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Submitted 11/27/06

IN THE COURT OF APPEALS FOR THE STATE OF ALASKA

DAVID HAEG	)	
	)	
Appellant,	)	
	)	
vs.	)	
	)	
STATE OF ALASKA,	)	Case No.: A-09455
	)	
Appellee.	)	
	)	

Trial Court Case #4MC-S04-024 Cr.

MOTION FOR CLARIFICATION & RECONSIDERATION OF DENIAL OF ALL MOTIONS FILED ON NOVEMBER 6, 2006, INCLUDING ORAL ARGUMENTS, REQUEST TO KNOW HOW TO APPEAL DENIAL TO THE ALASKA SUPREME COURT, ORDER THAT DISTRICT COURT ACCEPT APPLICATION FOR POST-CONVICTION RELIEF AND CHANGE VENUE FOR THIS TO KENAI, ALASKA

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 Pro Se Appellant, DAVID HAEG, in the above referenced case, hereby moves this court, in accordance with *Appellate Rule 503(h),* for clarification & reconsideration of motions filed on November 6, 2006, by appellant. On November 16, 2006 this court issued an order denying all Haeg's motions. Motions denied included Emergency Motion for Return of Property and to Suppress Evidence, Motion to Correct and Stay Guide License Suspension, Motion for Summary Judgment Reversing Conviction with Prejudice, Motion to Supplement the Record, and Motion to Stay Appeal Pending Post-Conviction Relief Procedure. Current motion includes request for oral arguments and request on the proper procedure for Haeg to appeal these denials to the

Alaska Supreme Court. See *Breck v. Ulmer*, 745 P.2d 66 (1987) "[a] judge should inform a pro se litigant of the proper procedure for the action he or she is obviously attempting to accomplish..." In addition Haeg asks this Court of Appeals for an order requiring the district court to accept a petition for post-conviction relief – as they have ruled they will not do so. Haeg further asks this Court of Appeals to change the venue for this procedure to Kenai, Alaska because of the immense bias in the trial court and the cost prejudice to Haeg and everyone else to conduct this in McGrath, Alaska.

I. Emergency Motion for Return of Property and to Suppress Evidence

Haeg requests the Court of Appeals to reconsider and clarify their reasons for denying his Emergency Motion for Return of Property and to Suppress Evidence. To deny ruling on Haeg's motion for return of property seized by the State the Court of Appeals states, "Apparently Haeg has not filed a motion under Criminal Rule 37(c)." The Court of Appeals is gravely mistaken in this. Haeg's motion of November 6, 2006 and supporting documents and the Court of Appeals own record in Haeg's case in no uncertain terms establishes that Haeg has made numerous and repeated attempts in both the district courts in which his property was seized for the return of his property, citing both Criminal Rule 37 (c) and Return of Property and Suppress Evidence - with the first of **fifteen (15)** separate motions being filed on

7/18/06.[1] Approximately every two (2) weeks Haeg and/or his wife filed new, amended, and/or expedited Criminal Rule 37(c) motions firmly telling the district courts that this motion was to be ruled on by them because it had to do with urgent and established constitutional due process concerns in protecting the livelihood of a family – and the jurisdiction to rule on these motions was clearly with the district courts. In addition Haeg pointed out he was in exact compliance with the specific rule that said these motions were to be filed in the court in the district in which the property was seized or in which the property may be used. At all times the district courts remained unpersuaded and in fact on 9/26/06 Judge David Landry issued a widely distributed memorandum, including to this court, explaining the situation, asking for advice, and trying to sidestep the issue by again claiming the case had gone to judgment and is currently on appeal. Judge Landry further tried to sidestep and confuse the issue by claiming that Haeg was apparently only concerned with a search warrant issued by him when in fact almost all of the property seized and illegally held in his district was though perjured search warrants issued in McGrath[2]. Both district courts (Aniak and Kenai) have refused to rule on Haeg's motions – telling Haeg that they had no jurisdiction to do so as Haeg's appeal of his criminal conviction was the jurisdiction of the Court of Appeals. Haeg went so far as to several times inform

[1] See enclosed motions included in attached appendix.
[2] See enclosed memorandum by Judge Landry dated 9/26/06.

both Morgan Christen and Mark Wood, the sitting judges for the third and forth districts, of the absolute refusal for anyone to rule on Haeg's motion, still all to no avail and with no response from any judge – even judges Christen and Wood.

More recently Judge Landry issued the only order in response to these numerous motions – denying Haeg's motion because "Subject matter and issues raised are the jurisdiction of the Court of Appeals" and "Believe this matter remains under the jurisdiction of the Court of Appeals".

Haeg and his wife have been illegally deprived of their property, used to provide the primary livelihood for their family, for nearly **three (3) years** at present. After Haeg and his wife realized this and said something they have been denied their property for an additional five (5) months after repeatedly telling the court of this injustice and asking, in exact accordance with rule and established case law, that something be done.

The limited response so far to Haeg's motions only arrived after Haeg and his wife told numerous judges, including all those in the Court of Appeals and Supreme Court, they were traveling to the Alaska State Troopers in Anchorage to recover their property – citing all they had done in the courts according to the Rule of Law – all with absolutely no response. The forced responses finally received were absurd and complete nonsense. This Court of Appeals, in refusing to rule, claims Haeg "hasn't filed anything with the district court" and the district courts, in

refusing to rule, claim, "We don't have any jurisdiction because jurisdiction is held by the Court of Appeals." Because Haeg and his wife are absolutely and irrefutably entitled to the return of their property, each court can only deny them this through the childish and corrupt ploy of saying "we can't rule because it's not our jurisdiction – it's the other courts jurisdiction". Yet in **five (5) months**, even **after** communicating about the issue with each other, they refuse to do anything. It should be clear that the courts are actively, intentionally, maliciously and corruptly denying Haeg and his wife their clear rights according to Rule, Law, and constitution. The courts know if they continue this long enough a pro se defendant will eventually have to give up fighting for his constitutional rights to his property, used to provide a livelihood, and have to find another way to make a living for his family. It is an unbelievably effective, ruthless, and chilling way to deny someone their constitutional rights – even more so when it is proven that it is being actively and aggressively utilized by multiple levels of courts.

In addition if Haeg had been afforded firmly established due process in the first place it would have been proven that all the search warrants used to seize the property were based on unbelievably intentional, knowing, and prejudicial perjury – again ending, before it ever started, the prosecution that has devastated and continues, unabated, to devastate Haeg and his family.

When Haeg, his wife and approximately twenty (20) other concerned people drove up from Soldotna to ask the troopers for the return of their property and, after they were again denied, continued onto the Court of Appeals to express their disbelief with the Court of Appeals ruling, the clerks of the Court of Appeals advised Haeg, his wife, and the assembled citizens that the Court of Appeals record contained the numerous motions Haeg filed in the district courts for return of property and to suppress evidence in accordance with *Criminal Rule 37(c).* The record of these motions was in addition to the multiple times Haeg clearly stated this fact in the very motion the Court of Appeals denied by claiming he had not filed these motions. How is it possible then for the Court of Appeals to deny ruling on Haeg's motion by claiming he has never filed a Criminal Rule 37 (c) motion requesting return of property and suppress as evidence? Did the Court of Appeals read Haeg's motion? If not why not? Did the Court of Appeals read the record in Haeg's case? If not why not? If they did read either of these how and why did they claim Haeg had "Apparently not filed a motion under Criminal Rule 37(c)"?

Haeg is confused that the Court of Appeals claims he "**still** has the opportunity to ask the trial court for the return of the property." How many times must someone ask for return of his or her property - more than the **fifteen (15)** times he has already asked over the last **five (5) months?** What is the magic number? Does the Court of Appeals mean David and Jackie Haeg have the

right to ask the court for the return of their property but the court has no obligation to answer? Exactly what is the job of the court? What good is the to right to ask if the courts have no obligation to respond?

Next the Court of Appeals states that the trial court must decide these issues before Haeg can ask for appellate review. If the district courts refuse to decide on these motions as they have done now for **five (5) months** after receiving **fifteen (15)** separate motions what is Haeg supposed to do – give up? Haeg will never do so and in fact cannot wait until he gets to explain this blatant corruption to the U.S. Supreme Court. It is obvious both the Court of Appeals and the district courts realize Haeg and his wife are entitled, by irrefutable and established constitutional due process, to their property back and are illegally refusing Haeg this in order to bankrupt Haeg and keep the corruption of the lawyers, Troopers, and judges in Haeg's case covered up.

Of special interest to Haeg is where this Court of Appeals states, "alternatively the State may seek to forfeit the property." Exactly how and why are they allowed to do this? The prosecution has illegally seized and illegally held Haeg's property, used to provide a livelihood, for nearly three years, and, even though they never gave Haeg or his wife the required notice they would seek to forfeit it, convinced the court to forfeit most of it after this. The State never obeyed **any** of the "ensemble of procedural rules that bounds the states discretion

to seize [property] and limits the risk and duration of harmful errors" that the Alaska Supreme Court requires the prosecution **must** follow. What happens to the State when they blatantly break this "ensemble" of constitutional protections to illegally and irreparably harm someone and put the resulting money in their pocket? Absolutely nothing as this Court of Appeals has ruled? Why would they **ever** obey this "ensemble" when it is so lucrative and there is no punishment?

Did this court read Haeg's motions, memorandum, affidavits and supporting documents? If they did they should know that the Alaska Supreme Court has ruled, "as a general rule, forfeitures are disfavored by the law, and thus forfeiture statutes should be strictly construed against the government." To Haeg this means if the State breaks this "ensemble" of protections they have to return the property and cannot use it as evidence – exactly as Criminal Rule 37(c) reads and the Supreme Court ruled. How then can the Court of Appeals, unless they are corrupt, rule that the State may **still** seek to forfeit David and Jackie Haeg's property that was seized, held, and forfeited in clear violation of this "ensemble" of established constitutional due process?

The State never provided Haeg or his wife anything in writing whatsoever to inform him they were going to seek forfeiture of their property. In none of the search warrants or three informations charging Haeg is there a single reference to the State's desire or intention to forfeit Haeg's property – or even a reference to the rule allowing this. Rom even admits this,

stating, "Although the judgments do not reflect the statutory authorization for forfeiture of the aircraft, and appellant does not directly raise this in his brief, AS 16.05.190-.195 and AS 08.54.720(f)(4) authorize forfeiture upon conviction. See Waiste, 10 P.3d at 1152-53." In other words the court forfeited Haeg's property without giving Haeg or his wife any chance whatsoever to prepare a defense against this. This is against the law. In fact Federal Rule of Criminal Procedures 7 and 32.2 prohibit anything being forfeited if the intent to forfeit property is not specifically articulated in the charging documents. This is to ensure that the person to be deprived has the constitutionally guaranteed "notice" of the case against his property and an opportunity to prepare to meet it. Neither Haeg nor his wife ever received this guaranteed "notice" of a case against their property.

Is the Court of Appeals trying to convince Haeg that it doesn't matter the State has illegally deprived him and his wife of their livelihood since the very beginning, effectively bankrupting him and his wife, and now the State gets to start over with a clean slate and seek forfeiture once again? So the State gets a clean slate but Haeg is required to keep his dirty, shattered, and bankrupt one? What, exactly, is the reasoning for this ruling? Would not constitutionally guaranteed fundamental fairness, clearly expressed in the due process clause, require a ruling exactly opposite? That Haeg gets a new, clean, and unbankrupt slate and the State gets the dirty, broken, and

bankrupt one? Haeg thinks the following courts have already ruled this upon this grave issue:

> U.S. Supreme Court in *Armstrong v. Manzo*, 380 U.S. 545, 552 (1965). "Only 'wip[ing] the slate clean ... would have restored the petitioner to the position he would have occupied had due process of law been accorded to him in the first place.' The Due Process Clause demands no less in this case."
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> U.S. Supreme Court in *Sniadach v. Family Finance Corp*., 395 U.S. 337 (1969). "[D]ue process is afforded only by the kinds of 'notice' and 'hearing' which are aimed at establishing the validity, or at least the probable validity, of the underlying claim against the alleged [defendant] before he can be deprived of his property or its unrestricted use. I think this is the thrust of the past cases in this Court [U.S. Supreme Court]."
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> U.S. Supreme Court in *Wiren v Eide*, 542 F2d 757 (9th Cir. 1976)."Where the property was forfeited without constitutionally adequate notice to the claimant, the courts must provide relief, either by vacating the default judgment, or by allowing a collateral suit."
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> Alaska Supreme Court in *Etheredge v. Bradley,* 502 P.2d 146 Alaska 1972. "Where the taking of one's property is so obvious, it needs no extended argument to conclude that absent notice and a prior hearing ... this procedure violates the fundamental principles of due process."

Neither Haeg nor his wife ever received any of these constitutional guarantees - above-required notice, hearings, or opportunity to bond (part of the "ensemble"). The prosecution came, seized most of the property Haeg and his wife used to provide the entire livelihood for their two daughters, used perjured search warrant affidavits from a single Trooper to do so, and, when Haeg asked when he could get his property back because he had clients coming in the next day, answered "never". When, after being illegally deprived for over a year Haeg asked

if at least he could bond his property out the judge refused to make a ruling – and refused to rule even after Haeg filed second motion asking her to rule on the first motion. The State's argument, used to blackmail Judge Murphy not to rule, is very enlightening; "The court will be **usurping executive authority** if it allows Haeg to bond his [property]". This democracy called the United States is dependent upon the checks and balances between the executive, judicial and legislative. It is very chilling indeed when it is so corrupt the executive is using the judiciary's checks **against** the judiciary to deny someone constitutionally guaranteed rights.

If the State is now allowed to re-forfeit Haeg's property or forfeit the property they still possess after they were denied forfeiture by the court because it was never even used as "evidence", they will have no reason to ever follow the "ensemble of procedural rules that bounds the states discretion to seize [property] and limits the risk and duration of harmful errors" because it will be proven there is no punishment if the State doesn't obey these constitutional protections.

II. Motion to Stay Appeal Pending Post-Conviction Relief Procedure

Haeg requests the Court of Appeals to reconsider and clarify their reasons for denying stay of his appeal until after his post-conviction relief procedure claiming ineffective assistance and corruption of counsel, prosecutorial misconduct/corruption, and judicial misconduct/corruption is

finished. The court has somehow justified their action by merely stating: "the law allows Haeg to pursue an appeal and a petition for post-conviction relief at the same time". This court never addressed the undeniable, immense, and fatal prejudice to Haeg that doing this would cause him – all documented for them to consider in the very motion this court denied. Also, the court did not claim the State would be in anyway prejudiced if Haeg' appeal was stayed.

All seminal Alaskan cases, including those by this Court of Appeals involving this exact situation, have held a defendant **must** first move for a new trial or sought post-conviction relief before moving forward with an appeal claiming ineffective assistance of counsel. This Court of Appeals in State v. Jones 759 P.2d 558 made it extremely clear: "Jones also filed a direct appeal challenging his conviction & sentence on unrelated grounds. **The appeal was stayed pending resolution of the post-conviction procedure**".

> See also: *Barry v. State*, 675 P.2d 1292: "we observed that in appeals raising the issue of ineffective assistance of counsel, the trial record will seldom conclusively establish incompetent representation, because it will rarely provide an explanation for the course of conduct that is challenged as deficient. We concluded that, **'henceforth we will not entertain claims of ineffective assistance of counsel on appeal unless the defendant has first moved for a new trial or sought post-conviction relief'**"
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> *Grinols v. State* No. A-7349: "But **many states – including Alaska – generally forbid a defendant from raising ineffective assistance of counsel claims on direct appeal. Instead, Alaska & these other states require a defendant to pursue post-conviction relief**

> **litigation if they want to attack the competence of their trial attorney**".

> Alaska Supreme Court in *Risher v. State* 523 P.2d 421: "Whether counsel is incompetent usually can be ascertained only after trial ... it may be necessary to remand for an evidentiary hearing on this issue. For example, if on appeal it is contended that trial counsel could have discovered helpful evidence, we might remand for a hearing on that issue. In most such cases, however, the necessity of an appeal & remanded may be avoided by first applying at the trial court level for a new trial or moving for post-conviction relief."

United States Court of Appeals for the Seventh Circuit

US v. Fuller No. 00-2023:

> "We generally discourage appellants from bringing ineffective assistance of counsel claims for the first time on direct appeal because only rarely is the trial record sufficiently developed for meaningful review. *See United States v. Pergler,* 233 F.3d 1005, 1009 (7th Cir. 2000); *United States v. Martinez,* 169 F.3d 1049, 1052 (7th Cir. 1999)."

Why does this same Court of Appeals refuse him this when they **require** it of everyone else? Haeg wonders if this is equal protection under law – when it is so extremely prejudicial to force him to proceed with an appeal based upon a nearly worthless record and at the same time telling him if he wants to conduct a post-conviction relief procedure to supplement the record he must do it at the same time. Yet, because his brief must be filed before this is done, this new evidence will never be considered in deciding his appeal. Also, because he will be trying to conduct both at the same time, along with still providing for his family, neither the appeal nor the post-conviction relief procedure will receive the attention each

needs to succeed. Is this the reason for this decision from the Court of Appeals? That they do not want Haeg to be able to conduct an effective appeal or post-conviction relief and/or they do not want to have on record the full truth of what happened to Haeg before deciding Haeg's appeal? Haeg would like to point out it was his counsel, who was actively representing interests in direct conflict with Haeg's, who filed Haeg's appeal. Haeg does not want to dismiss this appeal; he just wants a fundamentally fair opportunity to present it.

Of interest also is that nearly every court case Haeg has found has allowed and/or required a post-conviction relief procedure to finish before allowing an appeal claiming ineffective assistance of counsel to move forward. The overwhelming rational is that it is a waste of everyone's resources – judicial, defendant, and prosecution – to conduct an appeal which cannot get to the heart of the matter because the record is inadequate; and will have to be duplicated after the record is supplemented. Haeg has precious few resources left – the judicial and State prosecution have unlimited resources - as they get theirs from Haeg and every other taxpayer. The only possible reason that Haeg can imagine for the Court of Appeals singular treatment of him is that they are actively trying to bankrupt him and sabotage his appeal and post-conviction relief procedure. The only reason he could imagine for this is that they are actively trying to protect the State, Haeg's former

attorneys, and/or Judge Murphy from the consequences of their unbelievable actions in Haeg's case.

Haeg is also very curious if the courts will now rule that he cannot bring a post-conviction relief procedure claiming ineffective assistance of counsel, prosecutorial misconduct, and judicial misconduct because they "**could have been but were not** raised in a direct appeal from the proceeding that resulted in the conviction". Haeg thinks this would be a very effective way for this or any other court to further sabotage his appeal and/or post-conviction relief procedure and keep everything under wraps.

Haeg would also like this court to address, since it failed to do so earlier, his request, made in the motion of November 6, 2006 to stay appeal, to order the district court to accept an application for post-conviction relief and to change the venue for this process to Kenai, Alaska. The reasons for this are already outlined in the original motion. The trial court has ruled that it would not accept an application for post-conviction relief from Haeg and that he would have to file such an application with the Court of Appeals – remaining unpersuaded even after Haeg pointed out the rules did not allow him to file such an application with the Court of Appeals. This again directly shows the bias of the trial court against Haeg, and, along with the huge cost prejudice in conducting this procedure in McGrath, provides a sound basis for the change of venue.

III. ***Motion to Supplement the Record***

Haeg requests the Court of Appeals to reconsider and clarify their reasons for denying his Motion to Supplement the Record. Haeg has found that the court record can be supplemented with attorney disciplinary proceedings and judicial disciplinary proceedings but the trial court has refused to grant or even rule on this. This Court of Appeals has also now denied his request, stating "the record on appeal is to consist solely of evidence and documents presented to the trial court during the proceedings that we are being asked to review. See Appellate Rule 210(a)." Yet the Court of Appeals is mistaken in this – as Appellate Rule 217, which governs appeals from district court, clearly applies. Rule 217(c) states: "Unless otherwise ordered by the court of appeals, the record on appeal shall consist of the **entire** district court file, together with recordings of the electronic record designated by the parties." Haeg asks this court if this means anything he filed with the district court then is part of the record in his case – and if not why not. Haeg also asks this court exactly how and why it is that everything, including the electronic record and motions filed, made during Haeg's representation hearing before the trial court concerning the corruption by the State and attorney's in Haeg's case, have been carefully and completely wiped from the official case record. Haeg points out that the trial court has refused to respond to three different and direct inquiries of this exact issue. Haeg respectfully asks how to proceed - again citing

Alaska Supreme Court case law established in *Collins v. Artic Builders*, 957 P.2d 980 (1998), *Breck v. Ulmer*, 745 P.2d 66 (1987), *Keating v. Traynor*, 833 P.2d 695 (1992), & *Sopko v. Dowell Schlumberger, Inc*., 21 P.3d 1265 (2001) – all of which indicate a court should point out the proper procedure for a pro se defendant to accomplish what it is he is obviously attempting to accomplish. As indicated in his original motion, Haeg must have all official proceedings, including those before the Alaska Bar Association and the Alaska Commission on Judicial Conduct, made part of the record for him to obtain justice.

> *US v. Fuller*, No. 00-2023 (7th Cir. Dec. 20, 2001). "Mr. Fuller also submitted documentation of a grievance he had filed against his defense counsel with the Wisconsin state bar. We granted Mr. Fuller's motion, holding that for purposes of appeal defense counsel had an actual conflict of interest in view of allegations made by Mr. Fuller in various *pro se* submissions to this court. Although our order specified that defense counsel had a conflict of interest for the purposes of Mr. Fuller's appeal, we expressly reserved comment on whether defense counsel had a conflict of interest at the time he argued Mr. Fuller's motion to withdraw his plea. The Government has filed a motion to strike from appellant's opening brief the letter discussing the grievance that Mr. Fuller filed against his defense counsel with the Wisconsin state bar. This letter has already been discussed in our order granting Mr. Fuller's motion for appointment of new counsel. Accordingly, we deny the Government's motion and *sua sponte* supplement the record with the letter."

IV. *Motion for Summary Judgment Reversing Conviction with Prejudice*

Haeg requests the Court of Appeals to reconsider and clarify their reasons for denying his Motion for Summary Judgment Reversing Conviction with Prejudice. If the Court of

Appeals cannot do this Haeg, as a pro se defendant, respectfully asks to know the proper procedure for accomplishing this – as the State has not contested, nor can it contest, the merits of such a motion. This motion would end the gross and ongoing fundamental breakdown in justice and the adversarial system in Haeg's case – sparing he and his family from further harm.

V. *Motion to Correct and Stay Guide License Suspension*

Haeg requests the Court of Appeals to reconsider and clarify their reasons for denying his Motion to Correct and Stay Guide License Suspension. This court has ruled on the motion to correct that it has "the power to grant this kind of relief only if the trial court had no legal authority to revoke Haeg's license, or if the trial court was clearly mistaken in deciding to impose a license revocation as opposed to a suspension. In either event, we would not grant such relief until we decided Haeg's appeal". If this court refuses to correct Haeg's sentence until after his appeal, which, at the rate it is going, may be years away, he will already have been forced to destroy the exceedingly expensive camps - which will include burning them down and flying out the heaters, stoves, lights, bunks, tables, etc. etc. - as required by the Bureau of Land Management because of the current license revocation. How can this court possibly choose to ignore this obvious and immense prejudice to Haeg until **after** it happens to him – especially when the error, both legal and clearly a mistake, by the sentencing court is so clear? The State even admits this plain error is because the judgment **form**

states "revocation" while the **law** states "requires the court to ... **suspend** the guide license ... for a specified period of not less than three years, or to **permanently revoke** the guide license". How can the trial court order a five year revocation when the law does not allow this – with a **permanent** revocation the only revocation allowed? Again Haeg asks the reason why the Court of Appeals refuses to promptly rule so Haeg is again undeniably prejudiced so severely simply because a **form** fails to follow the **law**. Haeg points to Appellate Rule 503(d) "As **soon as practical** after the seven-day period [so adverse parties have time to respond], the motion will be considered." Exactly why does this Court of Appeals disregard this rule in Haeg's case? To Haeg it is clear this court and its judges are abdicating one of their most basic mandates – to keep the parties from being unjustly prejudiced (for those non-attorneys reading this prejudiced means harmed). Haeg can see no reason for this other than he must be prejudiced to the extent he can no longer expose the conduct of his defense attorney's, the prosecution, and the judges in his case. Again Haeg points to the sworn testimony by attorneys before the Alaska Bar Association concerning his representation: "there would be immense [political] pressure brought to bear on the prosecution and **judge** [to make an example of Haeg]". Haeg wonders if in the next round of sworn testimony "judge" will change to "judges". Haeg also respectfully asks this court if he is allowed to sue them for the damages their refusal to rule "as soon as practical" will cause him. It should

be in the neighborhood of $100,000.00 in actual damages, although Haeg will of course seek additional punitive damages.

Haeg has asked the trial court (Judge Murphy) to stay suspension/revocation of his guide license and this was denied at sentencing – as was already made clear to this Court of Appeals. This Court of Appeals stated it needed to know the reason for this refusal before it could consider ruling on Haeg's request to stay license suspension/revocation. The reason for denial was, as Haeg already made clear in his motion and is recorded on the sentencing record, that "most, if not all, the wolves were taken where Haeg [guides]". As Haeg has made exceedingly clear in multiple affidavits from both himself and his wife Jackie and wisely unchallenged by prosecutor Rom, this is patently false. This premeditated deception started with the intentional perjury by Trooper Brett Gibbens on all his search warrant affidavits (with Haeg's attorneys telling Haeg "it doesn't matter" when he asked what to do about it), and continued before Haeg's jury and Judge Murphy through the perjury of Gibbens that was suborned by prosecutor Scot Leaders (**after** they had both taped themselves being told it was perjury). After Haeg was sentenced Trooper Gibbens wrote a memorandum to Trooper Lieutenant Steve Bear (at Haeg's request) stating that **none** of the sites he investigated were in the Game Management Unit in which Haeg guides or has ever been allowed to guide and that the sites were **all** in the Game Management Unit in which the Wolf Control Program was being conducted. This is in direct contradiction to Trooper Gibbens

sworn statements on both his search warrant affidavits and during his testimony (after he and Leaders taped themselves being told it would be perjury) before Haeg's judge and jury. The prejudice of this intentional, continued, knowing, and malicious perjury had an almost incomprehensible effect on Haeg's case. It allowed the prosecution to charge and convict Haeg of big game guiding violations and end his and his wife's livelihood and life investment forever. It speaks volumes that the States opposition to Haeg's motion is silent on this point and many others, including the fact that **after** they induced Haeg (via a Rule 11 Plea Agreement that would have resulted in an active **6 month suspension** instead of the **6 year revocation** Haeg received) to give them a five-hour statement, have him and his wife give up an entire combined years income and the season was past, and had him fly in multiple witnesses from around the U.S. they broke their promises to Haeg yet still used his statements, corrupted by the included, known, and pointed out perjury, to file all charges that were in direct violation of the Rule 11 Plea Agreement (and necessarily Evidence Rule 410 and the constitutional right against self-incrimination), and then take Haeg to trial on these charges because he was now bankrupt and they had his attorney in their pocket. For these many, irrefutable, and compelling reasons, including fraud upon the court, Haeg again asks that his guide license suspension/revocation be stayed pending outcome of his appeal.

Haeg is in such shock that absolutely no relief was given to him from this Court of Appeals, asked for in the motions hand delivered to this court on November 6, 2006, that he wishes to know the proper procedure[3] to appeal the denials of these motions to the Alaska Supreme Court. It is incomprehensible to Haeg that he was denied relief after explaining, in exact detail, supplemented by numerous affidavits, the fraud and abuses that have happened during his prosecution.

Opposition from State

Haeg, to show the depth and breadth of the corruption, will dissect just the recent State's opposition (included) and actions in Haeg's case. Special Prosecutor Roger Rom, the professional attorney who is representing the State against Haeg (not an attorney) in these matters, swore, under penalty of perjury, that all factual claims made by him in his oppositions are true and accurate to the best of his knowledge.

I

Prosecutor Rom correctly states this court **stayed** imposition of restitution yet the prosecution then garnished Haeg's permanent fund dividend, without providing any of the constitutional guarantees guarding against errors, to pay for this same restitution, even **after** it had been already been paid in full. In other words Rom and the prosecution not only took Haeg's money **after** the restitution had **already** been paid in full

[3] *Breck v. Ulmer*, 745 P.2d 66 (1987) "[a] judge should inform a pro se litigant of the proper procedure for the action he or she is obviously attempting to accomplish..."

but even **after** Haeg was granted, according to this courts ruling, the right to **not** pay it. And, to do so, they ignored the constitutional guarantees that had to be given **before** doing so (because this had nothing to do with a criminal investigation the hearing to contest the deprivation had to be given in advance of seizure). Haeg wonders just how many others are presently being deprived of their dividends, or other property, in direct violation of constitutional due process in Alaska. Haeg wonders how many will be deprived illegally in the future. The prosecution said they are so far behind that it will be many months before they can look into the problem. This should illustrate the kind of mistakes that the "ensemble" of constitutional guarantees guard against. Just think of the consequences if it was Haeg's property at stake, used to put food in his kids mouths and heat in their bedroom, instead of just his dividend when this "mistake" took place. Oh! Haeg forgot. The "mistake" that did that happened almost three years ago.

II

Rom states Haeg "seeks an order of this court directing the State to return **evidence** lawfully seized and forfeited in this case" and "he needs a court order because he intends to confront the troopers on November 16, 2006, demanding return of the **evidence**." Yet in every one of Haeg's 16 motions it is painfully clear Haeg seeks return of his **property**, used as the primary means to provide a livelihood for his family, and never once asks for return of **evidence**. Once again the difference to Haeg and

prosecutor Rom could not be greater. There is no rule to return **evidence** yet there is a clear rule, backed up by the mightiest of constitutional guarantees, to return **property**, even if called "**evidence**" by the prosecution, if seized, held, and/or forfeited in violation of due process. Thus, because of the blatant violations of these guarantees, Haeg's property was illegally seized, held, and forfeited because it was treated **only** as "evidence". The rational is plain common sense – before you can put someone out of business for god only knows how long by seizing their business property (in Haeg's case almost three years), because you **might** use their property as "evidence" (it is interesting that most of Haeg's property that was seized, held, and/or forfeited was never used as "evidence" and that all of it that the court refused to forfeit is **still** being held by the State), you must comply with different guarantees than if the "evidence" taken and held was someone's fingerprints, statements or wiretap recordings – the deprivation of which would not affect their ability to put food in their families mouth. Apparently Rom thinks it proper for the State to be able to bankrupt a defendant on little more than a whim (its just "evidence"), without making sure there was no error (remember Haeg's dividend), and far before ever having to decide whether or not to even file charges. Before our revered "adversarial system" gets started the prosecution has already won through subterfuge.

III

Rom states Haeg "claims that the State was required to provide him with a hearing so he could challenge the search warrant which led to the collection of the evidence and eventual forfeiture in the judgment of conviction. Because he is both legally and factually mistaken, his motion must be denied." This is blatant, intentional, and knowing perjury (class B felony) by Rom. These Alaska Supreme Court decisions, which Haeg has pointed out over and over to Rom, prove this perjury:

> "The standards of due process under the Alaska and federal constitutions require that a deprivation of property be **accompanied by notice and opportunity for hearing** at a meaningful time to minimize possible injury. When the seized property is used by its owner in earning a livelihood, **notice and an unconditioned opportunity to contest the state's reasons for seizing the property must follow the seizure within days, if not hours, to satisfy due process guarantees** even where the government interest in the seizure is urgent." *F/V American Eagle v. State*, 620 P.2d 657 (Alaska 1980).
>
> "Waiste and the State agree that the Due Process Clause of the Alaska Constitution **requires a prompt postseizure hearing** upon seizure of a fishing boat potentially subject to forfeiture." "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". "This courts dicta, 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." "**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 seizure a few days or hours earlier. The interest in avoiding that slight burden is not significant." "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." "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**." Waiste v. State, 10 P.3d 1141 (Alaska 2000)."

Neither Haeg nor his wife Jackie were ever given a single one of this "ensemble" of constitutional guarantees before being deprived for **years** of their primary means of providing a livelihood for their two daughters, ages 5 and 8.

IV

Rom states, "The Aniak District Court authorized two search warrants which appear to apply to appellants arguments." Rom is again incorrect. Haeg's arguments apply to all five search warrants issued in his case because all five seized property that Haeg and his wife used to provide a livelihood.

V

Rom states, "Since appellant was served with the search warrant he had notice that the State had seized his property pursuant to a warrant. Criminal Rule 37(c) provided a mechanism for him to challenge the lawfulness of the seizure. Whether he exercised his right or not is irrelevant. The law provided due process for him to do so if he made that choice."

This is more smoke and mirrors by Rom. Irrefutable caselaw explaining the constitutional guarantees that must be given, already shown to Rom over and over, again proves this. The "notice" required to be given Haeg and his wife was not just

"notice" that the State had just made off with their ability to provide a livelihood but "notice" that they could protest this stunningly prejudicial act and the State would have to defend to make sure there were no errors. "Notice" also needed to be given that the State would seek to forfeit Haeg's property, so he had his constitutional right to know the charges against him. This is in order a defendant has time and an opportunity to prepare to meet the charges. This "notice" of a hearing and of the case against Haeg was in **addition** to the warrant, which was all that was necessary if the State was **only** seizing **evidence** that was not also **property** -especially property used to provide a livelihood. This "notice" had to **positively** notify Haeg and his wife that before the deprivation of property affected their ability to provide a livelihood, Haeg and his wife were entitled to an adversarial hearing, which could include sworn testimony, to ensure there were no errors in the deprivation – and to positively inform Haeg and his wife that the State intended to forfeit their property. During this hearing the State would have to prove its reasons for depriving Haeg and his wife of their means of livelihood were valid and that the States interest in continuing to deprive Haeg and his wife of their livelihood, even if valid, were greater than the Haeg's interest in providing a livelihood for their family. This is the entire reason for the Alaska Supreme Courts unbreakable "ensemble" – to guarantee that a family will not be deprived of their livelihood in error - as Haeg and his wife undeniably were.

> The United States Supreme Court put the constitutional issue as 'whether these statutory procedures violate the Fourteenth Amendment's guarantee that no State shall deprive any person of property without due process of law.' Justice Stewart, in writing for the majority, said in part: "For more than a century the central meaning of procedural due process has been clear: 'Parties whose rights are to be affected are entitled to be heard; and in order that they may enjoy **that** right they must be notified.' . . . It is equally fundamental that the right to notice and an opportunity to be heard 'must be granted at a meaningful time and in a meaningful manner.' . . . The Supreme Court put the constitutional issue as 'whether these statutory procedures violate the Fourteenth Amendment's guarantee that no State shall deprive any person of property without due process of law. *Sniadach v. Family Fin.Corp*. 395 U.S. 337, 342, 89 S.Ct. 1820,"

How can Rom argue without committing perjury? The U.S. Supreme Court has ruled. Parties whose rights are affected are **entitled to be heard**; and in order that they may enjoy **that** right they **must** be **notified**.

> The Alaska Supreme Court has ruled: "The standards of due process under the Alaska and federal constitutions require that a deprivation of property be **accompanied by notice and opportunity for hearing** at a meaningful time to minimize possible injury. When the seized property is used by its owner in earning a livelihood, **notice and an unconditioned opportunity to contest the state's reasons for seizing the property must follow the seizure within days, if not hours, to satisfy due process guarantees** even where the government interest in the seizure is urgent." *F/V American Eagle v. State*, 620 P.2d 657 (Alaska 1980).

> U.S. Supreme Court in *Mullane v. Central Hanover Bank*, 339 U.S. 396, (1950): "An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated under all the circumstances to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections ... The notice must be of such a nature as reasonably to convey the required information ... and it must

> afford a reasonable time for those interested to make their appearance...But **when notice is a person's due, process which is a mere gesture is not due process**."

The U.S. Supreme Court has held that it is unconstitutional to require a litigant who has not received notice to file a verified answer in order to vacate a default judgment:

> **"[A] judgment entered without notice or service is constitutionally infirm**.... Where a person has been deprived of property in a manner contrary to the most basic tenets of due process, "it is no answer to say that in his particular case due process of law would have led to the same result because he had no adequate defense upon the merits." *Coe v Armour Fertilizer Works*, 237 U.S. 413 (1915). *Peralta v Heights Medical Center, Inc.,* 485 U.S. 80 (1988)."
> U.S. Supreme Court Justice Harlan, concurring in *Sniadach v. Family Finance Corp*., 395 U.S. 337 (1969) stated, "I think that due process is afforded only by the kinds of "notice" and "hearing" which are aimed at establishing the validity, or at least the probable validity, of the underlying claim against the alleged debtor before he can be deprived of his property **or its unrestricted use**. I think this is the thrust of the past cases in this Court."[4]
>
> The Supreme Court of Alaska in *Etheredge v. Bradley,* 502 P.2d 146 Alaska 1972 quoted the U.S. Supreme Court in *Sniadach* "Where the taking of one's property is so obvious, it needs no extended argument to conclude that **absent notice and a prior hearing ... this prejudgment garnishment procedure violates the fundamental principles of due process**."[5]
>
> The Supreme Court of Alaska also mentioned the U.S. Supreme Court decision in *Goldberg v. Kelly*, "The extent to which procedural due process must be afforded the recipient is influenced by the extent to which he may be 'condemned to suffer grievous loss,' ... and depends upon whether the recipient's interest in avoiding that loss outweighs the governmental interest in summary adjudication. Accordingly,... 'consideration of what procedures due process may require under any given set of circumstances must begin with a determination of the precise nature of

[4] See, e. g., *Mullane v. Central Hanover Trust Co*., 339 U.S. 306, 313 (1950).

[5] *Sniadach v. Family Fin. Corp*., 395 U.S. 337, 342, 89 S.Ct. 1820, 1823, 23 L.Ed.2d 349, 354 (1969)

> the government function involved as well as of the private interest that has been affected by governmental action.'"[6]
>
> In *U.S. v Crozier*, 674 F2d 1293 (9th Cir. 1982) the Ninth Circuit vacated an ex pane restraining order, holding that even when exigent circumstances permit an ex pane restraining order, **the government may not wait until trial to produce adequate grounds for forfeiture.**

Haeg and his wife were guaranteed, by two constitutions, that they would receive notice of their right to an adversarial hearing and participation in that same hearing "in days if not hours" to make sure the deprivation was without error. This was not ever done. In fact Haeg asked Trooper Glen Godfrey, on the day much of Haeg's property was seized, when he could get his property back because he had clients coming in the next day and Godfrey responded "never". Haeg never received a hearing or even a response from the judge after motioning her twice if he could bond his property out after having been deprived of it for over a year – again in complete violation of the "ensemble" of guarantees. The reason for the active denial of all this due process is simple – if Haeg was afforded his right to point out everything was based on perjury the prosecution of him would have ended.

Rom's statements that Haeg received due process, because Haeg had a right to this hearing but didn't afford himself of it (because it was hidden in hundreds of thousands of pages of law), are absolutely preposterous and more blatant perjury.

[6] *Goldberg v. Kelly*, 397 U.S. 254, 262-263, 90 S.Ct. 1011, 1018, 25 L.Ed.2d 287, 296 (1970)

Haeg, or anyone else, would be trying to figure out how to make a living now that their primary means had been stripped from them – not searching through law books for some hearing they didn't even know existed.

Rom's statements that Haeg received due process because the State gave "notice" they had seized his property pursuant to a search warrant is also false. The State was required to provide "notice" that they intended to seek forfeiture of Haeg's property – in order that Haeg could prepare to meet that case. This "notice" was required to be in addition to the criminal process against Haeg himself.

Rom's statements that once Haeg was charged Criminal Rule 12 applied and in someway negated Haeg's constitutional rights to due process before being deprived of his property, is also perjury. Criminal Rule 12 applies exclusively to pleadings and motions before trial, not deprivation of property used to provide a livelihood.

Rom's statements that Haeg's "reliance upon case law in *F/V American Eagle v. State*, 620 P.2d 657 (Alaska 1980) and *Waiste v. State*, 10 P.3d 1141 (Alaska 2000) is misplaced" is also perjury. These cases are ruling in Alaska for the due process protections that must be received before someone is deprived of property, used to provide a livelihood, during a criminal investigation. In his opposition Rom deletes the parts of the rulings that indicate notice of a hearing and forfeiture intent was given so that it appears notice of a hearing or forfeiture did not need to be

given. In American Eagle Rom deletes this part of the case: "the seizure was pursuant to AS 16.05.190-.195" (statutes allowing forfeiture in fish and game cases – never given to Haeg so he would know to prepare a defense against forfeiture), "The state subsequently **filed a [civil] complaint for forfeiture**..."(which specifically, and in great detail, outlines all rights to hearings, deadlines for those hearings must be given, deadlines for property deprivations, etc, etc. "The vessel was later released [through bonding] for local fishing", and "The other owners indicated they in fact received timely notice of the seizure, for prior to the state's filing of a formal civil complaint...their attorneys mentioned the possibility of suing for release of the vessel."

Rom then unbelievably states, "The court reviewed dicta in *American Eagle and State v. F/V Baranof*, 677 P.2d 1245 (Alaska 1984) and federal law to determine whether the Due Process Clause of the Alaska Constitution would require **more than a prompt post seizure hearing**. Waiste, 10 P.3d at 1147. In deciding this issue in Waiste, the Court stated: '[W}e balance the State's interest in avoiding removal or concealment with the likelihood and gravity of error in the relevant class of cases, and, in so doing, we hold that a blanket rule of ex parte seizure comports with due process.' Id. at 1152. There was no lack of due process an appellants [Haeg's] motion should be denied."

Rom's theory here is utterly fantastic and incomprehensible. The Alaska Supreme Court, ruling here on

Waiste's claim that a **preseizure** hearing was required by due process before depriving someone of his or her property in a criminal case, determined that this **preseizure** hearing was not required by due process. The ruling, cited by Rom, clearly holds that a **prompt postseizure** hearing was all that was needed to comply with the Due Process Clause of the Alaska Constitution. **Neither Haeg nor his wife ever received a post seizure hearing – let alone a prompt post seizure hearing**. They never even received notice of such a hearing, notice of an intent to forfeit their property or any of the other "ensemble of procedural guarantees".

The Alaska Supreme Court merely held that if the State seizes your property in a criminal investigation they do not have to warn you, with a **preseizure** hearing, **before** they do so. But within "days if not hours" **after** seizure you **must** get a hearing to contest the reasons for being deprived of your property, especially property used to provide a livelihood. Prosecutor Rom must be very desperate indeed to utilize such incredible tactics.

Rom, in his footnotes, states, "forfeiture of the aircraft was contemplated at all times throughout the plea negotiations in this case. The return of the aircraft was apparently not a consideration." To Haeg this is interesting because the State, **after** Haeg had placed nearly $1,000,000.00 in detrimental reliance upon a completed Rule 11 Plea Agreement in which the plane was not required to be given up, then "changed their mind", filed far more severe charges than agreed to, and required Haeg to "give them the plane" if he wanted "the same deal". Haeg

declined, realizing he was being held hostage and that giving in would only encourage the State to demand more and more (otherwise known as extortion).

Rom states, "the judgments do not reflect the statutory authorization for forfeiture of the aircraft." Haeg knows that under federal law, property cannot be forfeited if notice and authorization of forfeiture is not included in the charging documents. Since this is true in Alaska, and since the judgments do not reflect the statuary authorization, Haeg would like to add these to the plethora of reasons already given for the return of his property.

VI

Rom states that there is no basis in law to support Haeg's request to stay his appeal pending a post-conviction relief procedure and that "policy reasons suggest it would be improper to grant his motion." This again is perjury by Rom. Not only is there basis in law but "policy reasons" demand this be done in many cases. See Alaska Supreme Court ruling in *Risher v. State* 523 P.2d 421:

> "Whether counsel is incompetent usually can be ascertained only after trial ... it may be necessary to remand for an evidentiary hearing on this issue. For example, if on appeal it is contended that trial counsel could have discovered helpful evidence, we might remand for a hearing on that issue. In most such cases, however, the necessity of an appeal & remanded may be avoided by first applying at the trial court level for a new trial or moving for post-conviction relief."

See also the Court of Appeals ruling in *State v. Jones* 759 P.2d 558:

> "Jones also filed a direct appeal challenging his conviction & sentence on unrelated grounds. The appeal was stayed pending resolution of the post-conviction procedure", in *Barry v. State*, 675 P.2d 1292 "we observed that in appeals raising the issue of ineffective assistance of counsel, the trial record will seldom conclusively establish incompetent representation, because it will rarely provide an explanation for the course of conduct that is challenged as deficient. We concluded that, 'henceforth we will not entertain claims of ineffective assistance of counsel on appeal unless the defendant has first moved for a new trial or sought post-conviction relief'" & in *Grinols v. State* No. A-7349 "But many states – including Alaska – generally forbid a defendant from raising ineffective assistance of counsel claims on direct appeal. Instead, Alaska & these other states require a defendant to pursue post-conviction relief litigation if they want to attack the competence of their trial attorney".

> *U.S. v. Fuller No. 00-2023:* "We generally discourage appellants from bringing ineffective assistance of counsel claims for the first time on direct appeal because only rarely is the trial record sufficiently developed for meaningful review. *See United States v. Pergler,* 233 F.3d 1005, 1009 (7th Cir. 2000); *United States v. Martinez,* 169 F.3d 1049, 1052 (7th Cir. 1999)."

Rom then unbelievably claims, "A petition for post conviction relief is a civil matter." This is unbelievably blatant perjury. Criminal Rule 35.1 authorizes petitions for post-conviction relief and there is no post-conviction relief in the Civil Rules. In fact the very name "post-conviction" obviously indicates this because there is no "conviction" under

civil law.[7] Rom uses this fiction to advance the theory that the evidence gathered during a post-conviction relief procedure would not be allowed in Haeg's appeal – and thus his appeal should not be stayed pending a post-conviction relief procedure. Yet this is the exact reasoning for the vast majority of courts to **require** post conviction relief – so an appeal without an adequate record may move forward after the record is supplemented through a post-conviction relief procedure. Rom cites Appellate Rule 210 in support. Rom again is mistaken - Appellate Rule 217 governs appeals from district court. Rule 217(c) states: "the record on appeal shall consist of the entire district court file, together with recordings of the parts of the electronic record designated by the parties." In other words, all Haeg's post conviction procedures, as by rule they will be conducted, recorded, and filed in the district court, will be admissible on appeal.

Rom again uses the perjury that Appellate Rule 210 governs to argue that official proceedings before the Alaska Bar Association, district court representation hearing, and Alaska Commission on Judicial Conduct are "**excluded** by this rule." As Haeg already explained Rule 217 governs and **allows** the addition of these proceedings by stating, "**Unless otherwise ordered by the court of appeals**, the record on appeal shall consist of the entire district court file..." Also, Haeg again maintains it is

[7] See Rule 35.1. Post-Conviction Procedure. (a) Scope. A person who has been convicted of or sentenced for a crime may institute a proceeding for post- conviction relief under AS 12.72.010 - 12.72.040 if the person claims:

blatant corruption that the Court of Appeals is not allowing Haeg's representation hearing to remain part of the record in Haeg's case. The sworn testimony in this hearing, especially that by Haeg's third attorney, was stunning. To continue to scrub the district court record clean of all evidence of the misconduct of Haeg's attorneys, the State, and Haeg's judge is of absolute devastation to Haeg. How can Haeg ever show the corruption in his case when at every turn the evidence of it is wiped from the record?

Rom has the gall to state, "Since the items he wants to include in the record would not advance his appeal, his motion should be denied." So Rom does not think that when Haeg's attorneys are proven, while under oath, that they have been actively representing the State's interests against Haeg and their own interests against Haeg by working together to hide this from Haeg that this would not advance Haeg's appeal? That the formal investigation into the personal relationship between Haeg's judge and the main investigating trooper and witness against Haeg would not advance Haeg's appeal? Exactly what would advance Haeg's appeal according to Rom?

VII

Rom, in considering the issue of modifying Haeg's sentence from a revocation to a suspension, for once agrees; stating this was overlooked because the form differed from the law. Yet he opposes doing this by motion and requests that Haeg do so by amending his appeal and waiting for it to be decided before it

takes effect. Again Haeg would be horribly prejudiced by this delay – much to the State's benefit and delight.

Rom, in asking this court to deny Haeg's ability to guide during his appeal states, "The trial court was in the best position to determine whether appellant should be permitted to act as a guide during his appeal. The trial court rejected his request." Rom apparently expects the Court of Appeals to conveniently overlook the fact Haeg's conviction and sentence was obtained through fraud before Haeg's judge and jury; and this very fraud was specifically articulated on the record by the sentencing judge as the reason for Haeg's harsh sentence. Haeg wishes to know exactly why Rom fails to challenge Haeg's claims in this regard, because Rom cannot, and to do so would mean more perjury by Rom and further the fraud intentionally committed to harm Haeg and his family. The reasons given for Haeg's sentence by the sentencing judge, because Haeg's conviction and sentence was obtained through fraud, cannot be considered by this Court of Appeals, thus his license should not be suspended/revoked during his appeal.

Conclusion

It is overwhelming obvious to everyone involved Haeg and family have been absolutely crushed beyond recognition by a runaway prosecution. If you look at the entire process, as Haeg and family have to do every day, it is incomprehensible something so disastrous and so fundamentally unfair could actually take place in America. It is not what Rom claims in the State's

opposition that is the most frightening – it is what Rom doesn't claim. There is not a word denying that the State made a Rule 11 Plea Agreement to induce Haeg and his family to give up guiding for an entire year, to give a five hour interview, and to fly in numerous witnesses from around the United States. There is no denial that the State broke this Rule 11 Plea Agreement only five business hours before it was to be completed – by filing charges far more severe than those agreed to. There is no denial that the State broke the Rule 11 Plea Agreement after Haeg and family's opportunity to guide and make a living for a whole year was past. There is no denying the State used Haeg's statements, made for the Rule 11 Plea Agreement the State broke, to file all the charges in his case. There is no denial the search warrants were based upon knowing, intentional, misleading and amazingly prejudicial perjury. There is no denial that this same perjury continued at Haeg's trial, **after** Haeg had told the prosecution about it at his taped five-hour interview. There is no denial the judge specifically articulated this perjury as the basis for her harsh sentence of Haeg. Each and every one of these individual violations is enough to reverse Haeg's conviction with prejudice.

Adding to what makes all this so chilling is that all of Haeg's attorneys have done far more than even the prosecution to cover all this up. Haeg has all his attorney's, on tape, claiming it didn't matter that the State did all this and "there is nothing that can be done about it." Haeg is further panicked when

he reads the Court of Appeals discussion in Smith v. State 717 P.2d 402:

> "We are particularly troubled by the apparent failure of both Smith's counsel and counsel for the state to disclose the substance of the negotiated plea agreement to the trial court during Smith's change of plea hearing. Similarly disturbing is the failure of Smith's counsel to disclose to the court the fact that Smith had expressed qualms about following through with this agreement. Even in the absence of withdrawal by defense counsel, such disclosures would at least have enabled the trial court to inquire on the record into Smith's understanding of the agreement and to give appropriate advice concerning the extent to which the agreement limited Smith's procedural options."

Haeg demanded, over and over, for the Rule 11 Plea Agreement, and all he had done in reliance on it, to be brought up numerous times – yet he was lied to by his attorneys over and over and over (on tape) about his right to enforce it or bring it to the courts attention. Haeg finally got so upset he paid for a subpoena for his first attorney (who did not enforce the Rule 11 Plea Agreement when it was first broken and told Haeg it could not be enforced) to appear and explain this at Haeg's sentencing, paid for it to be successfully delivered, paid for witness fees, paid for an airline ticket to McGrath, paid for a hotel room and then the attorney never showed up. Haeg's second attorney told Haeg (on tape), "He didn't come because his testimony wasn't relevant to your guilt." Haeg told the second attorney, "I had already been found guilty, I subpoenaed him to my sentencing and his testimony would have been relevant to my sentence **and you know it**."

In the Smith case above the defendant had got what he bargained for – the ability to go to trial on only one charge and if he were found innocent the second charge would be dropped; if he were found guilty he would plead guilty to the second charge. His attorney, after he was found guilty on the first charge thought he had to plead guilty to the second charge – as agreed. The Court of Appeals held this is not the case – and since he plead guilty because of his attorney's erroneous advice – overturned his conviction. What should happen in Haeg's case? Instead of an attorney with the integrity to think his client should honor his bargains, Haeg has an attorney who helps the State forcefully and maliciously take away Haeg's constitutional right to have the bargain he paid for enforced. Haeg has his attorneys on tape telling him they couldn't enforce the Rule 11 Plea Agreement. Then Haeg has the first one perjuring himself 17 times before the Alaska Bar Association when he tried to claim he had told Haeg he could enforce the Rule 11 Plea Agreement but "Haeg didn't want to". This was very difficult task as the Alaska Bar Association allowed in as evidence the tapes and transcriptions that Haeg had of this same attorney telling Haeg the Rule 11 Plea Agreement could not be enforced. When Haeg had this attorney read the transcriptions, while under oath, they would shake so hard he could hardly do so. The amount of effort to cover all this up and the effectiveness with which this happens is terrifying. Haeg, just to be on the safe side, has

distributed tapes and CD of everything in multiple, widely separated vaults.

The State (and the courts in at least Haeg's case) relies heavily on someone's financial and mental weakness to wear them down and make them forgo the formidable protections of their constitutional rights. Yet Haeg, now that he is doing almost all of his own litigation and begins to understand and utilize the power of the U.S. constitution and law, including the specific powers against corruption, can, will, and must (for the future his beautiful wife and daughters) last indefinitely. The case against Haeg started because the State of Alaska failed to manage game in direct violation of its own constitution; and Haeg and family relied, with everything they had in life, on this constitutionally guaranteed management. Because of animal right activists, media coverage, and the resulting political fear the prosecution of Haeg morphed into something far more akin to a witch-hunt than the fundamentally fair proceedings guaranteed by multiple constitutions – bolstered no doubt by the corruption that has come to light. It is overdue to end the "farce and mockery" that has been the cornerstone of Haeg's prosecution before more damage is done. Haeg can see that the "immense pressure" brought to bear against him will keep adding to the number of careers ultimately ruined. Haeg will remain unwavering, as he has understood for quite some time that all he must do is not miss any filing deadlines, not get maneuvered out of his appeal and/or post-conviction relief procedure, carefully

continue recording the plethora of constitutional violations and criminal actions against him, preserve his right to appeal to the federal courts, and the U.S. and Alaska constitutions will see him and his family through very successfully. He does not wish the "immense pressure" to keep adding more innocent souls to the trap created when those charged with protecting Haeg's rights violate them instead while trying to free those already caught

It was very illuminating and a very deep breath of fresh air/sanity, when Haeg first contacted the U.S. Department of Justice in Washington D.C., to learn that the exact type of corruption Haeg has run into (defense attorneys, law enforcement, prosecutors, and/or judges working together to defraud ignorant defendants) is not uncommon. It happens on a regular basis in those parts of the U.S. (primarily Arkansas, Kentucky, Oregon and Louisiana) that have relatively small, isolated populations utilizing the same legal players over and over. Haeg was told this corruption had never been recorded in Alaska but that Alaska fit the profile exactly. To Haeg the numerous comments of "big state – small pool", made when he was unsuccessfully trying to hire attorney number four after he had fired attorney number three, finally made sense.

More and more puzzling things are beginning to make sense to Haeg. Take the brutal fight Haeg had during remand of his case from the Court of Appeals to the district court to determine if Haeg knowingly and intelligently waived his right to counsel and if he was competent to represent himself on appeal. Haeg claimed

all of his attorney's, including the one he had just fired but was still his attorney of record (Osterman), were actively representing the State's interests instead of his own. Haeg asked Osterman to file motions and oppositions to Rom's motions. When Osterman refused (on tape) to do so Haeg filed these pro se. The State objected, stating Haeg was represented by counsel and thus was precluded from representing himself. In addition the State filed to strike Haeg's motions and included affidavits from the record. Haeg, in a motion to this Court of Appeals, asked permission to represent himself because his counsel refused to represent him and he had a constitutional right to a defense, even if it was only himself, during the remand of his case. This Court of Appeals denied Haeg's motion, stating he was already represented – even though Haeg had included affidavits that Osterman had refused on tape to represent him. The district court granted all these unopposed motions of the State, including the one to strike from the record everything Haeg had filed. In light of this gross and fundamental breakdown in the adversarial system Haeg filed a motion to this Court of Appeals to reconsider their ruling denying him the right to any representation during remand. This Court of Appeals again denied Haeg – actively and intentionally denying Haeg any representation whatsoever during the remand of his case. The prejudice this caused is tremendous. All record that Haeg needed to conduct a successful appeal has been wiped away because this Court of Appeals made sure there was no one at the wheel of Haeg's defense to oppose the State's

motions doing this. This Court of Appeals never addressed the prejudice their rulings caused Haeg or discussed any prejudice, if any, to the State. It is of interest to Haeg that anyone can request to be co-counsel while represented by an attorney – which allows him or her to act in the same capacity as if they were pro se. If this is the case why did the Court of Appeals refuse Haeg any representation during remand in which the State did so much damage because of this absence of representation?

Haeg was allowed to question Osterman under oath, but when Osterman claimed he needed to go, the court released him after stating on the record Haeg reserved his right to recall him. The testimony Osterman gave under oath was stunning – collaborating all Haeg's allegations of collusion/conspiracy between the State and Haeg's attorneys – and proving it was an intelligent decision for Haeg, totally ignorant of the law, to proceed pro se. Then, when Haeg asked to continue his questioning of Osterman under oath as the court itself stated he had reserved the right to do, the court refused. This again was of immense prejudice to Haeg, as Haeg was unable to finish gathering the stunning evidence of this collusion/conspiracy between his own attorney's and the State.

Haeg knows that he is not an attorney and realizes that much, or even most, of the opposition to him, his motions, and to his quest for justice is because of this fact. With the stakes so unbelievably high much will be gambled in the knowledge Haeg has a good chance of failing. Yet Haeg realizes, as many possibly

don't, that justice is not and cannot be reserved just for those represented by an attorney. Just because "esquire" doesn't appear behind Haeg's name doesn't mean he isn't allowed to enforce his rights. Haeg has incentive like no other attorney alive to be innovative, tough, and flat out persistent. Haeg has been at the top of the field in every endeavor he has put his mind to and this has his entire undivided attention. He knows this is the fight of his and his family's life and to be successful he must see it to an end. The fact that one third of the cases pending before the United States Court of Appeals, Ninth Circuit, are from pro se appellants is of great inspiration to Haeg. In addition to this Haeg, in reading thousands upon thousands of cases, has yet to come across a single case in which one tenth as much injustice has occurred. Haeg cannot possibly imagine what a federal court will think when they start reading his case – never has a case contained such an ongoing, perverted, and fundamental breakdown in justice.

Haeg will die trying before he lets this kind of corruption live. The United States Constitution and the safety of Haeg's family demand no less.

These motions and requests are supported by the accompanying affidavits, documents, and by the motions, memorandum, affidavits, and supporting documents that were already delivered by hand to this court on November 6, 2006.

RESPECTFULLY SUBMITTED this ____ day of November 2006.

_____

David S. Haeg, Pro Se Appellant

CERTIFICATE OF SERVICE

I certify that on the _____ day of November, 2006, a copy of the forgoing document by ___ mail, ___ fax, or ___ hand, to the following party:

Roger B. Rom, Esq., O.S.P.A.
310 K. Street, Suite 403
Anchorage, AK 99501

By: _____