if he were appointed for me

Court
The concept that has evolved relatively recently, unbundled services
That means in family law cases the concern by some attorneys is that once you enter an appearance, will be held to the case even if the client is no longer paying you
Can enter an appearance for a limited purpose in the case and then be excused
Its an evolving concept
Doesn't apply to post conviction relief matters
Inquires if Peterson would have problem appointing Dolifka in a hybrid situation

Peterson
There are couple things that come to mind
Dolifka has been a witness in another hearing already
Interesting issue with having him be counsel
When it comes to evaluating a Petition to Revoke, appointed counsel has time to evaluate if there is a valid issue
Don't know if that will be imposed for a hybrid issue
I'm trying to grab the rule right now
I'll have to provide that to the court at another time

3:33:58 PM Court
Does that apply in a Rule 12 administrative appointment setting?
Looking at Title 12 section 72, statutory group of laws by the legislature with regard to Post Conviction Relief
Or may be in criminal rule
In any event, if inclined to go with counsel, I'll ask you to let Dolifka know that Court is poised to appoint him under Rule 12 and he needs to consider whether the fact that he was a witness presents a conflict of interest problem
That will be his judgment and not the courts
If he's comfortable taking on a hybrid role, then I certainly don't have any problem appointing him

3:36:02 PM

Peterson
One concern, when I look at Administrative Rule 12
Court must first appoint Public Defender agency
This is a new area of me
Don't know if this is something you can waive
Criminal Rule says to make sure court orders counsel within 60 days

Court
Reads from Rule
No determination here that Mr. Haeg is indeed indigent
Don't know that appointment of a hybrid counsel would necessarily be one that would implicate 35.1.E

Peterson
Court will appoint and then state will pay for Dolifka without a finding of indigency?

Court
Short answer is yes

Peterson
I'm confused
I would like to see counsel in this case
How is court going to appoint counsel without seeing if he qualifies?

Court
Court may need to review the scope of its authority under administrative Rule 12
At the present time, I want you to follow through with letting Dolifka know about Rule 12
Would like to give you a period of time, 5 business days to contact Dolifka and give me a brief written report

3:40:10 PM

Petitioner
I understand
Can I ask for a recording of this hearing today?
Can that happen or do I have to wait?

Court
The clerk's office will have the details
Think it's fairly quick

Petitioner
I think he will be hesitant
He has gone a long way to help me with the situation
If indeed I can't find counsel to help me, court satisfies itself that this was a waiver to right to counsel?
Don't take this the wrong way
The first time I represented myself, my judge sent me to API for a psych evaluation
I was one scared puppy in that facility
After 2 hours of talking to the evaluator, she said without a doubt, your attorneys turned on you
She's not an attorney but I'm just saying

3:43:38 PM

She did find me competent to represent self
But that was another court at another time
Now I know, the rules mean nothing unless you exercise them

I can only ask for the rules to be followed
3:44:10 PM This says the court must satisfy itself, knowing, intelligent, and voluntary waiver
I stand on the fact that it is anything but voluntary

Court
I hear what you're saying but you do have to go forward in some fashion, in due course, in this case
Cannot put the court in a catch 22 situation

Petitioner
I understand but it goes back to what the whole PCR is about
I didn't write this
I feel I'm reading it the correct way
Cole was private counsel
Robinson also private
As was Marc Osterman
No matter what attorney sits next to me know, I'm the one who's going to be in control
I would like to approach Dolifka first
3:46:49 PM If we get out of here in time, I'll do that today and see what can happen with him
Having an attorney we can trust and has our interests at heart, is far more important that having an attorney is knowledgeable
A very great attorney is nothing if his interests aren't aligned with yours

Court
Within 5 business days, by close of business 2/22/11 I want to receive something from you, Mr. Haeg
Copy it to Peterson
Something with regard to Mr. Dolifka's willingness or issues
If it turns out I need to make a determination as to your indingency, not that of your wife, it bears on you, may need to do that even if Dolifka agrees to serve
I'll be reviewing if that is precedent to an appointment
If Dolifka does not want to serve, will leave option open to you to appoint the Public Defender's
Lets assume that that attorney says your application is not going to fly and it has no merit, hypothetically
It's either open to you to discharge the Public Defender's office and proceed on your own
If you can find private counsel that you have comfort with or hybrid representation you can pull them in and they can enter some sort of special appearance and we will merrily go forward in the case

Petitioner
You would allow me to discharge the Public Defender's and move forward on my own?

Court
They don't have the authority to dismiss PCR, just have opinion to voice

Petitioner
Would they be hybrid?

3:51:01 PM Court
I believe their policy is to represent the client
Believe they are resistant to hybrid representation
If appointed, you can explore that with them
You can always discharge them

	Have constitutional right to represent self
3:51:35 PM	Petitioner I had other constitutional rights that weren't exercised I'm pretty gun shy over what is going on
	Court Not going to be moving forward on any other motions until counsel situation has clarified itself
	Peterson No concerns
3:52:16 PM	Off record

In the Superior Court at Anchorage Alaska

Media No: 604 **Judge:** S. Joannides

Date: Wednesday, August 25, 2010 **Clerk:** M. Malalang

Case No: 3HO-10-64CI

Case Title: In The Matter of: David S Haeg and State of Alaska

Type of Proceeding: Evidentiary Hearing

RE: Motion to Disqualify Judge / Representation Hearing

Counsel Present:

Plaintiff: Pro-se
Defendant: Alfred Peterson

Court Orders:

- **Did issue order on Motion to disqualify, Granted**
- **Case to be reassigned to another judge**
- **Mr. Haeg to file his position for possible hybrid counsel by September 2, 2010, if nothing filed, will assume Mr. Haeg is proceeding without counsel**
- **Motion to quash subpoena filed by Mr. Cole in court, no action**

Summary of Proceedings:

9:30:45 AM On record
Court in session / identifies case and parties

COURT:
-issue of representation today
-did issue order on Motion to disqualify, Granted
-issue the confidential order, based on confidential issue commission can address it
-will have the case reassigned to another judge
-my role is only to decide the issue of representation
-issue of Mr. Haeg is seeking through court appointed counsel or his own
-do remember there is something going on in the criminal case, thought there was complaint to forfeiture, PCR judge will address that as soon as possible

9:33:58 AM -do hope to have the other order out by today if not tomorrow

9:34:16 AM Mr. Haeg
-don't think we qualify for court appointed counsel
-we went through it once before, we still have assets
-McKracken vs. State 1974
-my issue, my belief that my representing myself is voluntary
-I used to be a master guide, have been a commercial pilot since I was 18
-they risk dying
-I want this court to satisfy it's self, that I have been black balled

COURT:
-have your finances changed since the last time you applied

Mr. Haeg
-do have friends around the world

-I want my shot at presenting to this court, my side if this is a voluntary professional person
-I have people here that I would like to
-that I have been forced to represent myself

9:38:21 AM The court may satisfy itself that I for go counsel – intelligent decision

9:38:44 AM
- Mr. Brent Cole enters courtroom

Mr. Haeg
-I would like to question him

- Mr. Brent Cole hands the clerk paperwork

9:39:09 AM **COURT**:
-Mr. Cole, you cannot interrupt Mr. Haeg
-issue before me today, know you have a lot of concerns of what happened
-issues for the PCR judge
-my role is very limited, for judge Murphy to recuse herself
-on grounds of impropriety
-adequately represented, they are in a position for confidentiality
-can you afford to hire a layer, do you qualify for court appointed lawyer
-you do understand the value of a lawyer, that it would be beneficial

9:41:37 AM
- we can call you, Mr. Cole
- Mr. Cole leaves courtroom

9:41:49 AM -issue today is very narrow
-just if you qualify for court appointed counsel
-you should file the paperwork
-discretion of court appointed counsel
-if you don't quaiify, then I maybe in a position to appoint you an attorney
-people should have lawyers
-do you want me to see the paperwork to see if you qualify

9:43:25 AM Mr. Haeg
-disagree with you that I may get court appointed counsel

9:43:46 AM 518P2nd85 1974

9:44:33 AM COURT:
-will take a look at this
-can go off record

9:44:40 AM Off record

9:50:36 AM On record

COURT:
-have read McCracken
-McCracken is incarcerated and you are not
-can appoint under Rule 12
-for purposes of presentation, I don't have the power to appoint an attorney
-will hear from the state and hear from you again

9:52:08 AM Peterson

-would benefit if Mr. Haeg had counsel
-do believe he has assets to hire an attorney
-he has done a very effective job
-his briefing was adequate
-don't know of another avenue to make the process more efficient
-can't get around his assets

9:53:33 AM **COURT**:
-as soon as I issue my order, then to Judge Gleason
-then will be assigned another Judge

9:54:20 AM Peterson
-confidentiality order will be sent to?

COURT:
-commission, SOA, Mr. Haeg, Judge Murphy
-results of the judicial conduct meeting – not a secret
-so the understand Mr. Haeg's concern
-will be up to them to decide
-Judge Murphy will not be presiding over the case
-I didn't go that far to decide any wrong doing
-importance of the public's confident, appearance of impropriety, did grant the request
9:56:34 AM -sometimes people go to remote places, sometimes law enforcement are the only people to help them there
-judicial conduct committee, did believe there was an impropriety
-did not find collusion, procedurally assigned to the trial judge
-understand that you have witnesses here to speak that you have been forced to represent yourself, not here to decide that issue
-will look at McCracken
-any other cases to look at?

9:59:24 AM Mr. Haeg
Newer case, Hampton vs. Huston, 1982
653P2D1058
- pause

10:01:28 AM **COURT**:
-again, indigent individuals, can't find you indigent
-something that you believe that people are not indigent

10:02:04 AM Mr. Haeg
-Alaska is a young state
-found an amount that law has not been
COURT:
-willing to look at other States
Mr. Haeg
-not that I want you to appoint counsel for me, even though I can hire my own
-mostly for Alaska's own good, there is a problem here, I spent 7 years of my life, we lived in hell
-their dad who put them in hell, must think something is wrong
-asking you to let me put on evidence – so they can
-this forum is the only one – been to them all
-it isn't a matter of my questioning my attorney, would like to do it in two witnesses
10:04:47 AM -Lithka, my business attorney and my wife

-there is a problem in this state, problem with the legislature
-problem people taking money, it's hidden, it's damaging – not understand why it is damaging
-hire an attorney yet, do something bad to your family
-my interpretation – I don't have Westlaw, I just get on the internet

10:06:32 AM COURT:
-can go on the State of Alaska website
-I sometimes pull cases from Google than Westlaw, it's sometime faster

10:07:13 AM Mr. Haeg
-I'm not an attorney
-people just dismiss me because I have not been to law school, it's a valuable thing
-my daughter has said, we are living in hell
-you have eluded to the fact that they rode together, that has been muted, in rural locations
-my bigger concern that the fact when I filed a complaint, I have it on tape, the official investigator – Marla Gibbons
-you look like you agreed that the rides did take place before I was sentenced
-it's a felony, a conspiracy, proven that he committed perjury

10:10:09 AM COURT:
-I did not reach that issue of the judicial conduct
-I did point out all the issues that you raised, am sending along with it all the affidavits to the judicial conduct

Mr. Haeg
-they are crying for everyone to do it
-it has been wiped away
-that lie, no one will do a thing about it
-it gets confidential, we lived the nightmare so no on has to do that
-this isn't over, I've just begun

10:12:12 AM COURT:
-don't want you to misinterpret what I have in the order
-not just that investigator just looks at my order
-understand that you are frustrated
-know you want justice and know that you want it now
-you were successful for Judge Murphy sitting on the case
-it is going to the commission for them to look at them
-cohersion for you to do a limited record
-will give you a record to do certain findings

10:14:24 AM Mr. Haeg
-calls Mr. Dolifka

10:14:42 AM Witness Sworn/Affirmed:
Dale Dolifka

10:15:43 AM Mr. Haeg
-do you understand I do this with a lot of misgivings

10:16:03 AM COURT inquires
(am a lawyer in Alaska
(35 years

10:16:17 AM Direct Examination by Mr. Haeg
(was a teamster lawyer
(your business attorney, not sure
(could have been 20 years
(you were very emotional, I knew your world was about to change
(I was not seasoned to do your
(thought you needed a criminal lawyer
(I referred you to Jim McCummus
(you did not hire Jim McCummus
(thought you were calling me as a friend
10:18:39 AM (you did hire an attorney he referred you to
(I did talk with you many times, just trying to be a friend
(I was worried about you
(you are very emotional, knew how it was impacting your family
(we you lost your airplane
(your life had changed, didn't know how I was going to protect you that way
(yeah, you hired Brent Cole
(I've been very ill for 2 years, my memory is not the same
(think you had fired Mr. Cole
(then referred you to Mr. Robinson in Soldotna
(I noticed that letter
(do remember the hackles on my neck stand up, that wasn't the only time
10:22:49 AM (you did hire Chuck Robinson
(my recollection – something happened in your case, things crashed with Mr. Robinson
(that's when I became very confused in your case
(even contacting Judge Hansen
(it had made no sense of what happened
(when it didn't work, I was quite disturbed when I had an attorney that I had that much faith in
(I'm not a criminal attorney
(don't understand how you had due process
(I am just wore out trying to figure it out, I can't
(one of the reasons I may have said those things, I was cynical of our court system in Kenai
(you are not the only person from the community
(5-6 year period, tell me of things that went on in our system up there
(we sent them to the governor, your case is one of many
(you called me many times
(I tried to befriend you, my doctor said that I got to stop
(my friends watched it implode
(it is a different community today than it was 2-3 years ago
(Judge Hansen would validate everything I have said to you
10:29:12 AM (I would have kept notes, think a lawyer from Minnesota
(he was very disparaging, he said we had a Kangaroo Court
(have Troopers conspiring with Judges – guess it's a concern
(incompetency, read where Judge Card screamed at the District Attorneys
(cynicism of how are we going to get our community back, don't know how that happened
(I understand the importance of having an attorney
(you put a lot of lawyers to shame
(you are above some lawyers
(I can't believe I told you to represent yourself, surprising how you have represented yourself
(I told you to go get an attorney
(you hired an attorney, not one that I recommended
(I read all the pleadings, more power to the courts

(the attorney – Mark Osterman
(if you made the tape recordings that I made to you
(that is primarily why I sought counsel from Judge Hansen
(other cases that were disturbing
(Judge Hansen took an interest in your case, it was troubling to me, it wasn't the only one
(disturbs ethics of any kind

10:36:55 AM Objection, speculation, would like him to ask the question

COURT: just the answer is evidence

10:37:34 AM (do understand that you recorded our conversations

COURT:
-before we admit them, tell me what you hope to show

Mr. Haeg
-am not voluntarily giving up my right to counsel
-good old boys club, for the greater good of the State, I wish to stand up and do my part
-actual conversation with a 37 year old attorney

10:39:20 AM **COURT**:
-that you were represented, hired Osterman, unwilling to proceed
-tried to hire someone from the lower 48
-member of bar here said that you have a lot of

Mr. Haeg
-exactly, he said needed 12K
-he hands me a brief, that is no good, 12k is gone, 36K is for point on appeal
-can't effect the lives and lively hood, he said it was a prima facia of evidence

10:41:34 AM COURT:
-accept that as true, only limited amount of time
-attempted to find representation, but unwilling to take your cause because of the impact of other lawyers

Mr. Haeg
-they take and drive my ship and drive it into a ditch
-they sabotage me

COURT:
-allegation on conspiracy of amongst members of the bar on this issue, not going to be proven through this testimony
-concerns of Mr. Osterman, should go to the bar

Mr. Haeg
-I have gone everywhere
-these tape recordings will not go anywhere
-I am – not trying to do anything wrong
-I am forced to

COURT:
because you can't find one adequately

Mr. Haeg

-correct

10:45:27 AM Peterson
-seems like an odd process
-testimony is better saved for the PCR hearing

COURT:
-state usually doesn't attend representation hearings
-usually PCR, people incarcerated, that a defendant really understands what they are giving up
-he can afford to hire one, but he cannot find one
-will give you some time to make your record

Mr. Haeg
-thought it was going very well
-if Delifka thought it was so bizarre
-we have a constitution right, yet I cannot find

COURT:
-tape of Osterman's comments to you
-that he didn't want to take the case because of the livelihood of other attorneys

10:48:45 AM Mr. Haeg
-valid subpoena – some did not show up

10:49:19 AM Dale Dolifka
Direct Examination by Mr. Haeg continues

10:49:58 AM (I never understood on your plea agreement
(plea to lesser charges, tell everything you know, then charges increased
(I interpreted, how you could have found yourself in that position
(it was a poor case
(until you spoke, there were a lot of holes in that case
(told what you told and did not have a plea agreement
(get your charges increase, unfair to pull a sentence out
(could have been in the context of the little travels
(all the stuff that you filed for a new judge
(community was outraged
(she has been the only judicial investigator for 21 years
(that is what smells so bad
10:56:01 AM (once you poison something, how did this go on built on a lie on an affidavit

10:56:25 AM COURT:
-this kind of information is usually for PCR judge

10:56:52 AM Mr. Haeg
(if that tape is in 2006, I did say that
(I did say that, federal level
(as a southerner, I probably said that
(Engelton and I tried to get the newspaper
(Kenai/ Soldotna, we sit in this cauldron, that was the poison when it went to the court system
(I already paid a huge price -- as confidential and continues to do
(I doubt more than it already has
(am not telling you anything more because it will just get worse

(I have not talked to you in a long, long time
(if that was in that era down there
(I was at the point of cynisim
11:03:29 AM (am not as cynical as I was
(have had some faith restored to me by the court system
(it was tough time in our community for me
(my wife would sit there and listen, don't doubt I said those things
(if you don't put it in the context of when it was
(look at all the state legislators, that would have been a common statement
(I probably did say that
(I know of a judge, we had indicted senators, legislators
11:06:38 AM (don't' think you will get an attorney in Alaska, including what you did to me today, no one will retain you
(there are lawyers out of Alaska that you could hire
(would be perplexed if an Alaska lawyer would take your case, there needs to be a new judge
(needs to be infusion of new blood
(I have no idea about that

11:09:42 AM Mr. Haeg
-what I have done here today, I know he has feared it

11:10:05 AM **Cross Examination by** Mr. Peterson
(don't remember him doing that
(I delve led into the file for my information
(believe there was an admission to that effect of wolves
(I have helped so many people from confidentiality
(people don't trust me anymore
(what they said in my room, stayed there
(when it was drug out, don't' know if they thought my confidentiality was broke
(most of the time, thought I was his friend
(client management, lawyer 30 years

11:13:33 AM Witness excused

11:13:38 AM COURT:
-so common for people to record everything
-family law cases, even people recording the proceedings today
-understand why are family is here, is there reason for your daughters to be here

11:14:33 AM Mr. Haeg
-having them here is for me to do a good job

COURT:
-only concern, an expression of fear that there would be physical retribution to your home
-extremely unlikely for something like that to happen

Mr. Haeg
-they have been through it already, it is nothing new
-there was a time when it was incredible concern
-most of the time it was my wife's concern
- not anything that should be a concern to my kids

11:16:37 AM Witness Sworn/Affirmed:

Jackie Haeg

11:17:01 AM Peterson
-attorney client privilege
-spousal privilege, she runs the risk of that, PCR case, issue should be raised

11:17:38 AM COURT:
-if your wife testifies, issues related to find an attorney in the road blocks that you have
-at your PCR the state would take a position to question your wife
-not prepared to address that today, spousal privilege is so strong
-just explaining it to you know

Mr. Haeg
-she has already testified in another hearing
-it has already been waived – about the same issues
11:19:32 AM -it was over 4 years ago

COURT:
-August 24, 2006, from Tamara Russell, evaluation, competent to proceed for your own legal defense, you were found to be competent

Mr. Haeg
-it was just for the appeal
-PCR, they should satisfy themselves

COURT:
-I take no position on it today

11:21:03 AM **Jackie Haeg**
Witness Previously Sworn/Affirmed Resumes Stand:

Direct Examination by Mr. Haeg
(I was skeptical, felt attorneys were there to help us
(we went in another proceeding, knew it wasn't true, so what you were telling me was true
(it made me believe --- not for me to commit perjury, I knew it was false
(he had said that when this first happened, he told us he could file motions
(knew he wasn't telling me the truth
(when the plea agreement broke, that he notify the prosecutor's boss to see if there was something he could do
11:25:34 AM (we lost our business, savings. College funds
(mental issues on our family, our marriage, mortgage our house, we had to sell things
(a lot of credit, attorney fees
(was worried
(don't think most families would have gone through this
(this does need to be addressed so it doesn't happen to anyone else
(guide license taken ---

11:28:03 AM Peterson
-we have been doing this for 1 ½, thought this is a representation hearing

COURT:
-understand that you have suffered an emotional toll, that is a given
-based on your statement, do accept it as true

-accept that would be her testimony

11:30:22 AM Direct continues
(believe we have

11:31:02 AM COURT inquires
(recent we have not been trying to look for a lawyer
(last hired a lawyer, was Osterman
(many efforts
(I think probably around 20, not all in Alaska some of them in Washington, Minnesota, Oregon

11:32:29 AM Redirect Examination by Mr. Haeg
(two clients, did refer us
(what you did, it could have been, David

11:34:43 AM Mr. Haeg
-we went everywhere, we went to Widner, Murtaug
-I believe it scared all of them
-for retainer, 50K, he said he already sent it to Chuck Robinson
-the hackles are up on my neck, we have been to everyone
-he just said just keep selling stuff

11:36:29 AM Witness excused

11:36:33 AM COURT inquires Mr. Haeg
(3rd grade; then home schooled
(everything I learned from books
(got into flying and guiding because of where I lived

11:37:37 AM COURT:
-who ever home schooled you did a good job
-diagnosed with learning disabilities?

11:38:07 AM Mr. Haeg
-nope

COURT:
-looks like you understand the legal issues

Mr. Haeg
-that is fair

COURT:
-do you have the ability to obtained unbundled legal services?

Mr. Haeg
-I have –Mr, Dolifka, he would help me with the concepts
-sometimes you just need to step back, wrong and right
-some help even in Germany, as I write documents
-emergency documents, do well because we have a tremendous grass roots to run it by people
-they have a chance to

11:40:46 AM COURT:

-does sound like you have an amazing support

Mr. Haeg
-this is what showed up when I told people not to come
-people willing to show up from Idaho
-have someone here to
-thinking of all the support I have -- a system that I feel is broken

11:41:49 AM COURT:
-you do understand the benefits of legal counsel
-there have been attorneys who would zealously represent you

Mr. Haeg
-would like Mr. Dolifka to represent me

COURT:
-used to be a time when we could list attorneys, we are not allowed to do that any more
-it has taken a financial toll on us
-you can submit a confidential information on your finances
-not uncommon in PCR

11:45:28 AM Mr. Haeg
-there will be
-think some poor attorney in relinquishing the reins that I know, that I have the ability to do myself
-miss one filing deadline and the whole thing is over
-think you are one fine judge and you should be the chief justice
-it's the same thing with the attorneys that behind the scenes – do you know where you are going
-month later before my brief was due
-was I the only one talking to Mr. Osterman
-you could appoint to a number of attorneys, how would I get a good one

11:48:16 AM **COURT**:
-realist, I couldn't find there isn't an attorney out there to adequately represent you
-cannot find that you have made a showing that there isn't someone out there to raise these issues for you
-not trying to sell you the Public Defenders
-if you can't afford that lawyer, there are options
-sometimes lawyers and clients disagree on tactics
-there are circumstances, can have hybrid representation
-there to have an attorney there to assist you
-just want to make sure that you understand that there is more than one option

11:53:08 AM Mr. Haeg
-appreciate that, would jump at that chance
-how do I find that lawyer
-someone may damage the case then that puts me back years
-everyone in this state knows me now
-Dale Miller, everyone knows who I am, he is getting my stuff all the time

COURT:
-sometimes it is a good idea to listen to a lawyer's perspective, right or wrong
-we need to address the issue, would find that you understand what a lawyer can do for you
-can't find that you are not voluntarily waiving your right, you have this fear that you are not going

to get a good enough lawyer to represent you
-can tell you are really concerned
-think you still have the ability to get the choice to get a lawyer
-would you like me to review any information to see if you qualify for a court appointed lawyer
-want to talk to an attorney for hybrid representation hearing

11:59:01 AM Mr. Haeg
-would like not to make a decision right now
-would like to be able to write a response
-would like to talk to my support
-fear of getting an attorney, think I am good at righting briefs
-I have yet to learn on objects, when something is leading
-what I would gain from an attorney as if I got the wrong one

COURT:
-you can be primary counsel in a hybrid representation

Mr. Haeg
-I had to fight tooth an nail to get my tooth back
-hybrid, can I just get rid of them

COURT:
-if you are lead counsel, you are filing the pleadings
-there are parameters
-understand it is a big decision,
12:03:09 PM -that you understand hybrid counsel, importance of having a lawyer
-option of hybrid counsel through Public Defender or through another attorney
-I will give you 14 days or 7 days

12:04:08 PM Will request reassignment
-except representation issues
-all issues have been stay
-there were defendants who wanted hybrid counsel
-up to you if you want that option

Mr Haeg
-I personally don't want to go there
-but will talk to my support group

12:05:35 PM **COURT**:
-file something by September 2, 2010

12:06:03 PM Peterson
-if nothing filed, then, waived

12:06:29 PM COURT:
-will just assume that you are proceeding on your own if you don't file anything

Mr. Haeg
-pleasure to be in a courtroom like this than in the other that I have been in

COURT:
-will send out order

-no position, will send the judicial committee

Mr. Haeg
-that you just have to open any door
-it's the public who depends on an honest judicial system
-if they are the ones that are the problem
-although you are not the proper venue, there is a concern that is going, entities that there is something wrong here, seen by enough eyes
-it isn't like I didn't go to the proper people first

COURT:
-thank you

12:09:27 PM Off record

IN THE ~~DISTRICT~~/SUPERIOR COURT FOR THE STATE OF ALASKA

AT Anchorage

FILED IN OPEN COURT
8-25-10

David Haeg
Plaintiff

vs.

State of Alaska
Defendant

CASE NO. 3HO-10-64 CI

WITNESS LIST

PLAINTIFF'S WITNESSES

DATE	TAPE NO.	LOG NO.	WITNESS NAME
8-25-10	604	101442 11:13:33	Dale Dolifka
8-25-10		112103 113629	Jackie Haeg

DEFENDANT'S WITNESSES

DATE	TAPE NO.	LOG NO.	WITNESS NAME

In the Superior Court at Anchorage Alaska

Media No:	604	**Judge:**	S. Joannides
Date:	Friday, July 09, 2010	**Clerk:**	M. Malalang
Case No:	3HO-10-64CI		
Case Title:	In The Matter of: David S Haeg	Vs.	State of Alaska
Type of Proceeding:	Scheduling Conference		
Counsel Present:			
Plaintiff:	David Haeg/p, David Brummel/p		
Defendant:	Andrew Peterson-Office of Special Prosecutions and Appeals		

Court Orders:

- **Evidentiary Hearing RE: Motion to disqualify judge**
  August 25, 2010 @ 930am- 145pm, August 26, 2010 @ 9am-130pm

Mr. Haeg
P O Box 123, Soldotna, AK 99669
262-9249-home
398-6403-cell

Summary of Proceedings:

12:35:04 PM

On record
Court in session / Court identifies case and parties

COURT:
-scheduling hearing
-unless someone is an attorney, do you need him there for something

Brummel
-here for moral support

COURT:
-allow him there for moral support for today only
-did request all files, did receive the criminal file also
-reviewed the issues, understand the complaint
-motion to disqualify, whether it should be granted or denied, need to make sure I have all the information I need
-have the letters of the judicial conduct commission hearing, Exhibit 32, January 12 letter
-interviewed witnesses, do have the transcripts
-an appearance of impropriety
-have you seen any thing from

12:40:32 PM

Mr. Haeg
-what judge Murphy and Trooper givens said, have the tape recording of that
-Marla Greenstien said she called everyone on my list
-I contacted every witness and no one had contacted Ms. Greenstien
-they told her that the rides took place

12:42:14 PM **COURT**:
-just trying to find out what I need from the judicial conduct commission

Mr. Haeg
-I Telephonically gave testimony
-Greenstien said that the complaint was dismissed, there was an official opinion
-official opinions only issued when there are sanctions

- Haeg shows Peterson document
- Haeg hands document to court
- Pause, Court reads document

12:45:35 PM **COURT**:
-formal ethics opinions
> reads document
12:46:28 PM -commission did formally look into it, they did investigate in opinion #25
-opinion states that she wasn't sanction
-may request to review to see their records
12:48:11 PM -Issue request to see the judicial to see their records in camera
-post conviction relief cases are assigned to the trial judges
12:50:22 PM -you referenced a letter in your motion
-was there a letter that was missing from the file?

12:50:38 PM Haeg
-my concern is that I brought that letter from myself to I believe my attorney-Brent Cole
-he thought that I shouldn't have brought that letter
-Dale Lulifka, in Soldotna
-knew why you did what you did
-he told me to put it before the court
-he faxed it to Judge Murphy
-that letter kept an entrapment defense

12:53:23 PM COURT:
-was it faxed as a part of a motion?
-did you find the first page in the file?

12:54:29 PM Haeg
-first page was there, no letter
-signed by Brent Cole, signed by Brent Murphy
-I overruled a man to put it in the record
-I went through 2 different attorneys
-irrefutable defense
-the letter was a taken as an a defense
-state needed to prove that entrapment did not happen
-I sent in in over my attorney's objections
12:56:40 PM -criminal attorney and judge had dropped the ball
-signed into the court record, then it was removed
-that Trooper was giving rides to Judge Murphy
-I have a very clear tape joking that they were going to go get a coke
-they testified that it did not happen
-Marla Greenstein, they said that it never happened
-actual proof that everyone in this courtroom that she gave right to the primary witness
-That happened every day of my trial

	-everything of my life is gone
	COURT: -my role isn't to review the case -just what happened between the judicial conduct commission and the missing letter
12:59:52 PM	Haeg -I have proof that she gave accepted rides -judge was riding around with the primary witness -I had 6 years of my life taken away from my family, I am so angry -would like those tapes entered into evidence -I talked to all the witnesses -her lying during and official investigation
1:01:19 PM	COURT: -helpful to request of the judicial conduct commission records
1:01:52 PM	Mr. Peterson -ask that judge Murphy be notified that you are requesting those letter
	COURT: -do intend to give notice
	Mr. Peterson -state law does not give
1:03:04 PM	COURT: -this would be going to the presiding judge, not necessarily to the same judge
	Mr. Peterson -PCR is usually handled by the office who tried a matter
1:04:17 PM	COURT: -if there is a provision for a judge a to hear from you -will issue an order today, asking for that material -will asked for an in-camera review -serve Judge Murphy, Presiding judge -do need something in writing -instruct the parties not to contact judicial conduct commission or judge Murphy on this issue -will request in writing, will send the judicial conduct commission an order requesting it's records
1:07:47 PM	Haeg -thought this was going to be a scheduling conference, as I requested in my motion -did ask that -did contact Marla Greenstien for her to be a witness, do have a number of witnesses -thought that is what this is for—to schedule the hearing I requested
1:09:46 PM	COURT: -will be scheduling a hearing -don't know how long it will be to get the information
	Haeg -just asked when she would be available to be a witness, did talk to her secretary

-some witnesses have conflicts

Mr. Peterson
-state would like to reserve to file a motion/briefing on the matter

1:12:53 PM Haeg
-me and my family will be gone August 5-27

Mr. Peterson
-not available week of August 30, week of October 4

COURT:
-scheduling

Haeg
-have 15 witnesses, people that attended my sentencing
-most would be under 5 minutes

Mr. Peterson
-will need to wait to see your findings

1:18:21 PM **COURT**:
-Evidentiary Hearing August 25, 2010 @ 930am- 145pm
August 26, 2010 @ 9am-130pm

1:19:29 PM -confirms mailing address
P O Box 123, Soldotna, AK 99669

1:19:52 PM 262-9249-home
398-6403-cell

Haeg
-can you enlighten me on how to subpoena someone?

1:20:25 PM COURT:
-Clerks office can help you in subpoena witnesses
-order Trooper to appear
1:21:32 PM -not sure if you serve Judge Murphy directly
-clerks office can help you
-do you intend to provide additional information?

1:23:11 PM Haeg
-maybe I could have the witnesses
-I want the court to know the truth of what happened

COURT:
-if I'm going to ask for additional information for judicial conduct information
-would move the case along

Haeg
-if I have tape recordings, do I need to give copies of those recordings?

	COURT: -I can't give legal advise, will need to discuss that with a lawyer -if parties decide to supplement by July 28th, 2010
1:26:12 PM	**Off record**

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

FILED
STATE OF ALASKA
THIRD DISTRICT
10 DEC -8 PM 1:
CLERK, TRIAL COURTS
BY
DEPUTY CLERK

DAVID HAEG
Plaintiff,
vs.
STATE OF ALASKA
Defendant.

CASE NO. 3HO-10-00064 CI

NOTICE OF CHANGE OF JUDGE
(Peremptory Challenge)

Pursuant to Civil Rule 42(c)/Criminal Rule 25(d), the State of Alaska
☐ plaintiff ☒ defendant, hereby peremptorily challenges the judge assigned to this case, Judge Peter Ashman. Names and addresses of all parties (or their attorneys) in this case are (attach additional sheet if necessary):

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

I certify that a copy of this notice has been sent to each of the persons listed above.

December 3, 2010
Date

Signature
Alfred Andrew Peterson
Type or Print Name

FOR COURT USE ONLY

Notice is ☒ timely. ☐ not timely.
☐ A peremptory challenge has not previously been filed.
☒ A peremptory challenge was previously filed by ☒ plaintiffs. ☐ defendants.

12/8/10
Date

Clerk / Judge

ORDER

☒ This case is reassigned to Judge Bauman.
☐ This Notice of Change of Judge is not approved because
☐ It is not timely.
☐ Other:

12-8-10
Date

Judge / Clerk
Shawn Gleason
Type or Print Name

I certify that on 12/9/10
a copy of this order was sent to:
Judge
Judge
Parties/Attys Haeg / Peterson
Clerk: DEP

CALENDARING NOTICE
TRIAL DATE:
CALENDAR CALL:
LOCATION:
OTHER:

TF-935 (2/00)(st.4)
NOTICE OF CHANGE OF JUDGE

Civil R. 42(c)
Crim. R. 25(d)

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

DAVID HAEG
Plaintiff,
vs.
STATE OF ALASKA
Defendant.

CASE NO. 3HO-10-00064 CI

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Date

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Alfred Andrew Peterson
Type or Print Name

FOR COURT USE ONLY

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☐ A peremptory challenge has not previously been filed.
☒ A peremptory challenge was previously filed by ☒ plaintiffs. ☐ defendants.

12/8/10
Date

Clerk / Judge

ORDER

☐ This case is reassigned to Judge _____.
☐ This Notice of Change of Judge is not approved because
☐ It is not timely.
☐ Other: _____

Date

Judge / Clerk

Type or Print Name

I certify that on _____,
a copy of this order was sent to:
Judge _____
Judge _____
Parties/Attys _____
Clerk: _____

CALENDARING NOTICE
TRIAL DATE: _____
CALENDAR CALL: _____
LOCATION: _____
OTHER: _____

TF-935 (2/00)(st.4)
NOTICE OF CHANGE OF JUDGE

Civil R. 42(c)
Crim. R. 25(d)

Emailed to Atty 12/3/10

DEC 08 2010

02857

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

DAVID HAEG,

Plaintiff,

v.

STATE OF ALASKA,

Defendant.

Case No. 3HO-10-00064 CI

Notice of Reassignment

This case is reassigned to Judge Peter Ashman, Superior Court Judge for all purposes.

ENTERED this 1st day of December, 2010 at Anchorage, Alaska.

SHARON L. GLEASON
Presiding Judge
Third Judicial District

I certify that on 12/2/10 a Copy of the above was mailed to the parties of Record: Haeg / OSPA

Judicial Assistant

12-1-10 -Gleason faxed to Homer Court for distribution

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT HOMER

In the Matter of the Application for Post-Conviction Relief of DAVID HAEG.	)	Case No. 3HO-10-64CI

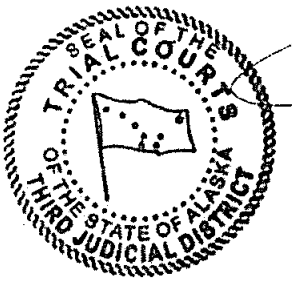
ORDER RE: MOTION FOR CHANGE OF JUDGE

In response to the court's order of November 18, 2010 Haeg filed a renewal/clarification of his motion for change of judge from the undersigned and a motion to change venue from Homer to Kenai. In its initial opposition to Haeg's motion for change of venue and/or change of judge the State asserted that Haeg could not knowingly participate in proceedings on the merits of his case before the undersigned and simultaneously seek a change of judge. The State did not assert that Haeg had already used his one opportunity to peremptorily challenge the assigned judge or that Haeg's motion for change of judge was untimely.

Haeg's initial motion for change of venue and/or change of judge was not a motion touching on the merits of his post conviction relief action and even if it were the court did not decide the motion to change venue but rather denied it because it was moot—i.e., the court did not weigh the arguments as to whether changing venue was appropriate because Haeg mistakenly believed that venue was Valdez when in fact it was Homer. Thus Haeg has not waived his right to request a change of judge. Haeg's motion for change of judge is **GRANTED.** The presiding judge will reassign this matter to another judicial officer.

The undersigned is not addressing Haeg's renewed/clarified motion for change of venue from Homer to Kenai. The venue issue will be decided by the new assigned judge.[1]

DATED this 1st day of December 2010 at Valdez, Alaska.



Daniel Schally
Superior Court Judge, *pro tempore*

I certify that on 12/2/10
a copy of this document was sent to
☒ Attorney(s) of record OSPA
☒ Other Haeg
at address of record
By _____
Deputy Clerk

[1] The State's motion to dismiss Haeg's PCR application, filed March 5, 2010, also remains pending and will be decided by the new assigned judge. It appears that Haeg has yet to respond to that motion.

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

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

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

ORDER GRANTING REQUEST FOR DISQUALIFICATION

This court was assigned the task of reviewing Judge Murphy's order denying Applicant David Haeg's request that she be disqualified from presiding over Haeg's post-conviction relief application.[1] On July 28, 2010, this court issued an order narrowing the issue of whether Judge Murphy should recuse herself to the question of whether her contacts with prosecution witness Trooper Gibbens during the trial and sentencing proceedings warranted recusal based on the appearance of impropriety.[2] After further consideration, David Haeg's request for the disqualification of Judge Murphy is GRANTED for the following reasons.[3]

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[1] *See* Order (April 30, 2010).
[2] *See* Order Narrowing Scope of Review of Judge Murphy's Order Denying Motion to Disqualify Judge Murphy for Cause (July 28, 2010) (denying Applicant's request to disqualify Judge Murphy on all other grounds but the appearance of impropriety).
[3] See also the confidential order supplementing this decision not yet issued by the court.

Haeg alleges that during his trial in the remote community of McGrath, Judge Murphy openly accepted rides from Trooper Gibbens. In support of this argument, Haeg (1) submitted numerous affidavits[4] over the course of this court's consideration of the issues related to disqualification and (2) referenced materials from the trial and sentencing transcript.

A review of the transcript and log notes of the hearing Haeg references reveals the cited conversation took place in court at 6:48 p.m. September 29, 2005, just prior to a 21-minute break, at Haeg's sentencing hearing.[5] As the transcript reflects, Judge

---

[4] *Cf.* 7-25-10 Mot. to Supplement (July 28, 2010) Ex. 6 (affidavits of Jackie Haeg, Tony Zellers, Tom Stepnosky, and Drew Hilterbrand); Affidavit of Wendell Jones (former Alaska State Trooper) (August 2, 2010). For example, Tony Zellers, a retired Air Force Captain, asserts that on July 28, 2005, a day during which he was a state's witness during the trial, and on September 29, 2005, the day of the sentencing hearing, "I personally observed Judge Margaret Murphy being shuttled in a white Trooper pickup truck driven by Trooper Brett Gibbens; leave and return with Trooper Gibbens in the same truck during breaks, lunch, and dinner; and leave with Trooper Gibbens when court was finished for the day." Jackie Haeg, Haeg's wife, asserted the same as to the trial days and other days in her own affidavit. Jackie Haeg Aff. Four affiants state that on September 29, 2005, the day of the sentencing hearing, the affiant "personally observed" Judge Margaret Murphy taking rides from Trooper Gibbens throughout the day. 7-25-10 Mot. to Supplement Ex. 6 (affidavits of Zellers, Stepnosky, Hilterbrand); Jones Aff.

[5] The conversation was as follows:

> MR. ROBINSON [Haeg's counsel. Substitution of Counsel (Dec. 15, 2004) (case no. 4MC-04-024CR).]: Before we get going again I think we're going to need about a 10 minute break
> THE COURT: At least. I have to get to the store because I need to get some . . .
> MR. ROBINSON: So why don't we take long enough to go to the store and . . .
> THE COURT: Get some diet Coke. And I'm going to commandeer Trooper Gibbens and his vehicle to take me because I don't have any transportation.

Murphy informed the parties that she was going to "commandeer" Trooper Gibbens to take her to the store. It appears that Prosecutor Leaders, sensing some possible appearance issue, began to address this concern. Haeg's trial counsel then stated he did not object to Judge Murphy obtaining a ride from the trooper.

Canon 2(A) of the Code of Judicial Conduct provides that a judge "shall" avoid both impropriety and also "the appearance of impropriety." In addition, Canon 3 requires a judge to weigh the possibility that an appearance of impartiality is likely to flow from his or her participation in any case, in light of the circumstances, even if the judge finds him or herself fully capable of subjective fairness in the

---

MR. ROBINSON: All right.
THE COURT: All right, Trooper Gibbens?
TROOPER GIBBENS: Well, yeah.
MR. ROBINSON: You've been commandeered.
MR. LEADERS [State Prosecution]: As long as there's no issue of . . .
MR. ROBINSON: Oh, no, no, I don't have any problem . . .
THE COURT: Yeah, I'm just telling you that I – I can tell you I'm not going to talk about the case.
MR. ROBINSON: You've been commandeered.
THE COURT: He's just going to drive me over there to get some diet Coke and we'll be back.
MR. ROBINSON: All right.
THE COURT: Why don't we start back up at like 10 after
MR. ROBINSON: Okay.
THE COURT: Okay?
(Whispered conversation)
THE COURT: Off record
(Off record)
THE COURT: Okay. We're back on record. Who did you want to call, Mr. Leaders? Or Mr. Robinson, I'm sorry. . . .

matter.[6] The purpose of this rule is to further the important goal of "promoting 'public confidence in the integrity and impartiality of the judiciary.'"[7]

At this juncture, this court does not seek to resolve whether (1) Judge Murphy's contacts with Trooper Gibbens were inappropriate and/or occurred during the trial as well as the sentencing and (2) any of Haeg's concerns about what occurred at the Judicial Conduct Commission.[8] These issues are best left for review within the PCR proceedings when claimed legal errors and alleged improprieties before the trial court are addressed.

This court has not conducted an evidentiary hearing to conclude that there was any wrong-doing on Judge Murphy's part with regard to Haeg's alleged submission of his explanatory letter.[9] In addition, Judge Murphy's request for a ride from Trooper Gibbens toward the end of the sentencing hearing, which was coupled with an explanation that she would not discuss the case with him and was acknowledged as appropriate by Haeg's counsel,[10] does not in and of itself raise an appearance issue. Nevertheless, the affidavits raising questions over the extent of her contact with prosecution witness Gibbens during the trial raise a sufficient appearance of impropriety that will negatively affect the confidence of the public, and Haeg himself, in the impartiality of the judiciary.

---

[6] *Perotti v. State*, 806 P.2d 325, 327-28 (Alaska 1991).
[7] *Amidon v. State*, 604 P.2d 575, 578 (Alaska 1979) (quoting Canon 2(A)).
[8] For a more detailed discussion of Haeg's concerns, see this court's confidential order supplementing this order, to be issued hereafter.
[9] *See* July 28, 2010 Order Narrowing Scope of Review.

CONCLUSION

The sentencing hearing transcript indicates that Judge Murphy discussed the propriety of her ride with Trooper Gibbens with counsel for both sides and that Haeg's counsel "d[id]n't have any problem" with her requesting the ride. Nevertheless, it is premature to rule conclusively that earlier rides and meals did not occur, since such a ruling would require an evidentiary hearing that is best held in the post-conviction relief proceeding itself. Haeg's motion to disqualify Judge Murphy is GRANTED due to concerns over the appearance of impropriety.

DONE this 25th day of August 2010 at Anchorage, Alaska.

STEPHANIE E. JOANNIDES
Superior Court Judge

I certify that on 8.25.10 a copy of the above was mailed/faxed/handed to each of the following at their address of record
D. Moss
Judicial Assistant

Haeg
Massen
Peterson
AK Judicial Council

[10] *Cf.* transcript of proceedings, quoted *supra* at n. 5.

IN THE DISTRICT COURT FOR THE STATE OF ALASKA

FOURTH JUDICIAL DISTRICT AT FAIRBANKS

In The Matter of Application for Post-Conviction Relief of DAVID S. HAEG Trial Case No. 4MC-04-00024 CR	CASE NO. 4MC-09-00005 CI

The State's motion to transfer this PCR to Judge Murphy is GRANTED / ~~DENIED~~. The Applicant's motion to change venue to Kenai is DENIED and venue for this matter ~~will remain~~ is changed to at HOMER.

DONE at Fairbanks, Alaska, this 3rd day of March, 2010.

Judge Raymond Funk of the District Court

Mtn to disqualify Magistrate Woodmancy is MOOT.

3/3/10

RAYMOND M. FUNK

I certify that a copy of the foregoing was distributed via:
MAIL
(✓) U.S. Postal Svc. D. Haeg, OSPA
( ) Other
HAND DELIVERY
( ) Courier Svc.
( ) Pick Up Bin
( ) Fax
(✓) Other FAXED TO ANAK. CRT 3-5-10
By: [illegible] Date: 3-8-10
Clerk

02866

IN THE DISTRICT/SUPERIOR COURT FOR THE STATE OF ALASKA
FOURTH JUDICIAL DISTRICT AT FAIRBANKS

David S Haeg,
Applicant,
vs.
State of Alaska,
Respondent.

CASE NO: 4MC-09-00005CI

NOTICE OF JUDICIAL ASSIGNMENT

This case is assigned to the Honorable Judge Raymond Funk for all purposes including trial.

1/15/2010
Date

By: KGriffith
Deputy Clerk

I certify that on 1/15/10
a copy of this order was mailed or delivered to:
Office of Special Prosecutions & Appeals
David S Haeg

Clerk: KGriffith

1/15/10
faxed to Anch Ct
KG

FILE COPY

CIV210(cv) (2/04)
Notice Of Judicial Assignment

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

David S Haeg,
Applicant,
vs.
State of Alaska,
Respondent.

CASE NO: 3KN-10-01295CI

INVENTORY AND RECEIPT

INVENTORY

The exhibits/depositions listed below and a copy of this form were released to Andrew Peterson by the following method:

- ☒ Certified mail (Attach certified mail receipts to this form)
- ☐ Messenger service (Receipt below must be signed)
- ☐ Pick up by person listed above or his/her representative (Receipt below must be signed)
- ☐ Temporary release authorized by Judge _____. Exhibits are to be returned to court by _____. (Check box above showing release method)

List of Exhibits/Depositions Released:

- ☐ Copy of exhibit list attached. (Circle those released.)
- ☒ List of exhibits:
  # 25, large map
- ☐ List of depositions:
  _____

September 13, 2012
Date

D Chapple
Deputy Clerk

RECEIPT FOR EXHIBITS/DEPOSITIONS

I certify that I received the exhibits/depositions noted above.

U.S. Postal Service™
CERTIFIED MAIL™ RECEIPT
(Domestic Mail Only; No Insurance Coverage Provided)
For delivery information visit our website at www.usps.com
OSPF FAIRBANKS AK

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Return Receipt Fee (Endorsement Required)	
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	$

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City, State, ZIP+4

PS Form 3800, August 2006 See Reverse

7010 1870 0003 1749 2028

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:
STATE OF ALASKA
OFFICE OF SPECIAL PROSECUTIOS
AND APPEALS
ANDREW PETERSON
310 K STREET, SUITE 308
ANCHORAGE, AK 99501

3KN-10-1295 CI

COMPLETE THIS SECTION ON DELIVERY

A. Signature
X ☑ Agent ☐ Addressee

B. Received by (Printed Name) Ian Peterse
C. Date of Delivery 9-17-12

D. Is delivery address different from item 1? ☐ Yes
If YES; enter delivery address below: ☐ No

SEP 18 2012

3. Service Type
☒ Certified Mail ☐ Express Mail
☐ Registered ☑ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

2. Article Number (Transfer from service label) 7010 1870 0003 1749 2028 02868

PS Form 3811, February 2004 Domestic Return Receipt 102595-02-M-1540

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT KENAI

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

ORDER

Pursuant to the request of the Office of Special Prosecutions and Appeals dated August 24, 2012, the wall map labeled as an exhibit in this case shall be released by the civil department to the Office of Special Prosecutions and Appeals with a copy of this order.

Dated at Kenai, Alaska, this 12th day of September, 2012.

Carl Bauman
SUPERIOR COURT JUDGE

CERTIFICATION
I certify that a copy of the foregoing was mailed to the following at their address of record: Haeg, Peterson
Date 9/13/12 Clerk Chappell

02869

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

August 24, 2012

To: **Clerk of the Kenai Court** *Fax Number:* **(907) 283-8535**

From: Tina Osgood for A. Andrew Peterson, AAG

Re: SOA v. David Haeg; 3KN-10-1295 CI

Number of Pages Including this Sheet: 1

PLEASE RETURN THE WALL MAP THAT'S LABELED AN EXHIBIT. *It's approximately 3' x 5', printed in color, and has an exhibit sticker on it.*

*A copy of this request **WILL NOT** 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

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

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

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

The applicant's 7-11-12 motion for sanctions and to compel discovery, is hereby GRANTED / DENIED.

Done at Kenai, Alaska, this_____day of_____, 2012.

MOOT

Superior Court Judge

JUL 11 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 6-6-12 motion, to strike the state's opposition to Haeg's 5-11-12 motion, is hereby GRANTED / DENIED.

Done at Kenai, Alaska, this_____day of_____, 2012.

MOOT

Superior Court Judge

JUN - 5 2012

02872

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 5-11-12 motion, for an immediate evidentiary hearing on newly discovered false evidence that was knowingly presented and never corrected by the state during Haeg's trial, is hereby GRANTED / DENIED.

Done at Kenai, Alaska, this_____day of_____, 2012.

MOOT

Superior Court Judge

MAY 11 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 4-27-12 motion, that AAG Andrew Peterson be held in contempt of court and fined $50,000, is hereby GRANTED / DENIED.

Done at Kenai, Alaska, this_____day of_____, 2012.

MOOT

Superior Court Judge

APR 27 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 4-27-12 motion, that independent investigator Henry F. Schuelke III be appointed to investigate David S. Haeg's prosecution, appeal, and post conviction relief proceeding for corruption, is hereby GRANTED / DENIED.

Done at Kenai, Alaska, this_____day of_____, 2012.

MOOT

Superior Court Judge

APR 27 2012

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 7-27-11 Motion for Evidentiary Hearing to Address Claims of Confidentiality and/or Privilege, the state's opposition, and any response thereto,

IT IS HEREBY ORDERED that the applicant's motion is DENIED. The applicant may re-notice depositions in this matter consistent with this Court's earlier rulings if additional discovery by the applicant is desired.

DONE at Kenai, Alaska, this _____ day of _____, 2011.

NOT USED

Superior Court Judge Carl Bauman

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

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

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

The applicant's 7-27-11 MOTION FOR EVIDENTIARY HEARING TO ADDRESS CLAIMS OF CONFIDENTIALITY AND/OR PRIVILEGE is hereby GRANTED / DENIED. The date for the evidentiary hearing is set for _____2011.

Done at Kenai, Alaska, this_____day of_____, 2011.

NOT USED

_____

Superior Court Judge Carl Bauman

JUL 27 2011

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 1-5-11 motion for hearing and rulings before deciding state's motion to dismiss, the state's opposition, and any response thereto,

IT IS HEREBY ORDERED that the applicant's motion for an evidentiary hearing is DENIED. It is further ordered that the applicant's motion to invalidate the modified judgments is denied. The state may / may not dispose of the airplane pending the outcome of the PCR application.

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

ORDER DENYING HAEG'S 6-18-12 EMERGENCY MOTION FOR RULINGS AND HEARINGS BY JULY 4, 2012

Haeg filed an emergency motion on June 18, 2012. Haeg requests immediate rulings and hearings to overturn Haeg's conviction, for immediate rulings and hearings to return the seized property, and for immediate rulings and hearings to schedule a jury trial so Haeg may present the case for both punitive and actual damages. Haeg's request for this relief and an expedited timeline to decide the *Motion to Dismiss* is denied. The court will be ruling on the *Motion to Dismiss* in due course and the case is under advisement.

The court further cautions Haeg that self-help, such as he proposes in his emergency motion, is inappropriate and may have criminal consequences.

Dated at Kenai, Alaska this 21st day of June, 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: faxed
OSPA, Haeg
6-21-12 Date
Roberts Clerk

02879

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 6-18-12 emergency motion for rulings and hearings by July 4, 2012, is hereby GRANTED / DENIED.

Done at Kenai, Alaska, this_____day of_____, 2012.

NOT USED

Superior Court Judge

JUN 18 2012

EMERGENCY

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)

6-18-12 Emergency Motion for Rulings and Hearings by July 4, 2012

COMES NOW Applicant, David Haeg, and hereby files this emergency motion for rulings and hearings by July 4, 2012. On 6-16-12 Haeg emailed the state to see if they opposed with no response received by the afternoon of 6-18-12.

Prior Proceedings

(1) On April 1, 2004 (over 8 years ago) the plane and property that Haeg used as the primary means to provide a livelihood for his family was seized by the state with affidavits that materially falsified evidence locations (of wolves Haeg killed while permitted to kill wolves during the Wolf Control Program) to Haeg's guide area – a false location which the state specifically used to justify charging Haeg with guide crimes and for plane/property forfeiture.

(2) Even though constitutional due process required that Haeg be notified of his right to a postseizure hearing "within days if not hours", Haeg was

never told of his right to a hearing to protest the plane seizure or to just bond the plane out. Attorney Brent Cole has testified under oath that, when Haeg hired him weeks after plane seizure, the reason he never told Haeg of the right to a hearing to protest the seizure or to bond the plane out was he thought Haeg was going to commit suicide because he was so depressed about the state taking the plane.

(3) Cole has testified Haeg required the evidence be submitted that Haeg was told by the state to do exactly as Haeg was later charged with doing; Cole testified he submitted this evidence to the court; but now all that remains of this evidence in the official court record is the cover letter Cole submitted with the evidence – proving the official court record has been tampered with to harm Haeg.

(4) Cole has testified the state gave Haeg immunity and then required him to give an "interview/statement" and to also make a map. During his "statement" Haeg was taped telling the state the evidence locations on the warrants had been falsified. Later Tony Zellers told and proved to the state the evidence locations had been falsified to Haeg's guide area – and again the state taped themselves being shown the proof of their false evidence and affidavits.

(5) Haeg's statement was then quoted by the state as reason to charge Haeg with guide crimes, Haeg's map was used against Haeg at trial, and long after he was convicted Haeg found out Alaska law prevented him from being prosecuted after he had been given immunity - no matter what other evidence there might be – and that his statement could not be used for anything whatsoever.

(6) At trial the state continued falsifying the evidence locations to Haeg's guide area and it was only after Haeg forced Chuck Robinson (Haeg's second attorney) to confront the state did the state admit they knew the evidence had been falsified. Proving the perjury's harm, Judge Murphy's specific reason for Haeg's devastating sentence was the evidence was found in Haeg's guide area - forgetting the state itself admitted this was false. And if Haeg's judge specifically used the perjury to sentence him what did Haeg's jury use to convict him?

(7) Cole has now testified the reason he never tried to help Haeg was that if he did so the state would punish him after Haeg's case was finished.

(8) Robinson has testified that Haeg's only viable defense at trial and appeal was that the state lacked "subject matter" jurisdiction because the state forgot to swear to the information charging Haeg. Yet Robinson, during this same testimony, also testified the state cured the lack of subject matter jurisdiction by swearing to the charging information *before* trial. And Robinson told Haeg at trial and on appeal that he (Haeg) should not bring up the false evidence locations, immunity violation, Cole's sellout, etc. because this would "admit" that the court had "subject matter" jurisdiction over Haeg. (Haeg can now prove the state always had "subject matter" jurisdiction over Haeg, that Robinson knew this, and that numerous other things – like the known use of false evidence by the state and the use of Haeg's immunized statement – would irrefutably overturn Haeg's conviction – all which Robinson had to know when he was "representing" Haeg) In other words Robinson focused Haeg's entire defense on a non-existent issue

and then told Haeg for non-existent issue to work all the real issues, any one of which would overturn Haeg's conviction, must be ignored.

(9) Mark Osterman (third attorney hired for Haeg's appeal), after first looking at Haeg's case and being hired by Haeg, stated on tape it was "the biggest sellout of a client I have ever seen", promised he would immediately overturn Haeg's conviction, and would help sue Cole and Robinson for millions on Haeg's behalf. Yet after this Osterman told Haeg on tape that he could not use Cole and Robinson's sellout of Haeg because "I can't do anything that will affect the livelihoods of your first 2 attorneys" and then claimed Haeg owed him 3 times the amount of money he had agreed to charge, on tape, before Haeg hired him.

(10) State prosecutor Leaders, in a certified document, testified that he never used Haeg's statement in the information charging Haeg with crimes. Yet Leaders' charging information specifically states that "David Haeg" gave a statement and recites 5 pages of Haeg's statement as justification for the charges (corrupted by the false evidence locations) forcing Haeg to trial.

(11) Alaska Commission on Judicial Conduct investigator Marla Greenstein irrefutably falsified an official investigation to cover up that Haeg's trial judge (Judge Murphy) was chauffeured by the main witness against Haeg (Trooper Gibbens) during Haeg's trial and sentencing and afterward conspired with Murphy and Gibbens to keep this covered up. And later yet Greenstein, in response to Haeg's Alaska Bar Association complaint against her, falsified a verified document to cover up that she had corruptly exonerated Judge Murphy.

(12) To see if the map used against Haeg at trial was the one Haeg had made, the court ordered the state to produce the trial map and ordered Haeg be given a copy. The state then refused to provide a copy and Haeg ended up having to look at the original - which had been placed in the court record of Haeg's case. Haeg found out that sometime after the state required him to mark the locations on the map (an aeronautical chart) the state falsified the Game Management Unit boundaries to corruptly make it appear that the wolves were taken in the same GMU as which Haeg guided in. In other words, even though the state was eventually forced to verbally admit they knew the evidence had been falsified to Haeg' guide area, they never corrected the GMU boundaries they had falsified on the map to show the same thing to Haeg's jury – irrefutably proving they knew the map was false when they used it to convince the jury to convict Haeg.

(13) During recent sworn deposition testimony Cole has claimed nothing has occurred that would lead him to believe the U.S. Department of Justice is investigating the corruption in Haeg's case. Yet in Cole's discovery to the state (a copy of which was provided to Haeg) there are letters from Cole to the Department of Justice proving they have been soliciting information from Cole about Haeg's case and Cole has been providing this information to them.

(14) Judge Bauman has delayed Haeg's post conviction relief proceedings to the point he has had to falsify numerous sworn pay affidavits in order to be paid – affidavits that certify nothing presented to Judge Bauman has went longer than 6 months without being decided. This has led to a felony

criminal complaint against Judge Bauman along with an investigation by the Alaska Commission on Judicial Conduct (where investigator Greenstein corruptly exonerated Judge Bauman, this was overturned because of Greenstein's corruption, and a now new investigation has been ordered).

(15) The above - any one of which requires Haeg's conviction to be overturned and property restored - are just a few of the instances proving widespread corruption and conspiracy to frame Haeg for guide violations. The recent depositions of Robinson and Cole, certified transcripts of which are now posted on the website www.alaskastateofcorruption.com, prove in detail just how pervasive and extensive the corruption in Haeg's case actually is.

Discussion

The above finally forced Haeg to realize the illegal actions and felony crimes by the prosecution, Cole, Robinson, Osterman, Judge Murphy, and investigator Greenstein were all calculated with 2 objectives: (1) framing Haeg as a rogue guide out to benefit his business by killing wolves in his guide area - *so no one would ever find out or realize the state was in running the incredibly controversial Wolf Control Program in violation of their own rules;* and (2) obtaining a fraudulent judgment against Haeg that would require all honest government employees to help break Haeg before he can expose what happened. Haeg now realizes the illegal and fraudulent judgment against him has the same power and worth of any other fraudulent document – absolutely nothing.

Delays (well over 8 years in Haeg's case) starve into submission those who start fighting because they realize they were victim of a racketeering influenced corrupt organization (RICO) involving their own defense attorneys working with corrupt judges, prosecutors, troopers, and judicial conduct investigators.

Haeg filed for post conviction relief over 2 and ½ years ago and Judge Bauman claims Haeg has yet to identify a harmful error and thus has no right to an evidentiary hearing where he may effectively present the evidence of injustice.

It is now the 9th straight season Haeg has been illegally deprived of the plane/property that he used to put food in his family's mouth – without anyone (other than Superior Court Judge Stephanie Joannides – who disqualified Judge Murphy from Haeg's PCR and then certified the evidence of Murphy, Gibbens, and Greenstein's conspiracy and corruption) doing a thing to address the injustice.

And although it has been over a month and a half since the oral arguments on the state's first motion to dismiss - in which the state was unable to refute Haeg's evidence and claims of shocking injustice, no action has been taken and another of Haeg's short seasons continues to roll by. Yet when the state wanted to seize the property Haeg used to provide a livelihood the court gave them seizure warrants on the very same day they applied for them with false affidavits.

Something is horribly wrong when the courts allow the government to put a person out of business overnight with false affidavits, covered up by the persons own defense attorneys (who empty the persons checking, saving's, retirement, kids college funds, home equity, saleable assets, etc, etc, etc, in order the state may

more quickly break the person), and yet the person put out of business must fight for 8 years and counting (along with withstanding jail time, tens of thousands in fines, hundreds of thousands in forfeitures, and loss of professional license) to get his illegally taken business property back after he can prove it was illegally taken. The odds a family could survive such an attack, by such an incomprehensible alliance of criminals using a person's trust and the color of law so effectively, is infinitesimal – explaining why these corrupt prosecutors, attorneys, and judges have gotten away with it for so long and are so good at it.

Conclusion

In light of the above Haeg asks this court for immediate rulings and hearings to overturn Haeg's conviction, for immediate rulings and hearings to return the seized property, and for immediate rulings and hearings to schedule a jury trial so Haeg may present the case for both punitive and actual damages.

If by July 4, 2012 there are no rulings or hearings scheduled Haeg will travel from his home to the state impound yard in Anchorage on Lake Hood to repossess the property he used to provide a seasonal livelihood for his family. In order that the state may adequately prepare a SWAT team (as they did when seizing the property from Haeg's home with illegal warrants and later to prevent Haeg from testifying of Greenstein, Murphy, and Gibbens' corruption during public testimony before the Alaska Commission on Judicial Conduct) Haeg will arrive promptly at noon on July 4, 2012 – with the wrenches and other tools it will take to get the plane and other property safely home.

This is the least Haeg can do, before he is broken and unable to ever do so by a 9th consecutive season of being put out of business, to pay for the wonderful life our constitution has already given him and to ensure others, including his two daughters, can also have the opportunity to experience a wonderful life free from government injustice.

"The strength of the constitution lies entirely in the determination of each citizen to defend it. Only if every single citizen feels duty bound to do his share in this defense are the constitutional rights secure." Albert Einstein (1879-1955) Physicist and Professor, Nobel Prize 1921

I declare under penalty of perjury the forgoing is true and correct. Executed on June 18, 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 June 18, 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)

7-11-12 Motion for Sanctions and to Compel Discovery

COMES NOW Applicant, David Haeg, and hereby files this 7-1-12 motion for sanctions and to compel discovery.

Prior Proceedings

1. On December 13, 2004 Haeg, through attorney Arthur Robinson, filed a comprehensive pretrial discovery request of the state. In spite of this request no discovery was provided. See attached.

2. On June 5, 2012 Haeg filed an interrogatory/discovery request of the state that be submitted under oath. See attached.

3. On June 20, 2012 assistant attorney general Andrew Peterson filed a response which, instead of providing the discovery requested, repeatedly claimed: (a) that the state had provided all information in its possession; (b) that the

information requested was not relevant to Haeg's PCR claims; (c) that the information was not designed to lead to discovery of admissible evidence; (d) that the information is protected by attorney/client privilege; and (d) that the information is protected as work product.

4. In spite of Haeg's specific request the interrogatory/discovery response be made under oath AAG Peterson failed to do so.

Claims

1. On information, belief, and evidence Haeg believes the state, before Haeg's trial and after a complete discovery request, withheld information favorable to Haeg - including but not limited to: (a) that the state was intentionally falsifying evidence and locations to frame Haeg for guiding violations; (b) that the state was using Haeg's statement against Haeg; (c) names of witnesses and potential witnesses they had contacted; (d) what was discussed with witnesses and potential witnesses; and (e) that witnesses and potential witnesses were exposed to Haeg's statement.

2. On information, belief, and evidence Haeg believes that the state, before Haeg's trial and after a complete discovery request, used Haeg's immunized statement to: (a) prosecute Haeg both in their "case in chief" and otherwise, (b) to find/obtain evidence and/or witnesses, and (c) to prepare/taint trial evidence and/or witnesses.

3. On information, belief, and evidence Haeg believes that the state, during the current post conviction relief proceeding and after a complete discovery

request, is continuing to withhold information favorable to Haeg – while affirmatively claiming there is no such evidence.

4. On information, belief, and evidence Haeg believes that the people involved with his prosecution, defense, appeal, and PCR - including but not limited to Judge Murphy; prosecutor Leaders; Trooper Gibbens; attorneys Cole, Robinson, and Osterman; AAG Peterson; and investigator Greenstein – are using claims of privilege to conceal that they are involved in an ongoing criminal conspiracy and/or cover up that Haeg was provided an illegal and unconstitutional trial, sentencing, appeal, and PCR proceeding.

Evidence

1. In spite of a direct request, no information whatsoever was provided by the state before trial that they had contacted, and/or considered using as witnesses, Tony Lee, Toby Boudreau, and/or Lewis Egress (others may yet surface) in regard to Haeg's prosecution and/or of what was discussed with or shown to these people. Yet information has surfaced after trial that all these people were contacted/interviewed by the state in connection with Haeg's prosecution before Haeg's trial, material evidence was seized from them in connection with Haeg's prosecution, and no word of what was discussed with, seized from, or shown to these potential witnesses was provided to Haeg. Only through his own post trial investigation has Haeg found information of the above and that the state was intentionally tainting these people with Haeg's immunized statement.

2. State trial witness Toby Boudreau repeatedly testified at Haeg's trial that Haeg and "Tony Lee" obtained Wolf Control Program permits as pilot/gunner partners. See trial pages 271 and 272. Yet Haeg's Wolf Control Program partner was Tony Zellers – not Tony Lee. Haeg gave Tony Lee's name to the state during Haeg's statement as the person who had control and responsibility of the trap line the state was using to charge Haeg with trapping violations. In other words Toby Boudreau must have been so effectively exposed to Haeg's immunized statement before trial that he (Boudreau) thought Tony Lee was Haeg's Wolf Control Program partner instead of Tony Zellers. As neither Haeg nor his attorneys ever talked with Boudreau before trial this is the only way Boudreau could have known a person named Tony Lee was involved. Yet in spite of this irrefutable evidence proving Haeg's statement was used to prepare Boudreau's trial testimony, this information was never provided to Haeg after a pretrial discovery request and is not being provided after Haeg's recent PCR discovery request. Now, in spite of the overwhelming evidence otherwise, the state continues to claim no use of Haeg's statement was made during trial (when it could not be used even before trial, when it is clear they used it to find and prepare their witnesses who testified at trial, was used to obtain the map used at trial, etc, etc).

3. In spite of repeated requests by Haeg the state only provided approximately 20 understandable minutes of Haeg's 5-hour immunized statement to the state – the use of which in any manner by the state against Haeg is prohibited. And it is the state's burden to prove none of their evidence or

witnesses were tainted in any manner by Haeg's statement – which is not possible if almost all of the recording is now unintelligible.

4. The state failed to inform Haeg or the jury that the state offered Tony Zellers a deal if he testified against Haeg – testimony which occurred - violating Giglio v. United States, 405 U.S. 150 (U.S. Supreme Court 1972). This is another unacceptable discovery violation.

5. The evidence already produced during Haeg's PCR (state's threats to Haeg's defense attorneys and subsequent/ongoing cover up, transactional immunity and subsequent/ongoing cover up, statement use and subsequent/ongoing cover up, evidence falsification and subsequent/ongoing cover up, the chauffeuring of Judge Murphy by Trooper Gibbens and subsequent/ongoing cover up, etc, etc) prove that AAG Peterson's claims of attorney client privilege and attorney work product are invalid – as these claims of privilege may not be used to cover up evidence of wrongdoing.

6. Further positive proof that the state has failed in its discovery obligations is the recent production of the falsified map used against Haeg at trial. Prior to trial Haeg (through attorney Robinson) had requested a copy of any and all material the state intended to use against Haeg at trial. In spite of this the state failed to provide Haeg a copy of the materially falsified map they used to convict Haeg at trial. This map was just recently given to Haeg because of Judge Bauman's order that the state do so – and after it was produced Haeg found it had been materially falsified to support the state's case for convicting Haeg and that

the state used it even after they knew it was false. *Had the state given Haeg a copy of this map before trial, as required, Haeg would have used it to prevent his unjust conviction over 8 years ago.* Just as the state failed to produce the falsified map after Haeg's discovery request over 8 years ago (which would have prevented Haeg from being unjustly convicted) they are now failing to produce what was discussed with witnesses and potential witnesses - information which will require Haeg's conviction to be overturned.

7. To support the state's opposition to Haeg's 3-19-12 Ineffective Assistance of Counsel Memorandum and 3-29-12 Judge Murphy/Trooper Gibbens Memorandum, AAG Peterson attached "Exhibit 4" (an email from prosecutor Leaders to various Troopers about needing to find a way to maximize the punishment imposed on Haeg); "Exhibit 8" (an email from prosecutor Leaders to various Troopers about needing to find a way to maximize the punishment imposed on Haeg); "Exhibit 28 (an affidavit from prosecutor Leaders); "Exhibit 29" (an affidavit from Trooper Gibbens); and "Exhibit 32" (an affidavit from Judge Murphy). Yet Haeg had never seen or received a copy of "Exhibits" 4, 8, 28, 29, or 32 before they were attached to AAG Peterson's opposition, they are not in the court record, and, far more shocking, *Haeg has never seen or received a copy of exhibits 1-3, 5-7, 9-27, 30, 31, and all above 32.* As exhibits in his case he was, and is, required to be given these.

8. The above proves Haeg's discovery request is relevant to Haeg's PCR claims and is designed produce admissible evidence – in direct conflict with

AAG Peterson claim that Haeg's discovery request is not relevant to his PCR claims and not designed to produce admissible evidence.

Conclusion

The failure by the state to honor their discovery obligations before Haeg's trial concealed the fact the state was falsifying trial evidence and using Haeg's immunized statement to obtain trial evidence and taint trial witnesses. This first discovery violation has already resulted in Haeg's unjust conviction and over 8 years of damage. Allowing the state to now continue its pattern and practice to violate its discovery obligations during Haeg's PCR is unacceptable.

The discovery violations in Haeg's case are far worse than the discovery violations that overturned Senator Ted Stevens' conviction. In Stevens' case the discovery violations merely concealed evidence that would have helped impeach the government's witnesses. In Haeg's case the discovery violations have concealed the fact the government itself was intentionally falsifying evidence and was intentionally tampering with witnesses.

In light of the above Haeg asks that:

1. AAG Peterson be held in contempt of court and fined $50,000 (per Rule 95) to sanction his refusal to produce the discovery Haeg requested.

2. That AAG Peterson be ordered to produce all material in the state's possession or ability to obtain that is in any way connected to Haeg's case – including but not limited to material in Robinson's December 13, 2004 discovery request and in Haeg's June 5, 2012 discovery request. Information known to be in

the state's possession that has never been provided to Haeg, at the very minimum, are the complete interviews of Toby Boudreau, Tony Lee, Lucky Egress, Bobbie Fifithian, and David Haeg; physical evidence obtained from these persons; and exhibits 1-3, 5-7, 9-27, 30, 31, and all those above 32 (which are proved to exist by the State's Opposition to Haeg's 3-19-12 Ineffective Assistance of Counsel Memorandum and 3-29-12 Judge Murphy/Trooper Gibbens Memorandum).

I declare under penalty of perjury the forgoing is true and correct. Executed on July 11, 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 June 11, 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: _____

Robinson & Associates
Lawyers
35401 Kenai Spur Highway
Soldotna, Alaska 99669

Tele: (907) 262-9164 • Fax: (907) 262-7034 • 1(800) 770-9164

December 13, 2004

Scot Leaders
District Attorney
120 Trading Bay, Suite 200
Kenai, AK 99611

Re: State v. Haeg
Case No. 4MC-04-024 Cr.

Dear Ms. Leaders:

I have been retained to represent the defendant in the above-referenced matter. Pursuant to Alaska Criminal Rule 16, please disclose the following information on this case within your possession or control to the defense and make available for inspection and copying:

A. Potential Witnesses

1. The names and addresses of persons known by the government to have knowledge of relevant facts, and their written or recorded statements or summaries of statements.

This request includes disclosure of the names and addresses and statements of any rebuttal witnesses known by the government to have knowledge of relevant facts. Howe v. State, 589 P.2d 421 (Alaska 1979).

2. Any written or recorded statements and summaries of statements, and the substance of any oral statements made by the defendant.

3. Any written or recorded statements and summaries of statements and the substance of any oral statements made by a co-defendant or co-conspirator.

B. Tangible Objects

1. Objects intended to be used by government at a hearing or trial or which were obtained from or belong to defendant

For the purposes of this request, tangible objects include the following:

a. Books

b. Papers, including:

1. names and addresses of author or producer of the papers.
2. name and address of author of papers.
3. name and address of person, organization (public or private), or other entity from whom government obtained the papers.
4. date when government received papers.
5. identity of any copies provided that are copied from original papers.

c. Documents, including:

1. names and addresses of author or producer of documents.
2. names and addresses of persons, organizations (public or private) and other entities from whom government received the documents.
3. date when government obtained possession or control of the documents.
4. identity of any copies of documents made from original documents.

d. Photographs, including:

1. name and address of the person(s) who took the photographs, date when photographs were taken and brief description of relationship to any element of the offense charged.
2. identification of all photographs that are reproduced from originals.

3. location, if known, of negatives to photographs.

e. Other tangible objects:

1. Any **audio** or **video** recordings, reproduced in the **same** quality as the **original** recording.
2. All other tangible objects that are intended to be used by the government at a hearing or trial.
3. Objects not in your possession and control but intended for use at a hearing or trial.
4. Any and all objects known to be in the possession or control of someone else or others, but is intended to be used by government at a hearing or trial.

C. Prior Convictions of Defendant and Witnesses

1. Any record of prior convictions of the defendant.

2. Any record of prior convictions of persons whom the prosecuting attorney intends to call as witnesses at a hearing or trial.

D. Expert Witnesses

Information regarding expert witness in accordance with Alaska Criminal Rule 16(b)(1).

E. Information Provided by Informants/Electronic Surveillance

Any relevant material on information relating to the guilt or innocence of the defendant which has been provided by an informant and any electronic surveillance, including wiretapping of:

1. conversations to which the defendant or the defendant's attorney or agents of the attorney was a party.

2. premises of the defendant, defendant's attorney or agents of the attorney.

F. Information Tending to Negate Guilt or Reduce Punishment

1. Any material or information within the prosecution attorney's possession or control, or which is known to the government which tends to negate the guilt of the defendant as to the offense.

2. Any material or information within the prosecution attorney's possession or control, or which is known to the government which would tend to reduce the defendant's punishment therefor.

Information within possession or control of the Prosecuting Attorney extends to material and information in the possession or control of

a) members of the prosecuting attorney's staff; and

b) any others who have participated in the investigation or evaluation of the case and who either regularly report or with reference to the particular case have reported to the prosecuting attorney's office.

This request for discovery should be considered to be a continuing request for discovery. It extends to material and information in the possession or control of your office or your staff, and any others who have participated in the investigation or evaluation of the case and who either regularly reports, or with reference to the particular case, have reported to your office.

If there are any questions with regard to this request, please do not hesitate to contact me.

Sincerely,
Robinson & Associates

Arthur S. Robinson
Attorney at Law

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)

6-5-12 Interrogatory/Discovery Request of State by Haeg

COMES NOW Applicant, David Haeg, and hereby files this 6-7-12 interrogatory and request that the state provide the discovery below, in writing and under oath, within 30 days of service. This request is deemed to have continuing effect so that if, after a response is filed, further information or knowledge comes to the state or any of its agents or representatives it must be promptly supplied.

Prior Proceedings

(1) On December 13, 2004 Haeg (through attorney Arthur Robinson - see Robinson discovery to state) requested discovery from the state. In spite of this virtually none of the discovery asked for was provided to Haeg or Robinson.

(2) On August 4, 2011 AAG Peterson asked for discovery from Haeg and Haeg complied.

Interrogatories and Discovery Requested:

1. Name, occupation, address, email address, and telephone number of every person contacted by the state (including contacts between state employees or agents themselves) in regard to Haeg's prosecution, appeal, and/or PCR – whether or not these persons were used (or were/are intended to be used) as a witness or not – and include a copy of every document, correspondence, map, chart, drawing, recording (tape or otherwise), note, photo, email, fax, diary, log, report, memo, letter, etc. (both electronic and non-electronic) made in relation to these contacts.

2. Why, in detail, the persons in #1 above were contacted and include a detailed description of the conversation, interrogation, and/or questioning, along with attaching any document, correspondence, map, chart, drawing, recording (tape or otherwise), note, photo, emails, fax, diary, log, report, memo, letter, etc. (both electronic and non-electronic) produced in connection with these persons.

3. A copy of every document, correspondence, map, chart, drawing, recording (tape or otherwise), note, photo, email, fax, diary, log, report, memo, letter, etc. (both electronic and non-electronic) the state has, or has access to, in regard to Haeg's prosecution, appeal, and/or PCR – whether or not it was used (or intends to be used) or not. In other words, Haeg requests a complete copy of the state's entire file on Haeg.

4. Name, occupation, address, email address, and telephone number of every person the state intends to call during Haeg's PCR proceeding including the

subject matter upon which each is expected to testify, along with the substance of the expected testimony.

5. Please identify which documents, correspondence, maps, charts, drawings, recordings (tape or otherwise), notes, photos, emails, faxes, diaries, logs, reports, memos, letters, etc. (both electronic and non-electronic) the state intends to use during Haeg's PCR proceeding.

6. Please identify any individual who may have any knowledge of any relevant facts, information, documents, tangible things, etc. regarding Haeg's prosecution, appeal, or PCR proceeding.

Submitted on June 5, 2012.

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

Superior Court
State of Alaska
SECOND JUDICIAL DISTRICT

BEN ESCH
Judge

P.O. BOX 1110
NOME, ALASKA 99762-1110

(907) 443-5216
FAX (907) 443-2192

June 19, 2012

Deirdre Cheek
Clerk of Court
Kenai Trial Court
125 Trading Bay Dr., Ste. 100
Kenai, AK 99611

JUN 21 2012

RE: Haeg v. State
2KN-10-1295 CI

Dear Ms. Cheek;

Thank you very much for your help in getting the earlier pleadings in this case. Unfortunately, I need to request your further assistance in obtaining document from the above file. I need copies of the following documents, hopefully by the first of the month:

Document Name	Docket Date	CtView Ref number
Application for PCR	1/7/10	02
Motion to dismiss PCR	3/5/10	14
Motion to disqualify Judge Murphy	3/15/10	16
Motion for representation hrg.	3/30/10	19
Notice of reassignment	12/8/10	78
Order appointing PD	4/20/11	112
Order partially granting dismissal.	1/3/12	198

Please let me know if this request presents any problem.

Yours truly;

BEN ESCH

Done
6/27/12

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)

6-6-12 Motion to Strike State's Oppostion to Haeg's 5-11-12 Motion for Immediate Evidentiary Hearing on Newly Discovered Known False Evidence Presented During Haeg's Trial (and now to Judge Bauman)

COMES NOW Applicant, David Haeg, and hereby files this 6-6-12 motion to strike the state's opposition to Haeg's 5-11-12 motion for immediate evidentiary hearing on newly discovered false evidence that was knowingly presented and never corrected by the state during Haeg's trial (and now knowingly presented to Judge Bauman).

Prior Proceedings

(1) On May 11, 2012 Haeg filed a motion for immediate evidentiary hearing on newly discovered false evidence that was knowingly presented and never corrected by the state during Haeg's trial (and now knowingly

presented to Judge Bauman). In addition, on this same day, Haeg sent the state a copy of this motion by first class mail.

(2) On June 1, 2012 state Assistant Attorney General (AAG) Peterson postmarked sending both the court and Haeg an opposition to Haeg's May 11, 2012 motion – which Haeg received on June 5, 2012.

Discussion

(1) Rule 77(c)(2) states that the time limit for filing an opposition is 10 days from the date of service of the motion. Yet AAG Peterson waited to file an opposition until 20 days after Haeg filed his motion - twice the amount of time allowed. In addition, AAG Peterson made no request for an extension of time before the time limit ran out or claim his failure to act was excusable – as was required under Rule 6(b).

(2) AAG Peterson never addresses Haeg's claim of why an immediate evidentiary hearing is needed – that it has just been discovered the state knowingly used a falsified map to convict Haeg. AAG Peterson only tries to justify refusing to provide Haeg a map copy free of charge as Judge Bauman ordered – and tries to justify failing to provide Haeg this copy within the 3 or 4 days as he promised Judge Bauman during the April 30, 2012 hearing.

(3) Again AAG Peterson violates the rules and laws that are in place to ensure citizens can obtain justice before they are starved into submission. This is still being allowed to happen even though it is now over 2 and a half years since

Haeg filed for post conviction relief, well over 8 years since the state first seized Haeg's airplane and business property with Gibbens' affidavits that falsified where the evidence was found, and after Haeg has filed motion after motion for expedited consideration of his case – motions which have all been denied.

Conclusion

In light of the above Haeg respectfully asks that AAG Peterson's opposition, filed far after the time to do so expired without any motion for extension or justification, be stricken from the court record of Haeg's case.

In spite of Haeg's best efforts to protest (proven by his protests during his "interview" and protests when it came up at trial) everyone - including Leaders, Gibbens, Haeg's own attorneys, and Judge Murphy - worked together to falsify the evidence to Haeg's guide area in order to destroy Haeg's guide business and protect the Wolf Control Program.

In spite of Haeg's best efforts to protest (proven by his documenting the evidence and demanding it be placed in the court record) everyone - including Leaders, Gibbens, Haeg's own attorneys, and Judge Murphy - worked together to eliminate any and all evidence the state told Haeg to do exactly as he was charged with doing in order to destroy Haeg's guide business and protect the Wolf Control Program – going so far as to take properly admitted evidence out of the official court record – while leaving in evidence proving it had been admitted.

In spite of Haeg's best efforts to protest (proven by recordings of Haeg and Cole when Cole was representing Haeg) everyone - including Leaders, Gibbens, Haeg's own attorneys, and Judge Murphy - worked together to violate Haeg's right against self-incrimination by telling Haeg he had immunity, telling him he was required to give a statement, and afterward denying Haeg had been given immunity when Haeg's statement was used in numerous ways – corruption which is irrefutably confirmed by the sworn testimony of Cole himself and of the attorney working with him at the time in question – Kevin Fitzgerald.

If the state and an ignorant defendant's own attorneys are allowed to work together to destroy favorable evidence, and to manufacture false evidence, anyone can be convicted of anything – not matter how innocent they are.

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.

Adickes v. S. H. Kress & Co., 398 U.S. 144 (United States Supreme Court 1970):

"Such, then, is the character of these outrages -- numerous, repeated, continued from month to month and year to year, extending over many States; all similar in their character, aimed at a similar class of citizens; all palliated or excused or justified or absolutely denied by the same class of men. Not like the local outbreaks sometimes appearing in particular districts, where a mob or a band of regulators may for a time commit crimes and defy the law, but having every mark and attribute of a systematic, persistent, well defined organization, with a fixed purpose, with a regular plan of action. The development of this condition of affairs was not the work of a day, or even of a year. It could not be, in the nature of things; it must be slow; one fact to be piled on another, week after week, year after year. . . .Such occurrences show that there is a pre-concerted and effective plan by which thousands of men are deprived of the equal protection of the laws. *The arresting power is fettered, the witnesses are silenced, the courts are impotent, the laws are annulled, the criminal goes free, the persecuted citizen looks in vain for redress."*

Monroe v. Pape, 365 U.S. 167 (United States Supreme Court 1961):

"[T]he local administrations have been found inadequate or unwilling to apply the proper corrective. Combinations, darker than the night that hides them, conspiracies, wicked as the worst of felons could devise, have gone unwhipped of justice. *Immunity is given to crime, and the records of the public tribunals are searched in vain for any evidence of effective redress.*

The State, from lack of power or inclination, practically denied the equal protection of the law to these persons...those who representing a State in some capacity were unable or *unwilling* to enforce a state law.

[I]f secret combinations of men are allowed by the Executive to band together to deprive one class of citizens of their legal rights without a proper effort to discover, detect, and punish the violations of law and order, the State has not afforded to all its citizens the equal protection of the laws.

Whenever, then, there is a denial of equal protection by the State, the courts of justice of the nation stand with open doors, ready to receive and hear with impartial attention the complaints of those who are denied redress elsewhere. Here may come the weak and poor and downtrodden, with assurance that they shall be heard. Here may come the man smitten with many stripes and ask for redress. Here may come the nation, in her majesty, and demand the trial and punishment of offenders, when all, all other tribunals are closed. . . .

The United States courts are further above mere local influence than the county courts; their judges can act with more independence, cannot be put under

terror, as local judges can; their sympathies are not so nearly identified with those of the vicinage; the jurors are taken from the State, and not the neighborhood; they will be able to rise above prejudices or bad passions or terror more easily. The marshal, clothed with more power than the sheriff, can make arrests with certainty, and, with the aid of the General Government, can seize offenders in spite of any banded and combined resistance such as may be expected. Thus, at least, *these men who disregard all law can be brought to trial.*

Does the grim shadow of the State step into the national court, like a goblin, and terrify us? Does this harmless and helpless ghost drive us from that tribunal -- *the State that mocks at justice, the State that licenses outlawry, the State that stands dumb when the lash and the torch and the pistol are lifted every night over the quiet citizen?*"

Haeg will prevail, no matter how many judges, prosecutors, troopers, or defense attorneys join the conspiracy to cover up, not because he is strong or clever – it is because the axe he swings is named United States Constitution and as the forces against it grow it will burn brighter and brighter, calling all those sworn to protect it to its aid. And while a criminal conspiracy of judges, prosecutors, troopers, and defense attorneys is powerful indeed, our Constitution and those sworn to uphold it are far mightier still and will prevail. Our Constitution and the countless people who have died for it demand nothing less.

I declare under penalty of perjury the forgoing is true and correct. Executed on June 6, 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 June 6, 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: _____

Superior Court
State of Alaska
SECOND JUDICIAL DISTRICT

BEN ESCH
Judge

P.O. BOX 1110
NOME, ALASKA 99762-1110

(907) 443-5216
FAX (907) 443-2192

May 31, 2012

Deirdre Cheek
Clerk of Court
Kenai Trial Court
125 Trading Bay Dr., Ste. 100
Kenai, AK 99611

JUN - 1 2012

RE: Haeg v. State
2KN-10-1295 CI

Dear Ms. Cheek;

In may capacity as Chair of the Alaska Commission on Judicial Conduct, I would request your assistance in obtaining some document from the above file. I need copies of the following documents:

Document Name	Docket Date	CtView Ref number
Order Setting Rep. Hearing	2/4/11	94
Order on Rep. Status	3/4/11	101
Reply to Rep. Order	3/17/11	103
Order on Rep. Status	4/11/11	108
Reply to 4/11 Order	4/18/11	112
Order of Stay	5/27/11	115
P.D. Dismissed/Withdrawn	6/15/11	129
Order on Stay & Brief Sched.	8/3/11	165

Please let me know if this request presents any problem.

Yours truly;

BEN ESCH

Done 6-6-12 (mailed 6-7-12) AK

02913

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT KENAI

DAVID HAEG,

Applicant,

v.

STATE OF ALASKA,

Respondent.

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

Trial Case No. 4MC-04-00024 CR

STATE'S OPPOSITION TO HAEG'S 5-11-12 MOTION FOR IMMEDIATE EVIDENTIARY HEARING ON NEWLY DISCOVERED FALSE EVIDENCE PRESENTED DURING HAEG'S TRIAL

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") 5-11-12 Motion.

The state sent the map out for copying on May 1, 2012. The map was returned on May 7, 2012. The state contacted Haeg the week of May 7, 2012 and informed him that the map was ready to be picked up. Haeg has previously sent a friend from Eagle River to collect discovery. Haeg declined to pick up the map and asked to have it mailed. The State responded that the cost of postage would be substantial and

STATE OF ALASKA
DEPARTMENT OF LAW
OFFICE OF SPECIAL PROSECUTIONS AND APPEALS
310 K STREET, SUITE 308
ANCHORAGE, ALASKA 99501
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which point Haeg said to use the map for fire starter. See Exh. 1. The state mailed the map on May 14, 2012 despite Haeg's refusal to pay for the postage.

DATED at Anchorage, Alaska, this 1st day of June 1, 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
_____ 6/1/12
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

Peterson, Andrew (LAW)

From: Osgood, Tina M (LAW)
Sent: Thursday, May 10, 2012 2:58 PM
To: Peterson, Andrew (LAW)
Subject: Haeg

David Haeg called. He called several people, I think you, the civil department, and Sherry included, before he was transferred to me. He asked about a map. I talked to you and you gave me the copy of the map that you had copied. I called Mr. Haeg back and told him we had the map and asked him to send someone after it as he has done in the past. He asked me to mail it. I replied that the postage would be substantial. He said to use it for firestarter then and hung up. The map is sitting at my desk should Mr. Haeg change his mind.

Tina Osgood
Law Office Assistant I
Office of Special Prosecutions and Appeals
310 K Street, Suite 308
Anchorage, AK 99501
(907) 269-6262
(907) 269-7939 fax

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)

5-11-12 Motion for Immediate Evidentiary Hearing on Newly Discovered Known False Evidence Presented During Haeg's Trial (and now to Judge Bauman) and 5-11-12 Reply to State's Opposition to Haeg's 4-27-12 Motions

COMES NOW Applicant, David Haeg, and hereby files this 5-11-12 motion for immediate evidentiary hearing on newly discovered false evidence that was knowingly presented and never corrected by the state during Haeg's trial (and now knowingly presented to Judge Bauman) and 5-11-12 reply to state's opposition to Haeg's motions that AAG Peterson be found in contempt of court, fined, and that an independent investigator be assigned to investigate Haeg's case.

Prior Proceedings

(1) On April 30, 2012 oral argument hearing was held on the state's first motion to dismiss – even though this motion had already been decided. During this hearing state AAG Peterson, after Judge Bauman's order he do so, presented the

map used against Haeg at trial. Judge Bauman ordered Haeg be given a copy – which AAG Peterson promised to do within 3 or 4 days.

(2) On May 4, 2012 AAG Peterson opposed Haeg's motions that AAG Peterson be found in contempt of court, fined and that an independent investigator be assigned to investigate Haeg's case.

(3) On May 9, 2012, because he never received the ordered map copy, Haeg examined the original in the Kenai courthouse and found that it falsified the locations of Game Management Unit (GMU) boundaries to corruptly make it appear the evidence against Haeg was found in the GMU 19-C, the GMU in which Haeg guides and has a hunting lodge – a falsification the state admitted to knowing and making at the beginning of Haeg's trial but never corrected.

(4) On May 10, 2012 AAG Peterson's office stated they had not sent Haeg a map copy, as Judge Bauman ordered, because of the "expense" to do so.

Evidentiary Hearing

Only because of Judge Bauman's order that the state produce the map used against Haeg at trial has it now been discovered the state knowingly presented false evidence against Haeg during Haeg's trial (and now during Haeg's PCR) and did nothing to correct the known falsification. Haeg requires an evidentiary hearing at which he is allowed to prove; (1) that the state's map is false; (2) that the state's false map was used against Haeg at trial; (3) that the state, knowing the map to be false, did nothing to correct the falsehood; and (4) that the state has now knowingly presented the same false map to Judge Bauman during Haeg's post

conviction relief proceeding – without informing Judge Bauman it was false. And the false map (corruptly indicating the wolves were taken in the same GMU that Haeg guides) irrefutably supported the state's case that Haeg was taking wolves to benefit his guide business (instead of for the Wolf Control Program that Haeg was licensed for) – and that this justified convicting Haeg of guide violations that would destroy his business. Additional proof of the materiality and effectiveness of the false evidence location on the map is Judge Murphy's use of the false evidence locations as her specific justification for the severe sentence she gave Haeg.

Also disturbing is that Haeg and Zellers, during their "interviews", affirmatively told and proved to the state that the evidence locations on the search warrants affidavits had been falsified from GMU 19-D (where Haeg was not allowed to guide) to GMU 19-C (where Haeg could and did guide) – *and after being told this the state still falsified the GMU boundaries on the map so the wolves appeared to have been taken in GMU 19-C instead of 19-D.*

"Conviction obtained through use of false evidence, known to be such by representatives of the State, is a denial of due process, and there is also a denial of due process, when the State, though not soliciting false evidence, *allows it to go through uncorrected when it appears.* Principle that a State may not knowingly use false evidence, including false testimony, to obtain a tainted conviction, implicit in any concept of ordered liberty, does not cease to apply merely because the false testimony goes only to the credibility of the witness. *A lie is a lie, no matter what its subject, and, if it is in any way relevant to the case, the district attorney has the responsibility to correct what he knows to be false and elicit the truth."* Napue v. Illinois, 360 U.S. 264 (U.S. Supreme Court 1959)

"We have consistently held that a conviction obtained by the knowing use of perjured testimony is fundamentally unfair and must be set aside if there is any

reasonable likelihood that the false testimony could have affected the judgment of the jury." United States v. Agurs, 427 U.S. 97 (U.S. Supreme Court 1976)

"[T]he dignity of the U.S. Government will not permit the conviction of any person on tainted testimony. The government of a strong and free nation does not need convictions based upon such testimony. It cannot afford to abide with them." Mesarosh v. U.S., 352 U.S. 1 (U.S. Supreme Court 1956)

"Requirement of 'due process' is not satisfied by mere notice and hearing if state, through prosecuting officers acting on state's behalf, has contrived conviction through pretense of trial which in truth is used as means of depriving defendant of liberty through deliberate deception of court and jury by presentation of testimony known to be perjured, and in such case state's failure to afford corrective judicial process to remedy the wrong when discovered by reasonable diligence would constitute deprivation of liberty without due process." Mooney v. Holohan, 294 U.S. 103 (U.S. Supreme Court 1935)

"Indeed, *if it is established that the government knowingly permitted the introduction of false testimony reversal is 'virtually automatic.'* United States v. Stofsky, 527 F.2d 237 (2nd Cir. 1975)

"The idea that the government would knowingly rely of false testimony in obtaining a conviction is repugnant to the very concept of ordered liberty and is perhaps the most grievous accusation that can be leveled against a prosecutor." United States v. Wallach, 935 F.2d 445 (2nd Cir. 1991)

"The ultimate mission of the system upon which we rely to protect the liberty of the accused as well as the welfare of society is to ascertain the factual truth, and to do so in a manner that comports with due process of law as defined by our Constitution. This important mission is utterly derailed by unchecked lying of witnesses, and by any law enforcement officer or prosecutor who finds it tactically advantageous to turn a blind eye to the manifest potential for malevolent disinformation.

A prosecutor's 'responsibility and duty to correct what he knows to be false and elicit the truth,' requires a prosecutor to act when put on notice of the real possibility of false testimony. This duty in not discharged by attempting to finesse the problem by pressing ahead without a diligent and good faith attempt to resolve it. A prosecutor cannot avoid this obligation by refusing to search for the truth and remaining willfully ignorant of the facts. What appears clearly for this record is a studied decision by the prosecution not to rock the boat, but instead to press forward with testimony that was possibly false...and not develop any evidence or

information that would either hurt their case or damage the credibility of their conniving witnesses.

Such false testimony and false evidence corrupts the criminal justice system and makes a mockery out of its constitutional goals and objectives. It is just as constitutionally unacceptable for the government to put a guilty person in prison on the basis of false evidence as it is to have an innocent person suffer the same fate.

In this connection, the principals which compel our decision here are not designed to punish society for the misdeeds of a prosecutor, see United States v. Agurs, 427 U.S. 97 (U.S. Supreme Court 1976), but to vindicate the accused's constitutional right to a fair trial, a fundamental right for which the prosecution shares responsibility with the courts.

What emerges from this record is an intent to secure a conviction of murder even at the cost of condoning perjury. This record emits clear overtones of the Machiavellian maxim: 'The end justifies the means,' an ideal that is plainly incompatible with our constitutional concept of ordered liberty.

Nowhere in the Constitution or in the Declaration of Independence, nor for that matter in the Federalist or in any other writing of the Founding Fathers, can one find a single utterance that could justify a decision by any oath-beholden servant of the law to look the other way when confronted by the real possibility of being complicit in the wrongful use of false evidence to secure a conviction in court." Commonwealth v. Bowie, 243 F.3d 1109 (9th Cir. 2001)

"The reason matters went awry is that Boscovich, the representative of the Government....chose to keep silent and not disclose his knowledge that statements he had made to the court and jury were false. Because the prosecutor's failure to correct his false representations could have affected the jury's verdict, we reverse... such a situation involves prosecutorial misconduct and a corruption of the truth-seeking function of the trial. Stated somewhat differently, we conclude that the prosecutorial misconduct was not harmless beyond a reasonable doubt in this case. " United States v. Alzate, 47 F.3d 1103 (11th Cir 1995)

Because the state failed to correct their false evidence that they knew was false during Haeg's trial, because the state has now presented this known false evidence to Judge Baumen during Haeg's PCR, and because this false evidence was not harmless beyond a reasonable doubt (as Judge Murphy's sentence justification proves), Haeg respectfully asks for an evidentiary hearing so truth and justice may be had along with proving how extensive the corruption really is.

Reply to AAG Peterson's Opposition to Finding AAG Peterson in Contempt of Court and Fining Him

In AAG Peterson's opposition he claims nothing he has done violates AS 09.50.010 – which specifies acts or omissions that constitute contempt.

Yet Peterson, among many other violations over the years, has:

1. Had Haeg physically threatened if Haeg continued to pursue his PCR application, violating AS 09.50.010(3) – misbehavior by an attorney.

2. Refused to provide a map copy to Haeg - in direct violation of the courts order he do so, violating AS 09.50.010(5) - disobedience of a lawful order.

3. Falsely claimed the law allows Haeg's judgment to be modified over 5 years after the fact, so the court would illegally modify the judgment against Haeg, violating AS 09.50.010(3) – violation of duty by an attorney and AS 09.50.010(4) – deceit by a party.

4. Falsely claimed Evidence Rule 410 only applies to evidence presented during the state's "case in chief" (so the court would overlook the violation of the state using Haeg's statement in the charging information), violating AS 09.50.010(3) – violation of duty by an attorney and AS 09.50.010(4) – deceit by a party.

5. Falsely claiming, in his most recent opposition, "a Malkin analysis would at best result in the affidavit being reevaluated without the reference to 19C." Yet Malkin holds that unless Trooper Gibbens could prove that the false 19C statement was not made intentionally made, the search warrant should be

invalidated whether or not probable cause would remain from the affidavits after the misstatement were excised. See Malkin:

"The rule we embrace is that once a defendant has pointed out specifically that statements in the affidavit are false, together with a statement of reasons in support of the assertion of falsehood, the burden then shifts to the state to show by a preponderance of the evidence that the statements were not made intentionally or with reckless disregard for the truth. *If, in fact, the police officer affiant intentionally made the misstatements then the search warrant should be invalidated whether or not probable cause would remain from the affidavit after the misstatements were excised.* A deliberate attempt to mislead a judicial officer in a sworn affidavit deserves the most severe deterrent sanction that the exclusionary rule can provide. Further, the fact that the officer has lied puts the credibility of the officer and of the entire affidavit in doubt."

This proves that AAG Peterson's claim, that the search warrants could not be invalidated, to be false – as there is no way Trooper Gibbens could prove by a preponderance of the evidence he had not intentionally falsified the location of the evidence locations – meaning the search warrants would be invalidated no matter what other evidence there was. Gibbens own GPS coordinates (and those of other state aircraft) irrefutably prove the evidence was found in GMU 19C, was many miles from GMU 19D, Gibbens himself testified that he was an wildlife trooper, trapper, and resident of many years in GMU 19 – meaning he was expert in knowing the Game Management Unit boundaries of GMU 19, and Gibbens himself had placed in his own report the motive for his falsification – Haeg taking wolves in his guide area would support devastating guide charges.

6. AAG Peterson's other misrepresentations of the law to the court to harm Haeg are too numerous to count – to deprive Haeg of notice he could protest being put out of business with false warrants, to deprive Haeg of electronic

monitoring, to not stay Haeg's incarceration pending appeal, that it was not perjury when Trooper Gibbens admitted his sworn testimony was false only after he knew he had been found out, etc, etc, etc.

Reply to AAG Peterson's Opposition to Independent Investigation

AAG Peterson claims Haeg provided no authority for the court to appoint an independent investigator. Haeg provided United States v. Theodore F. Stevens, No. 08-231 (DC Cir. 2008) as authority for a court to appoint an independent investigator in cases evidencing corruption:

Executive Summary

"The investigation and prosecution of U.S. Senator Ted Stevens were permeated by the systematic concealment of significant exculpatory evidence which would have independently corroborated Senator Stevens's defense and his testimony, and seriously damaged the testimony and credibility of the government's key witness. Months after trial, when a new team of prosecutors discovered, short order, some of the exculpatory information that had been withheld, the Department of Justice ("DOJ") moved to set aside the verdict and to dismiss the indictment with prejudice."

"To preserve justice in America, we must carefully analyze injustice whenever we find it. The Report does that. If we don't learn from injustice, we are doomed to repeat it. We can't pretend it didn't happen. Mere reverence for the Constitution does not assure that it actually protects individual liberties. This Report is a powerful tool to prevent future violations of the rights of citizens. Our hope is that the tragic circumstances of this case and the misconduct described in the Report will never be repeated. The Report serves to remind that every citizen is at risk of wrongful conviction unless honest, skilled professionals perform their respective roles in the criminal justice system with diligence, zeal and respect for the rule of law. Needless to say, if this can happen to a United States Senator in a federal courtroom in Washington, D.C., it can happen to any citizen anywhere in America."

Conclusion

The misconduct in Senator Ted Stevens's case is nearly nonexistent when compared to Haeg's case – as Stevens own attorneys were on his side and he had an honest judge.

In spite of Haeg's best efforts to protest (proven by his protests during his "interview" and protests when it came up at trial) everyone - including Leaders, Gibbens, Haeg's own attorneys, and Judge Murphy - worked together to falsify the evidence to Haeg's guide area in order to destroy Haeg's guide business and protect the Wolf Control Program.

In spite of Haeg's best efforts to protest (proven by his documenting the evidence and demanding it be placed in the court record) everyone - including Leaders, Gibbens, Haeg's own attorneys, and Judge Murphy - worked together to eliminate any and all evidence the state told Haeg to do exactly as he was charged with doing in order to destroy Haeg's guide business and protect the Wolf Control Program – going so far as to take properly admitted evidence out of the official court record – while leaving in evidence proving it had been admitted.

In spite of Haeg's best efforts to protest (proven by recordings of Haeg and Cole when Cole was representing Haeg) everyone - including Leaders, Gibbens, Haeg's own attorneys, and Judge Murphy - worked together to violate Haeg's right against self-incrimination by telling Haeg he had immunity, telling him he was required to give a statement, and afterward denying Haeg had been given immunity when Haeg's statement was used in numerous ways – corruption which

is irrefutably confirmed by the sworn testimony of Cole himself and of the attorney working with him at the time in question – Kevin Fitzgerald.

If the state and an ignorant defendant's own attorneys are allowed to work together to destroy favorable evidence, and to manufacture false evidence, anyone can be convicted of anything – not matter how innocent they are.

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.

Adickes v. S. H. Kress & Co., 398 U.S. 144 (United States Supreme Court 1970):

"Such, then, is the character of these outrages -- numerous, repeated, continued from month to month and year to year, extending over many States; all similar in their character, aimed at a similar class of citizens; all palliated or excused or justified or absolutely denied by the same class of men. Not like the local outbreaks sometimes appearing in particular districts, where a mob or a band of regulators may for a time commit crimes and defy the law, but having every mark and attribute of a systematic, persistent, well defined organization, with a fixed purpose, with a regular plan of action. The development of this condition of affairs was not the work of a day, or even of a year. It could not be, in the nature of things; it must be slow; one fact to be piled on another, week after week, year after year. . . .Such occurrences show that there is a pre-concerted and effective plan by which thousands of men are deprived of the equal protection of the laws. *The arresting power is fettered, the witnesses are silenced, the courts are*

impotent, the laws are annulled, the criminal goes free, the persecuted citizen looks in vain for redress."

Monroe v. Pape, 365 U.S. 167 (United States Supreme Court 1961):

"[T]he local administrations have been found inadequate or unwilling to apply the proper corrective. Combinations, darker than the night that hides them, conspiracies, wicked as the worst of felons could devise, have gone unwhipped of justice. *Immunity is given to crime, and the records of the public tribunals are searched in vain for any evidence of effective redress.*

The State, from lack of power or inclination, practically denied the equal protection of the law to these persons...those who representing a State in some capacity were unable or *unwilling* to enforce a state law.

[I]f secret combinations of men are allowed by the Executive to band together to deprive one class of citizens of their legal rights without a proper effort to discover, detect, and punish the violations of law and order, the State has not afforded to all its citizens the equal protection of the laws.

Whenever, then, there is a denial of equal protection by the State, the courts of justice of the nation stand with open doors, ready to receive and hear with impartial attention the complaints of those who are denied redress elsewhere. Here may come the weak and poor and downtrodden, with assurance that they shall be heard. Here may come the man smitten with many stripes and ask for redress. Here may come the nation, in her majesty, and demand the trial and punishment of offenders, when all, all other tribunals are closed. . . .

The United States courts are further above mere local influence than the county courts; their judges can act with more independence, cannot be put under terror, as local judges can; their sympathies are not so nearly identified with those of the vicinage; the jurors are taken from the State, and not the neighborhood; they will be able to rise above prejudices or bad passions or terror more easily. The marshal, clothed with more power than the sheriff, can make arrests with certainty, and, with the aid of the General Government, can seize offenders in spite of any banded and combined resistance such as may be expected. Thus, at least, *these men who disregard all law can be brought to trial.*

Does the grim shadow of the State step into the national court, like a goblin, and terrify us? Does this harmless and helpless ghost drive us from that tribunal -- *the State that mocks at justice, the State that licenses outlawry, the State that stands dumb when the lash and the torch and the pistol are lifted every night over the quiet citizen?*"

Haeg will prevail, no matter how many judges, prosecutors, troopers, or defense attorneys join the conspiracy to cover up, not because he is strong or clever – it is because the axe he swings is named United States Constitution and as the forces against it grow it will burn brighter and brighter, calling all those sworn to protect it to its aid. And while a criminal conspiracy of judges, prosecutors, troopers, and defense attorneys is powerful indeed, our Constitution and those sworn to uphold it are far mightier still and will prevail. Our Constitution and the countless people who have died for it demand nothing less.

I declare under penalty of perjury the forgoing is true and correct. Executed on May 11, 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 May 11, 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.

STATE OF ALASKA,

Respondent.

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

Trial Case No. 4MC-04-00024 CR

STATE'S OPPOSITION TO HAEG'S 4-27-12 MOTION THAT AAG PETERSON FOUND IN CONTEMPT OF COURT AND FINED; AND 4-27-12 MOTION FOR INDEPENDENT INVESTIGATION OF HAEG'S CASE

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") 4-27-12 Motions filed in conjunction with his PCR application.

Haeg first motion asks this court to find AAG Peterson in contempt of court and to impose a fine of $50,000 for defending the state's conviction of Haeg as a result of his intentionally killing wolves same day airborne outside of the duly designated predator control area. See Motion for Sanctions, pg. 39. Haeg references

STATE OF ALASKA
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the allegations in the preceding 38 pages as evidence in support of his motion. Haeg provides this court with no authority for holding a prosecutor in contempt under similar situations and/or for imposing an unprecedented fine of $50,000. Haeg's motion is without merit and should be dismissed.

Contempt under Alaska Rule of Civil Procedure 90(b) may only be premised on disobeying or disrespecting a court of law or its members, officers, or proceedings. Alaska Statute 09.50.010 specifies twelve acts or omissions that constitute contempt, and all are related to court proceedings. In the present case, AAG Peterson has not disrespected a court of law or its members or proceedings, but rather is diligently defending the state's conviction of Haeg despite the litany of unchecked personal attacks.

Haeg claims that his prosecution was illegal and that by defending the prosecution, AAG Peterson is in contempt. Haeg alleges that the misstatements in Trooper Gibbens' affidavits are irrefutable evidence of the illegal prosecution. See 4-27-12 Reply to State's Opposition, p. 1-8. There is no support for the contention that Haeg's prosecution was illegal. The lower court allowed the prosecution and the Court of Appeals for the State of Alaska upheld his conviction. Haeg fails to recognize that the Court of Appeals already ruled on this issue in his underlying appeal, thus the issue of Gibbens false statement is not before this court as part of his PCR claim.

The only issue before this court is whether or not Haeg's counsel was ineffective by failing to address this issue prior to trial. This is a Malkin analysis that both Cole and Robinson decided was not an issue worth raising pre-trial. See State v.

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Malkin, 722 P.2d 943 (Alaska 1986); see also Cole Depo, p. 41-42, Robinson Depo, p. 12-13. Malkin provides a defendant must first show that there is a material false statement in an affidavit. Once this is demonstrated the burden shifts to the state to show that the misstatement was not made intentionally or with a reckless disregard for the truth. Only intentional or reckless misstatements are excised from the affidavit. In this case, contrary to Haeg's contention, the statement that the wolves were killed in 19C as opposed to 19D is not material to the charges filed by the state as all of the wolves were killed outside of the predator control area. A Malkin analysis would at best result in the affidavit being reevaluated absent the reference to 19C. Even under this analysis, the warrant would have been deemed valid. Consequently, Haeg's counsel did not commit error in failing to challenge the warrants and AAG Peterson is not committing contempt by defending the prosecution in these PCR proceeding.

Haeg's second motion asks that Henry Schuelke be appointed to independently investigate Haeg's case. Haeg provides no authority for this court to appoint an independent investigator. This court should deny Haeg's motion and instruct Haeg to focus on the process of litigating his PCR application.

DATED at Anchorage, Alaska, this 1st day of May 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
5/1/12
Signature Date

STATE OF ALASKA
DEPARTMENT OF LAW
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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)

5-7-12 Notice of Authorities

COMES NOW Applicant, David Haeg, and hereby files this 5-4-12 notice of authorities.

Prior Proceedings

(1) On April 30, 2012 oral arguments were held on the state's first motion to dismiss – even though this motion had already been decided.

1. Authorities and Discussion of Known False Testimony by State

"Conviction obtained through use of false evidence, known to be such by representatives of the State, is a denial of due process, and there is also a denial of due process, when the State, though not soliciting false evidence, allows it to go through uncorrected when it appears. Principle that a State may not knowingly use false evidence, including false testimony, to obtain a tainted conviction, implicit in any concept of ordered liberty, *does not cease to apply merely because the false testimony goes only to the credibility of the witness.*" Napue v. Illinois, 360 U.S. 264 (U.S. Supreme Court 1959)

"[T]he dignity of the U.S. Government will not permit the conviction of any person on tainted testimony. The government of a strong and free

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nation does not need convictions based upon such testimony. It cannot afford to abide with them." Mesarosh v. U.S., 352 U.S. 1 (U.S. Supreme Court 1956)

"Requirement of 'due process' is not satisfied by mere notice and hearing if state, through prosecuting officers acting on state's behalf, has contrived conviction through pretense of trial which in truth is used as means of depriving defendant of liberty through deliberate deception of court and jury by presentation of testimony known to be perjured, and in such case state's failure to afford corrective judicial process to remedy the wrong when discovered by reasonable diligence would constitute deprivation of liberty without due process." Mooney v. Holohan, 294 U.S. 103 (U.S. Supreme Court 1935)

"The principle that a State may not knowingly use false evidence, including false testimony, to obtain a tainted conviction, [is] implicate in any concept of ordered liberty..." Giles v. Maryland, 386 U.S. 66 (U.S. Supreme Court 1967)

"Indeed, *if it is established that the government knowingly permitted the introduction of false testimony reversal is 'virtually automatic.'* United States v. Stofsky, 527 F.2d 237 (2nd Cir. 1975) (citing Napue v. Illinois, 360 U.S. 264 (U.S. Supreme Court 1959)

"*The idea that the government would knowingly rely of false testimony in obtaining a conviction is repugnant to the very concept of ordered liberty* and is perhaps the most grievous accusation that can be leveled against a prosecutor." United States v. Wallach, 935 F.2d 445 (2nd Cir. 1991) (citing Napue v. Illinois, 360 U.S. 264 (U.S. Supreme Court 1959)

The court and AAG Peterson has claimed it did not matter that prosecutor Leaders and Trooper Gibbens knowingly presented false sworn testimony against Haeg at his trial – claiming that even if Gibbens had testified truthfully that the wolves were not taken when Haeg guides they were still taken outside the Wolf Control Program area. The overwhelming caselaw above proves this claim false – that even if the false testimony had

nothing to do whatsoever with the case the conviction must be reversed. The reason is that a state prosecutor or trooper, with the government's power, must not commit, or knowingly allow, perjury to convict a fragile individual. If this is allowed it tells a prosecutor or trooper they may commit or overlook felony perjury and/or conspiracy to obtain a conviction. (As happened in Haeg's case when *both* Leaders and Gibbens had been told of, and shown, the false evidence locations prior to trial yet both continued to work together to persist in concealing the truth at trial)

And in Haeg's case, even though it makes not the slightest difference in why Haeg's conviction must be overturned, the perjury by Gibbens was material to the state's case. Leaders entire case was that Haeg was killing wolves where he guided in order to benefit his guide business – and thus should be convicted of life devastating guide charges. The effectiveness of this argument was proven by Judge Murphy's specific use of Gibbens perjury and Leaders argument to justify Haeg's severe sentence.

Robinson (Haeg's trial attorney) gave this same excuse during his deposition – that Haeg should be convicted with guide violations no matter where wolves were taken if they were not in the control area. Yet when Haeg asked Robinson if this was true if the wolves were taking in one of the "donut holes" (areas not in the control area that were completely surrounded by the control area), Robinson testified, "I *never* thought you

should be charged with guide violations." This proves how corrupt Haeg's prosecution became after the introduction of the false evidence location.

And when you combine this false motive for Haeg's actions with the removal, *out of the official court record*, (felony tampering with evidence), of the evidence of Haeg's true motive (that the state told Haeg he must take wolves wherever he could find them to save the Wolf Control Program) and you understand how totally devastating the state's known false testimony really was. It changed the entire evidentiary picture from Haeg was doing as the state required - to Haeg was rogue guide out to feather his own nest.

2. Authorities and Discussion of False Warrant Affidavits

"[A]ll evidence obtained by searches & seizures in violation of the Federal Constitution is inadmissible in a criminal trial in a state. Nothing can destroy a government more quickly than its failure to observe its own laws, or worse, its disregard of the charter of its own existence." Mapp v. Ohio, 367 U.S. 643 (U.S. Supreme Court 1961)

"Once defendant has shown that specific statements in affidavit supporting search warrant are false, together with statement of reasons in support of assertion of falsehood, burden then shifts to State to show that statements *were not intentionally or recklessly made.*" Lewis v. State, 9 P.3d 1028, (Ak.,2000)

"State & federal constitutional requirement that warrants issue only upon a showing of probable cause contains the implied mandate that the factual representations in the affidavit be truthful." State v. Davenport, 510 P.2d 78, (Ak.,1973)

"Misstatements on warrants were material and intentional, justifying suppression of evidence obtained through use of the warrants." State v. White, 707 P2d 271 (Ak., 1985)

"'[Defendant] has everything to gain and nothing to lose' in filing a motion to suppress..." U.S. v. Molina, 934 F.2d 1440 (9th Cir. 1991).

AAG Peterson claims that the cure for Gibbens false evidence locations in his warrant affidavits (used to seize Haeg's property and evidence used against Haeg) is that the false information is removed and if the affidavit still provides probable cause for the seizure the evidence/property is not suppressed or returned. Yet the caselaw above proves if the false information was intentional or reckless, as it was in Haeg's case, the evidence must be suppressed – to punish the state and make sure they do not continue to knowingly or recklessly include false information on warrants to obtain evidence or seize a fragile citizens property.

Proof the false evidence location was intentional is Gibbens admitted he knew the location was false after he was confronted during cross-examination at Haeg's trial.

Proof the false evidence location (claiming the evidence was found where Haeg guides) was material is shown in #1 above.

3. Authorities and Discussion of Right to Notice

AS 28.05.131 Opportunity for Hearing Required

(a) *[T]he Department of Public Safety....shall give notice of the opportunity for an administrative hearing before....a vehicle is impounded by that department. If action is required under this section and prior opportunity for a hearing cannot be afforded, the appropriate department shall promptly give notice of the opportunity for a hearing soon after the action as possible to the parties concerned.*

"The purpose of notice under the Due Process Clause is to apprise the affected individual of, and permit adequate preparation for, an impending "hearing." Memphis Light, Gas & Water Div. V. Craft, 436 U.S. 1 (U.S. Supreme Court 1978)

"[I]f an applicant for the writ knows that he is dealing with an uneducated, uninformed consumer with little access to legal help and little familiarity with legal procedures, there may be a substantial possibility that summary seizure of property – however unwarranted – may go unchallenged, and the applicant may feel that he can act with impunity." Fuentes v. Shevin, 407 U.S. 67 (U.S. Supreme Court 1983)

AAG Peterson (and amazingly the Alaska Court of Appeals during Haeg's original appeal) claims that the due process "notice" required after the seizure of property is "notice" that the property was seized – and that because most of Haeg's property was seized in his presence this satisfied the "notice" required by due process. Yet as proven by AS 28.05.131 and the U.S. Supreme Court above the notice required is notice of your right to a hearing to protest the seizure.

And the reason why the state and Haeg's attorneys never gave Haeg notice of his right to a hearing to protest the false seizure warrants is clear – it would have been exposed the state was falsifying evidence locations to frame Haeg for guiding violations.

4. Authorities and Discussion of Rule 410

Rule 410. Inadmissibility of Plea Discussions in Other Proceedings.
(a) *Evidence* of a plea of guilty or nolo contendere, or of an offer to plead guilty or nolo contendere to the crime charged or any other crime, or *of statements* or agreements made in connection with any of the foregoing pleas or offers, *is not admissible in any civil or criminal action, case or proceeding against the government or an accused person who made the plea or offer if:*
(i) A plea discussion does not result in a plea of guilty or nolo contendere,

To foster negotiations the rule provides that *nothing that is said during plea bargaining may be used against the accused in any proceeding, whether criminal, civil or administrative.* Thus, the accused is free to discuss the case without resort to hypothetical statements of fact and without fear that a slip of the tongue may be devastating at a later trial or other proceeding.

AAG Peterson, Cole, and Robinson (and amazingly the Court of Appeals itself) claim Rule 410 only prevents plea agreement statements, if no plea agreement is made, from being used during a prosecutions "case in chief". Yet as clearly shown above the statement may not be used for anything – let alone in charges forcing someone to trial – as happened in Haeg's case. In his reply brief, and in the affidavit he drew up for Haeg to sign, Robinson repeatedly claimed the state could not use Haeg's statement in the charges forcing Haeg to trial. Yet now that Haeg has been convicted and Robinson is forced to cover up (so he cannot be sued for malpractice), everyone now claims Haeg's statement could be used to force Haeg to trial – more collusion, perjury, and cover up.

5. Authorities and Discussion of Who Makes Decisions

Brookhart v. Janis, 384 U.S. 1 (U.S. Supreme Court 1966) ruled it is the defendant, not the attorney, who is captain of the ship: "Although the attorney can make some tactical decisions, the ultimate choice as to which direction to sail is left up to the defendant. The question is not whether the route taken is correct; rather, the question is whether [the defendant] approved the course."... "The defendant, and not his lawyer or the State, will bear the personal consequences of a conviction... And although he may conduct his own defense ultimately to his own detriment, his choice must be honored out of 'that respect for individual which is the lifeblood of the law.'" (Quoting People v. Malkin, 250 N. Y. I85, 350-51 (1970) Brennan, J. concurring).

AAG Peterson, Robinson, and even Judge Bauman claim that Robinson could decide not to call Cole as a witness after: (1) Haeg had demanded Cole be forced to testify at Haeg's sentencing in response to 56 written questions Haeg had prepared for Cole to be asked – questions that would prove Haeg had given up a

year of his livelihood on the promises of Cole and the state and then been screwed out of it by Cole and the state; (2) Haeg had demanded and paid Robinson to subpoena Cole and Robinson had done so; Haeg had paid for Cole's witness fees; Haeg had paid for Cole's airline ticket; Haeg had paid for Cole's hotel room; Robinson never told Haeg that Robinson had received a letter from Cole stating that Cole would not show up in response to the subpoena; Robinson never told Haeg that he did not intend on calling Cole to testify; and Robison told Haeg that nothing could be done after Cole failed to show up to testify.

It is clear Robison had sold Haeg out and was in actuality representing Cole's interest in not exposing Cole's collusion/conspiracy with the state to deprive Haeg of a year of his livelihood for absolutely nothing. It is clear that calling Cole was exercising Haeg's right to confront the witnesses against him as Haeg demanded and paid for, it was Robinson's duty to follow Haeg's orders – as the U.S. Supreme Court in Brookhart above demanded Robinson do.

And Robinson's recent excuse for not doing so is absurd: Robinson claims waiving attorney/client privilege by calling Cole could have harmed Haeg – yet Cole was subpoenaed to Haeg's sentencing and Robinson had already had Haeg himself testify at trial, where the state was allowed to ask Haeg anything and everything they wanted and Haeg was required to answer. So Cole's testimony could not possibly harm Haeg – it could only help.

6. Authorities and Discussion of Using Court of Appeals Decision

NOTICE

Memorandum decisions of this court do not create legal precedent. See Alaska Appellate Rule 214(d) and Paragraph 7 of the Guidelines of Publication of Court of Appeals Decision (Court of Appeals Order No. 3). Accordingly, this memorandum decision may not be cited as binding precedent for any proposition of law.

AAG Peterson (and Judge Bauman) have both cited the Alaska Court of Appeals (COA,s) decision in Haeg's appeal as legal precedent in Haeg PCR – *even though the decision in Haeg's appeal was a memorndum decision that cannot be used.* In addition, the COA's decisions in Haeg's appeal are provably corrupt:

a. The COA's refused to stay Haeg's appeal so he could file for PCR, violating the COA's own precedent in State v. Jones, 759 P.2d 558 (AK 1988). This added over 3 years to the attempt to starve Haeg out.

b. The COA's gave the state 380 days in which to file their appellee brief after Haeg filed his appellant's brief – when Appellate Rule 217 requires the state to file within 20 days of Haeg's filing. This added over a year to the attempt to starve Haeg out. See Haeg's 1-8-08 opposition.

c. The COA's gave the state a "do over" - by telling the state to file a second brief after the COA's claimed the state's first brief failed to refute Haeg's claims of error. This prevented Haeg from winning on appeal – as he should have – and added years to the attempt to starve him out.

d. The COA's failed to address Haeg's biggest and most plainly identified issue that would have required Haeg's conviction be overturned using the court record of Haeg's trial alone: that the state knowingly presented false testimony against Haeg at trial. Even after Haeg filed a motion for reconsideration the COA's refused to address this issue. This prevented Haeg from winning on appeal – as he should have – and added years to the attempt to starve him out. See Haeg's appeal brief and motion for reconsideration.

e. The COA's ruled that Haeg was "hunting" because his activities for the wolf control program were governed by title 16 and thus Haeg could be convicted of same-day airborne hunting. Yet 5AAC 92.039 "Permit for taking wolves using aircraft" (the permit Haeg was given to take wolves from and aircraft) states:

"[T]he methods and means authorized in a permit issued under this section *are independent of all other methods and means restrictions in AS 16 and this title."*

In addition, 5AAC 92.110(m) states:

"A wolf population reduction or wolf population regulation program established under this section [the section governing Haeg's permit] *is independent of, and does not apply to, hunting..."*

It is clear the COA's falsified the law to prevent Haeg from winning on appeal – as he should have – and added years to the attempt to starve him out. See COA's decision.

f. The COA's ruled Haeg did not litigate, in the district court, that the prosecutor violated Evidence Rule 410. Yet Haeg's May 6, 2005 affidavit, filed with the district court, and Robinson's May 6, 2005 reply, prove the COA's claim is false. It is clear the COA's falsified the facts to prevent Haeg from winning on appeal – as he should have – and added years to the attempt to starve him out.

g. The COA's ruled that Haeg's statement could be used against Haeg as long as it was not used in the state's "case-in-chief." Yet as Evidence Rule 410 proves this is false. It is clear the COA's falsified Evidence Rule 410 to prevent Haeg from winning on appeal – as he should have – and added years to the attempt to starve him out.

h. The COA's ruled it didn't matter that Haeg's statement was used to convict Haeg, as there was other evidence available. Yet Evidence Rule 410, the Alaska Supreme Court, DC District Court, and U.S. Supreme Court hold this cannot happen:

"The Government must do more than negate the taint; it must affirmatively prove that its evidence is derived from a legitimate source wholly independent of the compelled testimony." Kastigar v. United States, 406 U.S. 441 (U.S. Supreme Court 1972)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

F.2d at 312. This incurable inability to adequately prevent or detect nonevidentiary use, standing alone, presents a fatal constitutional flaw in use and derivative use immunity.

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

It is clear the COA's falsified the law to prevent Haeg from winning on appeal – as he should have – and added years to the attempt to starve Haeg out.

i. The COA's ruled that Judge Murphy did not prevent Haeg from claiming he was not hunting. Yet Judge Murphy specifically ruled before trial that Haeg could not claim he was not hunting and Judge Murphy did not allow a jury instruction that Haeg's permit prevented hunting convictions. It is clear the COA's falsified the facts to prevent Haeg from winning on appeal – as he should have – and added years to the attempt to starve him out.

j. The COA's ruled that the "notice" required by due process regarding property seizure is "notice" the property has been seized – not notice that you are entitled to a hearing to contest. As shown above in AS 28.05.131 and U.S. Supreme Court case Memphis Light above this is false. It is clear the COA's falsified the law to prevent Haeg from winning on

appeal – as he should have – and added years to the attempt to starve him out.

k. The COA's ruled Haeg's attorney had "waived" numerous rights by not bringing them up at the proper time or in an improper way but then ruled that Haeg had to litigate this during PCR. Yet the COA's refused to stay Haeg's appeal so he could do so and refused to order the district court to accept Haeg's PCR application after the district court refused to do so. See Haeg's 1-8-08 opposition.

7. Authorities and Discussion of Attorney Dolifka's Testimony

Attorney Dale Dolifka investigated the COA's decision in Haeg's case, including presenting the COA's decision to other attorneys and former judges, and *all agreed the Court of Appeal's decision violated the Appellate Rules:*

8-25-10 Dale Dolifka Testimony

Superior Court Judge Stephanie Joannides presiding

Mr. Haeg: Ok -um- do you remember saying something 'sold your soul for a deal and then the State and Cole sold you down the river'. Is that?

Mr. Dolifka: I – I could have very well said that…

Mr. Haeg: Ok.

Mr. Dolifka: Cause your – your whole plea thing just boggles my mind to this day.

Mr. Haeg: Ok 'other than just an outright payoff of a judge or jury it is hard to imagine anyone being sold down the river more'?

Mr. Dolifka: I don't remember saying that but I – I might of.

Mr. Haeg: Ok -um- -uh-…

Mr. Dolifka: That could have been in the context of – of all of the – the little travels… I mean your stuff even with the proprieties that went on I'm so glad you got a new judge on this because one of the things that smelled so bad to – to lay people was all the stuff that you filed for new judge about. The judge riding around with the Trooper and commandeering vehicles. I mean that smelled to high heaven. Especially to non-lawyers. That was one of the things he community was most outraged was just…

Mr. Haeg: Well and not only that – that when I went to the single investigator of judicial conduct and I can prove she lied. I mean that and when she told me – well I guess I'm testifying but… Is the fact that she investigated and because she's been the only judicial investigator for 21 years and – and you reading the stuff should know she lied. Was that a concern?

Mr. Dolifka: Of course. I mean it was and it was… Look at the people that are here today. It was those things that became so troubling. Not only in your case but other cases down there. You would see this stuff and you would just go 'my god that cannot be…

Mr. Haeg: Ok.

Mr. Dolifka:…true'…

Mr. Haeg: Ok. Well let me – I'll just 'your end of the bargain was not met. It was heads I win tails you loose. You didn't even have to be a lawyer or you don't even have to be a lawyer to know inherently there's something wrong with that'.

Mr. Dolifka: I – I'm sure I said that and I still feel that way. That how you – when you went and told everything that you did thinking you had an agreement. Turns out you didn't have agreement and your charges got exponentially increased. That statement I made right there. I absolutely said it. I'm sure and I agree with it today.

Mr. Haeg: Ok if I told – 'if you told a thousand ordinary citizens that for a deal you went in an spilled your guts and then never got the deal they would find that appalling. That's what smelled so bad to me'?

Mr. Dolifka: I'm sure I said that.

Mr. Haeg: -Um- 'the fruit of the poisonous tree started with the warrants which claimed all the evidence was found where you guide. The dominos should have all went down right there. That's what I thought Chuck would latch onto'?

Mr. Dolifka: Well yeah when – when I read your case and the lay people here read your case it appears that the whole the whole foundational things built on a lie. Unless we're all misreading it it looks like it - it the whole deal about section this and all the affidavits. Everything had it. And then the hearing while it wasn't that at all it – when I used it… And that was kind of odd thing to use as fruit of the poisonous tree. We all had that. For us old coots that was a common theory in law school. And once you poison something it's like a house without a foundation. So all the good folks that are here today that we would talk about – I think almost everyone goes back to that original seminal issue that how the hell did this case go on when it appears to lay people and to me a lot of it was built on a lie in a sworn affidavit?

Judge Joannides: And Mr. Haeg just want to tell you that this kind of information (undecipherable) is the kind of information that generally goes to PCR judge about the legal defects in the case.

Mr. Haeg: -Um- 'Everyone in your case has had a political price to pay if they did right by you. If they did right by you the DA would take it out on them and other cases. Then you got the case of your lawyer and the other lawyer got hurt. *You had a series of situations which everyone was doing things to protect everyone rather than you because there was a price to pay'?*

Mr. Dolifka: I agree with that.

Mr. Haeg: Ok. -Um- 'Your case has shades of Selma in the 60's. Where judges, sheriffs, and even assigned lawyers were all in cahoots together'?

Mr. Dolifka: Well I don't remember that but as a southerner I probably said that.

Mr. Haeg: But anyway let me just see if you remember this. 'The reason why you have still not resolved your legal problems is corruption. I can tell you exactly what happened. In the early stages you were one of the first that I realized

it was corruption. At first I thought it was ineptness. Over time in this journey with you here's a corrupt case here's a corrupt case and here's a corrupt case. Now here's what happens when they come up on appeal. You have a Supreme Court sitting there looking at a pile of dung and *if they right by you and reveal you know you have the attorneys going down, you have the magistrates going down, you have the troopers going down. You are one small part of the pocket. A lot of lawyers would agree with me. The reason is all gummed up at the top. You're just one of many. It's absolute unadulterated self-bred corruption'?*

Mr. Dolifka: If that was in that era down there I – I probably did say that. I – I was – I had got to such a point of cynicism that I – I was ready to throw in the towel.

Mr. Haeg: Ok and then you…

Mr. Dolifka: But I…

Mr. Haeg: …you gone on 'I talked to Judge Hanson about this. I talked to Judge Hanson for 3 hours about your case. I lean on him all the time. *He now sees it. The system crushes them. I don't have any question now because I couldn't figure out why your appeal could be over and done with. I walked over here and lawyer A says my god they're violating every appeal rule ever. How can it be like this?'*

Mr. Dolifka: Well I probably…

Mr. Haeg: Ok. I mean this is you know then you said 'I absolutely have no faith left in the system'?

Mr. Dolifka: During that time that I probably would have said that.

8. Authorities and Discussion of Perjury

AS 11.56.200. Perjury
(a) A person commits the crime of perjury if the person makes a false sworn statement which the person does not believe to be true.
(b) In a prosecution under this section, it is not a defense that
(1) the statement was inadmissible under the rules of evidence; or
(2) the oath or affirmation was taken or administered in an irregular manner.
(c) Perjury is a class B felony.

AS 11.56.235. Retraction as a defense.
(a) In a prosecution under AS 11.56.200 or 11.56.230, if the false statement was made in an official proceeding, it is an affirmative defense that the defendant expressly retracted the false statement
(1) during the course of the same official proceeding;
(2) before discovery of the falsification became known to the defendant;
(3) before reliance upon the false statement by the person for whom it was intended; and
(4) if the official proceeding involved a trier of fact, before the subject matter of the official proceeding was submitted to the ultimate trier of fact.

AAG Peterson and Robinson claim that it was not perjury when Trooper Gibbens "corrected" himself only after he knew his sworn false trial testimony had been discovered. Yet this is by definition perjury – the person giving the false sworn testimony can only "correct" themselves *before* they know their false testimony has been found out – not *after* they know it has been found out.

8. Miscellaneous

a. AAG Peterson having Haeg threatened with physical harm if Haeg continued to pursue post conviction relief.

b. Leaders threatening to harm Cole if Cole advocated for Haeg.

c. Peterson never answering and talking in circles when asked by Judge Bauman to address the state using Haeg's statement in the charging information that Haeg went to trial on.

d. Peterson repeatedly referring to the "deposition" of Scot Leaders – when Haeg was never informed Leaders was deposed, given an opportunity to attend the deposition, or given an opportunity to cross-examine Leaders.

e. When Haeg filed a criminal complaint of the troopers perjury against Haeg it was "investigated" and dismissed by Roger Rom – the state attorney who, at the very same time of his "investigation", was defending the state's conviction of Haeg. All authorities, including the Alaska Bar Association, hold this is an unacceptable conflict of interest.

f. State ethics attorney Dave Jones ruling that it was not unethical for troopers to commit perjury at trial. By definition acts that are illegal are unethical.

g. Judge Bauman's dismissal of Haeg's claim and evidence against ACJC investigator Greenstein, when all who have looked at the evidence claim this alone is enough to overturn Haeg's conviction – and then investigator Greenstein's dismissal of Haeg's complaint against Judge Bauman without addressing Haeg's claim or the evidence against him – and then ACJC chairman Judge Esch having to reverse Greenstein's dismissal of Haeg's complaint against Judge Bauman.

h. ACJC chairman Judge Esch denying Haeg's request to testify, during ACJC open public testimony, about ACJC investigator Greenstein's corruption – and then Judge Esch having Haeg met by a trooper SWAT team when he attended the open pubic testimony portion of the ACJC meeting.

i. Judge Bauman's dismissal of Judge Joannides 2 separate referrals to the Alaska Commission on Judicial Conduct – referrals which certify evidence that Judge Murphy, Trooper Gibbens, and judicial conduct investigator Greenstein conspired to cover up the corruption of Judge Murphy and Trooper Gibbens during Haeg's trial and sentencing.

j. Judge Bauman's dismissal of the fact that Judge Joannides ruled that at a minimum Judge Murphy gave the appearance of impropriety (which is in itself unacceptable according to Judicial Canons) while she presided over Haeg's prosecution.

k. Judge Bauman ruling that Haeg was "indigent" and then ruling Haeg must pay for depositions and denying Haeg' request for transcriptions of depositions taken by the state. See Nichols v. State, 425 P.2d 247 (AK 1967):

"In the recent decision of Long v. District Court of Iowa, the United States Supreme Court held that a refusal of a stat court to furnish an indigent prisoner with a transcript.... was to deny the prisoner the equal protections of the laws."

l. Attorney Robinson's sworn deposition testimony that he never said there was a "good old boys club" of "judges, magistrates, prosecutors, and troopers that protect their own" against claims of perjury and corruption – when Haeg has tape recordings of Robinson stating exactly this.

m. The official record of the Alaska Bar Association proceedings against Cole coming up "empty" and the Bar's refusal to reconstruct the official record with Haeg's recordings that were made at the very time in question –

forcing Haeg to appeal, with an "empty" record, the fact Cole testified under oath that Haeg had immunity and could not be prosecuted – but let him be anyway after being threatened by the state.

n. The evidence "missing" out of the official court record of Haeg's prosecution – evidence that would have provided the motive for Haeg's actions and would have destroyed the state's case Haeg's actions were to benefit his business.

o. Haeg's public defenders "not being able to meet statutory obligations" – and forcing Haeg to represent himself.

p. AAG Peterson's 14-page opposition to Haeg representing himself.

q. Judge Bauman first denying oral arguments on the state's first motion to dismiss – and then Judge Bauman holding oral arguments on the state's first motion to dismiss – after he had already decided this motion.

r. Judge Murphy, Magistrate Woodmancy, and ACJC investigator Greenstein hiring private criminal defense attorneys after Haeg's subpoenas.

s. Director of the Alaska State Troopers, Colonel Keith Mallard, telling Haeg that Haeg's allegations of trooper perjury "was just sour grapes" and that he [Mallard] "will not dignify you [Haeg] with an address to which you can send a complaint." This response from Mallard came after the FBI told Haeg to contact Colonel Mallard with the evidence of trooper perjury.

Conclusion

In spite of Haeg's best efforts to protest (proven by his protests during his "interview" and protests when it came up at trial) everyone - including Leaders, Gibbens, Haeg's own attorneys, and Judge Murphy - worked together to falsify the evidence to Haeg's guide area in order to destroy Haeg's guide business and protect the Wolf Control Program.

In spite of Haeg's best efforts to protest (proven by his documenting the evidence and demanding it be placed in the court record) everyone - including Leaders, Gibbens, Haeg's own attorneys, and Judge Murphy - worked together to eliminate any and all evidence the state told Haeg to do exactly as he was charged with doing in order to destroy Haeg's guide business and protect the Wolf Control Program – going so far as to take properly admitted evidence out of the official court record – while leaving in evidence proving it had been admitted.

In spite of Haeg's best efforts to protest (proven by recordings of Hag and Cole when Cole was representing Haeg) everyone - including Leaders, Gibbens, Haeg's own attorneys, and Judge Murphy - worked together to violate Haeg's right against self-incrimination by telling Haeg he had immunity, telling him he was required to give a statement, and afterward denying Haeg had been given immunity when Haeg's statement was used in numerous ways – corruption which is irrefutably confirmed by the sworn testimony of Cole himself and of the attorney working with him at the time in question – Kevin Fitzgerald.

If the state and an ignorant defendant's own attorneys are allowed to work together to destroy favorable evidence, and to manufacture false evidence, anyone can be convicted of anything – not matter how innocent they are.

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.

Adickes v. S. H. Kress & Co., 398 U.S. 144 (United States Supreme Court 1970):

"Such, then, is the character of these outrages -- numerous, repeated, continued from month to month and year to year, extending over many States; all similar in their character, aimed at a similar class of citizens; all palliated or excused or justified or absolutely denied by the same class of men. Not like the local outbreaks sometimes appearing in particular districts, where a mob or a band of regulators may for a time commit crimes and defy the law, but having every mark and attribute of a systematic, persistent, well defined organization, with a fixed purpose, with a regular plan of action. The development of this condition of affairs was not the work of a day, or even of a year. It could not be, in the nature of things; it must be slow; one fact to be piled on another, week after week, year after year. . . .Such occurrences show that there is a pre-concerted and effective plan by which thousands of men are deprived of the equal protection of the laws. *The arresting power is fettered, the witnesses are silenced, the courts are impotent, the laws are annulled, the criminal goes free, the persecuted citizen looks in vain for redress."*

Monroe v. Pape, 365 U.S. 167 (United States Supreme Court 1961):

"[T]he local administrations have been found inadequate or unwilling to apply the proper corrective. Combinations, darker than the night that hides them, conspiracies, wicked as the worst of felons could devise, have gone unwhipped of justice. *Immunity is given to crime, and the records of the public tribunals are searched in vain for any evidence of effective redress.*

The State, from lack of power or inclination, practically denied the equal protection of the law to these persons...those who representing a State in some capacity were unable or *unwilling* to enforce a state law.

[I]f secret combinations of men are allowed by the Executive to band together to deprive one class of citizens of their legal rights without a proper effort to discover, detect, and punish the violations of law and order, the State has not afforded to all its citizens the equal protection of the laws.

Whenever, then, there is a denial of equal protection by the State, the courts of justice of the nation stand with open doors, ready to receive and hear with impartial attention the complaints of those who are denied redress elsewhere. Here may come the weak and poor and downtrodden, with assurance that they shall be heard. Here may come the man smitten with many stripes and ask for redress. Here may come the nation, in her majesty, and demand the trial and punishment of offenders, when all, all other tribunals are closed. . . .

The United States courts are further above mere local influence than the county courts; their judges can act with more independence, cannot be put under terror, as local judges can; their sympathies are not so nearly identified with those of the vicinage; the jurors are taken from the State, and not the neighborhood; they will be able to rise above prejudices or bad passions or terror more easily. The marshal, clothed with more power than the sheriff, can make arrests with certainty, and, with the aid of the General Government, can seize offenders in spite of any banded and combined resistance such as may be expected. Thus, at least, *these men who disregard all law can be brought to trial.*

Does the grim shadow of the State step into the national court, like a goblin, and terrify us? Does this harmless and helpless ghost drive us from that tribunal -- *the State that mocks at justice, the State that licenses outlawry, the State that stands dumb when the lash and the torch and the pistol are lifted every night over the quiet citizen?*"

Haeg will prevail, no matter how many judges, prosecutors, troopers, or defense attorneys join the conspiracy to cover up, not because he is strong or

clever – it is because the axe he swings is named United States Constitution and as the forces against it grow it will burn brighter and brighter, calling all those sworn to protect it to its aid. And while a criminal conspiracy of judges, prosecutors, troopers, and defense attorneys is powerful indeed, our Constitution and those sworn to uphold it are far mightier still and will prevail. Our Constitution and the countless people who have died for it demand nothing less.

I declare under penalty of perjury the forgoing is true and correct. Executed on May 7, 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
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Soldotna, Alaska 99669
(907) 262-9249 and 262-8867 fax
haeg@alaska.net

Certificate of Service: I certify that on May 7, 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)

4-27-12 Reply to State's Opposition; 4-27-12 Response to Judge Bauman's Order; 4-27-12 Motion that AAG Peterson be Found in Contempt of Court and Fined; and 4-27-12 Motion for Independent Investigation of Haeg's Case

COMES NOW Applicant, David Haeg, and hereby files this (1) 4-27-12 reply to state's opposition; (2) 4-27-12 response to Judge Bauman's order; (3) 4-27-12 motion that AAG Peterson be found in contempt of court and fined $50,000; and (4) 4-27-12 motion for independent investigation of Haeg's case.

Prior Proceedings

(1) On April 20, 2012 oral arguments were held concerning AAG Andrew Peterson's falsification of the law to the court – so that the state could cover up the illegal seizure and forfeiture of the plane that Haeg used to provide a livelihood for his family.

(2) On April 2, 2012 Judge Bauman ordered Haeg and the state to address the recent U.S. Supreme Court decisions in Missouri v. Frye and Lafler v.

Cooper "as regards to plea negotiation related issues in this case" including whether they effect "Haeg's claim that the district court erred by failing to inquire about plea negotiations."

(3) On April 20, 2012 state AAG Peterson filed an opposition to Haeg's 3-19-12 ineffective assistance of counsel memorandum and 3-29-12 Judge Murphy/Trooper Gibbens memorandum.

Discussion

(1) 4-27-12 reply to state's opposition.

(a) In his opposition AAG Peterson numerous times uses Cole's sworn Alaska Bar Association (ABA) testimony. Yet during Haeg's deposition of Cole both Cole and AAG Peterson refused to let Haeg question Cole about his ABA testimony. See Haeg's ineffective assistance of counsel memorandum. This unquestionably violates Haeg's constitutional right to confront the witnesses against him.

(b) AAG Peterson claims Trooper Gibbens' affidavits and trial testimony he found the wolf kill locations in Game Management Unit (GMU) 19-C were only a misstatements. Yet long before trial both Trooper Gibbens and prosecutor Scot Leaders had twice been informed (by Haeg and by Tony Zellers during their "statements") that the locations were false and were actually located GMU 19-D, the GMU in which the wolf control program was taking place and where Haeg did not and could not guide. See Haeg's PCR memorandums, exhibits, affidavits, and motions to supplement. *Yet knowing the affidavits were*

false neither Leaders nor Gibbens corrected the false affidavits. See trial record and Haeg's PCR memorandum and exhibits. Instead they later continued to falsify the kill locations at trial with Leaders suborning and accepting Gibbens trial testimony that the wolves were killed in GMU 19-C. See trial record. Only after Gibbens knew his perjury had been discovered (when Haeg flat demanded Robinson force Gibbens, during Gibbens' cross-examination, to admit he knew the wolves were killed in GMU–19-D) did Gibbens admit he knew his testimony was false. See trial record. This is the exact definition of perjury:

AS 11.56.200. Perjury
(a) A person commits the crime of perjury if the person makes a false sworn statement which the person does not believe to be true.
(b) In a prosecution under this section, it is not a defense that
(1) the statement was inadmissible under the rules of evidence; or
(2) the oath or affirmation was taken or administered in an irregular manner.
(c) Perjury is a class B felony.

AS 11.56.235. Retraction as a defense.
(a) In a prosecution under AS 11.56.200 or 11.56.230, if the false statement was made in an official proceeding, it is an affirmative defense that the defendant expressly retracted the false statement
(1) during the course of the same official proceeding;
(2) before discovery of the falsification became known to the defendant;
(3) before reliance upon the false statement by the person for whom it was intended; and
(4) if the official proceeding involved a trier of fact, before the subject matter of the official proceeding was submitted to the ultimate trier of fact.

This known perjury by Trooper Gibbens, or even its acceptance by prosecutor Leaders - who also had been told the wolves had been killed in GMU 19-D, means Haeg's conviction is invalid:

"Conviction obtained through use of false evidence, known to be such by representatives of the State, is a denial of due process, and there is also a denial of due process, when the State, though not soliciting false evidence, allows it to go through uncorrected when it appears. Principle that a State may not knowingly use false evidence, including false testimony, to obtain a tainted conviction, implicit in any concept of ordered liberty, does not cease to apply merely because the false testimony goes only to the credibility of the witness." Napue v. Illinois, 360 U.S. 264 (U.S. Supreme Court 1959)

"[T]he dignity of the U.S. Government will not permit the conviction of any person on tainted testimony. The government of a strong and free nation does not need convictions based upon such testimony. It cannot afford to abide with them." Mesarosh v. U.S., 352 U.S. 1 (U.S. Supreme Court 1956)

"Requirement of 'due process' is not satisfied by mere notice and hearing if state, through prosecuting officers acting on state's behalf, has contrived conviction through pretense of trial which in truth is used as means of depriving defendant of liberty through deliberate deception of court and jury by presentation of testimony known to be perjured, and in such case state's failure to afford corrective judicial process to remedy the wrong when discovered by reasonable diligence would constitute deprivation of liberty without due process." Mooney v. Holohan, 294 U.S. 103 (U.S. Supreme Court 1935)

"The principle that a State may not knowingly use false evidence, including false testimony, to obtain a tainted conviction, [is] implicate in any concept of ordered liberty..." Giles v. Maryland, 386 U.S. 66 (U.S. Supreme Court 1967)

"We hold the Due Process Clause of the Fifth Amendment is violated when a defendant has to stand trial on an indictment which the government knows is based partially on perjured testimony..." United States v. Basurto, 497 F.2d 781 (9th Cir. 1974)

And once Haeg and Zellers pointed out Gibbens' affidavit had falsified the evidence locations to Haeg's guiding GMU and that this meant the state's claim Haeg was killing wolves for his own benefit was false, the state was obligated to correct the affidavits:

"[A]ll evidence obtained by searches & seizures in violation of the Federal Constitution is inadmissible in a criminal trial in a state. Nothing can destroy a government more quickly than its failure to observe its own laws, or worse, its disregard of the charter of its own existence." Mapp v. Ohio, 367 U.S. 643 (U.S. Supreme Court 1961)

"Once defendant has shown that specific statements in affidavit supporting search warrant are false, together with statement of reasons in support of assertion of falsehood, burden then shifts to State to show that statements were not intentionally or recklessly made." Lewis v. State, 9 P.3d 1028, (Ak.,2000)

"State & federal constitutional requirement that warrants issue only upon a showing of probable cause contains the implied mandate that the factual representations in the affidavit be truthful." State v. Davenport, 510 P.2d 78, (Ak.,1973)

"Misstatements on warrants were material and intentional, justifying suppression of evidence obtained through use of the warrants." State v. White, 707 P2d 271 (Ak., 1985)

"'[Defendant] has everything to gain and nothing to lose' in filing a motion to suppress..." U.S. v. Molina, 934 F.2d 1440 (9th Cir. 1991).

And irrefutable proof the known perjury harmed Haeg is the fact Judge Murphy specifically cited the false locations to justify Haeg's severe sentence. And if Judge Murphy used the known false testimony to sentence Haeg it is certain Haeg's jury used it to convict him. See court record.

(c) AAG Peterson claims that Cole and Robinson believe that the misstatements by Gibbens were not intentional. Yet if Cole or Robinson admitted the misstatements were intentional and they did nothing they would be admitting they had committed ineffective assistance of counsel and malpractice - while denying the misstatement was intentional would help insure Haeg remained

convicted and thus not legally able to sue them for malpractice. See Shaw v. State, 816 P.2d 1358 (AK Supreme Court 1991):

"We hold that a convicted criminal defendant must obtain post-conviction relief before pursuing an action for legal malpractice against his or her attorney. The requirement of post-conviction relief promotes judicial economy because many issues litigated in the quest for post-conviction relief will be duplicated later in the legal malpractice action. This is because dispositive post-conviction relief is relevant to the issue of proximate causation. The burden of proof in the two proceedings is similar."

This is an incredibly potent motive for both Cole and Robinson to falsely claim they did not think Gibbens intentionally falsified the evidence locations to GMU 19-C, the GMU in which Haeg guided.

(d) AAG Peterson claims that although Gibbens' affidavit claims the wolves were killed in GMU 19-C the affidavit makes no mention that Haeg is a big game guide and/or that his lodge is located in GMU 19-C. Yet Gibbens' affidavit specifically states:

"Within the remote camp know as Trophy Lake Lodge located near Under Hill Creek near the Upper Swift River *in GMU 19-C...Trophy Lake Lodge is located in Game Management Unit 19-C and is large guide camp which Haeg owns and uses for both commercial* and private use..."

See Haeg's PCR memorandums, exhibits, affidavits, and motions to supplement.

(e) AAG Peterson claims that Cole explained evidence could not be suppressed unless the false statement was intentional. Yet Lewis v. State above and Franks v. Delaware below states the falsehood need only be reckless and if the state is informed of a falsehood, as they were, they were required to cure the

falsehood, which they did not. See Franks v. Delaware, 438 U.S. 213 (U.S. Supreme Court 1978):

> "It would be an unthinkable imposition upon [the authority of a magistrate judge] if a warrant affidavit, revealed after the fact to contain a deliberately or recklessly false statement, were to stand beyond impeachment."

In addition, Gibbens and Leaders' admitted perjury and subornation of perjury at trial prove the misstatement on the affidavit was intentional. See Haeg's PCR memorandums, exhibits, affidavits, and motions to supplement.

(f) AAG Peterson claimed Cole testified that even guides get the location of a Game Management Unit wrong. Yet Gibbens and Leaders were both told about the false evidence location and instead of correcting it they pressed forward with the same falsehood at trial until finally forced to admit they had knowingly done so. It is irrefutable that they did so intentionally and maliciously and it is irrefutable that this falsehood harmed Haeg. See Haeg's PCR memorandums, exhibits, affidavits, and motions to supplement.

(g) AAG Peterson claims Cole testified that since Gibbens affidavit made no mention of the game management unit that Haeg hunted in a motion to suppress would not result in a dismissal of the case against Haeg or a return of the airplane. As already shown above Gibbens affidavit included both the location of where Haeg hunted and the location of Haeg's lodge. See Haeg's PCR memorandums, exhibits, affidavits, and motions to supplement.

(h) AAG Peterson claims Cole testified that filing a motion to suppress would put the case in a trial posture, which was not a favorable position for Haeg. Yet when Haeg decided to go to trial neither Cole nor Robinson put Haeg's case in a trial posture by filing motions to suppress, to protest the falsified evidence locations, to protest the illegal warrants and perjury, to protest the violation of Haeg's immunity, to protest the state told Haeg it was for the greater good of the state for Haeg to do exactly as the state charged Haeg with doing, to protest the witness against Haeg chauffeuring Haeg's trial judge, etc, etc. See court record.

It is exactly as if Haeg were landing an airplane, told his crew to abort the landing, and the crew never firewalled the throttle, sucked up the landing gear, or set flaps for climb. It is no wonder Haeg and family crashed and burned.

(i) AAG Peterson claims that while Haeg at times wanted to fight the charges, he ultimately agreed to Cole's strategy of negotiating. Yet Haeg has recordings of Cole, while Cole was representing Haeg, proving that Cole lied to Haeg about what could be done to fight. In other words Haeg would have never negotiated if Cole told him the truth – proven by the fact Haeg went to trial without ever being told the incredible strength of his defenses against the state. And Peterson's claim, that Haeg ultimately agreed to Cole's strategy of not going to trial, is irrefutably false - *Haeg went to trial.* See court record and Haeg's PCR memorandums, exhibits, affidavits, and motions to supplement.

(j) AAG Peterson claims that Cole discussed bonding the plane out with Haeg. Yet Haeg has recordings of Cole, while Cole was representing Haeg,

proving that Cole never discussed bonding the plane out with Haeg. Cole has also testified under oath that he never discussed bonding the plane out with Haeg. See Haeg's PCR memorandums, exhibits, affidavits, and motions to supplement.

(k) AAG Peterson claims Haeg claimed Cole provided ineffective representation by *allowing* Haeg to give a statement to Trooper Gibbens and prosecutor Leaders. Haeg never claimed this. Haeg claimed that Cole provided ineffective representation by telling him he had been given immunity, that he was *required* to give a statement, and then *allowing* Haeg to be prosecuted along with letting the state use his statement to do so. See Haeg's PCR memorandums, exhibits, affidavits, and motions to supplement.

(l) AAG Peterson claims that Cole had Haeg give a statement so the state would not shut Haeg's business down. Yet Haeg has recordings of Cole, while Cole was representing Haeg, proving this was not the case. See Haeg's PCR memorandum and exhibits. In addition, the state could not legally shut Haeg's business down before Haeg was charged and convicted. See Haeg's PCR memorandums, exhibits, affidavits, and motions to supplement.

(m) AAG Peterson never refutes that Cole has testified twice under oath (during his ABA testimony and during his deposition for this case) that Haeg had transactional immunity for his statement – preventing Haeg from ever being prosecuted for anything that was discussed during the statement – which was everything that Haeg was later prosecuted for.

"Transactional immunity" affords immunity to the witness from prosecution for the offense to which the compelled testimony relates. Black's Law Dictionary (9th Ed.2009).

(n) An attorney working with Cole while Cole was representing Haeg (Kevin Fitzgerald) has also testified at Cole's request that Haeg had been given transactional immunity. Even more shocking than this is the fact that Fitzgerald also testified that prosecutor *Leaders had affirmatively told Cole that he (Leaders) was not going honor Haeg's immunity.* See Haeg's PCR memorandum and exhibits. This proves that not only did Haeg have immunity, Cole knew Leaders was going to violate it, Cole never told Haeg this, Cole never did anything about the immunity violation, that Leaders knowingly and maliciously violated Haeg's immunity and right against self-incrimination, and Cole, Leaders and AAG Peterson have committed multiple acts of perjury to cover everything up. See Haeg's PCR memorandums, exhibits, affidavits, and motions to supplement.

(o) AAG Peterson claims that during Haeg's "interview" by Leaders and Gibbens it was never mentioned that Haeg's statement was "immunized" and would prevent Haeg from being prosecuted. Yet Cole, who was representing Haeg when Haeg gave the statement (the "interview" took place in Cole's office with Cole present), has twice testified under oath that Haeg had been given transactional immunity for the statement – which would prevent Haeg from being prosecuted. *And Cole has testified to the reason he did not protest when Leaders affirmatively told Cole that he (Leaders) was going to violate Haeg's immunity –*

Leaders and the state threatened to sanction him if he did. See Haeg's PCR memorandums, exhibits, affidavits, and motions to supplement.

(p) AAG Peterson claims that even Haeg believed his statement fell under Evidence Rule 410. Arthur "Chuck" Robinson (who Haeg hired after firing Cole) told then ignorant Haeg that his statement fell under Evidence Rule 410. As Haeg was paying Robinson $250 per hour for his expert legal advice it is understandable that then ignorant Haeg believed Robinson's advice and did not know it was just another falsehood to cover up the growing scandal. See Haeg's PCR memorandum, exhibits, affidavits, and motions to supplement.

(q) AAG Peterson claims that Cole negotiated a resolution that was very favorable to Haeg. This "very favorable" resolution included 55 days in jail, 110 hours of community service, $11,000 fine, suspension of Haeg's guide license (the primary way for both Haeg and wife to make a livelihood) for 1-3 years, forfeiture of the plane and other property that was the primary means by which Haeg and wife provided a livelihood and worth hundreds of thousands of dollars, restitution of $4500, and suspension of Haeg's trapping license for 10 years. If this is a "very favorable" resolution for doing exactly what the state asked, one must wonder what an "unfavorable resolution" might be. This doesn't even take into account that Haeg was given immunity that prevented Haeg from being prosecuted at all or that the state intentionally falsified all the evidence locations to justify a guiding prosecution and strip Haeg of Wolf Control Program law protection. See Haeg's PCR memorandum, exhibits, affidavits, and motions to supplement.

(r) AAG Peterson claims Haeg should have accepted any number of plea agreements the state offered and/or Cole negotiated. Yet AAG Peterson never once addresses Haeg's claims and proof that *Cole (and Robinson) lied to Haeg to force Haeg to even consider a plea agreement at all – let alone one that involved harming Haeg's guide business.* See Haeg's PCR memorandum, exhibits, affidavits, and motions to supplement.

(s) AAG Peterson claims the state did not break a plea agreement by filing an amended information. Yet Haeg has recordings of Cole, both when Cole was representing Haeg and immediately afterward, proving that this is exactly what the state did. See Haeg's PCR memorandum, exhibits, affidavits, and motions to supplement.

(t) AAG Peterson claims there was a complete agreement on November 8, 2004. Yet Haeg has recordings of Cole, both when Cole was representing Haeg and immediately afterward, proving there was no agreement on November 8, 2004. See Haeg's PCR memorandum, exhibits, affidavits, and motions to supplement.

(u) AAG Peterson claims the state had the option of changing the charges to AS 08.54.720(a)(15) when lesser charges had already been filed. Yet Haeg had already given up a year of guiding and flown in multiple witnesses from as far away as Illinois in reliance on the lesser charges. See Haeg's PCR memorandum, exhibits, affidavits, and motions to supplement. After this detrimental reliance the state could not increase the severity of the charges:

"When the prosecution makes a 'deal' within its authority and the defendant relies on it in good faith, the court will not let the defendant be prejudiced as a result of that reliance." United States v. Goodrich, 493 F.2d 390, 393 (9th Cir. 1974).

"The indictment upon which Garcia's convictions are based was obtained in violation of the express terms of the agreement and is therefore invalid. The upholding of the Government's integrity allows for no other conclusion." U.S. v. Garcia, 519 F.2d 1343 (9th Circuit 1975)

> "Government must adhere strictly to the terms of agreements made with defendants—including plea, cooperation, and immunity agreements..." Santobello v. New York, 404 U.S. 257 (U.S. Supreme Court 1971)

> "[A] court must carefully scrutinize the agreement to determine whether the government has performed; in doing so, court must strictly construe the agreement against the government." Stolt-Nielsen v. U.S., 442 F.3d 177 (3d. Cir. 2006)

> "Modern notions of due process have belied the notion that a prosecutor may invoke his discretion to evade promises made to a defendant or potential defendant as part of an agreement or bargain. That being the case, a defendant or witness does have more to rely upon than merely the "grace or favor" of the prosecutor... to allow the defendant some redress for prosecutorial reneging." Surina v. Buckalew, 629 P.2d 969 (Alaska 1981)

"Where an accused relies on a promise... to perform an action that benefits the state, this individual...will not be able to "rescind" his or her actions. ... In the plea bargaining arena, the United States Supreme Court has held that states should be held to strict compliance with their promises. ...courts consider the defendant's detrimental reliance as the gravamen of whether it would be unfair to allow the prosecution to withdraw from a plea agreement. Closson v. State, 812 P.2d 966 (Ak. 1991)

(v) AAG Peterson claims that prosecutor Leaders filed the first information *before* Cole made an open sentencing plea agreement for Haeg. Yet Leaders filed the first information *months after* Cole billed Haeg for making an

open sentencing agreement with Leaders. See Haeg's PCR memorandum, exhibits, affidavits, and motions to supplement.

(w) AAG Peterson claims that Haeg had agreed to forfeit the airplane before the first information was filed. Yet Haeg has recordings of Cole, both when Cole was representing Haeg and immediately afterward, proving that Haeg *never* agreed to forfeit the plane. See Haeg's PCR memorandum, exhibits, affidavits, and motions to supplement.

(x) AAG Peterson claims that Leaders was first asked about open sentencing *after business hours on November 8, 2004*. Yet Cole billed Haeg for asking Leaders about open sentencing *months before November 8, 2004*. See Haeg's PCR memorandum, exhibits, affidavits, and motions to supplement.

(y) AAG Peterson claims that Haeg made an agreement that left nothing to the courts discretion. Yet Haeg has recordings of Cole, both when Cole was representing Haeg and immediately afterward, proving that Haeg *never* agreed to anything in which left nothing to the courts discretion. See Haeg's PCR memorandum, exhibits, affidavits, and motions to supplement.

(z) Peterson claims that information provided by Haeg during his "interview" was not used or admitted at trial. Yet during Haeg's 6-11-04 "interview" Gibbens is tape-recorded having Haeg mark in pen on a map where the wolves were killed.

Gibbens: "*Why don't we mark them out with a digit, chronologically*?"

Haeg: "yeah"

Gibbens: "or a 1 *where it was with a pen and it will show up just a little better.*" See Haeg's PCR memorandum, exhibits, affidavits, and motions to supplement.

Then, during Zellers 6-23-04 "interview" Gibbens is tape-recorded telling Zellers to confirm the locations that Haeg had already marked in pen on the map.

Gibbens: "Well real quick *while I've got the map out I'll have you look it here and I'll show you the marks that David [Haeg] made* and you tell me if you concur or unconcur basically." See Haeg's PCR memorandum, exhibits, affidavits, and motions to supplement.

Then prosecutor Leaders himself, on the court record during Haeg's trial, stated that the map being used and admitted against Haeg was the same exact one as Haeg made during his "interview". See trial court record, page 281.

Leaders: *"This is a map Trooper Gibbens has said – you were the one that, right, that did this..."*

Gibbens: "Yes."

Leaders: "*...and then it was used in an interview, one with Mr. Haeg, which is not admissible because it was based on plea negotiations and also with Mr. Zellers regarding the – where the wolves were taken."*

This map was labeled exhibit # 25 on court record page 286, admitted into evidence against Haeg on court record page 333, and used against Haeg by Trooper Gibbens and prosecutor Leaders – see court record pages 333 - 373, 422,

441, 461, 467, 469, 474, and 475. This irrefutably proves that information provided by Haeg during his interview was used and admitted against him at trial.

Also shocking is that Leaders and Gibbens later work together to deceive Judge Murphy and Haeg's jury into believing Gibbens placed the marks on the map. See trial court record, pages 281, 332, and 333.

Leaders: "This is a map Trooper Gibbens has said – *you were the one that, right, that did this?"*

Gibbens: *"Yes."*

Leaders: "And *did you mark them somehow on the map*?"

Gibbens: "*I – I marked them in pen on the map…*"

This irrefutably proves that not only was the map Haeg made with pen during his "interview" used and admitted against him at trial, prosecutor Leaders and Trooper Gibbens conspired to suborn, and commit, perjury to conceal this from Judge Murphy and Haeg's jury.

AAG Peterson was given the proof of this and is now affirmatively and knowingly trying to cover it up. And this doesn't address the fact that the state released what was in Haeg's statement to the media and all Alaska's major newspapers published it – so Haeg's jurors were already tainted with Haeg's statement before his map was admitted against him at trial. See Haeg's PCR memorandum, exhibits, affidavits, and motions to supplement.

(aa) AAG Peterson claims Cole believed that the court would forfeit Haeg's plane at open sentencing. Yet *Cole has testified under oath the reason he*

never told Haeg he could bond the plane out, and was entitled to notice of a hearing and a hearing to protest being put out of business, was because Haeg was so comatose over the state taking the plane Cole thought Haeg was going to commit suicide. See Haeg's PCR memorandum, exhibits, affidavits, and motions to supplement. In other words Cole *wanted and expected* Haeg to commit suicide. And once a bond is in place if the item is forfeited the bond is forfeited – not the plane. So no matter what happened Haeg would have been able to keep the plane had Cole told him the truth. And this doesn't even consider the fact that the seizure affidavits had been intentionally falsified – meaning the plane cannot be forfeited.

(bb) AAG Peterson never once refutes Haeg's claims and evidence Cole and Robinson lied to Haeg to deprive Haeg of numerous defenses after Haeg had specifically asked how to defend himself – forcing Haeg, before he began to get suspicious of both Cole and Robinson, to believe he had to negotiate.

(cc) AAG Peterson claims Haeg's testimony at trial "corroborated" Gibbens affidavits and that Haeg's allegation, that Gibbens misstatement was intentionally made, is false. Gibbens affidavits claimed the wolves were killed in Game Management Unit 19-C. See Haeg's PCR memorandum, exhibits, affidavits, and motions to supplement. Haeg never testified that the wolves were killed in 19-C – so Haeg's testimony does not "corroborate" Gibbens' testimony. See court record. And long before trial both Haeg and Zellers (during their "interviews") informed both Gibbens and Leaders about the false evidence locations on Gibbens affidavits and neither Gibbens nor Leaders did anything

about it, as they were required to. See caselaw above and Haeg's PCR memorandum, exhibits, affidavits, and motions to supplement. Irrefutable proof this falsification was intentional is that Gibbens continued to persist in the GMU 19-C false evidence location, and Leaders continued to accept it, at Haeg's trial – and only after Gibbens knew his falsification at trial had been discovered did he admit the truth – that the wolves had actually been taken in GMU 19-D. This proves Gibbens falsification was intentional. See court record. And this falsification was critical. The states life-destroying claim Haeg must be convicted of guide crimes rested on their specific argument was Haeg taking wolves where he guides to benefit his guide business. See court record. *Haeg did not, and could not, guide in GMU 19-D while he did, and could, guide in GMU 19-C.* And proof that this falsification affirmatively harmed Haeg is Judge Murphy's specific use of the false GMU 19-C location to justify Haeg's severe sentence. See court record.

(dd) AAG Peterson claims that Haeg's own testimony supported that Haeg "was involved in the predator control activity to some degree to increase his business." At trial prosecutor Leaders asked if from where Haeg conducted wolf control activity wolves and/or moose could travel to Haeg's guide area. As wolves and/or moose can travel hundreds if not thousands of miles Haeg answered yes – and this is what the state now claims was Haeg admitting to benefiting his business. See court record.

(ee) AAG Peterson claims Robinson did not believe a motion to suppress the search and seizure warrants would have been successful. Yet the evidence is

overwhelming that the state falsified the warrant affidavits *intentionally* – requiring suppression:

"[A]ll evidence obtained by searches & seizures in violation of the Federal Constitution is inadmissible in a criminal trial in a state. Nothing can destroy a government more quickly than its failure to observe its own laws, or worse, its disregard of the charter of its own existence." Mapp v. Ohio, 367 U.S. 643 (U.S. Supreme Court 1961)

"Once defendant has shown that specific statements in affidavit supporting search warrant are false, together with statement of reasons in support of assertion of falsehood, burden then shifts to State to show that statements were not intentionally or recklessly made." Lewis v. State, 9 P.3d 1028, (Ak.,2000)

"State & federal constitutional requirement that warrants issue only upon a showing of probable cause contains the implied mandate that the factual representations in the affidavit be truthful." State v. Davenport, 510 P.2d 78, (Ak.,1973)

"Misstatements on warrants were material and intentional, justifying suppression of evidence obtained through use of the warrants." State v. White, 707 P2d 271 (Ak., 1985)

"'[Defendant] has everything to gain and nothing to lose' in filing a motion to suppress..." U.S. v. Molina, 934 F.2d 1440 (9th Cir. 1991).

(ff) AAG Peterson claims that Robinson denies telling Haeg nothing could be done about the falsified search and seizure warrants. Yet Haeg has evidence and witnesses proving Robinson told Haeg nothing could be done. See Haeg's PCR memorandum, exhibits, affidavits, and motions to supplement. And when Gibbens admitted to intentionally falsifying the evidence locations at trial Robinson still did nothing with the false warrants (or proven trial perjury by the state) to defend Haeg. See court record.

(gg) AAG Peterson claims that Robinson denies failing to tell Haeg he was entitled to a prompt post seizure hearing. Yet Haeg has evidence and witnesses proving Robinson never told Haeg he had right to a prompt post seizure hearing. See Haeg's PCR memorandum, exhibits, affidavits, and motions to supplement.

(hh) AAG Peterson claims that Robinson states Haeg did not want to bond the plane out because of limited funds. Yet Haeg has evidence and witnesses proving Haeg never told Robinson he did not want to bond out the plane because of lack of funds. See Haeg's PCR memorandum, exhibits, affidavits, and motions to supplement.

(ii) AAG Peterson claims that Haeg's motion to bond out the plane - made to Judge Murphy on July 8, 2005 - was denied. Judge Murphy never ruled on this motion and it is still outstanding. See court record. In other words not only is Peterson again making false claims to the court, Judge Murphy has been falsifying the sworn pay affidavits required by AS 22.15.220 (requiring district court judges and magistrates to swear under penalty of perjury that nothing presented to them for decision has gone undecided for more than 6 months) every 2 weeks for at least 6 ½ years. *This is approximately 169 counts of felony perjury by Judge Murphy.* As Judge Murphy sentenced Haeg to 3 months in jail for a single count of *unsworn* falsification Judge Murphy will be sentenced to approximately 80 years in prison (six months prison per count for *sworn* falsification, times 169 counts).

(jj) AAG Peterson claims Robinson had no proof that the state told Haeg to take wolves outside the area. Yet Haeg had *documented exactly when, where, how, who, and why* he had been told this, *Cole testified under oath he submitted this evidence to the court* – proving false Robinson's claim there was no proof. More disturbing yet is that the evidence Cole submitted to the court was removed and/or destroyed out of the official court record while proof the evidence had been in the court record remained. See Haeg's PCR memorandum, exhibits, affidavits, and motions to supplement. This is the felony of tampering with evidence - while the court record was in Judge Murphy's possession.

(kk) AAG Peterson claims Robinson felt Haeg claiming the state told him he must take wolves outside the wolf control area would *essentially* be admitting that Haeg actually killed wolves outside the wolf control area. Yet Robinson *actually* had Haeg testify he took wolves outside the area. So there could be no harm – other than presenting a defense that would have prevented Haeg from ever being charged or convicted. Robinson never did a thing to explain why Haeg testified the way he did. Worse yet Robinson never did a thing to expose the state had falsified the evidence locations, from seizure warrants to trial testimony, to make is seem Haeg was a rogue guide out to benefit his guide business - which, when combined with Haeg's partial testimony, was devastating. And the reason Haeg testified at all was Robinson told Haeg that he must testify as the state was going to use the "bad" parts of Haeg's statement against Haeg at trial – and for "good" parts of Haeg's statement to be heard Haeg had to testify. Robinson

testified under oath he told Haeg this – irrefutably proving Haeg's "interview" statement his was used to force Haeg to testify at trial. (AAG Peterson then claims Haeg "elected" to testify – proven false by the forgoing.) See Haeg's PCR memorandum, exhibits, affidavits, and motions to supplement.

(ll) AAG Peterson claims Robinson denies telling Haeg that there was nothing Haeg could do to enforce the plea agreement violated by the state. Yet Haeg has tape recordings of Robinson and witnesses proving Robinson stated the plea agreement the state violated "was water under the bridge" and nothing could be done about it. See Haeg's PCR memorandum, exhibits, affidavits, and motions to supplement.

(mm) AAG Peterson claims Robinson denies telling Haeg he would lose at trial because Cole had given the state everything. Yet Haeg has tape recordings of Robinson and witnesses proving Robinson stated Haeg would lose at trial because Cole had given the state everything. See Haeg's PCR memorandum, exhibits, affidavits, and motions to supplement.

(nn) AAG Peterson claims Robinson stated "unequivocally" that Leaders never used Haeg's statement against Haeg at trial in the state's "case in chief." Yet on cross-examination while being deposed Robinson admitted the map Haeg made during his statement was admitted against Haeg during the state's case in chief. Robinson then tried to explain this away by claiming that when Zellers pointed at Haeg's map (after it had been admitted and used against Haeg during Gibbens testimony) the map then became Zellers' by virtue of the fact Zellers pointed at it

– after it had already been admitted and used against Haeg. See Haeg's PCR memorandum, exhibits, affidavits, and motions to supplement. And Robinson's claim Haeg's statement was only excluded from being used in the state's "case in chief" is just more lies and cover up. Evidence Rule 410 prevented Haeg's statement from used anywhere - as it was in the newspapers and in the charging informations - not just in the state's case in chief. *Robinson himself had previously documented that the state could not use Haeg's statement anywhere when Robinson, in his May 6, 2005 reply, protested the use of Haeg's statement in the information forcing Haeg to trial.* See court record and Evidence Rule 410:

Rule 410. Inadmissibility of Plea Discussions in Other Proceedings.
(a) *Evidence* of a plea of guilty or nolo contendere, or of an offer to plead guilty or nolo contendere to the crime charged or any other crime, or *of statements* or agreements made in connection with any of the foregoing pleas or offers, *is not admissible in any civil or criminal action, case or proceeding against the government or an accused person who made the plea or offer if:*
(i) A plea discussion does not result in a plea of guilty or nolo contendere,

To foster negotiations the rule provides that *nothing that is said during plea bargaining may be used against the accused in any proceeding, whether criminal, civil or administrative.* Thus, the accused is free to discuss the case without resort to hypothetical statements of fact and without fear that a slip of the tongue may be devastating at a later trial or other proceeding.

(oo) AAG Peterson claims Robinson denies ever telling Haeg he would no doubt win on appeal. Yet Haeg has tape recordings of Robinson and witnesses proving Robinson told Haeg he would no doubt win appeal – *and that this was so sure Haeg should not even put up a defense at trial.* See Haeg's PCR memorandum, exhibits, affidavits, and motions to supplement.

(pp) AAG Peterson claims Robinson believed Haeg had a valid "jurisdictional" challenge and that this was the only possible defense he could identify. *Yet during his deposition Robinson testified under oath that the "jurisdictional" issue had been cured by the state long before trial – yet Robinson still pursued it to the exclusion of all else (the false warrants, the known trial perjury, the immunity, the statement use, the entrapment, etc.) – even using it as the basis for Haeg's appeal after trial.* See Haeg's PCR memorandum, exhibits, affidavits, and motions to supplement.

(qq) AAG Peterson claims Robinson denies that Haeg had immunity. Yet Cole has twice testified under oath that while he represented Haeg the state gave Haeg immunity. And Fitzgerald, who was working with Cole while Cole represented Haeg, has also testified the state gave Haeg immunity. In addition, Fitzgerald testified that prosecutor Leaders had affirmatively stated he (Leaders) was not going to honor Haeg's immunity. See Haeg's PCR memorandum, exhibits, affidavits, and motions to supplement.

(rr) AAG Peterson claims Robinson denies Gibbens committed perjury at Haeg's trial because "under the rules of perjury, one is allowed to correct a misstatement." Yet Robinson also testified Gibbens "corrected" his misstatement *only after he knew his sworn falsehood had been found out.* This means that Gibbens, when he first gave the sworn false testimony *knew* it was false when he gave it and also proves that he would have never "corrected" his sworn false testimony had he not been found out. This is by definition perjury:

AS 11.56.200. Perjury
(a) *A person commits the crime of perjury if the person makes a false sworn statement which the person does not believe to be true.*
Perjury is a class B felony.

AS 11.56.235. Retraction as a defense.
(a) In a prosecution under AS 11.56.200 or 11.56.230, if the false statement was made in an official proceeding, it is an affirmative defense that the defendant expressly retracted the false statement
(1) during the course of the same official proceeding;
(2) *before discovery of the falsification became known to the defendant;*
(3) before reliance upon the false statement by the person for whom it was intended; and
(4) if the official proceeding involved a trier of fact, before the subject matter of the official proceeding was submitted to the ultimate trier of fact.

In other words Gibbens cannot retract his testimony and use this as a defense after he knew his falsehood had been found out. Proof the perjury harmed Haeg – even after Gibbens had admitted it was perjury – was the fact Judge Murphy specifically used Gibbens' *false testimony* to specifically justify Haeg's severe sentence (apparently Judge Murphy forgot Trooper Gibbens had admitted he had testified falsely) And no one is allowed to be convicted upon known false testimony by the state:

"Conviction obtained through use of false evidence, known to be such by representatives of the State, is a denial of due process, and there is also a denial of due process, when the State, though not soliciting false evidence, allows it to go through uncorrected when it appears. Principle that a State may not knowingly use false evidence, *including false testimony,* to obtain a tainted conviction, implicit in any concept of ordered liberty, does not cease to apply merely because the false testimony goes only to the credibility of the witness." Napue v. Illinois, 360 U.S. 264 (U.S. Supreme Court 1959)

"[T]he dignity of the U.S. Government will not permit the conviction of any person on tainted testimony. The government of a strong and free nation

does not need convictions based upon such testimony. It cannot afford to abide with them." Mesarosh v. U.S., 352 U.S. 1 (U.S. Supreme Court 1956)

"Requirement of 'due process' is not satisfied by mere notice and hearing if state, through prosecuting officers acting on state's behalf, has contrived conviction through pretense of trial which in truth is used as means of depriving defendant of liberty through deliberate deception of court and jury by presentation of testimony known to be perjured, and in such case state's failure to afford corrective judicial process to remedy the wrong when discovered by reasonable diligence would constitute deprivation of liberty without due process." Mooney v. Holohan, 294 U.S. 103 (U.S. Supreme Court 1935)

"The principle that a State may not knowingly use false evidence, including false testimony, to obtain a tainted conviction, [is] implicate in any concept of ordered liberty..." Giles v. Maryland, 386 U.S. 66 (U.S. Supreme Court 1967)

(ss) AAG Peterson claims Robinson denies that Cole's presence at Haeg's sentencing was "relevant" and this is why Robinson did not enforce the subpoena against Cole. Yet Robinson also testified that Haeg flat demanded Cole be forced to testify at sentencing about the guide year Cole had Haeg give up because the state promised to give Haeg credit for it - and about all the state required Haeg do for a plea agreement they broke after Haeg had paid for it. (Haeg had also given Robinson a written list of questions he demanded Cole be asked.) Because Cole would have testified the state promised to give Haeg credit for the guide year *his presence was incredibly relevant at Haeg's sentencing – as Cole never testified and Haeg never got credit for the year.* Cole has testified that this effectively turned Haeg's 5-year guide license suspension into a 6-year guide license suspension. Also disturbing is the fact that long after he had been sentenced without credit for the year Haeg found a letter from Cole to Robinson

(in the files Haeg obtained after firing Robinson) in which Cole stated he did not intend on obeying the subpoena and asked Robinson not to call him as a witness.

Robinson testified he never told Haeg that he did not intend on calling Cole – even after he decided not to call Cole. This prevented Haeg from firing Robinson in time to find someone who would force Cole to testify so Haeg would get credit for the guide year as the state had promised. And *if Haeg would have got credit for the year it would have proved Haeg had bought and paid for charges less severe than what Haeg had just be convicted of – rendering Haeg's conviction null and void:*

"When the prosecution makes a 'deal' within its authority and the defendant relies on it in good faith, the court will not let the defendant be prejudiced as a result of that reliance." United States v. Goodrich, 493 F.2d 390, 393 (9th Cir. 1974).

"The indictment upon which Garcia's convictions are based was obtained in violation of the express terms of the agreement and is therefore invalid. The upholding of the Government's integrity allows for no other conclusion." U.S. v. Garcia, 519 F.2d 1343 (9th Circuit 1975)

"Government must adhere strictly to the terms of agreements made with defendants—including plea, cooperation, and immunity agreements…" Santobello v. New York, 404 U.S. 257 (U.S. Supreme Court 1971)

"[A] court must carefully scrutinize the agreement to determine whether the government has performed; in doing so, court must strictly construe the agreement against the government." Stolt-Nielsen v, U.S., 442 F.3d 177 (3d. Cir. 2006)

"Modern notions of due process have belied the notion that a prosecutor may invoke his discretion to evade promises made to a defendant or potential defendant as part of an agreement or bargain. That being the case, a defendant or witness does have more to rely upon than merely the "grace or favor" of the prosecutor… to allow the defendant some redress for prosecutorial reneging." Surina v. Buckalew, 629 P.2d 969 (Alaska 1981)

"Where an accused relies on a promise... to perform an action that benefits the state, this individual...will not be able to "rescind" his or her actions. ... In the plea bargaining arena, the United States Supreme Court has held that states should be held to strict compliance with their promises. ...courts consider the defendant's detrimental reliance as the gravamen of whether it would be unfair to allow the prosecution to withdraw from a plea agreement." Closson v. State, 812 P.2d 966 (Ak. 1991)

"Detrimental reliance may be demonstrated where the defendant performed some part of the bargain; for example, where the defendant provides beneficial information to law enforcement." Reed v. Becka, 333 S.C. 676, 511 S.E.2d 396 (Ct. App. 1999)

"Counsel ineffective for failing to move to compel the state to comply with pretrial agreement and failing to advise the defendant of this option." State v. Scott, 602 N.W.2d 296 Wis. 1999

And it is irrefutable it was Haeg's decision, and not Robinson's, to force Cole to testify at Haeg's sentencing:

Jones v. Barnes, 463 U.S. 745 (U.S. Supreme Court 1983) & *Brookhart v. Janis*, 384 U.S. 1 (U.S. Supreme Court 1966) ruled it is the defendant, not the attorney, who is captain of the ship: "Although the attorney can make some tactical decisions, the ultimate choice as to which direction to sail is left up to the defendant. The question is not whether the route taken is correct; rather, the question is whether [the defendant] approved the course."... "The defendant, and not his lawyer or the State, will bear the personal consequences of a conviction... And although he may conduct his own defense ultimately to his own detriment, his choice must be honored out of 'that respect for individual which is the lifeblood of the law.'" (Quoting *People v. Malkin*, 250 N. Y. I85, 350-51 (1970) Brennan, J. concurring).

(tt) AAG Peterson claims Robinson denies that Haeg ever asked him (Robinson) to sign an affidavit regarding his representation of Haeg. Yet the following June 6, 2006 10:44 AM email was sent to Haeg from Robinson (see attachment for copy of original) after Haeg requested Robinson sign an affidavit regarding his representation of Haeg:

David:

I'm in receipt of your 5/23/06 letter to me containing a proposed affidavit or questions for me to fill out. You requested that I let you know by June 1, 2006 if for some reason I was not able or willing to do so. I am unable and unwilling to fill out the proposed affidavit you sent me. Many of the questions you ask me to answer call for legal conclusions which I'm not willing to make. Many of your questions call for speculation on my part which I will not engage in. Some of your questions do not relate in any way to ineffective assistance of counsel claims.

Chuck Robinson

This proves Robinson's testimony, that Haeg never asked him for an affidavit regarding his representation of Haeg, is more felony perjury.

(uu) AAG Peterson claims Haeg's allegations that Trooper Gibbens (the main witness against Haeg) chauffeured Judge Murphy and ate meals with her while she presided over Haeg's prosecution, "are simply untrue." Yet Haeg has affidavits from numerous witnesses stating that they had each personally witnessed Gibbens chauffeuring Judge Murphy and having meals with her while she presided over Haeg's prosecution. See Haeg's PCR memorandum, exhibits, affidavits, and motions to supplement. *And the official court tape recordings of Haeg's prosecution captured Judge Murphy and Gibbens themselves joking about the chauffeuring while Judge Murphy presided over Haeg's prosecution.* See court record. And Superior Court Judge Stephanie Joannides, after looking at all the evidence, disqualified Judge Murphy from presiding over Haeg's case *for cause* and sent 43 and 77 page certified referrals to the Alaska Commission on Judicial Conduct (along with sending a copy of the 77 page referral directly to Judge

Bauman to be placed in the official record of Haeg's case) documenting Judge Murphy's corruption and the evidence judicial conduct investigator Marla Greenstein completely falsified her investigation to corruptly exonerate Judge Murphy after Haeg's original complaint about the chauffeuring. See Judge Joannides' certified 77-page referral in court record.

Further proof of the incredible corruption is that Haeg filed an Alaska Bar Association complaint against attorney Greenstein for falsifying that she contacted the witnesses Haeg provided, along with completely falsifying the testimony they would have given had they been contacted. Greenstein then filed a *verified* document with the Bar certifying that not only had she contacted the witnesses Haeg provided she had contacted Robinson about the chauffeuring of Judge Murphy by Gibbens. Yet Robinson has also testified Greenstein never contacted him and that he also remembered Judge Murphy being chauffeured by Gibbens while she presided over Haeg's prosecution. In other words *every single witness Greenstein claimed to contact during her official investigation of Judge Murphy has sworn under oath they were never contacted – and sworn that Greenstein had completely falsified the testimony they would have given had they been contacted.* And when Judge Joannides requested to review Greensteins "confidential" investigation "in camera", Greenstein refused to provide it to Judge Joannides. See Judge Joannides 77-page referral and Haeg's motions to supplement.

(vv) AAG Peterson claims Judge Murphy swears she ate all her meals in the Takusko House or alone in the court office during Haeg's prosecution. Judge

Murphy apparently never mentions the Hotel McGrath B and B in her affidavit - where she was also witnessed dining with Trooper Gibbens during Haeg's prosecution. See Haeg's PCR memorandum, exhibits, affidavits, and motions to supplement.

(ww) AAG Peterson claims Judge Murphy swears that although the court record captured her and Gibbens joking about the chauffeuring it never took place. Yet the official court tape recordings also capture Judge Murphy admitting she had no transportation other than Gibbens (she had flown in from Aniak to conduct Haeg's week long trial and 2 day sentencing in McGrath and there are no rental cars or public transportation in McGrath). And numerous witnesses have testified under oath they personally witnessed Gibbens chauffeuring Judge Murphy exactly as the official tape recordings captured Judge Murphy and Trooper Gibbens joking about. Numerous witnesses have testified under oath that every single time they personally seen Judge Murphy arrive or depart the "courthouse" (a small building which doubles as an Iditarod Sled Dog Race checkpoint) it was with Trooper Gibbens. See Haeg's PCR memorandum, exhibits, affidavits, and motions to supplement.

(xx) AAG Peterson claims Judge Murphy swears that she did ride with Gibbens once, but it was after Haeg's sentencing. Yet all witnesses have testified they never seen Judge Murphy walk to or from the courthouse and that every single time Judge Murphy arrived or departed the courthouse it was in Gibbens truck with Gibbens driving. And Judge Murphy admitted on the court record she

had no transportation other than Gibbens. See court record and Haeg's PCR memorandum, exhibits, affidavits, and motions to supplement.

More incriminating yet is that Judge Murphy and Gibbens testified to judicial investigator Greenstein that Gibbens never chauffeured Judge Murphy. See Judge Joannides 77-page referral in court record.

(yy) AAG Peterson claims Judge Murphy swears that she never left the courthouse on September 29, 2005. Yet numerous witnesses claim they personally witnessed Judge Murphy leave the courthouse in Gibbens truck with Gibbens driving on September 29, 2005. See Haeg's PCR memorandum, exhibits, affidavits, and motions to supplement.

(zz) AAG Peterson claims Trooper Gibbens provided an affidavit swearing "it would not be uncommon for him to give someone a ride in McGrath due to the limited options for transportation." This also makes it clear that for Haeg's weeklong trial and 2 day sentencing Judge Murphy was dependant on Gibbens for her transportation around McGrath.

(aaa) AAG Peterson claims Gibbens swears he remembers giving Judge Murphy a ride but can't remember when. Yet Gibbens testified to judicial investigator Greenstein that he *never* chauffeured Judge Murphy. See Judge Joannides 77-page referral in court record.

(bbb) AAG Peterson claims Gibbens swears he never had a meal with Judge Murphy. Yet numerous witnesses have testified that they personally

witnessed Gibbens having meals with Judge Murphy. See Haeg's PCR memorandum, exhibits, affidavits, and motions to supplement.

(ccc) AAG Peterson claims that Gibbens affidavit supports Murphy's affidavit. Yet Gibbens never swears he did not chauffeur Judge Murphy during Haeg's trial and sentencing as Haeg claims – this does not support Judge Murphy's affidavit.

(ddd) AAG Peterson claims that Robinson, Leaders, and Gibbens refute that the map *Haeg provided* to troopers was used against him at trial. Yet this is not Haeg's claim. Haeg's claim is that during his "interview" he was required to mark, in pen with numbers, the wolf kill locations on a map *provided by Trooper Gibbens* and prosecutor Leaders. As proven in (z) above, Haeg, during his "interview" with Gibbens and Leaders, was required by Gibbens to *mark with numbers in pen, on a map provided by Gibbens*, the locations of the wolf kills:

Gibbens: "*Why don't we mark them out with a digit, chronologically*?"

Haeg: "yeah"

Gibbens: "*or a 1 where it was with a pen and it will show up just a little better.*" See Haeg's PCR memorandum, exhibits, affidavits, and motions to supplement.

Then, during Zellers 6-23-04 "interview" Gibbens is tape-recorded telling Zellers to confirm the locations that *Haeg had already marked in pen with numbers* on the map.

Gibbens: "Well real quick *while I've got the map out I'll have you look it here and I'll show you the marks that David [Haeg] made* and you tell me if you concur or unconcur basically." See Haeg's PCR memorandum, exhibits, affidavits, and motions to supplement.

Leaders on record statements during Haeg's trial irrefutably prove the map Haeg marked with numbers in ink during his "interview" is the same map admitted and used against Haeg during trial. See trial court record, page 281.

Leaders: "This is a map Trooper Gibbens has said – you were the one that, right, that did this…"

Gibbens: "Yes."

Leaders: "*...and then it was used in an interview, one with Mr. Haeg, which is not admissible because it was based on plea negotiations and also with Mr. Zellers regarding the – where the wolves were taken."*

This map was then labeled exhibit # 25 on court record page 286, admitted into evidence against Haeg on court record page 333, and used against Haeg by Trooper Gibbens and prosecutor Leaders – see court record pages 333 - 373, 422, 441, 461, 467, 469, 474, and 475.

This irrefutably proves that *the map, provided by Gibbens but marked on by Haeg in ink with numbers during his "interview", is the same map that was admitted and used against Haeg at trial* because Leaders, during Haeg's trial confirmed it was the map used at Haeg's "interview…regarding where the wolves were taken." Then Gibbens and Leaders, to cover up their violation of Haeg's

right against self-incrimination, conspired to falsely testify it was Gibbens who placed the marks and numbers on the map. See above and court record.

AAG Peterson was given the proof of this conspiracy and, rather than exposing Gibbens and Leaders, is now affirmatively and knowingly trying to cover up for them. See Haeg's PCR memorandum, exhibits, affidavits, and motions to supplement.

(eee) AAG Peterson claims that Haeg provided Leaders with a map. Haeg never provided Leaders with a map. Months prior to Haeg's "interview" Cole had required Haeg to mark the wolf kill locations *without numbers* on a map in pencil, without numbers, and send it to him (Cole). See attached map from discovery to the state from Cole. In other words Haeg was required to mark the wolf kill locations *without numbers in pencil* on a map for Cole long before Haeg's "interview" and then Haeg was required to mark on a second map the wolf kill locations *with numbers in ink* for Gibbens during Haeg's "interview". So Haeg has made 2 different maps, one in Cole's possession in pencil without numbers, and one in the state's possession in ink with numbers. It appears that Cole gave Haeg's first map, marked in pencil *without numbers*, to Leaders prior to Haeg's interview.

It is irrefutable Cole's map is not the same as that Gibbens required Haeg to make during Haeg's interview – as Cole's map has the wolf kill locations marked without numbers and not with numbers Gibbens as is heard on tape requiring Haeg to do during his interview. See attached map from Cole's discovery to AAG Peterson.

(fff) AAG Peterson claims that the map Haeg made for *Cole* is not trial Exhibit #25. As shown above this is true – trial Exhibit #25 is the map Haeg made for *Gibbens* during Haeg's interview.

(ggg) AAG Peterson claims that trial Exhibit #25 was made by Trooper Gibbens. It is entirely possible that Gibbens added information to the map (trial Exhibit #25) after he left Haeg's "interview" with it in his possession. (Haeg does not remember placing a "legend" on the map that is apparently on it now, according to AAG Peterson.) But it was Haeg who marked the locations of the wolf kill locations on trial Exhibit #25 with numbers in ink. So for AAG Peterson to claim trial Exhibit #25 was made by Gibbens alone is not true – as it was Haeg who identified the wolf kill locations on trial Exhibit #25.

(hhh) AAG Peterson never refutes Haeg's claim that (in addition to Haeg's immunity) Haeg's statement could not have been used, as 5 pages of it was, in the charging information forcing Haeg to trial:

Evidence Rule 410. Inadmissibility of Plea Discussions in Other Proceedings.
(a) *Evidence* of a plea of guilty or nolo contendere, or of an offer to plead guilty or nolo contendere to the crime charged or any other crime, or *of statements* or agreements made in connection with any of the foregoing pleas or offers, *is not admissible in any civil or criminal action, case or proceeding against the government or an accused person who made the plea or offer if:*
(i) A plea discussion does not result in a plea of guilty or nolo contendere,

To foster negotiations the rule provides that *nothing that is said during plea bargaining may be used against the accused in any proceeding, whether criminal, civil or administrative.* Thus, the accused is free to discuss the case without resort to hypothetical statements of fact and without fear that a slip of the tongue may be devastating at a later trial or other proceeding.

The use of Haeg's statement was devastating.

(iii) AAG Peterson asks that:

"Haeg's petition for post conviction relief to be dismissed in its entirety without leave to amend as Haeg is unable to meet his burden of establishing any of the violations alleged."

Yet at this point Haeg does not have to establish the violations alleged to require the evidentiary hearing he is asking for to prove his case – he just has to set out facts that, if true, would entitle him to have his conviction over turned – which Haeg has done:

"'If, within the framework of the complaint, evidence may be introduced which will sustain a grant of relief to the plaintiff, the complaint is sufficient,' Id. The court 'must presume all factual allegations of the complaint to be true and [make] all reasonable …in favor of the non-moving party.'" Kollodge v. State, 757 P.2d 1024 (AK Supreme Court 1988)

"Motions to dismiss are viewed with disfavor and should rarely be granted." Reed v. Municipality of Anchorage, 741 P.2d 1181 (AK 1987)

"[I]f the application – either in its original form or as augmented following notice of intent to dismiss – sets out facts which, if true, would entitle the applicant to the relief claimed, then the court must order the case to proceed and call on the state to respond on the merits." State v. Jones, 759 P.2d 558 (AK 1988)

"A complaint should not be dismissed 'unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." Conley v. Gibson, 355 U.S. 41 (U.S. Supreme Court 1957) and Shooshanian v. Wagner, 672 P.2d 455 (AK 1983)

"In fact, granting the Rule 12(b)(6) motion would be improper if the Shooshanians' complaint states a claim upon which some relief may be granted, although the relief demanded may not be the kind to which the

party is in fact entitled to obtain." Shooshanian v. Wagner, 672 P.2d 455 (AK 1983)

Rules require that Haeg be allowed to amend his PCR application, if needed, to survive a motion to dismiss. See Hampton v. Huston, 653 P.2d 1058 (AK 1982) and Mely v. Morris, 409 P.2d 979 (AK 2008)

And as Haeg is pro se (representing himself) his application should not be dismissed on technicalities:

"The pleading of pro se litigants "should be held to less stringent standards than those of lawyers. We have held that where the essence of a pro se litigant's argument is "easily discerned" from his briefs, the trial court should consider the pro se litigants argument, provided that the applicatble law is well established and the opposing party would not be prejudiced by the court's consideration of the issue." Rathke v. Corrections Corp. of America, Inc., 153 P.3d 303 (AK Supreme Court 2007)

Haeg's PCR application cannot be dismissed until he has been given an evidentiary hearing to prove his case – as he has made a *prima facie* case by claiming under oath his attorneys actively represent interests in conflict with Haeg's and that this conflict of interest harmed Haeg; that the state conspired to knowingly present false testimony against Haeg and that this harmed Haeg; that the state conspired to knowingly violate Haeg's right against self incrimination; and that Judge Murphy had actual bias against Haeg, conspired with Trooper Gibbens and judicial investigator Greenstein, and that this harmed Haeg:

"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 counsels performance. Particularly where, as here, it is the pretrial and post-trial performance of counsel as well as the performance during trial that is

specifically alleged to have been inadequate, it is not sufficient that the trial judge found counsel's performance as observed in the course of trial to be adequate." Wood v. Endell, 702 P.2d 248 (AK 1985)

Haeg is claiming he received ineffective assistance of counsel along with prosecutorial and judicial misconduct before trial, at trial, and after trial. Haeg must be given an opportunity to prove this at an evidentiary hearing.

(2) 4-27-12 response to Judge Bauman's order.

Missouri v. Frye and Lafler v. Cooper support the absolute right a defendant has to effective assistance of counsel at very nearly all proceedings but do not impose a duty on a court to inquire into plea negotiations.

(3) 4-27-12 motion that AAG Peterson be found in contempt of court and fined $50,000.

Haeg has realized Peterson, by intentionally falsifying statutes, rules, and facts to the court to cover up Haeg's illegal prosecution and to cover up a growing conspiracy (now including Gibbens, Leaders, Rom, Judge Murphy, Magistrate Woodmancy, investigator Greenstein, Cole, Robinson, and Osterman at a minimum), has committed contempt of court and should be fined. See Alaska Civil Rule 95 and independent investigator Henry Schuelke's recent 525-page report into Senator Ted Stevens' prosecution. Because of AAG Peterson's corrupt actions, which far exceed anything federal prosecutors did in Stevens' case, Haeg asks that in addition to being found in contempt AAG Peterson be fined the $50,000 maximum fine allowed by Rule 95. For evidence of AAG Peterson's corruption see above, below, previous court filings in this case, and Haeg's

original criminal case - where AAG Peterson recently falsified the law to the court in order to illegally and corruptly modify the judgment against Haeg.

(4) <u>4-27-12 motion for independent investigation of Haeg's case.</u>

Because of the widespread corruption exposed in Haeg's case – implicating at a minimum: prosecutors Peterson and Leaders; attorneys Cole, Robinson, and Osterman; judges Murphy and Woodmancy; trooper Gibbens; and judicial conduct investigator Greenstein – Haeg respectfully asks that independent investigator Henry Schuelke (who investigate Stevens' prosecution) be appointed by the court to investigate Haeg's prosecution, appeal, and post conviction relief proceeding. Numerous people following Haeg's case have pointed out the evidence of corruption already exposed in his case – *before investigation* – far exceeds all that exposed after Schuelke's 2-year investigation of Senator Ted Stevens prosecution – which only uncovered corruption in the Stevens' prosecution team. In Haeg's case not only is the prosecution team criminally implicated so are Haeg's judges and defense attorneys, topped off with a judicial conduct investigator. In light of overwhelming evidence of corruption above to deprive Haeg of nearly every constitutional right that guarantees a fair trial, along with the subsequent felony crimes of perjury to cover it up, Haeg ask that investigator Schuelke be appointed immediately.

After 8 long years Haeg may not know how all this will end but he does know one thing absolutely – the public will demand his case be independently investigated with the same care and thoroughness as was Stevens' prosecution.

Conclusion

In light of the above Haeg respectfully asks that state's motion to dismiss be denied; that AAG Peterson be found in contempt of court and fined $50,000; and that Henry Schuelke be appointed to independently investigate Haeg's case.

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.

United States Supreme Court in Monroe v. Pape, 365 U.S. 167 (1961):

"[T]he local administrations have been found inadequate or unwilling to apply the proper corrective. Combinations, darker than the night that hides them, conspiracies, wicked as the worst of felons could devise, have gone unwhipped of justice. Immunity is given to crime, and the records of the public tribunals are searched in vain for any evidence of effective redress.

[C]ertain States have denied to persons within their jurisdiction the equal protection of the laws. The proof on this point is voluminous and unquestionable... the State made no successful effort to bring the guilty to punishment or afford protection or redress to the outraged and innocent. The State, from lack of power or inclination, practically denied the equal protection of the law to these persons...those who representing a State in some capacity were unable or *unwilling* to enforce a state law.

[I]f secret combinations of men are allowed by the Executive to band together to deprive one class of citizens of their legal rights without a proper effort to discover, detect, and punish the violations of law and order, the State has not afforded to all its citizens the equal protection of the laws.

Whenever, then, there is a denial of equal protection by the State, the courts of justice of the nation stand with open doors, ready to receive and hear with impartial attention the complaints of those who are denied redress elsewhere. Here may come the weak and poor and downtrodden, with assurance that they shall be heard. Here may come the man smitten with many stripes and ask for redress. Here may come the nation, in her majesty, and demand the trial and punishment of offenders, when all, all other tribunals are closed. . . ."

The United States courts are further above mere local influence than the county courts; their judges can act with more independence, cannot be put under terror, as local judges can; their sympathies are not so nearly identified with those of the vicinage; the jurors are taken from the State, and not the neighborhood; they will be able to rise above prejudices or bad passions or terror more easily. The marshal, clothed with more power than the sheriff, can make arrests with certainty, and, with the aid of the General Government, can seize offenders in spite of any banded and combined resistance such as may be expected. Thus, at least, these men who disregard all law can be brought to trial.

Does the grim shadow of the State step into the national court, like a goblin, and terrify us? Does this harmless and helpless ghost drive us from that tribunal -- the State that mocks at justice, the State that licenses outlawry, the State that stands dumb when the lash and the torch and the pistol are lifted every night over the quiet citizen?" Monroe v. Pape, 365 U.S. 167 (U.S.Supreme Court 1961)

Haeg will prevail, no matter how many judges, prosecutors, troopers, or defense attorneys join the conspiracy to cover up, not because he is strong or clever – it is because the axe he swings is named United States Constitution and as the forces against it grow it will burn brighter and brighter, calling all those sworn to protect it to its aid. And while a criminal conspiracy of judges, prosecutors, troopers, and defense attorneys is powerful indeed, our Constitution and those

sworn to uphold it are far mightier still and will prevail. Our Constitution and the countless people who have died for it demand nothing less.

I declare under penalty of perjury the forgoing is true and correct. Executed on April 27, 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 April 27, 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:


SONY
700MB

3HO-10-64CI
Letters from the public

3KN-10-1295CI

April 10, 2010

U.S. Attorney General Eric Holder
950 Pennsylvania Ave., NW
Washington DC 20530

Dear Mr. Holder,

I met Mr. Haeg the evening I was a speaker at the recent "2nd Amendment Freedom Rally" at the Kenai High School Auditorium and over several meetings I learned of the Corrupt Court Cases he has been involved in fighting, and I have PERSONALLY REVIEWED the Court cases, the Facts and the Law, and I am asking you to intervene so he can receive Due Process, and Justice. I will be attending his "Public Corruption Meeting" this Saturday evening at the Soldotna Sports Center from 7 P.M.- 9 P.M. It is being advertised over the radio and with his airplane flying a Banner announcing the meeting. He is a VERY dedicated man and he has invested his whole life in this fight because the State of Alaska and his attorneys have attempted to deprive him of his Entire Livelihood as a Master Guide with TREMENDOUS CORRUPTION.

I have lived here in Alaska since 1963, and I first became involved in law issues in Kodiak with a Petition to try to prevent the 1968 Gun Control Law. Attorney Madsen, who later became a Judge and a son of Charles Madson the old Brown Bear Guide in Kodiak and brother of Alf Madsen, another Guide who later died when his plane crashed there in Kodiak, drew up that Petition for me at no charge because he believed in the 2nd Amendment also. David has made his living with a plane and a rifle his entire life and he deserves JUSTICE!! I ask you to read the following and come to Mr. Haeg's aid.

(1) I have PERSONALLY reviewed The Facts, The Law, and The Fillings that apply to David Haeg's case.

(2) The Facts and The Law PROVE that David Haeg's PCR application CANNOT be dismissed before he is allowed to compel attorney testimony at a Formal Deposition.

(3) The Facts and The Law PROVE David Haeg was deprived of Numerous Basic Constitutionally Secured Rights, and this has devastated his life and his families lives and this is Absolutely Unacceptable.

(4) The Facts and The Law PROVE David Haeg's attorneys and the State of Alaska, INTENTIONALLY used deception and color of law to deprive him of these Rights, and this is Absolutely Unacceptable.

(5) The Facts and The Law PROVE that even the Official Court Record was tampered with to deprive David Haeg of his defenses, and this is Absolutely Unacceptable.

(6) The Facts and The Law PROVE that the State is continuing to attempt TO DECEIVE EVERYONE in their Motion to Dismiss, so David Haeg's PCR Application is dismissed before

he can compel the attorneys to testify, which will have the Direct Effect Of Keeping The Above Crimes Covered Up, and that is Absolutely Unacceptable.

(7) A Named Defendant AND Material Witness has been assigned as a Judge in this case, AT THE STATE'S SUGGESTION, and that is Absolutely Unacceptable.

(8) The Primary Reason all this is so Absolutely Unacceptable is because this corruption can affect anyone and everyone in or out of this entire State. This Framing A Man for a Crime can be perpetrated even against your sons and daughters. ANYONE CAN BECOME A VICTIM!!!!! If this mess is allowed to continue to fester The People, in order to protect themselves, will be required to eventually take the law into their own hands, and I don't want to see that happen. The People also need to be told about what is going on!!

Seymour Marvin Mills

Seymour Marvin Mills
P.O. Box 51
Sterling, Alaska
Postal Zone 99672
907-262-9289 seymourm@gci.net

C.C.

FBI Assistant Special Agent in Charge, David Heller
101 E. 6th Ave.
Anchorage, AK 99501
(907-276-4441)

AK Governor Sean Parnell
PO Box 110001
Juneau, AK 99811
(907-465-3500)

AK Supreme Court Chief Justice Walter Carpeneti
303 KSt.
Anchorage, AK. 99501
(907-463-4771)

AK Senate President Gary Stevens
Capital Room
Juneau, AK
(907-465-4925)
(1-800-821-4925)

Judge Margaret Murphy
3670 Lake St., Building A
Homer, AK 99603
(907-235-8171)

U.S. Attorney Karen Loeffler
222 West 7th Ave., #9, Rm 253
Anchorage, AK 99513
(907-271-5071)

April 6, 2010

US Attorney General Eric Holder
950 Pennsylvania Avenue NW
Washington D.C. 20530

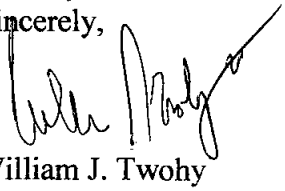
Dear Attorney General Holder:

I seek your assistance on behalf of David Haeg, of Soldotna, Alaska. I have been following his legal battle with the State of Alaska for over 5 years now. I never would believe a court system could be so corrupt in this day and age if I hadn't witnessed it myself during that time. I have seen blatant violations of individual Constitutional Rights, unchallenged perjury by state officials and members of the Alaska Bar, and State-appointed judges ignoring state and federal laws aimed at ensuring individual rights to a fair trial. I have read the court records which show State officials tampered with evidence to gain a search warrant, using that tampered evidence during the trial to achieve conviction, and the judge factoring in the tampered evidence to explain the severity of her sentencing. I am aware of official court records that contained evidence beneficial to Mr. Haeg's defense removed as if it was never in place, only a cover sheet where it once belonged.

At every step of the way, in an effort to use existing laws to obtain a fair trial, Mr. Haeg has met with a court that twists the law or won't fairly apply the legal precedants in their case against him. There needs to be an investigation into the corruption that the State of Alaska used from the beginning of this case to successfully make an example out of Mr. Haeg. I have witnessed the unusually harsh penalty dealt to Mr. Haeg ruin his livelihood, the culmination of years of hard work, while nearly bankrupting him. This was all a result of Mr. Haeg volunteering his efforts to help the State of Alaska in their misguided Wolf Control program.

It is unacceptable that the stench of corruption has managed to infiltrate the branch of our government that is entrusted with the sacred oath to enforce existing laws and our constitutional rights. Without an investigation into this particular case, and many others like it, by a legal entity outside of Alaska, this corruption will continue to fester, fomenting distrust of the State's judicial system and unrest in the Republic.

Thank you.
Sincerely,



William J. Twohy
38720 Gavin Circle
Soldotna, Alaska 99669

Cc: David Heller, Walter Carpenti, David Haeg, Karen Loeffler, Margaret Murphy, Sean Parnell, Tim Twohy

TO: U.S. Attorney General Eric Holder
950 Pennsylvania Ave., NW
Washington DC 20530

CC: FBI Assistant Special Agent in Charge David Heller
101 E. 6th Ave.
Anchorage, AK 99501

CC: AK Governor Sean Parnell
PO Box 110001
Juneau, AK 99811

CC: AK Supreme Court Chief Justice Walter Carpeneti
303 K St.
Anchorage, AK 99501

CC: AK Senate President Gary Stevens
Juneau, AK 99801

CC: Judge Margaret Murphy
3670 Lake St., Building A
Homer, AK 99603

CC: U.S. Attorney Karen Loeffler
222 West 7th Ave., #9, Rm 253
Anchorage, AK 99513

CC: Dave Haeg
PO Box 123
Soldotna AK 99669

Dear Sir,

I have known Dave Haeg for a long time and have watched his plight for justice and seen what he and his family have wrongly gone through to this point in time and find it an atrocity. I have came to the conclusion that without help from his fellow citizens, and maybe involvement from many sources on up the ladder, that this type of corruption and scandal by government paid officials will keep happening and get much worse. I feel it is my duty to write this letter and I would like to request a response of some kind, and will personally follow this through with Dave until justice is served.

(1) I have PERSONALLY reviewed the facts, law, and filings that apply to David Haeg's case.

(2) The facts and law provide that David Haeg's PCR application CANNOT be dismissed before he is allowed to compel attorney testimony at a formal deposition.

(3) **The facts and law provide David Haeg was deprived of numerous basic constitutional rights**, this has devastated his life and as an American this is totally unacceptable.

(4) **The facts provide evidence that David Haeg's attorneys and the State of Alaska intentionally used deception and the color of law to deprive these rights** –This is also unacceptable.

(5) **The facts prove that even the official court record was tampered with to deprive David Haeg of his defenses** –This is outrageously unacceptable.

(6) **The facts provide clear evidence that the State is continuing to attempt to deceive everyone in their Motion to Dismiss - so David Haeg's PCR application is dismissed before he can compel the attorneys to testify – which will have the direct effect of keeping the above crimes covered up** –This is surely unacceptable.

(7) **That a named defendant and material witness has been assigned as judge in this case, at the State's suggestion** –This is grossly unacceptable.

(8) **The reason all this is unacceptable is not just because of the incredible damage to David Haeg and his family – it is unacceptable because it may be me or my sons and daughters who are the next victims to be framed for a crime they did not commit by this incredibly effective, hard-to-believe, and hard-to-prove alliance between Alaska's prosecutors and defense attorneys and many other government officials.**

(9) **The oath millions of Americans and public officials have taken before taking an office is as follows; "I will support and defend the Constitution of the United States against all enemies, foreign and DOMESTIC..." demands nothing less.**

(10) **This case is not just going to go away. All the efforts by those involved in this shamefully corrupt case to make it go away and sweep it under the table will not happen. There are enough people fed up with this type of corruption, I believe with all my heart that in the end justice will be served and those involved will be punished to the full extent of the law and their job given to someone who will live up to the constitution and provide for everyone's basic rights as a citizen of this great state and the United States of America.**

Please consider everything that has been outlined in this letter. Something must be done to right the wrongs that have happened here with this case.

Best Regards

Doug Boykin
Po Box 1805
Buna Texas 77612
409-273-8707
April 5, 2010

Timothy D. Twohy
1241 Paddy Place
Wasilla, Alaska 99654

March 22, 2010

The Honorable Judge Blankenship
Superior Court Presiding Judge
101 Lacey Street
Fairbanks, Alaska 99701

Dear Judge Blankenship,

This letter is request for your immediate intervention and correction for the judicial error of Judge Funk, who has and without cause, disqualified himself and assigned Judge Murphy to (his) assigned Post Conviction Relief application case; 4MC-09-00005CI Haeg v. State

Judge Funk reassigned his case, subsequently to a States "Motion to dismiss", to a Judge that has previously proven to be biased, has collaborated with State witnesses, permitted false testimony on search warrants and at trials, and will be the named defendant for her collusion, conspiracy and tampering with official court documents.

After reading both sides of the Haeg Case, the actions of our justices in Mr. Haegs case, mimic the corruption, conspiracy and cover-up stories of actual cases such as Watergate, yet are shockingly more incredible than any John Grisham novels.

How can the people expect justice when courts allow the State Prosecutors to pervert the judicial process by choosing the venue and the Judge for a case, such as Judge Funk has regarding Haeg?

Following Judicial Cannon excerpts from our Alaska Court System:

> *A judge shall consider and decide all matters assigned to the judge except those in which the judge's disqualification is required.*
>
> *Under this rule, a judge is disqualified whenever the judge's impartiality might be questioned, regardless Of whether any specific rule in Section 3E(1) apply*

Anyone who reads what has happened can clearly see that Judge Funk neglected his (assigned) judicial obligation. And, that Judge Murphy's impartiality is more questionable and demands for her immediate disqualification. Only if the government is forced to follow the rules, will the people be assured fair treatment.

This Court cannot allow the State to tell her, when or where a case will be decided. Any attempt by the State Prosecutors to control the Judiciary, simply prostitutes the Courts and reveals nothing short of a absolute corrupt, totalitarian society, that if continues to prevail, will be met with violent opposition, as our forefathers have had in the past.

Thank you for your consideration to reassign the Haeg case, back to your Court or to a venue that will provide a fair, accessible and impartial forum, for the Haeg family.

Respectfully yours,

Timothy D. Twohy

U.S. Attorney General Eric Holder
950 Pennsylvania Ave., NW
Washington DC 20530

April, 17. 2010

Dear Sir:

We have personally reviewed the facts, law and filings in David Haeg's case. We have attended several of his court proceedings. We are neighbors of David and Jackie Haeg and know them to be upstanding citizens who abide by the laws of our state and country.

The facts and law prove David Haeg's PCR application CANNOT be dismissed before he is allowed to compel attorney testimony at a formal disposition. Mr. Haeg has been denied and deprived of too many Constitutional rights that we hold dear. This needs to be fixed! His family has been devastated by the lack of government officials and the courts upholding Constitutional rights that we all have assumed are there for being followed but have instead been trampled upon..

The facts and law show beyond reasonable doubt that Mr. Haeg's attorneys and the State of Alaska used deception and outright lies to deprive him of the rights given each citizen in the Constitution and laws of our great land.

It is beyond comprehension that even the official court record was tampered with and pages are now missing from his file which would have proven his main defense. This is unacceptable!

It is appalling that the facts and law prove that the State by its Motion to Dismiss is continuing to deceive everyone. Mr. Haeg's PCR application would be dismissed before he could compel the attorneys to testify. This is another indication of the desire of the State and attorneys to not follow the facts and law so that the truth is again covered up. This is unacceptable!

To top all of this, the assigned judge in this case was a named defendant and material witness in Mr. Haeg's case and the state suggested this judge. How can this be? This is unacceptable!

Think about this. All of the above is disgraceful on the part of our government and judicial system. The horrible damage done and being done to the Haeg family is unnecessary and unreasonable BUT what if this behavior by the system were happening to you or your children? If the state and attorneys continue to get away with this kind of behavior of not following the law or the facts, our state and country as we know it will no longer exist. We do not want this for our children and grandchildren so we are compelling you to listen and fix this situation as we know you have the capabilities to do.

This attack on our Constitution is unacceptable and we will do whatever is necessary to inform the public because the public can and will defend the Constitution even if government officials will not. Remember the oath taken by millions of American citizens to "support and defend the Constitution of the United States against enemies both foreign and domestic..." demands that we do just that because many of us take this very seriously.

Sincerely,

Larry M. Poage

Ruth E Poage

P.O. Box 2138
Soldotna, AK 99669
(907) 262-7540
poagies@yahoo.com

cc: David Heller, FBI; U.S Attorney Karen Loeffler; AK Governor Sean Parnell; AK Supreme Court Chief Justice Walter Carpeneti; AK Senate President Gary Stevens; Judge Margaret Murphy

U.S. Attorney General Eric Holder
950 Pennsylvania Ave., NW
Washington DC 20530

April 16, 2010

A public corruption meeting was held at the Soldotna Sports Center in Soldotna, Alaska on Saturday April 10, 2010.

Over 200 people attended; listened to direct witness testimony of the corruption in David Haeg's prosecution; examined the physical evidence in David Haeg's prosecution; discussed corruption in numerous other cases; agreed the problem has gotten so bad it is will not or cannot be addressed by State agencies; and agreed it can only be addressed by the federal government with law enforcement agents from outside Alaska.

Enclosed are copies of the petition signed by those by who attended the above meeting, asking for a federal investigation.

We the People of the United States

In order to breathe life into our Constitution we do hereby demand the current federal investigation be completed, and a prosecution started, concerning the corruption during David Haeg's case. We believe that in David Haeg's prosecution there is clear and convincing evidence Alaska's defense attorneys are intentionally depriving their own clients of constitutional rights and/or are conspiring to do so – violating 18 U.S.C. 241-242. *See* U.S. Supreme Court filings at www.alaskastateofcorruption.com.

(Sign & print name, address, phone number, email & date)

[illegible signature] DAVID BRUMMEL 34194 LOURDES SOLDOTNA AK PO BOX 3717 907 262 8722
[illegible signature] JOHN ODD joodd2@gmail.com DOB 62 Clam Gulch AK 99568 4-10-10
[illegible signature] 41435 Grove Ct, Apt 3 Soldotna, AK 99669
[illegible signature] 41435 Grove Ct Apt 3, SOLDOTNA AK 99669
Jeanette L Diamond 47155 black bear AK 99611
Kenney Diamond 47155 blackbear Kenai 99611
[illegible signature] 53181 Stol Rd. 2624764
Pattie Wright PATTIE WRIGHT PMB335 35555 Spur Hwy Soldotna
K. Gill Ken Gill PMB 335, 35555 Spur Hwy Soldotna 99669
Ed Robinson ED ROBINSON PO Box 2185 Soldotna, AK 99669
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Ray White 35482 Kuskokwim Ave Kenai
James Isaak Box 1341 Soldotna, AK 99669 James Isaak
[illegible signature] 39310 KALLELUJAH TR. DR SOLDOTNA AK 99669 MICHAEL T. ADLAM
PETE SEDIVY 30093 ALI ST. SOLDOTNA, AK
Philip Smith PHILIP SMITH P.O. BOX 4013 260-6678
[illegible signature] RANDY BLONDEN BOX 159 KODIAK, AK 99615
[illegible signature] MARK POWELL 46655 KSH Kenai AK 99611
Jim Dietz PO Box 3706 Soldotna 907-347-3557 jim_dieTZ@hotmail.com
AdAm D. Leach 394-0283 [redacted] dean-AdAm-7 yahoo.com

Return to: David Haeg for hand delivery to the U.S. Department of Justice
* P.O. Box 123 * Soldotna, AK 99669
Fax 907-262-8867 * email: haeg@alaska.net
Or call 262-9249 for pickup

We the People of the United States

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(Sign & print name, address, phone number, email & date)

Sallie J Perkins	Sallie J. Perkins	4800 E 147th Anch. AK 99516	907-345-1547 June 18, 2009
John Cheeseman	John Cheeseman	4800 E 147th Anch. AK 99516	907-252-6906 6-18-09
Donald K. Gill	Donald K. Gill	PMB 335 35555 Spur Hwy Soldotna	907-262-894 9966
	Greg Stoumbaugh	34460 Rounders	907-252-4091 Soldotna 99669
	SHARON C SMYTH TM	C/O POBOX 532 KASILOF AK [99610]	
Joseph Toman	Joseph Toman	C/O POB 169 Kasilof AK 99610	
	Brent Williams		951-216-4389
			907-336-4092
Ruth E Paige	Ruth E. Paige		907-262-7540 paigeruth@yahoo.com
Larry M Poage	LARRY M. PAIGE		262-7540 "
	36377 Kappy Way		335-3356
	102 Tern		335-1178
Eddie B. Ford	35360 Echolake		252 6625
Teresa Hancock	Teresa Hancock		
Greg Pearson			262-3935
Gary Oberts	35310 Huntington Dr		262-0856
Scott Nicole			252-0537
Jolene Pine			260-4478
David Pine			420 0652
Mike Jones			262-4795
Ann Bayes	Ann Bayes	POBox 117 Kenai, AK 9961	283-9097

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(Sign & print name, address, phone number, email & date)

John Rodgrick	Soldotna, AK	262-7140
Denyse Cook	PO Box 44 Soldotna AK	
Ed Ferguson	Box 128 Kenai,	776-8508
Frank Rogich	P.O. 128 Kenai	3946735
Jenny Hall	513 Peninsula Kenai	283-1456
Shelley Davis	Box 4028 Soldotna	262-2804
Ronnie Davis	Box 4028, Soldotna	262-2804
Daniel Dan	Box 1247 Sterling	
Diane Gander	38220 Evergreen Sterling	2-9747
Tom Patrick	Anchorage 99503	626 898 3596
Tim Twomey	Wasilla	44-2601
Terry Nelson	Nikiliaik AK 99639	6674328
Janie Nelson	" "	"
Randy McCafferty	Soldotna	260 4773
Byron Moore	Soldotna	2604463
Dianna Taplin Diana Taplin	Box 50 Soldotna	262-2249
Nancy McCauley	Soldotna	-
Rick Patterson	Sterling	398-7985
George Pierce	Kasilof	262 9716
Jaynda Evensen	Sterling	394-0788
Rick Sanchis	Soldotna	252-8288

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(Sign & print name, address, phone number, email & date)

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ZALIE KUMMERT ATOPSILAUTOBODY@HOTMAIL.COM 252-4761
Chris Giani gianieage8@hotmail
Amber Lowenstein 43914 Supreme Ct Kenai
Michelle Hahn 36180 Kenai Spur Hwy Ste #A Soldotna 99669
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Sharon J. Copeland PO Box 8127 Nikiski, 99635
Ernest Faler P.O. Box 941 Kasilof, AK 99610
Deb Brown box 1313 Kenai debb-n-ak@hotmail.com
Keri Green Box 647 Kasilof AK 99610
Kelly Peters P.O. Box 8127 Nikiski AK 99635 KP.Kuukpike x0400
Jeromie Reams 2116 FAIRBANKS #7, ANCHORAGE, AK 99503 4/10/201
Thad Lodge-Zeber box 304 Sterling AK 99672

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(Sign & print name, address, phone number, email & date)

FRED STEINMAN Box 513 252-0100 4-16-10
Angie Hall Angie Hall 33300 St. Joseph 398-9767 4/10/10
ROBERT KRAUSE 30555 STUBBLEFIELD DR. 252-5270 4-10-1
Matt Bell 33175 Colson st 262-7874
Tim Hatten PO Box 894 Kasilof, AK 99610 907-741-1165
Dustin J.S. VinZant P.O. Box 3422 Soldotna AK 99669 enkianunaki@hotmail.c
Christopher B Foster PO Box 2315 Kenai, AK 99611 10 Apr 2010
JEFF SISSON P.O. Box 3517 Soldotna AK 99669 4/10/10
Linda Sisson PO BOX 3517 Soldotna AK 99669 hangdake@hotmail.c
Patrick Humecky 37303 Longview st. Sterling AK 99672 uncledidy@gmail
Leon Ailsworth 43499 Ross Drive Soldotna AK 99669 4/10/1
Richard Patterson Box 1317 Sterling AK
Bert Nelson Box 439 Kasilof AK
Nancy McCraney P.O Box 337 soldotna A.K. 4-10-10
Kim MARTIN 26399 Cohoe Lp. Rd. Kasilof, AK. 99610
Seymour Marvin Mills Seymour Marvin Mills 907-262-9289 Box 51 Sterling, ALASKA
Robert Seybold 35140 Slikok Creek Soldotna 262-1850

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Ben Sanders Ben Sanders Box 2102 Soldotna AK 99669
Doug Weaver Doug Weaver P.O. Box 1002 Kasilof 99610
Byron Moore Byron Moore PO. Box 2884 Kenai 99611
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Esther Byford Esther Byford 33600 Echo Lake Rd. Sold. 99669
Steve Bilbew Steve Bilbew 53181 Stol Rd Kasild 99610
~~Ronald Davis Ronald L Davis JR PO Box 4028, So~~
Shelia Isaak Shelia Isaak, POB 134, Soldotna, AK 99669
Clint Hall 1212 1st Ave Kenai AK 99611
Bill Hyder 38720 Gavin Circle, Soldotna 99669 907 262 5447
Tony Gillett 9420 Swan Circle, Eagle River 99577

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(Sign & print name, address, phone number, email & date)

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me_joellen@yahoo.com 4-10-10
907 260 4773
Robert L. Cox 283-8333 4/10/10
Patty VanMeter 262-1298 4-10-10
260-5300 4/10/10
Michael G. Walker 63325 Sterling Hwy Clam Gulch 99568
Brandy Sawyer, Darren Sawyer 395-0523
William B. Dooley JR, Jeremy Dooley 260-3238
Jacob Tuttle 776 6577
Colby Babcock, 43350 Parkin Soldotna AK 99669
Keith Damon Vaughan PO Box 610 Kasilof AK
Shannan Carter 1114 Larch Ave Kenai 907 283 1423 996
Lisa Gough 43028 Morning Cir Kenai 283-1423 4-10

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(Sign & print name, address, phone number, email & date)

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Keith Herring PO Box 7265 Soldotna AK 99669 394-1901

Ralph C Meloon JR POB 4477 Soldotna AK 99669

Paula Lee Carlyle Paula Carlyle 1314 Kiana Kenai 907 262 928. 395-3912

Cynthia A. Stewart PO Box 1023 Kasilof, AK 99610

Jacqueline Jaeger P.O. Box 1982 Kenai AK

Warren Moore PO Box 2884 Kenai AK 99611

Scott Oldenburg Po Box 1055 Kasilof 99610

Jim Hathaway Po Box 647 Kasilof, AK 99610 252 3481

Chris Stanford PO Box 422 Kasilof 99610 394-0641

Robert Romig P.O. Box 1952 Kenai, AK. 283-6021, rhromig@acsalaska.net

Tini Twidy 1241 Bridget Circle 99654 744-2601 4-10-10

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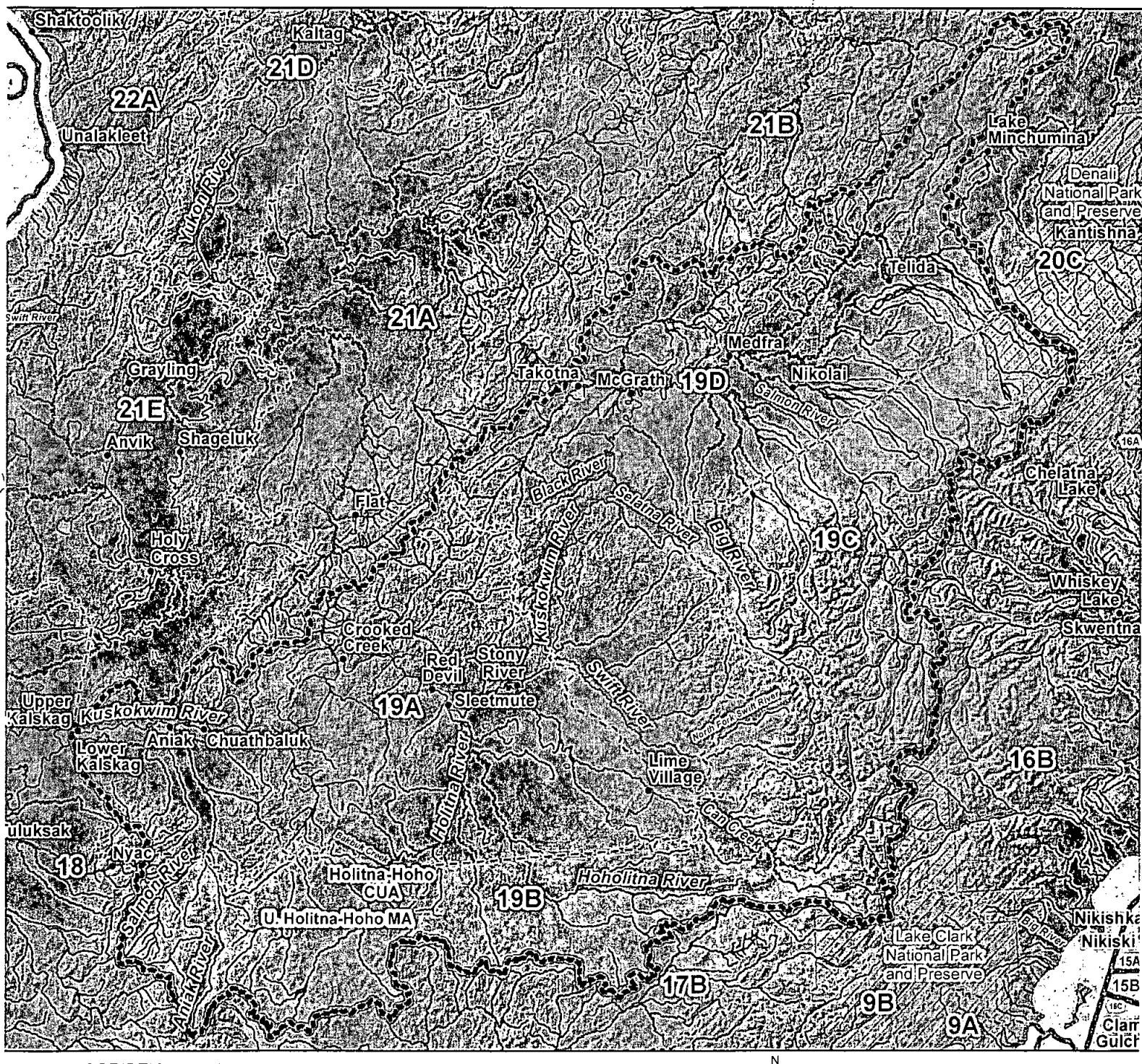
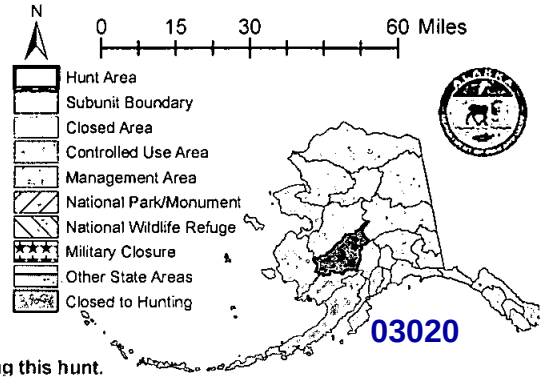
Unit 19
Wolf - General Hunt
Residents and Nonresidents

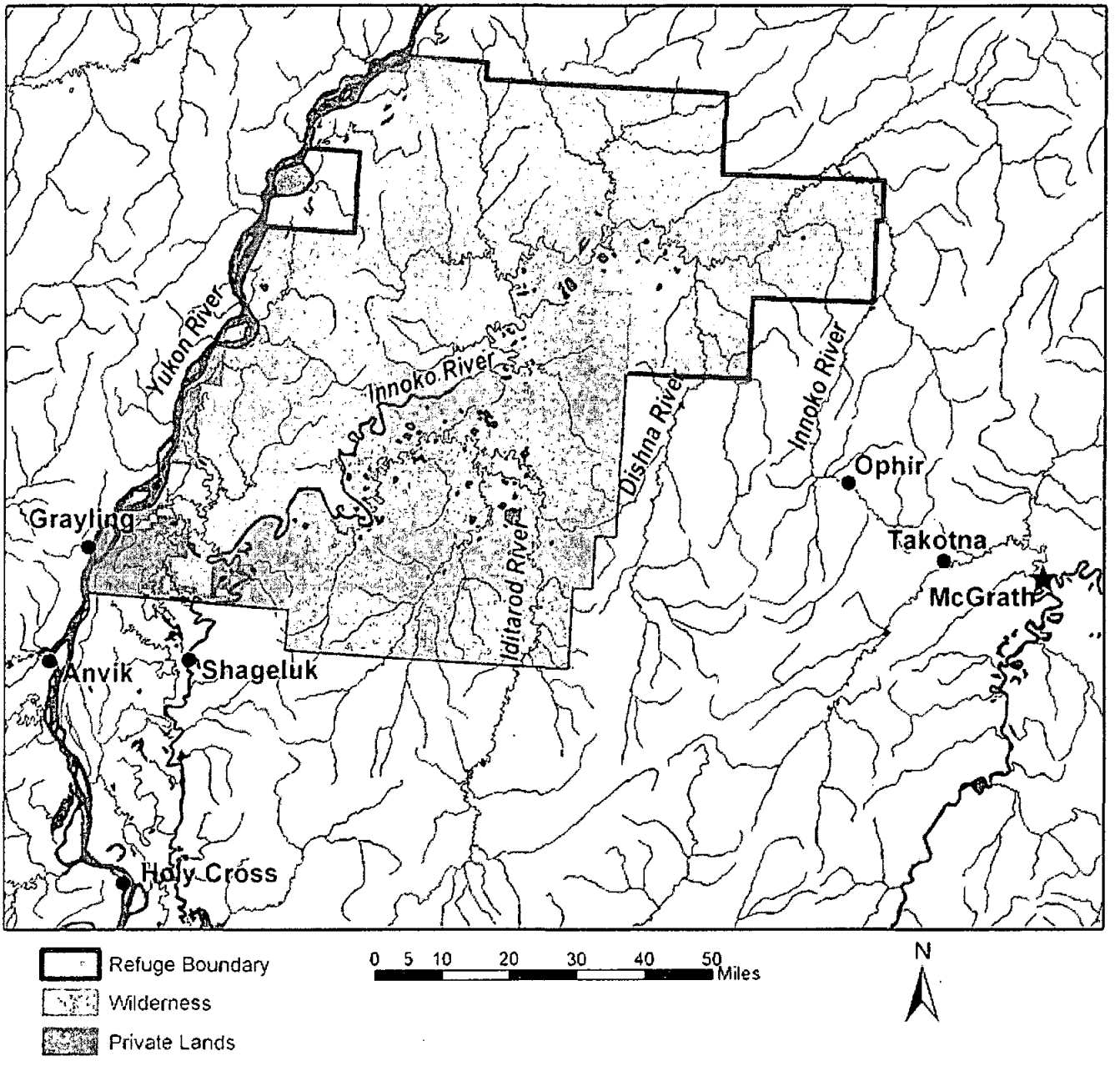


AREA DESCRIPTION: Unit 19.

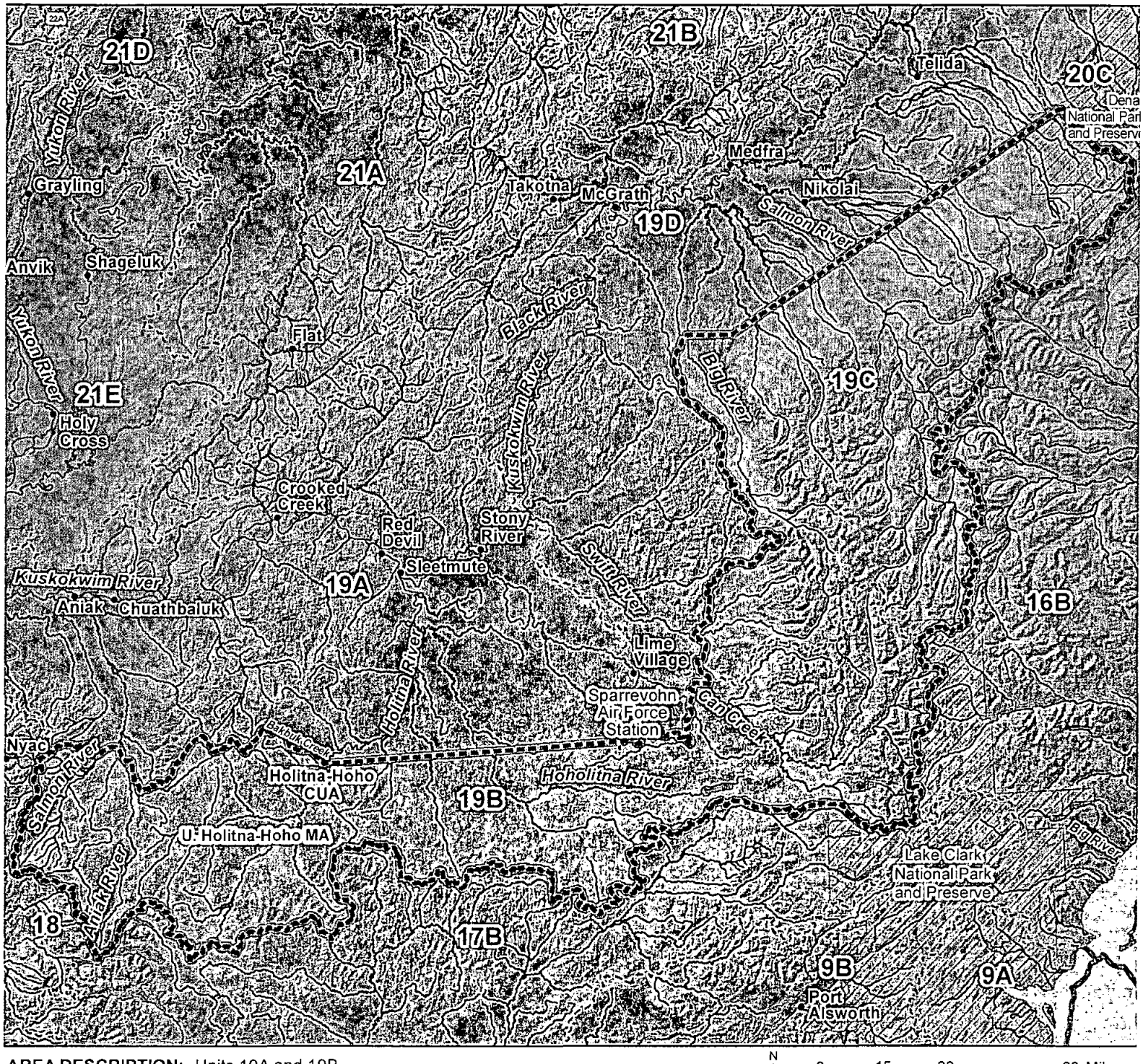


Please refer to the Alaska Hunting Regulations booklet for bag type, seasons, and additional regulations concerning this hunt.

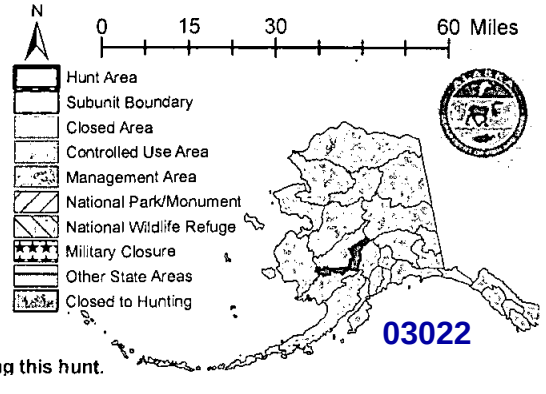
Innoko National Wildlife Refuge



Units 19A and 19B
Black Bear - General Hunt
Residents and Nonresidents



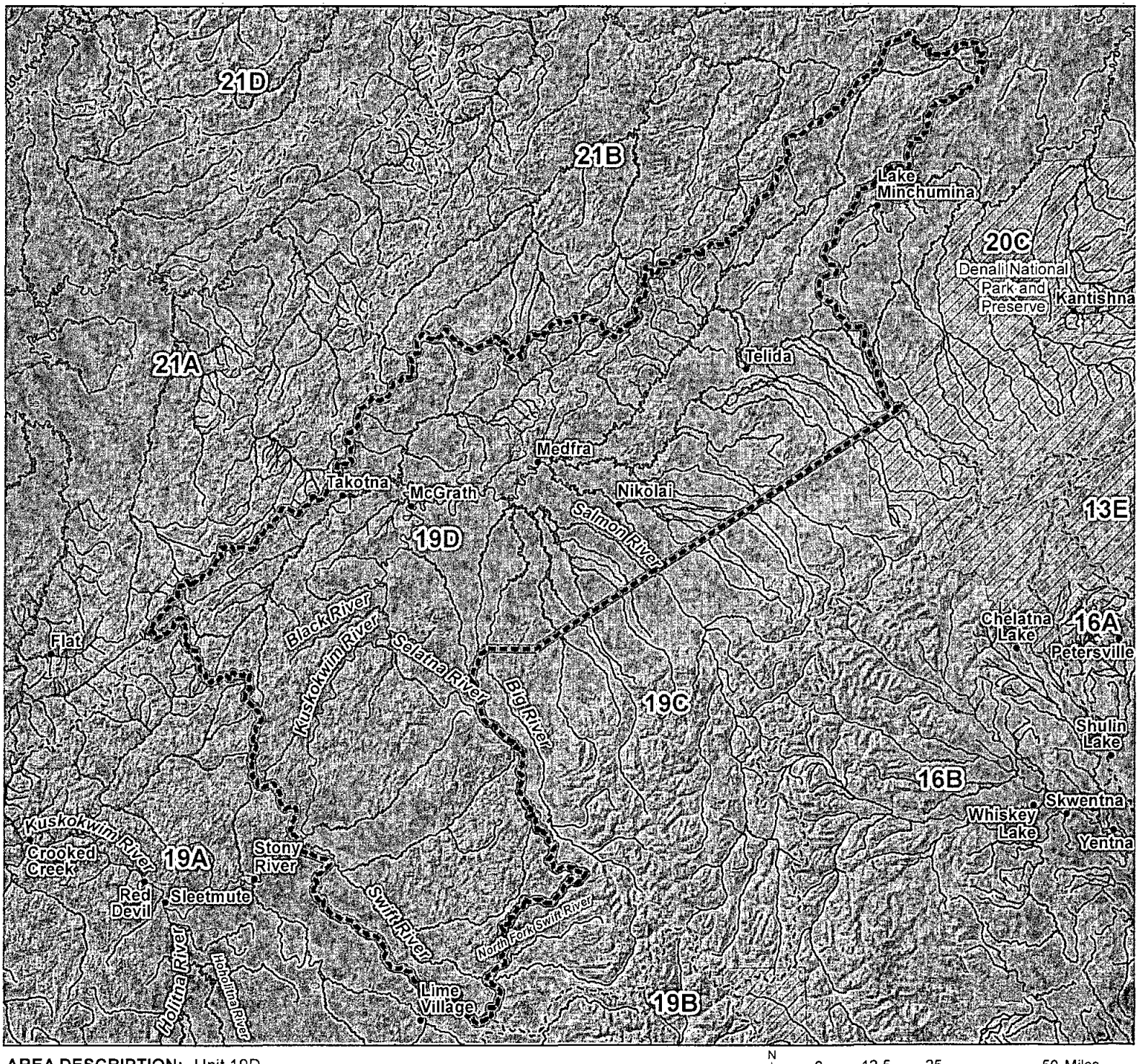
AREA DESCRIPTION: Units 19A and 19B.



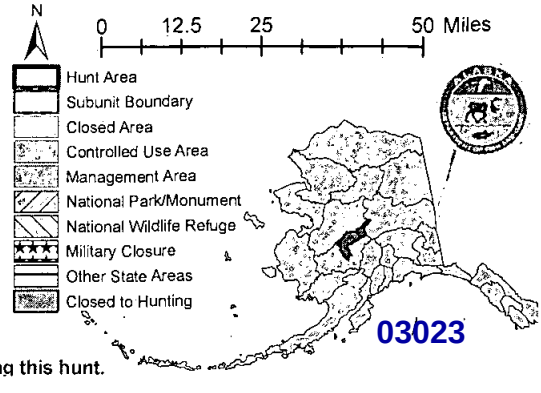
03022

Please refer to the Alaska Hunting Regulations booklet for bag type, seasons, and additional regulations concerning this hunt.

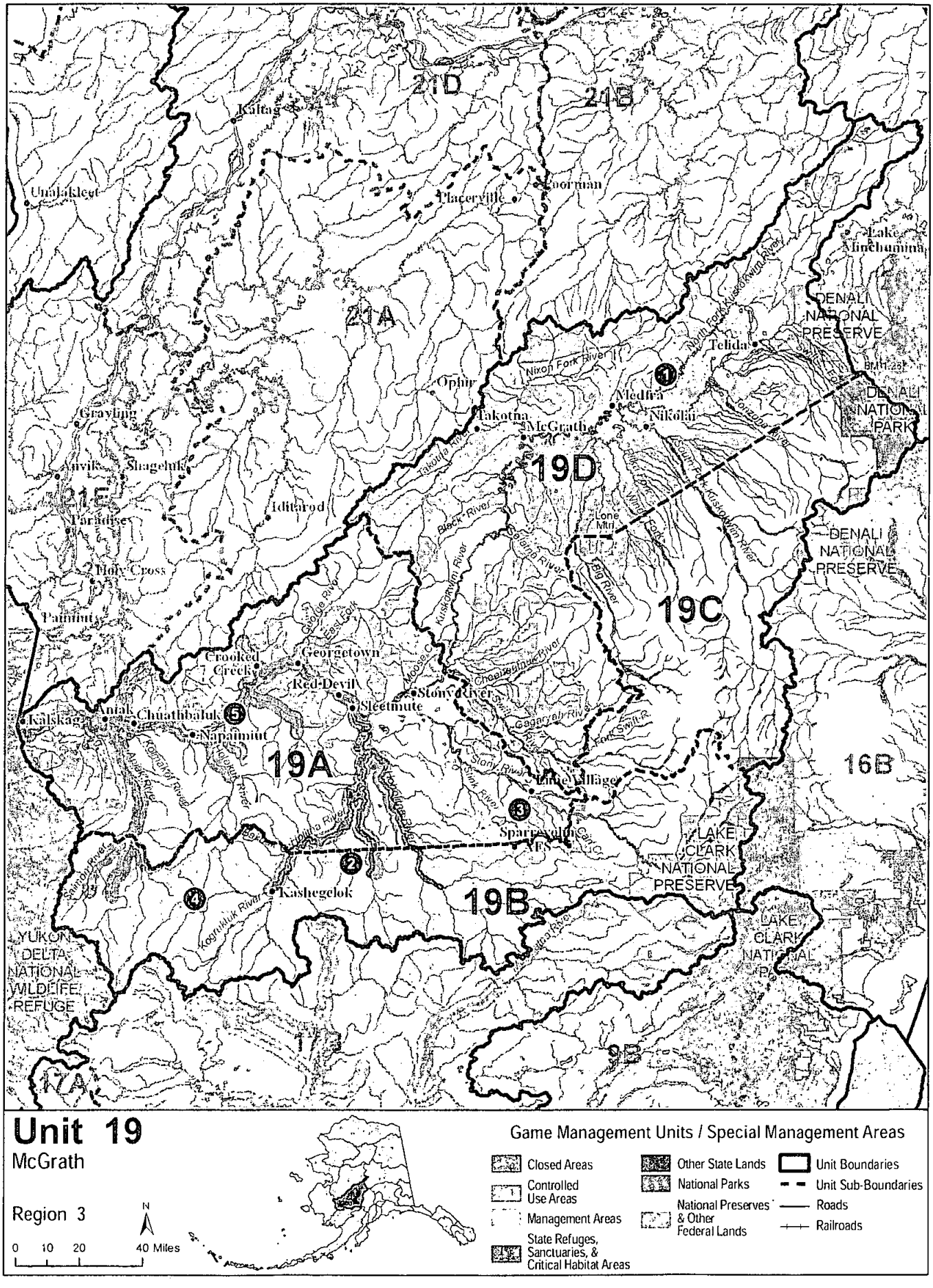
Unit 19D
Black Bear - General Hunt
Residents and Nonresidents - Harvest Ticket Required



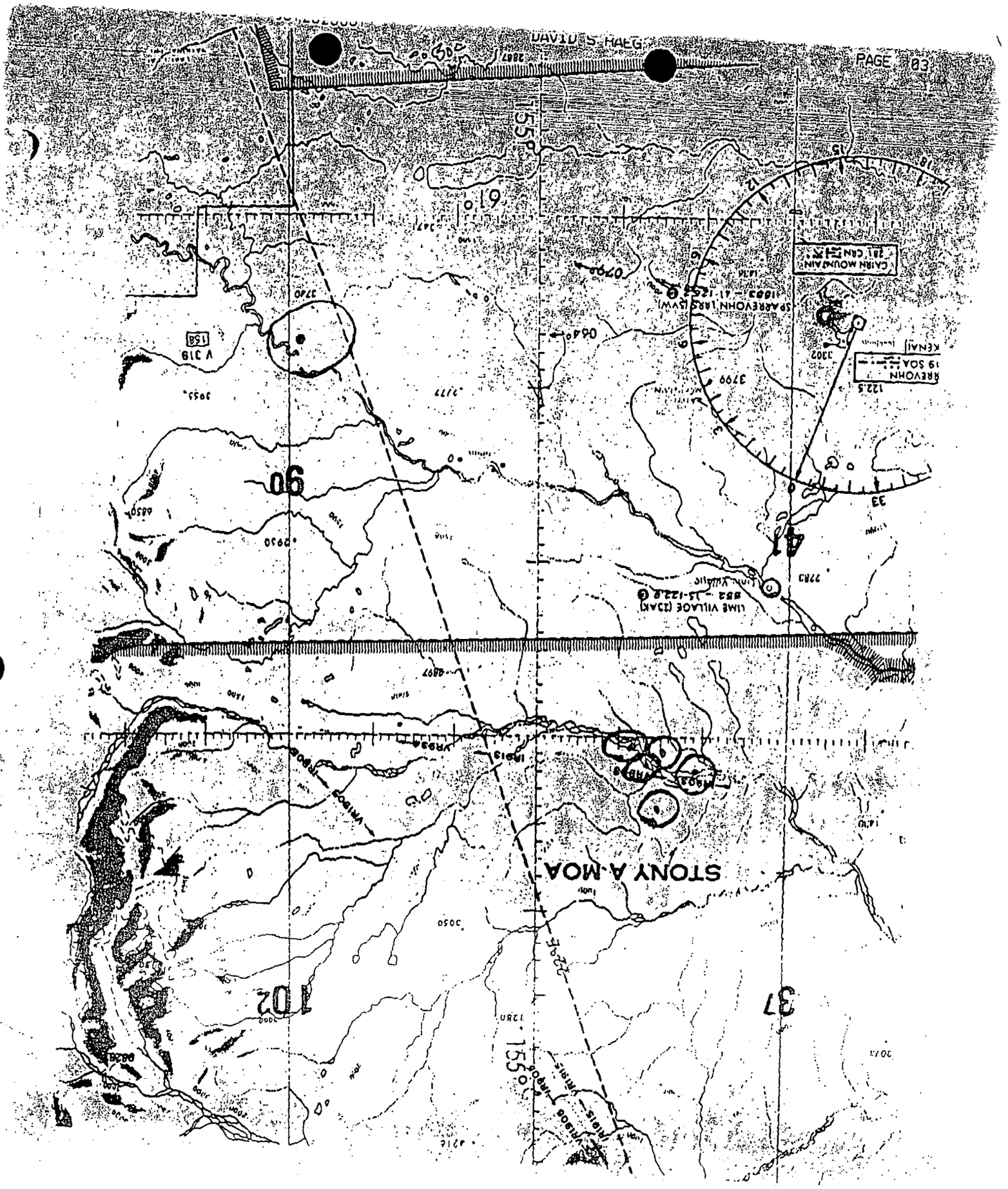
AREA DESCRIPTION: Unit 19D.



Please refer to the Alaska Hunting Regulations booklet for bag type, seasons, and additional regulations concerning this hunt.


21D
21B
21A
21E
19D
19C
19A
19B
16B
17
9B
Kaltag
Unalakleet
Placerville
Coorman
Lake Minchumina
DENALI NATIONAL PRESERVE
DENALI NATIONAL PARK
Telida
Nixon Fork River
Medfra
Nikolai
Ophir
Takotna
McGrath
Grayling
Anvik
Shageluk
Iditarod
Paradise
Holy Cross
Pamiut
Crooked Creek
Georgetown
Red Devil
Sleetmute
Stony River
Kalskag
Aniak
Chuathbaluk
Napaimiut
Lime Village
Sparrevohn FS
LAKE CLARK NATIONAL PRESERVE
Kashegelok
YUKON DELTA NATIONAL WILDLIFE REFUGE
Lone Mtn
Black River
Big River
Swift R.
Fork Swift R.
Unit 19
McGrath
Region 3
0 10 20 40 Miles
Game Management Units / Special Management Areas
Closed Areas
Controlled Use Areas
Management Areas
State Refuges, Sanctuaries, & Critical Habitat Areas
Other State Lands
National Parks
National Preserves & Other Federal Lands
Unit Boundaries
Unit Sub-Boundaries
Roads
Railroads

03024

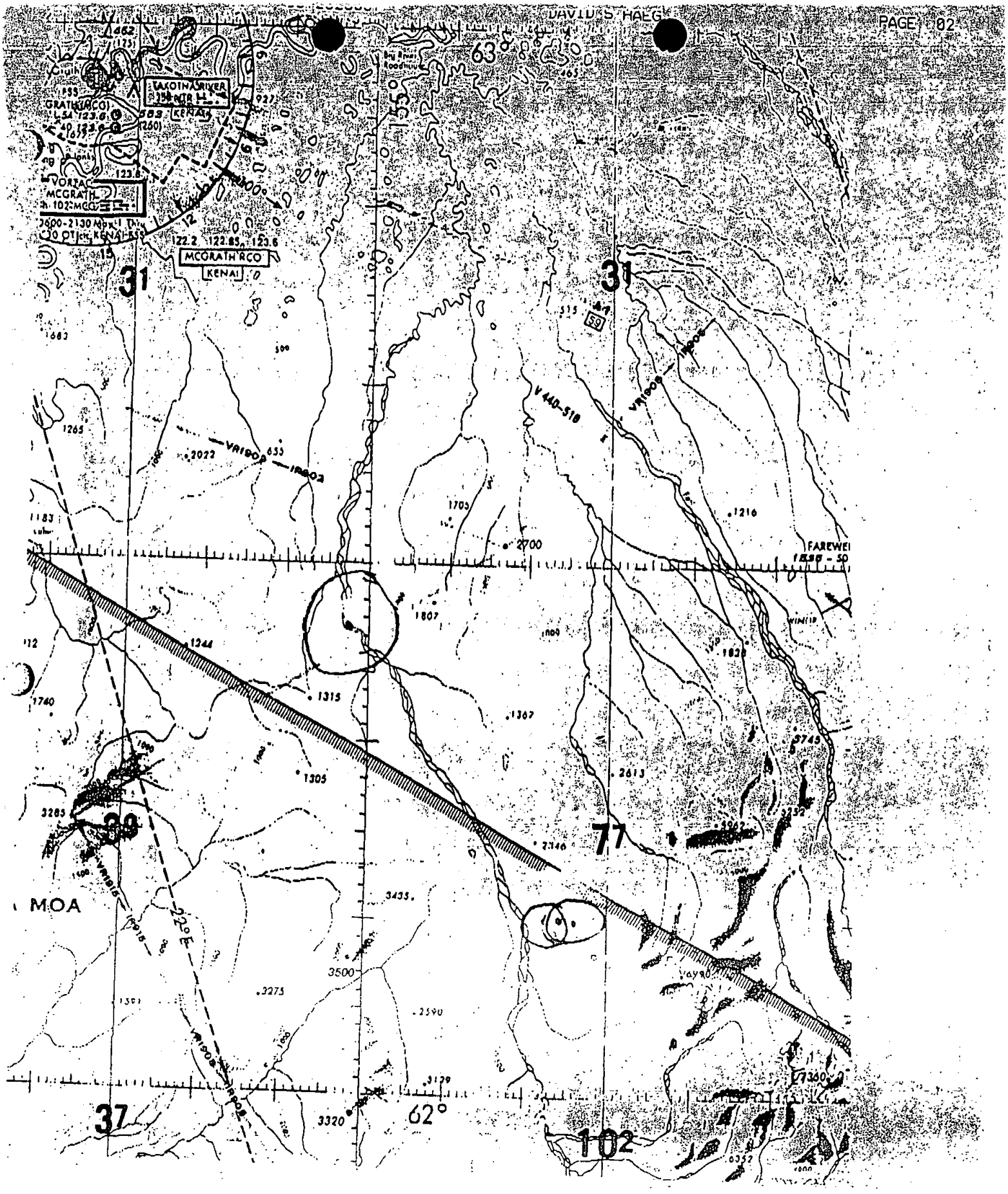


1 1277

EXHIBIT A

PAGE 1 OF 2

03025



1 1278

EXHIBIT A

PAGE 2 OF 2

03026

haeg@alaska.net

From: "Chuck Robinson" <chuck@robinsonandassociates.net>
To: <haeg@alaska.net>
Sent: Tuesday, June 06, 2006 10:45 AM
Subject: FW: Request For Bonnie Burger's affidavit

From: Chuck Robinson
Sent: Tuesday, May 30, 2006 10:07 AM
To: David Haeg (haeg@alaska.net)
Subject: Request For Bonnie Burger's affidavit

Dear David:

In your email and letter to Bonnie requesting that she answer certain questions for purposes of an affidavit, you requested that you be notified before June 1, 2006 of any reason or unwillingness for her not to do so. This is notice that Bonnie will not answer the questions in your proposed affidavit. Many of the questions ask for legal conclusions which she is not qualified to answer. The questions concerning Mr. Jayo don't seem pertinent to an effective assistance of counsel claim. If these questions are directed at a refund for fees and cost you paid for his telephonic attendance at your sentencing hearing, then you can address that issue with me. I might be willing to make some adjustment on the fees and cost you paid for his attendance.

Chuck Robinson

---

haeg@alaska.net

From: "Chuck Robinson" <chuck@robinsonandassociates.net>
To: <haeg@alaska.net>
Sent: Tuesday, June 06, 2006 10:44 AM
Subject: FW: proposed affidavit for Arthur Robinson

From: Chuck Robinson
Sent: Wednesday, May 31, 2006 10:25 AM
To: David Haeg (haeg@alaska.net)
Subject: proposed affidavit for Arthur Robinson

David:

I'm in receipt of your 5/23/06 letter to me containing a proposed affidavit or questions for me to fill out. You requested that I let you know by June 1, 2006 if for some reason I was not able or willing to do so. I am unable and unwilling to fill out the proposed affidavit you sent for me. Many of the questions you ask me to answer call for legal conclusions which I'm not willing to make. Many of your questions call for speculation on my part which I will not engage in. Some of your questions do not relate in any way to ineffective assistance of counsel claims.

Chuck Robinson

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

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

MC-04-00024CR)

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

CATION: I certify this document and its attachments do not contain the (I) name of victim of a sexual offense listed in AS 12.6 1.140 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
hone number in a transcript of a court proceeding and disclosure of the information was ordered by the court.

pplicant, 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

l 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, 3 10 pages of supporting evidence, and 7 independent affidavits Haeg laid out a shocking case of corruption, conspiracy, and cover up b
e 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.
aeg 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.
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
aeg (Trooper Brett Gibbens), and Judicial Conduct's only investigator of judges for the past 25 years (Maria 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 Ha
Judge Joannides ruled that Haeg's PCR claims ***required*** *an evidentiary hearing to be decided.*
ber 8, 2010, or well over a year ago, Judge Bauman was assigned to decide Haeg's PCR.
y 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 Maria Greenstein covered up for Judge Murphy and Trooper Gibbens: *"No one in America would believe you c*
e that was presiding over your prosecution was being chauffeured by the main witness against you."
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.
man, 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 P
udge 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 motio
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 Ha*
l 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.*
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.*
nber 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*
dismiss and that Judge Bauman knew this hearing was required.
ber 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.*
y 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 Ju
oper Gibbens' corruption during Haeg's trial and sentencing, (b) eliminated Haeg from presenting Judge Joannides' certified evidence that Judicial Conduct investigator Maria Greenstein conspired with Judge Murphy and Trooper Gibbens to cover up Judge Murphy's conspiracy
ooper 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 M
udge 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 substa
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 P
randum/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
r 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 evide
uting 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 applicati
davit, 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

is.
nt.
otions 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.*
ent 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.
22.10.190. Compensation.
ant 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.
onstitution, Fourteenth Amendment
ake 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.*
OF RELEVANT EVIDENCE
tion of Relevant Evidence.
ce 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.
nt Evidence Admissible - Exceptions - Irrelevant Evidence Inadmissible.
nce 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.
Conviction Procedure
Judgment on Pleadings
a pro se [someone representing themselves like Haeg] *application the court shall consider substance and disregard defects of form.*
Judicial Conduct
e Shall Uphold the Integrity and Independence of the Judiciary.
and honorable judiciary is indispensable to achieving justice in our society.
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 maintaine
ere to the provisions of this Code.
tion of this Code diminishes public confidence in the judiciary and thereby does injury to the system of government under law.
e Shall Avoid Impropriety and the Appearance of Impropriety in All of the Judge's 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.
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
ht be viewed as burdensome by the ordinary citizen and should do so freely and willingly.
gainst behaving with impropriety or the appearance of impropriety applies to both the professional and personal conduct of a judge. Because it
cifically mentioned in the Code.

...proper 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 restrictio
...conduct that might be viewed as burdensome by the ordinary citizen and should do so freely and willingly.
...he 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 judg
...although not specifically mentioned in the Code.
...*ctual 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 responsibili*
...*npartiality, and competence is impaired.*
...7) A judge *shall* accord to every person the right to be heard according to law.
...3) A judge *shall* dispose of all judicial matters *promptly*, efficiently, and *fairly*.
...). Disciplinary Responsibilities:
...) 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
...entencing!
...*he 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

...) *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
...w, 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
...ing 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 t*
...*elf, that no public oral argument hearings take place.*
...) 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 da*
...*the mandatory time limit for holding Haeg's mandatory oral argument hearing.*
...) 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 re
...r 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.
...) 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 he
...in ever larger numbers – packing Haeg's PCR court to standing room only.
...) 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
...d 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'*
...*rule Haeg cannot submit evidence and claims because of the delay.*
...) 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
...ivit 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, t
...ng 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
...ivit, 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 attacl
...orandum/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, th
...ng this. *Judge Bauman's claim, that Haeg's only "newly discovered evidence" PCR claim is that of entrapment, is proven false.*
...) 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 lo
...ve 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
...itutional right against self-incrimination. In Haeg's memorandum/affidavit numerous other instances of PCR appropriate constitutional rights violations are specifically cited and proved:
...) 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 d
...tigation 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 t
...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
...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 at
...ides use of this same evidence to disqualify Judge Murphy from presiding over Haeg's case also prove Judge Bauman's claim is false.
...0) 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
...ctive 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 tria
...obinson 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. S
...r 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 n
...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 vi*
...*aw 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.*
...1) 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
...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 attorne
...ot 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 th
...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;
...led 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
...one 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
...is 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 a
...; (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 prov
...orneys 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 pro
...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
...ically 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.*
...) 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
...mer attorneys refused to fill out the affidavits – and he cannot force them to.
...) 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, a
...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 ap
...lets 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 pr
...ge 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 ac
...s and 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
...position phase, genuine issues of material fact remain to be resolved."
...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 ski*
...*ite 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
...o 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 furthe
...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
...ith agreed to file an affidavit responding to Mr. Haeg's allegations of ineffective assistance of counsel."
...eg 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 provide
...it.
...) 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
...long 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 th
...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 relev
...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.
...rv 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.*"
...od 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."
...chibroda 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 St
...*petitioner's motion and affidavit contain charges which are detailed and specific.*
...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
...portunity to support them by evidence. *On this record it is his right to be heard.*

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to support them by evidence. *On this record, it is his right to be heard.*
lways 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 func*
255 can be served in this case only by affording the hearing which its provisions require.
ms 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 th*
t 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.
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
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 cas*
im 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?
wn 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 cour*
ance and disregard defects of form" when someone is "pro se" or representing himself or herself in PCR – as Haeg is doing.
ingle 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 oper
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
rs 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
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" scan
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

e above:
spectfully 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 prosec
auman 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 sh
ruption 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!
only investigator of judges in Alaska, will investigate Judge Bauman for covering up the corruption of Marla Greenstein – another fantastic conflict of interest.
spectfully asks that Judge Bauman's January 3, 2012 orders be stricken from the record.
spectfully 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, Tro
s 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 assis
o 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 a
his oral argument.
ks 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.
l 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
ter 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 subpoen
n 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
ved 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 a*
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
lge 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 H
vent 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 min***
ial 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 an
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 assista
ht to petition the Government with grievances.
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
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 deman*
, 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 Re
20
ment *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*
Justice Hugo L. Black, US Supreme Court Justice
an 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.
d 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 de
tion of everyone involved for the felonies of conspiring to use positions of trust and the color of law to intentionally violate our constitution.
eg 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.
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and recordings proving the corruption are located at: www.alaskastateofcorruption.com
g

aska 99669
49 and 262-8867 fax
a.net
f 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.

, 2012 9284/7

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)

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 h 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 ava 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, Anchorag 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, 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 prec 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 resulte 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 Hae 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*

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 durin [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 v "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 S 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 safegu

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 test 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 degre 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 pe 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 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, 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 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 consti 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 co 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 to refresh their memories, or otherwise to focus their thoughts

e 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
esh 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
d, reviewed, or were exposed to the immunized testimony in order to prepare themselves or others as witnesses."
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
urden 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.
e 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
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*
fant is entitled to a new trial. If the same is true as to grand jury evidence, then the indictment must be dismissed."
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
ere was.
s Law Dictionary (9th Ed. 2009):
ional immunity protects a witness from prosecution for the offense to which the compelled testimony relates."
sult 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 L
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
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
e 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) Zeller
rney Kevin Fitzgerald, have testified Zellers cooperated and testified for the state as a direct result of Haeg's statement – [See Gonzalez and North] above.
his 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 cr
ion 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
tate 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 fa
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 qu
ing.
the above it is clear Cole must answer questions of Haeg's choice, and not answer questions of his own choice.
bove 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
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 witness
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, 20
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, evasi*
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State's Second Motion to Dismiss Haeg's PCR

orney 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

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Discussion

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Conclusion

the above Haeg respectfully asks the court to:

ole's motion to quash his subpoena.

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

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).

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.

nity 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 wi
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certify that copies of many of the documents and recordings proving the corruption in Haeg's case are located at: www.alaskastateofcorruption.com

laeg
23
Alaska 99669
9249 and 262-8867 fax
aska.net

te of Service: I certify that on January 30, 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.

S. Haeg

03034

/19, 2012

9349/