

after the sentencing hearing.” A transcript of the sentencing hearing was provided by the Aniak District Court.<sup>8</sup> The transcript reflects that Judge Murphy raised the issue of obtaining a ride from Trooper Gibbens during the sentencing hearing.<sup>9</sup> A review of the log notes reveals that this statement was approximately five hours before the end of the hearing. In addition, Mr. Haeg provides four affidavits stating that on the date of the sentencing hearing, September 29, 2005, the affiant “personally observed” Judge Margaret Murphy taking rides from Trooper Gibbens throughout the day of the sentencing hearing.<sup>10</sup>

Third, Mr. Haeg claims that the Ms. Greenstein stated that she talked to the people that Mr. Haeg identified in a list he provided to the Commission.<sup>11</sup> Mr. Haeg claims that he provided a list of four people and that the affidavits of these four individuals state that they were not contacted regarding this matter.<sup>12</sup>

Finally, in addition to his concerns regarding the alleged impropriety of Judge Murphy receiving rides from Trooper Gibbens, Mr. Haeg also explains that based upon his understanding of Judge Murphy’s and Trooper Gibbens’ representations to the Commission, he feels that they were not truthful about their contacts during the trial. Therefore, Mr. Haeg is concerned over Ms. Greenstein’s assertion that “even if

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<sup>7</sup> Attach. H.

<sup>8</sup> Attach. I.

<sup>9</sup> *Id.* at 1262.

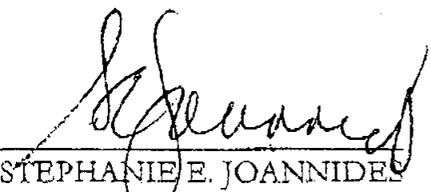
<sup>10</sup> Attach. C, D, E, F.

<sup>12</sup> Attach. A at 1, 7.

everything you say is true it wouldn't be that significant --um-- a thing. It would be the kind of thing where we would just caution the judge to --um-- to try to make other arrangements in small communities in the future. That's all we would do."<sup>13</sup>

In light of this court's ruling granting the disqualification request, the July 28, 2010 Order for Information from Judicial Conduct Commission is hereby  
WITHDRAWN.

DONE this 27 day of August 2010 at Anchorage, Alaska.

  
STEPHANIE E. JOANNIDES  
Superior Court Judge

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<sup>12</sup> Attach. C, D, E, F. One affiant, Tom Stepnosky, stated that "[o]n or about 2006 I contacted . . . Marla Greenstein by phone and told her I had personally seen Trooper Gibbens give Judge Murphy rides before David Haeg was sentenced." Attach. E.

<sup>13</sup> Attach. A. at 9.

Transcribed Phone Call between  
Alaska Commission on Judicial Council (Marla Greenstein) and  
David Haeg on or about January 12, 2007

1 HAEG: Hey I was wondering whatever became of the investigation into Judge Murphy?

2 GREENSTEIN: Yeah we're sending you a letter today. We have a meeting coming up

3 on January 22<sup>nd</sup>. Where -um- they'll consider my report and the judge's response.

4 But - but it sounds like everything was -um- was ok. It sounds like -um- there was no

5 communication about the case and they didn't share any meals together and the rides

6 were provided by somebody else - not Trooper Gibbens.

7 HAEG: They said the rides were provided by somebody other...

8 GREENSTEIN: Yes...

9 HAEG: ... than Trooper Gibbens?

10 GREENSTEIN: Yes.

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

12 GREENSTEIN: -Um- that's what - that's what everyone I interviewed said.

13 HAEG: And who did you interview - may I ask?

14 GREENSTEIN: Well in addition to the names you gave me I talked to Trooper Gibbens,

15 and the Judge, and there was one other law enforcement person there.

16 HAEG: Ok well I'm goanna fly out to McGrath -uh- Marla and I'm goanna get tape

17 recordings of everybody - every juror that was there, all the people in McGrath -

18 cause there was 300 of them - and I'm goanna walk into your office and I'm goanna

19 hand you the tape. Ok?

20 GREENSTEIN: I'm just - it's - we don't...

21 HAEG: Will that be clear enough for you Marla?

22 **GREENSTEIN:** No. And it's not that serious a thing anyway - even if it did happen.  
23 Which we don't have any evidence that it did. They...  
24 **HAEG:** Wasn't that serious?  
25 **GREENSTEIN:** No...  
26 **HAEG:** Do you know - you guys wouldn't accept the other stuff that happened in my  
27 case? Because 'oh...  
28 **GREENSTEIN:** Yeah...  
29 **HAEG:** ...we can't do whatever'... She was changing her decisions 180 degrees to  
30 accommodate Trooper Gibbens. Ok?  
31 **GREENSTEIN:** Well I understand that's your perception but the...  
32 **HAEG:** Well...  
33 **GREENSTEIN:** I mean the other people...  
34 **HAEG:** Yeah my perception Marla...  
35 **GREENSTEIN:**... Mmm hmm...  
36 **HAEG:** -Um- if I were you I would look at the Anchorage Daily News back whenever  
37 they arrested -uh- Anderson and start looking at what's going on in this state. I'd start  
38 opening my - my - my views should start expanding a little bit. You - and - I need a  
39 copy - can I have a copy of Trooper Gibbens saying he never gave Judge Murphy a  
40 ride - ever?  
41 **GREENSTEIN:** He didn't say never ever. It was during that week when you were  
42 down there.  
43 **HAEG:** During the week, when we were down there, he never gave her a ride?

44 **GREENSTEIN:** No.

45 **HAEG:** Ok and the Judge said that also?

46 **GREENSTEIN:** Umm hmm...

47 **HAEG:** -Um- I have to have copies of that. You tell me how - what I need to do to get

48 copies of that? (talking over GREENSTEIN) And I will be there - in your office as fast

49 as you could say...

50 **GREENSTEIN:** Yeah I understand you want...

51 **HAEG:** ...get here.

52 **GREENSTEIN:** ...the copies. But they're confidential documents so we can't give them

53 to you. But it wasn't like they... Let me pull it up. Let me see if I could see the exact...

54 I can tell you what - what's there - hold on... (1 minute passes)

55 **HAEG:** You believe this shit Jackie?

56 **JACKIE HAEG:** (Background) No I sure can't.

57 **HAEG:** Can you believe this?

58 **JACKIE HAEG:** (Background) She interviewed 2 people and that's just as far as she

59 got?

60 **GREENSTEIN:** -Um- it was VPSO Parker who provided the rides...

61 **JACKIE HAEG:** (Background) She interviewed Tom?

62 **HAEG:** Ok. VPSO Parker...

63 **GREENSTEIN:** Yeah...

64 **HAEG:** ...ok ...

65 **GREENSTEIN:** ...and -um- and after...

66 **HAEG:** And did you interview – did you interview Mr. Parker?

67 **GREENSTEIN:** -Um- I don't remember. And then after...

68 **HAEG:** Don't remember... Just hang on... Don't remember...

69 **GREENSTEIN:** And then after the completion of the sentencing hearing -um- Trooper

70 Gibbens did give -uh- Magistrate Murphy a ride to the hotel. But that was after the

71 sentencing hearing.

72 **HAEG:** Ok just – after sentencing – was it. Ok mmm hmm. Do you read the papers

73 Marla?

74 **GREENSTEIN:** Yeah of course – yes.

75 **HAEG:** Do you watch TV?

76 **GREENSTEIN:** No.

77 **HAEG:** Ok. -Um- how long have you been in your post?

78 **GREENSTEIN:** -Um- since 1989.

79 **HAEG:** Nineteen eighty-nine. So a good long time. Ok. Do you get many people like

80 me calling you and issuing complaints like this?

81 **GREENSTEIN:** -Um- we -- we average about 3 complaints – 2 - 2 to 3 complaints a

82 month that we investigate.

83 **HAEG:** Ok. Investigate – ok. And when it was determined that there should be further

84 investigation were you the only one that investigated?

85 **GREENSTEIN:** I'm the staff investigator – yes.

86 **HAEG:** Ok are there any other investigators?

87 **GREENSTEIN:** No.

88 HAEG: Ok so it's just you. Comes in you decide what's going on and that's it?

89 GREENSTEIN: No the Commission reviews everything.

90 HAEG: Ok and do I get a chance to appeal that decision?

91 GREENSTEIN: No.

92 HAEG: Ok - no appeal.

93 GREENSTEIN: You can - I mean there might be some - there might be a way to have

94 the Supreme Court...

95 HAEG: Oh - that's good...

96 GREENSTEIN: Do...

97 HAEG: Cause I already got - I already got two things heading their way already.

98 GREENSTEIN: Ok.

99 HAEG: Ok - Supreme Court may review - and that would be a - probably a Petition for

100 Review?

101 GREENSTEIN: No it's called an Original Application.

102 HAEG: Ok an Original Application.

103 GREENSTEIN: <sup>Totally (PS)</sup> ~~That~~ discretionary on the part of the court.

104 HAEG: Ok - Original Application. Not the Petition for Review. (Writing notes)

105 GREENSTEIN: ... (indecipherable) out of court...

106 HAEG: Ok -Um- (laughs) and what level of liability do Trooper Gibbens and Judge

107 Murphy have when they were talking to you? Did you have them under oath? Or was

108 it just .

109 GREENSTEIN: No it was an informal interview.

110 HAEG: Ok – informal. -Um- if you found out that they lied to you -uh- is there any  
111 liability?

112 GREENSTEIN: -Um- if he -um- well not for – not for just a witness but if a – if a judge  
113 wasn't telling us the truth we – we could review that as a complaint. But the – you  
114 know there's – it would have to be a – a deliberate kind of thing.

115 HAEG: Deliberate? -Um- let me just put my wife on for just one second. Jackie come  
116 here. Ok I want you to tell this lady that under the penalty of perjury you are goanna  
117 tell her how many times Trooper Gibbens drove Judge Murphy back and forth to the  
118 courthouse...

119 GREENSTEIN: I - I have...

120 HAEG: During my trial and sentencing...

121 GREENSTEIN: I have your wife's statement in writing – I have your wife's statement in  
122 writing. She doesn't need to tell me.

123 JACKIE HAEG: Hello.

124 GREENSTEIN: Hi. I have your statement in writing. That's fine.

125 JACKIE HAEG: Ok.

126 GREENSTEIN: You know I don't need you to tell me again cause I have your letter  
127 that you faxed us.

128 JACKIE HAEG: Ok well we did see her every single time that you know she was out of  
129 court and riding around to go to the store to get her pop or whatever and he was the  
130 one driving her everywhere. Back and forth from the hotel.

131 GREENSTEIN: Well he...

132 JACKIE HAEG: ...to eat...

133 GREENSTEIN: Well both he and the judge say that they weren't the people doing it...

134 JACKIE HAEG: Wow...

135 GREENSTEIN: ...It was VPSO Parker who provided the rides...

136 HAEG: (in background) tell her...

137 JACKIE HAEG: Well they're... well he's - Dave's pretty upset cause they are both lying

138 - I - you know there were - everybody else that was there with us saw it too and they

139 were all - you know and all the jurors. So - well I don't know what to tell ...

140 GREENSTEIN: Ok.

141 JACKIE HAEG: ... you probably need to ask some more people besides those two.

142 GREENSTEIN: No I talked to the people that your husband gave me the list of. I've

143 spoke to them as well.

144 JACKIE HAEG: And what did they tell you?

145 GREENSTEIN: -Um- they said they - that they did see -um- a trooper giving her rides.

146 and - but they - they couldn't identify which - who the trooper was.

147 JACKIE HAEG: Hmm... Well I'll let you talk to David again.

148 GREENSTEIN: Ok - thank you.

149 HAEG: Hi. (8M39S).

150 GREENSTEIN: Ok - well I think I gave you all the information that I can - so -um-

151 you'll get a letter after our Commission meeting on the 22<sup>nd</sup> to let you know exactly

152 what the Commission did.

153 HAEG: Ok and when does the Commission meet the next time – where I can talk to  
154 them?

155 GREENSTEIN: You already had an opportunity to talk to them.

156 HAEG: I want another opportunity.

157 GREENSTEIN: We only give the public one – one opportunity to talk to...

158 HAEG: Ok – my wife wants an opportunity.

159 GREENSTEIN: No we give each complainant one opportunity.

160 HAEG: She's a different complainant – she's pretty pissed.

161 GREENSTEIN: No it's the same complaint. She could've appeared when you did as  
162 well.

163 HAEG: Oh really...

164 GREENSTEIN: Yeah.

165 HAEG: Oh.

166 GREENSTEIN: No...

167 HAEG: It's too bad you didn't...

168 GREENSTEIN: ...it's the same...

169 HAEG: ...tell us that.

170 GREENSTEIN: ... complaint.

171 HAEG: Ok. -Um- (exhales)

172 GREENSTEIN: So...

173 HAEG: You understand what's going on here?

174 **GREENSTEIN:** Well I – I'm telling you even if everything you say is true it wouldn't be  
175 that significant -um- a thing. It would be the kind of thing where we would just caution  
176 the judge to -um- to try to make other arrangements in small communities in the  
177 future. That's all we would do.

178 **HAEG:** Well if I just made a small little thing if you were in court and just you know -  
179 um- see I've been reading about how important all this stuff is and why people do what  
180 they do. And when she's hanging out with Trooper Gibbens the whole time – he's the  
181 one – he actually perjured his search warrant affidavits to start my whole case and I  
182 mean you - I know that you're just saying I'm convicted and I have sour grapes. And I  
183 understand that and that's a good position to take because it's probably the logical  
184 position. But when she was involved over the entire course of my case and every  
185 decision that she was free to make sided with Trooper Gibbens and then she's riding  
186 around with him all the time and my jury is watching that each and every day. She  
187 leaves with Trooper Gibbens and she arrives with Trooper Gibbens. What they say is  
188 that a jury when they see that they say 'that trooper is credible...

189 **GREENSTEIN:** Did you have a lawyer?

190 **HAEG:** ... because he has the trust of the judge'...

191 **GREENSTEIN:** You have a lawyer?

192 **HAEG:** Huh?

193 **GREENSTEIN:** Did you have a lawyer?

194 **HAEG:** Yeah and I can prove my lawyer was lying to me throughout the whole trial and

195 ... I know that's another fantastic idea.

196 GREENSTEIN: Right no I mean if you're telling me everybody is lying including your  
197 lawyer you know I'm...

198 HAEG: ... Then -- then I'm not credible. I understand that.

199 GREENSTEIN: Right.

200 HAEG: Ok look at Trooper or I mean not... Legislator Anderson and I know that I'm  
201 kind of harping on this a little bit. But would you believe one of our legislators was  
202 extorting money from somebody?

203 GREENSTEIN: Well you would be the first to say that somebody ~~excused~~ <sup>accused</sup> should not  
204 be assumed guilty? Right?

205 HAEG: No what I'm saying and I - I understand entirely what you're saying - that you  
206 can't judge people before they're found guilty.

207 GREENSTEIN: Right.

208 HAEG: And that's what you're saying I'm doing. But what everybody's saying to me is  
209 since I've already been found guilty that my word is no longer any good.

210 GREENSTEIN: That's kind of how the system works.

211 HAEG: <sup>well</sup> My wife just told you what happened and she hasn't been found guilty of  
212 anything. And I will go get every jurors -um- affidavit.

213 GREENSTEIN: Well I'm just saying even if what you tell me is true it's a very minor  
214 thing from our perspective on what we address.

215 HAEG: Ok if it was so minor a thing in your perspective...

216 GREENSTEIN: Right.

217 HAEG: ...why do you even do it?

218 **GREENSTEIN:** Because then we could give a cautionary letter to judge -um- warning  
219 them that -um- they should make other arrangements if they're in a small community  
220 without public transportation.

221 **HAEG:** Ok now this is the real question. Why do you think Trooper Gibbens and  
222 Judge Murphy lied?

223 **GREENSTEIN:** I - I don't believe they lied. I understand you do. But I don't believe  
224 they did. If - if your memories differ on those things...

225 **HAEG:** If my memories different...

226 **GREENSTEIN:** Mm hmm...

227 **HAEG:** You know how many times I've been told that? -um- and you know I'll have you  
228 know that I'm taping this conversation as I tape all my conversations. And you know  
229 these allegations that I made about my - my -uh- lawyers they were all on tape.

230 **GREENSTEIN:** Mm hmm...

231 **HAEG:** And my first lawyer cause the one that went through trial was the second one.  
232 My first one I had before the Alaska Bar Association and as he lied I think it was  
233 somewhere over 20 times. Actually he was under oath so it was perjury. We played  
234 the - actually didn't play the tape he agreed that the transcriptions my wife made of  
235 the secretly recorded conversations were true and correct and as he read them he  
236 started shaking like a leaf. And you know there aint - there probably isn't goanna be  
237 much done to him because of people like yourself that when they're faced with the  
238 obvious they don't want to do anything. But I mean I have this. - I have - I mean...

239 **GREENSTEIN:** Well let me...

240 HAEG: ...my...

241 GREENSTEIN: Let me just reflect back to you.

242 HAEG: Ok.

243 GREENSTEIN: I think what you really want to - is a new trial or a retrial or to have

244 everything done over again.

245 HAEG: Exactly.

246 GREENSTEIN: I don't have the power -- our agency doesn't have the power to do that.

247 So I'm saying even if you know we found everything that you want us to find all we

248 would do is a cautionary letter to the judge. It won't help you.

249 HAEG: And did she get a cautionary letter?

250 GREENSTEIN: No. She hasn't yet...

251 HAEG: So she didn't even get that?

252 GREENSTEIN: Well until you...

253 HAEG: Didn't even...

254 GREENSTEIN: ... our Commission...

255 HAEG: ...freaking get that?

256 GREENSTEIN: ...I told you our Commission...

257 HAEG: I cannot believe that Marla.

258 GREENSTEIN: I told you our Commission hasn't finished with it yet. Didn't I just tell

259 you that we are goanna address it at our January 22<sup>nd</sup> meeting?

260 HAEG: I thought you said it's over and that...

261 GREENSTEIN: I said...

262 HAEG: ... you said -um- ...

263 GREENSTEIN: ... January 22<sup>nd</sup> meeting...

264 HAEG: ... everything - I wrote down -um- everything I wrote down everything was ok...

265 GREENSTEIN: Yeah from my investigation but I told you that we're meeting on

266 January 22<sup>nd</sup>.

267 HAEG: Ok January 22<sup>nd</sup>. Do you have a call in number for that date?

268 GREENSTEIN: I told you you already had your opportunity to address the

269 Commission.

270 HAEG: No there's other people that want their opportunity.

271 GREENSTEIN: You're the only - we only allow the complainant to talk about their

272 complaint. And we'll give the opportunity one time.

273 HAEG: Hmm... How convenient. -Um- And who's your boss in the big scheme of

274 things here?

275 GREENSTEIN: I work for the Commission.

276 HAEG: Ok Commission. And whose the - is there a president or...

277 GREENSTEIN: There's a Chair.

278 HAEG: Ok who's the Chair?

279 GREENSTEIN: Judge Ben Esch.

280 HAEG: Judge - what's the last name again?

281 GREENSTEIN: Esch. E-S-C-H.

282 HAEG: S-C-H?

283 GREENSTEIN: E-S-C-H.

284 HAEG: Ok and how do you pronounce that?

285 GREENSTEIN: Esch.

286 HAEG: Esch? Ok -um- ok well I guess and I probably am not allowed to talk to her or  
287 him or... Is it a him or a her?

288 GREENSTEIN: Him.

289 HAEG: Him.

290 GREENSTEIN: Yes Mr. Ben Esch.

291 HAEG: -Um- is there any way I can communicate with him?

292 GREENSTEIN: -Um- you can send a letter.

293 HAEG: Ok do you have an address?

294 GREENSTEIN: -Um- He's at the Nome court. Do you have access to the Internet?

295 HAEG: Yep. Nome court?

296 GREENSTEIN: -Uh- huh.

297 HAEG: Ok we can probably manage that one. -Um- -uh- well actually this is kind of  
298 good. And if I wanted those records. Cause this is goanna be good. Cause I'm going  
299 to have Trooper Gibbens and Judge Murphy under oath again <sup>during</sup> <sup>(S)</sup> of my Post Conviction  
300 Relief. And this will be a joy a true joy.

301 GREENSTEIN: Our - our records are confidential...

302 HAEG: I can - I can subpoena those records, correct?

303 GREENSTEIN: No. Our - our records are confidential by State statute.

304 HAEG: Ok and there's no - absolutely no court record - no way of getting those?

305 GREENSTEIN: No.

306 HAEG: Not even through the Supreme Court?

307 GREENSTEIN: -Um- if the...

308 HAEG: Supreme Court? I - I...

309 GREENSTEIN: If the Supreme Court...

310 HAEG: ... I walk into your office with an SCO and I can't have it?

311 GREENSTEIN: I mean if the Supreme Court ordered it they would get it under seal but

312 ... you probably wouldn't have access to it.

313 HAEG: Ok. Well I'll guarantee you those records are goanna be -um- looked at by

314 somebody. -um- cause I'm actually starting to enjoy this. This is kind of like - I used to

315 be a trapper and a hunter but this is far more fun. -Um- because it's the most

316 ridiculous thing that's ever happened. This state is so crooked you couldn't get a fair

317 trial here if you tried your hardest - like I did. It's unbelievable. -Um- but anyway you

318 probably heard that before. -Um- and as I said I'm guilty so you don't have to listen to

319 me. -Um- and oh I guess I've taken up enough of your time Marla.

320 GREENSTEIN: Ok.

321 HAEG: Thank you very much.

322 GREENSTEIN: You're welcome.

323 HAEG: Bye.

324 GREENSTEIN: Bye.

Transcribed Phone Call between  
Alaska Commission on Judicial Council (Marla Greenstein) and  
David Haeg on or about September 23, 2009

1 HAEG: Yep.

2 GREENSTEIN: Marla Greenstein.

3 HAEG: Hey how yah doing?

4 GREENSTEIN: I'm doing fine.

5 HAEG: -Um- hey I have a couple questions for you. I don't know if you remember me  
6 but I had a...

7 GREENSTEIN: I do.

8 HAEG: -Uh-

9 GREENSTEIN: I do it was a hunting thing.

10 HAEG: Yep and I'd - I'd filed a complaint I think it was against Judge Murphy...

11 GREENSTEIN: Right.

12 HAEG: -um- and -uh- what I was wondering is at the time you had said that -uh- -um-

13 you had interviewed I think Judge Murphy and some of the people that I had...

14 GREENSTEIN: Right the trooper and some of those other people.

15 HAEG: Yep. And you had said that they -um- denied that the trooper had ever given

16 Judge Murphy rides until I think you said - I'd wrote down some notes until like after I

17 was sentenced. And I was wondering if you -um- I guess have any documentation on

18 what they said or if you could give me some on what they said?

19 GREENSTEIN: I can't share that with anybody. I do the documentation but that -

20 that's confidential within our office.

21 HAEG: Ok and is there anyway to make it non confidential?

22 GREENSTEIN: No there is not.

23 HAEG: Not even a - like a court proceeding or anything?

24 GREENSTEIN: No our files are confidential by statute.

25 HAEG: Ok and so when you like if I claim what you had told me - I can't even do that  
26 either then?

27 GREENSTEIN: What I said to you? If you - I mean you should have a letter from me  
28 that probably set out the reasons we dismissed the complaint. That's the only thing. If  
29 you don't have that letter we can you another copy of that letter.

30 HAEG: Ok.

31 GREENSTEIN: That's the only thing that you can refer to.

32 HAEG: Ok. Well what - what my problem is is you had said that they - you had  
33 questioned them and they both denied that the trooper had given the judge rides. Ok?  
34 And I - I you know I wrote down -um- all the stuff that you had said because you had -  
35 you actually called me. I don't know if you remember that or not?

36 GREENSTEIN: Let me see. I think have the note - an advisory opinion that wrote as a  
37 result of that I can read. Let me just look it up. I think we wrote a summary of the  
38 opinion that public...

39 HAEG: And what - so this actually went further than what...

40 GREENSTEIN: No - no...

41 HAEG: ...just your investigation?

42 GREENSTEIN: No we did a formal opinion. They just - we write opinions to give  
43 judges guidance at times. -Um-

44 HAEG: Well why would there be any guidance if there were never any rides given?

45 **GREENSTEIN:** No there was... (time passes while looking through her stuff) ...just  
46 trying to help you. Just want to see if there's more information I can give you.

47 **HAEG:** Ok.

48 **GREENSTEIN:** No he did give them rides. It was a question of when the rides were  
49 given. So I can give you this opinion. Their opinion 'the judicial officer accepted rides  
50 from law enforcement while on duty in small village without any form of public  
51 transportation did not violate the Code of Judicial Conduct where no ex parte  
52 communication concerning the pending criminal matter occurred. The circumstances  
53 in rural Alaska often create a need for accommodations that would not be suitable if  
54 there were other alternatives. Where these accommodations include assistance by  
55 law enforcement officers, great care should be given to avoid any discussion of official  
56 matters while outside the courtroom. The best practice would be to disclose the  
57 special needs and accommodations on the record at the beginning of the court  
58 proceeding to avoid appearance of impropriety questions.'

59 **HAEG:** Well if...

60 **GREENSTEIN:** So that - that was our findings. I can mail that to you if you'd like?

61 **HAEG:** Ok well that would be great but what my question is - is you had said that you  
62 investigated...

63 **GREENSTEIN:** Mm.hmm.

64 **HAEG:** And you had called me and said that the trooper and the judge denied that any  
65 rides ever took place. Is that correct?

66 **GREENSTEIN:** No - until after sentencing.

67 HAEG: Ok until after sentencing?

68 GREENSTEIN: Right.

69 HAEG: Ok. Ok the problem I have Marla is I was there with I believe like 7 witnesses

70 and an attorney and - and...

71 GREENSTEIN: I talked to everybody.

72 HAEG: Ok.

73 GREENSTEIN: I talked to the attorneys. I talked to everybody. I talked to people in the

74 courtroom. I talked to a bunch of people. And they view things differently than you.

75 HAEG: Wow...

76 GREENSTEIN: Mm hmm.

77 HAEG: That's unbelievable isn't it? Because...

78 GREENSTEIN: I talked even to the people in Texas - or whoever they were. I made a

79 lot of phone calls.

80 HAEG: Ok.

81 GREENSTEIN: That's why I remember it so well.

82 HAEG: And you got no indication from anybody that they ever got - ever - the judge

83 ever took a ride with the trooper during my trial or sentencing, correct?

84 GREENSTEIN: Correct.

85 HAEG: Ok but I have a note here that says you talked VPSO Parker. He doesn't

86 remember. That you never talked to any of the witnesses...

87 GREENSTEIN: Listen are - are you goanna argue with me? I just told you I

88 interviewed a lot of the people. I talked to them...

89 HAEG: Well the problem – ok I'm not argu... I'm not try – I don't mean to argue with  
90 you. Ok? The problem is – is over this case...

91 GREENSTEIN: Mm hmm...

92 HAEG: ... I lost everything I had built for my family from...

93 GREENSTEIN: I understand that...

94 HAEG: ... when I was age 18.

95 GREENSTEIN: Nothing we do is going to change that.

96 HAEG: Ok. Correct absolutely. But what I'm saying is when the judge rode in every  
97 morning, every noon to lunch, and it's even on the record. This is what really pisses  
98 me off. Is that they - the State transcribed the record of the case and it has Judge  
99 Murphy 'I'm going to commandeer you again Trooper Gibbens and we're goanna into  
100 to town and get some stuff and blah blah blah'. And then when you tell me that – and  
101 ever day this happened. And it was like I think a 5-day trial and 2 day sentencing.  
102 And when that trooper was the main witness against me and it was proven he'd  
103 committed perjury and the judge overlooked it and they're riding around together the  
104 appearance – how that you are saying that the appearance of bias isn't right - we seen  
105 actual bias because we proved the trooper was lying about where the evidence was  
106 found. They claimed it was found where I guide and so I should be charged as a big  
107 game guide. And so it has to do with real things in life rather than protecting a couple  
108 people that did something they shouldn't be doing and are now denying it. And -um-  
109 you know and I don't mean to jump down your throat Marla but it's now five and a half  
110 years of my life as I know it ending. And I know that – that probably doesn't mean

111 anything to you. You get a paycheck and you go home at night and your jobs secure  
112 but me and my family have a hard time putting – having enough money to put food in  
113 our children's mouths anymore - over this. And Maria do you understand the  
114 determination when you make a claim like I did – and I didn't even know it was that big  
115 of deal but when they claimed it never happened. The judge lied to you and the  
116 trooper lied to you and if I were you I would take that very seriously. And apparently  
117 from what you're saying everybody agrees in fact you said no witnesses said it ever  
118 happened. Didn't I tell you it happened?

119 **GREENSTEIN:** You - you did but nobody else.

120 **HAEG:** Nobody else told you it happened?

121 **GREENSTEIN:** Right.

122 **HAEG:** Did you ever talk to my jurors?

123 **GREENSTEIN:** No.

124 **HAEG:** Did I ask that you do?

125 **GREENSTEIN:** Listen you're arguing with me again so I'm goanna hang up. This has  
126 been over for several years and I was trying to give you additional information. I'm  
127 sorry but there's nothing more I can do... (click)

David S. Haeg  
P.O. Box 123  
Soldotna, AK 99669  
(907) 262-9249

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

DAVID HAEG )

Applicant, )

vs. )

STATE OF ALASKA, )

Respondent. )

Case No.: 3HO-10-00064CI

AFFIDAVIT

1. My name is Wendell Jones and I am a former Alaska State Trooper.
2. I attended David Haeg's sentencing in McGrath on 9-29-05 and 9-30-05.

On these days I was present at the courthouse every hour David Haeg's court was in session. On 9-29-05 sentencing testimony and arguments started at 1 PM and continued straight through the night until the early morning of 9-30-05. David Haeg was finally sentenced at nearly 1 AM on 9-30-05.

3. On 9-29-05 I personally observed Judge Margaret Murphy arrive at court in a white Trooper pickup truck driven by Trooper Brett Gibbens; leave and return with Trooper Gibbens in the same truck during breaks and dinner; and leave with Trooper Gibbens when court was finished on 9-30-05. Nearly all the rides I witnessed Trooper Gibbens give Judge Murphy happened before David Haeg was sentenced.

4. Trooper Gibbens was the primary witness against David Haeg at sentencing and I believe during his trial.

5. During David Haeg's proceedings I never saw Judge Murphy arrive or depart the courthouse alone or with anyone other than Trooper Gibbens.

6. Other than David Haeg himself I was never contacted by anyone investigating whether or not Trooper Gibbens gave Judge Murphy rides.

AFFIDAVIT SWORN TO UNDER PENALTY OF PERJURY

I, WENDELL JONES, swear under penalty of perjury that the statements above and information included are true to the best of my knowledge.

Wendell Jones

Wendell Jones

SUBSCRIBED AND SWORN to before me this 20th day of July, 2010.

Cully Wooden

Notary Public in and for Alaska

My Commission Expires: 2-6-14

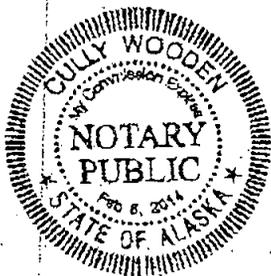


Exhibit #6

David S. Haeg  
P.O. Box 123  
Soldotna, AK 99569  
(907) 262-9249

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

DAVID HAEG	)	
Applicant,	)	
vs.	)	
STATE OF ALASKA,	)	Case No.: <u>3HQ-10-00064CI</u>
Respondent.	)	
	)	
	)	

AFFIDAVIT

1. My name is Tony Zellers and I am a retired Air Force Captain.
2. I was a state witness at David Haeg's trial in McGrath on 7-28-05. I also attended the sentencing in McGrath on 9-29-05 and 9-30-05. On these days I was present at the courthouse while David Haeg's court was in session. On 9-29-05 sentencing testimony and arguments started at 1 PM and continued through the night until the early morning of 9-30-05. David Haeg was finally sentenced at nearly 1 AM on 9-30-05.
3. On 7-28-05 and 9-29-05 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. Nearly all the rides I witnessed Trooper Gibbens give Judge Murphy happened before David Haeg was sentenced.

ATTACHMENT D

4. Trooper Gibbens was the primary witness against David Haeg at trial and sentencing.

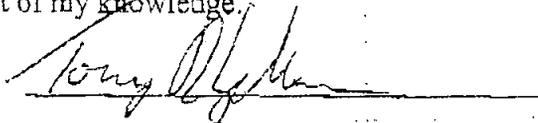
5. During David Haeg's proceedings I never saw Judge Murphy arrive or depart the courthouse alone or with anyone other than Trooper Gibbens.

6. Since 1994 to present my phone number has been 907-696-2319.

7. Other than David Haeg himself I was never contacted by anyone investigating whether or not Trooper Gibbens gave Judge Murphy rides.

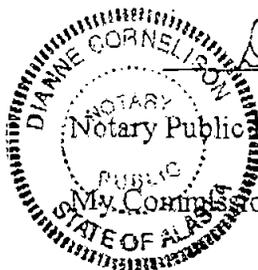
AFFIDAVIT SWORN TO UNDER PENALTY OF PERJURY

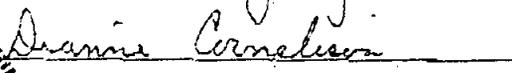
I, TONY ZELLERS, swear under penalty of perjury that the statements above and information included are true to the best of my knowledge.



Tony Zellers  
9420 Swan Circle  
Eagle River, AK 99577  
907-696-2319

SUBSCRIBED AND SWORN to before me this 21 day of July, 2010.



  
Notary Public and for Mat Su Bus Stop Alaska

My Commission Expires: April 5, 2014

Exhibit #6

David S. Haeg  
P.O. Box 123  
Soldotna, AK 99669  
(907) 262-9249

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

DAVID HAEG	)	
Applicant,	)	
vs.	)	
	)	
STATE OF ALASKA,	)	Case No.: <u>3HO-10-00064CI</u>
Respondent.	)	
	)	
	)	

AFFIDAVIT

1. My name is Tom Stepnosky and I am retired Vietnam Veteran.
2. I attended David Haeg's sentencing in McGrath on 9-29-05 and 9-30-05.  
On these days I was present at the courthouse every hour David Haeg's court was in session. On 9-29-05 sentencing testimony and arguments started at 1 PM and continued through the night until the early morning of 9-30-05. David Haeg was finally sentenced at nearly 1 AM on 9-30-05.
3. On 9-29-05 I personally observed Judge Margaret Murphy arrive at court in a white Trooper pickup truck driven by Trooper Brett Gibbens; leave and return with Trooper Gibbens in the same truck during breaks and dinner; and then leave with Trooper Gibbens when sentencing was finished on 9-30-05. Nearly all the rides I witnessed Trooper Gibbens give Judge Murphy happened before David Haeg was sentenced.
4. Trooper Gibbens was the primary witness against David Haeg at sentencing and I believe during his trial.

ATTACHMENT E

5. During David Haeg's proceedings I never saw Judge Murphy arrive or depart the courthouse alone or with anyone other than Trooper Gibbens.

6. Since 2005 to present my phone number has been 570-727-3130.

7. Other than David Haeg himself I was never contacted by anyone investigating whether or not Trooper Gibbens gave Judge Murphy rides.

8. On or about 2006 I contacted Alaska Commission on Judicial Conduct investigator Marla Greenstein by phone and told her I had personally seen Trooper Gibbens give Judge Murphy rides before David Haeg was sentenced.

AFFIDAVIT SWORN TO UNDER PENALTY OF PERJURY

I, TOM STEP NOSKY, SR., swear under penalty of perjury that the statements above and information included are true to the best of my knowledge.

*Thomas J. Stepnosky, Sr.*

Tom Stepnosky, Sr.  
PO Box 205  
Thompson, PA 18465  
570-727-3130

SUBSCRIBED AND SWORN to before me this 16<sup>th</sup> day of July, 2010.

*Nina A. Bills*

Notary Public in and for \_\_\_\_\_

My Commission Expires: COMMONWEALTH OF PENNSYLVANIA

Notarial Seal  
Nina A. Bills, Notary Public  
Susquehanna Depot Boro, Susquehanna County  
My Commission Expires Jan. 10, 2011

Exhibit #6

David S. Haeg  
P.O. Box 123  
Soldotna, AK 99669  
(907) 262-9249

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

DAVID HAEG	)	
Applicant,	)	
vs.	)	
STATE OF ALASKA,	)	Case No.: <u>3HO-10-00064CI</u>
Respondent.	)	
	)	
	)	

**AFFIDAVIT**

My name is Drew Hilterbrand.

I attended David Haeg's sentencing in McGrath on 9-29-05 and 9-30-05. On these days I was present at the courthouse every hour David Haeg's court was in session. On 9-29-05 sentencing testimony and arguments started at 1 PM and continued through the night until the early morning of 9-30-05. David Haeg was finally sentenced at nearly 1 AM on 9-30-05.

On 9-29-05 I personally observed Judge Margaret Murphy arrive at court in a white Trooper pickup truck driven by Trooper Brett Gibbens; leave and return with Trooper Gibbens in the same truck during breaks and dinner; and leave with Trooper Gibbens when court was finished on 9-30-05. Nearly all the rides I

witnessed Trooper Gibbens give Judge Murphy happened before David Haeg was sentenced.

Trooper Gibbens was the primary witness against David Haeg at sentencing and I believe during his trial.

During David Haeg's proceedings I never saw Judge Murphy arrive or depart the courthouse alone or with anyone other than Trooper Gibbens.

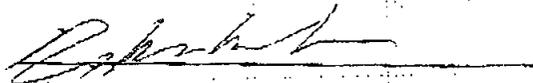
From about 2004 to present my phone number has been 907-252-4090.

Other than David Haeg himself I have never been contacted by anyone investigating whether or not Trooper Gibbens gave Judge Murphy rides.

**AFFIDAVIT SWORN TO UNDER PENALTY OF PERJURY**

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

July 19th 2010 . A notary public or other official empowered to administer oaths is unavailable and thus I am certifying this document in accordance with AS 09.63.020.



Drew Hilterbrand  
PO Box 1038  
Soldotna, AK 99669  
907-252-4090

Exhibit #6

David S. Haeg  
P.O. Box 123  
Soldotna, AK 99669  
(907) 262-9249

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

DAVID HAEG )  
Applicant, )  
vs. )  
STATE OF ALASKA, ) Case No.: 3HO-10-00064CI  
Respondent. )  
)  
)

AFFIDAVIT

1. My name is Greg Pearson; I am a husband and father of two.
2. I attended all of David Haeg's 12-hour self-representation hearing that was conducted in McGrath on 8-15-06. The hearing lasted until about 11 PM.
3. During David Haeg's self-representation hearing I heard Magistrate David Woodmancy ask Trooper Brett Gibbens for a ride and Trooper Gibbens responded that he could not give Magistrate Woodmancy a ride because of all the trouble he (Gibbens) got into by doing this the last time.

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

7-25-2010 A notary public or other official empowered to

administer oaths is unavailable and thus I am certifying this document in accordance with AS 09.63.020.

Greg Pearson  
Greg Pearson  
PO Box 1456  
Soldotna, Alaska 99669 (907) 262-3935

Exhibit # 6

David S. Haeg  
P.O. Box 123  
Soldotna, AK 99669  
(907) 262-9249

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

DAVID HAEG	)	
Applicant,	)	
vs.	)	
STATE OF ALASKA,	)	Case No.: <u>3HO-10-00064CI</u>
Respondent.	)	
	)	
	)	

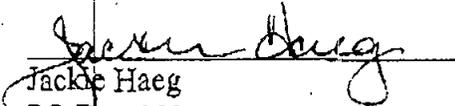
AFFIDAVIT

1. My name is Jackie Haeg; I work for the Kenai Peninsula Borough School District, am married, and mother of two.
2. I attended David Haeg's trial in McGrath on 5-17-05, 5-18-05, 7-25-05, 7-26-05, 7-27-05, 7-28-05, and 7-29-05. Trial went till 11:29 PM some days and I was present at the courthouse every hour of trial.
3. Every day of David Haeg's trial I personally observed Judge Margaret Murphy arrive at court 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 done for the day. All the rides I witnessed Trooper Gibbens give Judge Murphy happened before David Haeg was sentenced.
4. Trooper Gibbens was the primary witness against David Haeg at trial.

5. During David Haeg's trial I never saw Judge Murphy arrive or depart the courthouse alone or with anyone other than Trooper Gibbens.
6. Since about 1990 to present my phone number has been 907-262-9249.
7. Other than David Haeg himself I have never been contacted by anyone investigating whether or not Trooper Gibbens gave Judge Murphy rides.
8. I was the one who found David Haeg's 17-page letter (evidencing that the State had told and induced David Haeg to do what the State later charged him with doing) had been removed out of the official court record while proof it had been admitted remained in the official court record.
9. I attended all of David Haeg's 12-hour self-representation hearing that was conducted in McGrath on 8-15-06 before Magistrate David Woodmancy.
10. During David Haeg's self-representation hearing I heard Magistrate Woodmancy ask Trooper Brett Gibbens for a ride and Trooper Gibbens responded that he could not give Magistrate Woodmancy a ride because of all the trouble he (Gibbens) got into by doing this the last time.

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

July 23, 2010. A notary public or other official empowered to administer oaths is unavailable and thus I am certifying this document in accordance with AS 09.63.020.

  
Jackie Haeg  
PO Box 123  
Soldotna, Alaska 99669  
(907) 262-9249

Alaska Court System  
 P.O. Box 147  
 Aniak, AK 99557-0147  
 Phone: (907) 675-4325  
 Fax: (907) 675-4278

**ANIAC DISTRICT COURT**

**Fax**

**To:** Judge Joanides **From:** Jean Ekemo/Clerk of Court  
**Fax:** 907-264-0618 **Pages:** 5 w/cover  
**Phone:** **Date:** 8/6/10  
**Re:** David Haeg - 4MC-04-24CR selected transcripts **CC:**

**• Comments:**

Following this cover you should find

1 page) a copy of the cover of "Transcript of Proceeding" Volume III

3 pages) Pages 1257-1268 (4 pages per 8x11 page so actually (3) 8x11 size pages)

ATTACHMENT I

FILED  
STATE OF ALASKA  
IN THE DISTRICT COURT FOR THE STATE OF ALASKA  
FOURTH JUDICIAL DISTRICT

2007 NOV 14 AM 11:16  
CLERK, APPELLATE COURTS  
BY: DEPUTY CLERK

STATE OF ALASKA,  
Plaintiff,  
vs.  
DAVID HAEG,  
Defendant.

A09455

Case No. 4MC-04-24 CR

VOLUME III

TRANSCRIPT OF PROCEEDINGS

September 29, 2005 - Page 1037 through Page 1454

DISCLAIMER

Transcripts prepared for the Alaska Court System

The Alaska Court System accepted this transcript based on either review of a random sample or without review because the transcriber's prior work has consistently met court system standards. Because it is possible that this transcript may contain some errors, the court system encourages parties to listen to the recordings of critical portions of the proceedings and to bring any significant errors to the ACS Transcript Coordinator's attention immediately.

AURORA COURT REPORTING

A I never -- I never saw that moose.

Q Okay. That's the one you told Mr. Haeg that had been chased off or whatever, right?

THE COURT: That was on the 5th.

MR. LEADERS: Okay. Apologize, that's the 5th, okay.

Q But you don't note that anywhere?

A No.

Q The -- is it possible you -- the days may have somehow gotten mixed up or confused in any way during your hunt?

A No.

Q All right. The -- Mr. Jayo's moose was taken fairly early in the morning?

A Yes, as -- as I stated, around 7:30 that morning.

Q Okay. Shortly after light then?

A Yes.

Q You guys had to hike how far?

A We hiked approximately two and a half miles. We started about 5:00 o'clock in the morning. At that time of year about 5:30 is when it starts getting twilight out, and by 6:00 o'clock you've got enough -- plenty of light to -- to hunt. 7:00 o'clock the -- the sun wasn't up over the -- the Revelation Mountains yet.

Q So it took you almost a couple hours to get down to this location?

A Yes.

- Q Roughly, I guess, we heard the pace is about a mile an hour earlier?
- A Roughly -- roughly, yeah.
- Q That's pretty accurate?
- A Yes. Uh-huh (Affirmative).
- Q The -- were you -- I guess I was a little but unclear on some of this.  
Someone -- you climbed a tree for observation once you crossed the river  
and that's where you first see the cows?
- A No.
- Q Oh, okay.
- A We did not see any moose from -- from the tree.
- Q From the tree, I see, okay.
- Q When we came down and I decided to take Doug a little further down the  
ridge so I could see a little further down river, that the river bend made a  
shallow bend to the left and then it came back hard to the right, down by  
the sandbar that Dave landed on, later, and that's where I saw the -- the  
two cows along the river.
- Q And that's where you then called -- from that location is where you called  
the bull to?
- A Correct, I went down maybe 20 yards near a big rock or a husgik(ph) for  
Doug to have a laying down steady rest.
- Q Okay. And it was two shots ultimately to kill this moose?

A Two shots, yes.

Q The initial?

A One from the.....

Q To take it down?

A One from -- one from my rifle a .375, and one from Doug Jayo's rifle which is I believe he was shooting .330.

Q Okay. They were spaced approximately 15, 20 minutes apart or so?

A Correct.

Q And then there was a lot of flying activity after that?

A Yes.

Q Mr. Haeg's plane?

A Correct.

Q He hadn't -- you hadn't noticed any other planes in that area flying during the few days that you -- the couple days you were hunting that specific area?

A No, I did not. I've heard other planes but I did not observe them with my eyes. Maybe not fly up into that valley.

Q So you heard them in the distance type thing?

A Correct.

Q I mean you can hear planes off for miles away at times (indiscernible)?

A At times, yeah, you can hear them a long ways.

Q Okay.

A The weather wasn't conducive to -- to seeing a lot of them.

MR. LEADERS: I have no further questions.

TONY ZELLERS

testified as follows on:

REDIRECT EXAMINATION

BY MR. ROBINSON:

Q Mr. Zellers, you entered a plea of, I think, no-contest to your charges in this wolf case, right?

A That's correct.

Q And you were required to come to court and testify truthfully were you not?

A Correct.

Q And in your opinion when you came to testify at the trial did you give truthful testimony?

A Yes, I did.

Q And anything you said today, was it truthful testimony?

A Yes, it was.

Q Particularly with your diary concerning when you noted the day that Mr. Jayo shot this moose, is there anything untruthful about that?

A No, there isn't.

Q Is there anything untruthful about the fact that before Mr. Jayo took that moose on the morning of September 7th that Mr. Haeg was not flying around, was not using any

kind of communications from the airplane to direct that hunt for Mr. Jayo?

A No, he wasn't.

Q And that's truthful?

A That's truthful.

Q As truthful as you testified about matters at trial here?

A Yes, it is.

MR. ROBINSON: I don't have anything further.

TONY ZELLERS

testified as follows on:

REXCROSS EXAMINATION

BY MR. LEADERS:

Q The -- let me ask you. In your mind, your perception of the wolf charges which you pled to and that now Mr. Haeg's -- do you consider those less serious based on the nature that they were wolves taken than you do what we're discussing here, whether or not a moose, a game animal was taken from the -- with the use of an airplane?

A No, it's the same charge. Same day -- same day airborne, so.

Q So you don't see -- okay, you don't perceive any difference between the wolves or the moose or anything like that? As to the way they should be treated?

A No, I've got probably -- I don't like the wolves any more than anybody else out in this area.

Q Right.

A But -- because I mean if I look at this charge versus this charge they're the same charge, so.

Q Shouldn't be treated any differently in your mind?

A No.

MR. LEADERS: Nothing further.

THE COURT: Anything else?

MR. ROBINSON: No.

THE COURT: Okay. Thank you, Mr. Zellers, you can go back.

MR. ROBINSON: 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.

MR. ROBINSON: All right.

THE COURT: All right, Trooper Gibbens?

TROOPER GIBBENS: Well, yeah.

MR. ROBINSON: You've been commandeered.

MR. LEADERS: 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.

MR. ROBINSON: Mr. Wendell Jones.

THE COURT: Okay.

(Whispered conversation)

THE COURT: Mr. Jones, if you'd raise your right hand.

(Oath administered)

MR. JONES: I do.

THE COURT: Okay. Please be seated.

MR. JONES: Thank you.

WENDELL L. JONES

called as a witness on behalf of the defendant, testified as follows on:

DIRECT EXAMINATION

THE COURT: Spell your first and last name for the record, please.

A Wendell L. Jones, W-e-n-d-e-l-l L. J-o-n-e-s.

THE COURT: Okay. Thank you, sir.

BY MR. ROBINSON:

Q Good evening, Mr. Jones. Where do you live?

A I live in Cordova, Alaska.

Q And how long have you lived there?

A Well, I first moved there in '76 and I moved to Soldotna in about '84.  
Moved back to Cordova about '94.

Q And what is your occupation?

A I'm sorry?

Q What is your occupation?

A I'm a commercial fisherman.

Q (Coughing) Excuse me. How long have you been a commercial  
fisherman?

A Since 1978.

Q What kind of commercial fisherman? (Indiscernible).

A I purseine, I gill net and I used to spot herring when we had herring.

Q So when you were a purseiner or gill netter was that in the salmon  
fisheries? Was that for salmon?

A Salmon. Salmon. I'm sorry, I don't hear well.

Q Okay. And that was in the salmon fisheries?

A Yes.

Q And where in the state did you do your salmon fishing?

A In Prince William Sound, and on the Copper River Delta.

Q Other than being a commercial fisherman have you had any other occupations?

A Yes. I was a fish and wildlife protection officer for five years and prior to that I was a commercial pilot, prior to that I was an A&P mechanic. And prior to that I was a kid.

Q What years were you a fish and wildlife enforcement officer?

A From '73 to '78.

Q And where was that at?

A In Ketchikan and then in Cordova.

Q Are you still fishing commercially?

A Yes, I am.

Q Do you know the defendant in this case, David Haeg?

A Very well.

Q And how do you know him?

A Let's see. He was about 19, maybe 20 when he wanted Dan France to build an airplane for him and Dan was busy so Dan referred David to -- referred me to David (indiscernible) to me. So he came and talked to me

about this airplane that he wanted to build, and wanted to know if I'd work with him on it. We made an agreement and we went to work in the winter time. He was commercial fishing during the summer and so was I, so it was -- it took us a couple years to finish -- couple winters to finish it. And so I got to know him very well.

Q All right. What kind of plane was this?

A This was the Batcub, the PA-12.

Q The PA-12, the airplane that we've all come to call in this proceeding the Batman plane?

A Well, it's been redone since he and I did it, but, yes, it's the same design, yes.

Q So how long has he had this plane?

A Since he was 20 years old, something like that. Well, it took two years to build it, so -- let's see, so 22 and he's 38 now, aren't you, Dave?

MR. HAEG: (Indiscernible).

Q All right. So he's had it for quite some time?

A Oh, yeah.

Q Tell us the kind of -- other than the contacts you had with him in building the plane, what other kind of contacts have you had with David over the years?

A Well, in herring spotting he -- I took him over to the Sound. He flew back seat for me for part of a season

and then there was a fatality in the herring fishery and David took over that position, and was very successful. He's good at whatever he does.

Q Okay. Over the years, Mr. Jones, have you developed an opinion about Mr. -- about David's character since you've known him?

A Without a doubt.

Q And what is that opinion?

A I wouldn't be surprised if he couldn't walk on water. No. I think he's -- he's -- well, I love him like he's my son. He -- I think he's just a wonderful person, he's got a beautiful family.

Q Now you know that he was convicted in this case of several fishing -- I mean hunting violations?

A That's true, I know.....

Q And several counts of.....

A Concerning the wolves, yes.

Q Concerning hunting wolves, same day airborne, unlawful possession of game, making a false statement regarding the taking of game. Also hunting wolverine out of season -- trapping out of season. Despite your knowledge of these convictions what do you think of Mr. Haeg?

A Well, I wasn't familiar with wolverine, I don't understand that charge, but the wolves -- first off, you

have to look at David's life. He was raised in Chinitna Bay in the wilderness. His dog -- his folks dog was killed by wolves. Then you have to look at what's going on. We all know that there's mismanagement by our fish and game that we're not -- we aren't doing the charge that we have as far as managing our resources on a sustained yield basis. And we all sitting here know that they -- that the influence of the Sierra Club and -- and all the Walt Disney lovers that are influencing our state government to where they're not allowing management by fish and game of the wolves. We used to have poison programs and all kinds of programs to keep them in balance with our other game that we used. They -- they are a predator and the other ones are -- are game that we harvest and we don't harvest the wolves for -- as consumption. So -- but we aren't managing them as a predator so that we can maintain the moose in a balanced situation. And -- so it's -- it's hap -- it's gone on for so long that the frustration level is very high. I don't -- I admit that what David has done, the way he handled the situation is wrong. He'll admit it's wrong to me, but -- but the frustration of it -- have you read -- well, I shouldn't ask you the questions, I'm sorry. But if you've read Harrower's letters to Governor Knowles. The -- the frustration level has been

STATE OF ALASKA V DAVID HAEG 4MC-04-24 CR

Aurora Court Reporting

1 A I never -- I never saw that moose  
 2 Q Okay That's the one you told Mr. Haeg that had been  
 3 chased off of whatever, right?  
 4 THE COURT: That was on the 5th  
 5 MR. LEADERS: Okay. Apologize, that's the 5th, okay.  
 6 Q But you don't note that anywhere?  
 7 A No.  
 8 Q The -- is it possible you -- the days may have somehow  
 9 gotten mixed up or confused in any way during your hunt?  
 10 A No.  
 11 Q All right. The -- Mr. Jayo's moose was taken fairly  
 12 early in the morning?  
 13 A Yes, as -- as I stated, around 7:30 that morning.  
 14 Q Okay Shortly after light then?  
 15 A Yes.  
 16 Q You guys had to hike how far?  
 17 A We hiked approximately two and a half miles. We started  
 18 about 5:00 o'clock in the morning. At that time of year  
 19 about 5:30 is when it starts getting bright out, and  
 20 by 6:00 o'clock you've got enough -- plenty of light to  
 21 -- to hunt. 7:00 o'clock the -- the sun wasn't up over  
 22 the -- the Revelation Mountains yet  
 23 Q So it took you almost a couple hours to get down to this  
 24 location?  
 25 A Yes.

- 1257 -

1 A Two shots, yes  
 2 Q The initial?  
 3 A One from the...  
 4 Q To take it down?  
 5 A One from -- one from my rifle a 375, and one from Doug  
 6 Jayo's rifle which is I believe he was shooting .330  
 7 Q Okay. They were spaced approximately 15, 20 minutes  
 8 apart or so?  
 9 A Correct  
 10 Q And then there was a lot of flying activity after that?  
 11 A Yes.  
 12 Q Mr. Haeg's plane?  
 13 A Correct.  
 14 Q He hadn't -- you hadn't noticed any other planes in that  
 15 area flying during the few days that you -- the couple  
 16 days you were hunting that specific area?  
 17 A No, I did not. I've heard other planes but I did not  
 18 observe them with my eyes. Maybe not fly up into that  
 19 valley.  
 20 Q So you heard them in the distance type thing?  
 21 A Correct.  
 22 Q I mean you can hear planes off for miles away at times  
 23 (indiscernible)?  
 24 A At times, yeah, you can hear them a long ways.  
 25 Q Okay.

- 1259 -

1 Q Roughly, I guess, we heard the pace is about a mile an  
 2 hour earlier?  
 3 A Roughly -- roughly, yeah.  
 4 Q That's pretty accurate?  
 5 A Yes. Uh-huh (Affirmative).  
 6 Q The -- were you -- I guess I was a little but unclear on  
 7 some of this. Someone -- you climbed a tree for  
 8 observation once you crossed the river and that's where  
 9 you first see the cows?  
 10 A No.  
 11 Q Oh, okay.  
 12 A We did not see any moose from -- from the tree  
 13 From the tree, I see, okay.  
 14 Q When we came down and I decided to take Doug a little  
 15 further down the ridge so I could see a little further  
 16 down river, that the river bend made a shallow bend to  
 17 the left and then it came back hard to the right, down  
 18 by the sandbar that Dave landed on, later, and that's  
 19 where I saw the -- the two cows along the river.  
 20 Q And that's where you then called -- from that location  
 21 is where you called the bull to?  
 22 A Correct, I went down maybe 20 yards near a big rock or a  
 23 husk(gh) for Doug to have a laying down steady rest  
 24 Q Okay. And it was two shots ultimately to kill this  
 25 moose?

- 1258 -

1 A The weather wasn't conducive to -- to seeing a lot of  
 2 them.  
 3 MR. LEADERS: I have no further questions.  
 4 TONY ZELLERS  
 5 testified as follows on:  
 6 REDIRECT EXAMINATION  
 7 BY MR. ROBINSON:  
 8 Q Mr. Zellers, you entered a plea of, I think, no-contest  
 9 to your charges in this wolf case, right?  
 10 A That's correct.  
 11 Q And you were required to come to court and testify  
 12 truthfully were you not?  
 13 A Correct.  
 14 Q And in your opinion when you came to testify at the  
 15 trial did you give truthful testimony?  
 16 A Yes, I did.  
 17 Q And anything you said today, was it truthful testimony?  
 18 A Yes, it was.  
 19 Q Particularly with your diary concerning when you noted  
 20 the day that Mr. Jayo shot this moose, is there anything  
 21 untruthful about that?  
 22 A No, there isn't.  
 23 Q Is there anything untruthful about the fact that before  
 24 Mr. Jayo took that moose on the morning of September 7th  
 25 that Mr. Haeg was not flying around, was not using any

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STATE OF ALASKA v DAVID HAEG 4MC-04-24 CR

Aurora Court Reporting

1 kind of communications from the airplane to direct that  
 2 hunt for Mr. Juyo?  
 3 A No, he wasn't  
 4 Q And that's truthful?  
 5 A That's truthful  
 6 Q As truthful as you testified about matters at trial  
 7 here?  
 8 A Yes, it is  
 9 MR. ROBINSON: I don't have anything further.  
 10 TONY ZELLERS  
 11 testified as follows on:  
 12 RECROSS EXAMINATION  
 13 BY MR. LEADERS:  
 14 Q The -- let me ask you In your mind, your perception of  
 15 the wolf charges which you pled to and that now Mr  
 16 Haeg's -- do you consider those less serious based on  
 17 the nature that they were wolves taken than you do what  
 18 we're discussing here, whether or not a moose, a game  
 19 animal was taken from the -- with the use of an  
 20 airplane?  
 21 A No, it's the same charge Same day -- same day  
 22 airborne, so.  
 23 Q So you don't see -- okay, you don't perceive any  
 24 difference between the wolves or the moose or anything  
 25 like that? As to the way they should be treated?

1 MR. LEADERS: As long as there's no issue of....  
 2 MR. ROBINSON: Oh, no, no, I don't have any problem...  
 3 THE COURT: Yeah, I'm just telling you that I -- I can  
 4 tell you I'm not going to talk about the case.  
 5 MR. ROBINSON: You've been commandeered.  
 6 THE COURT: He's just going to drive me over there to get  
 7 some diet Coke and we'll be back.  
 8 MR. ROBINSON: All right  
 9 THE COURT: Why don't we start back up at like 10 after  
 10 MR. ROBINSON: Okay.  
 11 THE COURT: Okay?  
 12 (Whispered conversation)  
 13 THE COURT: Off record  
 14 (Off record)  
 15 THE COURT: Okay. We're back on record. Who did you  
 16 want to call, Mr. Leaders? Or Mr. Robinson, I'm sorry.  
 17 MR. ROBINSON: Mr. Wendell Jones  
 18 THE COURT: Okay.  
 19 (Whispered conversation)  
 20 THE COURT: Mr. Jones, if you'd raise your right hand.  
 21 (Oath administered)  
 22 MR. JONES: I do.  
 23 THE COURT: Okay. Please be seated.  
 24 MR. JONES: Thank you.

WENDELL L. JONES

1 A No, I've got probably -- I don't like the wolves any  
 2 more than anybody else out in this area.  
 3 Q Right.  
 4 A But -- because I mean if I look at this charge versus  
 5 this charge they're the same charge, so  
 6 Q Shouldn't be treated any differently in your mind?  
 7 A No  
 8 MR. LEADERS: Nothing further.  
 9 THE COURT: Anything else?  
 10 MR. ROBINSON: No.  
 11 THE COURT: Okay. Thank you, Mr. Zellers, you can go  
 12 back.  
 13 MR. ROBINSON: Before we get going again I think we're  
 14 going to need about a 10 minute break  
 15 THE COURT: At least. I have to get to the store because  
 16 I need to get some....  
 17 MR. ROBINSON: So why don't we take long enough to go to  
 18 the store and....  
 19 THE COURT: Get some diet Coke. And I'm going to  
 20 commandeering Trooper Gibbens and his vehicle to take me because  
 21 I don't have any transportation  
 22 MR. ROBINSON: All right.  
 23 THE COURT: All right, Trooper Gibbens?  
 24 TROOPER GIBBENS: Well, yeah.  
 25 MR. ROBINSON: You've been commandeered.

1 called as a witness on behalf of the defendant, testified as  
 2 follows on:  
 3 DIRECT EXAMINATION  
 4 THE COURT: Spell your first and last name for the  
 5 record, please.  
 6 A Wendell L. Jones, W-e-n-d-e-l-l, J-o-n-e-s.  
 7 THE COURT: Okay. Thank you, sir.  
 8 BY MR. ROBINSON:  
 9 Q Good evening, Mr. Jones. Where do you live?  
 10 A I live in Cordova, Alaska.  
 11 Q And how long have you lived there?  
 12 A Well, I first moved there in '76 and I moved to Soldotna  
 13 in about '84. Moved back to Cordova about '94.  
 14 Q And what is your occupation?  
 15 A I'm sorry?  
 16 Q What is your occupation?  
 17 A I'm a commercial fisherman.  
 18 Q (Coughing) Excuse me. How long have you been a  
 19 commercial fisherman?  
 20 A Since 1978.  
 21 Q What kind of commercial fisherman? (Indiscernible).  
 22 A I purseine, I gill net and I used to spot herring when  
 23 we had herring.  
 24 Q So when you were a purseiner or gill netter was that in  
 25 the salmon fisheries? Was that for salmon?



STATE OF ALASKA V DAVID HAEG 4MC-04-24 CR

Aurora Court Reporting

1 A Salmon, Salmon. I'm sorry, I don't hear well.  
 2 Q Okay. And what was in the salmon fisheries?  
 3 A Yes.  
 4 Q And where in the state did you do your salmon fishing?  
 5 A In Prince William Sound, and on the Copper River Delta.  
 6 Q Other than being a commercial fisherman have you had any  
 7 other occupations?  
 8 A Yes. I was a fish and wildlife protection officer for  
 9 five years and prior to that I was a commercial pilot,  
 10 prior to that I was an A&P mechanic. And prior to that  
 11 I was a kid.  
 12 Q What years were you a fish and wildlife enforcement  
 13 officer?  
 14 A From '73 to '73.  
 15 Q And where was that at?  
 16 A In Ketchikan and then in Cordova.  
 17 Q Are you still fishing commercially?  
 18 A Yes, I am.  
 19 Q Do you know the defendant in this case, David Haeg?  
 20 A Very well.  
 21 Q And how do you know him?  
 22 A Let's see. He was about 19, maybe 20 when he wanted Dan  
 23 France to build an airplane for him and Dan was busy so  
 24 Dan referred David to -- referred me to David  
 25 (indiscernible) to me. So he came and talked to me.

1 about this airplane that he wanted to build, and wanted  
 2 to know if I'd work with him on it. We made an  
 3 agreement and we went to work in the winter time. He  
 4 was commercial fishing during the summer and so was I,  
 5 so it was -- it took us a couple years to finish --  
 6 couple winters to finish it. And so I got to know him  
 7 very well.  
 8 Q All right. What kind of plane was this?  
 9 A This was the Batcub, the PA-12.  
 10 Q The PA-12, the airplane that we've all come to call in  
 11 this proceeding the Batman plane?  
 12 A Well, it's been redone since he and I did it, but, yes,  
 13 it's the same design, yes.  
 14 Q So how long has he had this plane?  
 15 A Since he was 20 years old, something like that. Well,  
 16 it took two years to build it, so -- let's see, so 22  
 17 and he's 38 now, aren't you, Dave?  
 18 MR. HAEG: (Indiscernible).  
 19 Q All right. So he's had it for quite some time?  
 20 A Oh, yeah.  
 21 Q Tell us the kind of -- other than the contacts you had  
 22 with him in building the plane, what other kind of  
 23 contacts have you had with David over the years?  
 24 A Well, in herring spotting he -- I took him over to the  
 25 Sound. He flew back seat for me for part of a season

1 and then there was a fatality in the herring fishery and  
 2 David took over that position, and was very successful.  
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 21 season -- trapping out of season. Despite your  
 22 knowledge of these convictions what do you think of Mr.  
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 24 A Well, I wasn't familiar with wolverine, I don't  
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 25 Governor Knowles. The -- the frustration level has been

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

DAVID HAEG )

Applicant )

v. )

STATE OF ALASKA )

POST-CONVICTION RELIEF  
CASE NO. 3HO-10-00064 CI

Trial Case No. 4MC-04-00024 CR

STATE'S OPPOSITION TO APPLICANT'S MOTION FOR  
CHANGE OF VENUE TO KENAI

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

COMES NOW the State of Alaska, by and through Assistant Attorney General Andrew Peterson and hereby files this opposition to the Applicant's motion for change of venue to Kenai or, if change of venue to Kenai is not granted, to "notice of Change of Judge" Daniel Schally. This opposition is supported by arguments of counsel and a proposed order.

DATED: November 8, 2010.

DANIEL S. SULLIVAN  
ATTORNEY GENERAL

This is to certify that a copy of the foregoing is being

mailed / filed / delivered to:

David Haeg

Andrew Peterson  
Assistant Attorney General  
Alaska Bar No. 0601002

[Signature] 11/8/10  
Signed 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 VALDEZ

DAVID HAEG )

Applicant )

v. )

STATE OF ALASKA )

POST-CONVICTION RELIEF  
CASE NO. 3HO-10-00064 CI

Trial Case No. 4MC-04-00024 CR

MEMORANDUM OF FACTS AND LAW IN SUPPORT OF STATE'S  
OPPOSITION TO APPLICANT'S MOTION FOR  
CHANGE OF VENUE TO KENAI

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In November 2009, Haeg filed this post conviction relief ("PCR") application in McGrath, which was the location of his underlying convictions. Haeg immediately filed a motion to disqualify Magistrate Woodmancy and for a change of venue to Kenai.<sup>1</sup> The State opposed Haeg's motion and requested that the matter be re-assigned to Judge Murphy in Homer who was the trial judge. The case was initially

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DEPARTMENT OF LAW  
OFFICE OF SPECIAL PROSECUTIONS AND APPEALS  
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assigned to Judge Funk in Fairbanks, but was then re-assigned to Judge Murphy. Haeg filed a motion to challenge Judge Murphy for cause which was ultimately granted. The Anchorage Superior Court re-assigned the matter to Judge Schally in Valdez.

### Argument

This Court should deny Haeg's motion to change venue of his PCR application to Kenai as convenience to the parties and/or expense are not factors to be considered in deciding venue for a PCR application. Additionally, this Court should deny Haeg's "Notice of Change of Judge" if this Court rules on his motion for change of venue.

The State will not oppose the re-assignment of this matter to Valdez. The State believes there are similarities between the venues of McGrath and Valdez that make Valdez an appropriate Venue selection. If this court is inclined to grant Hage's motion for change of venue, this Court should transfer the matter back to McGrath, which is the location of Haeg's underlying convictions.

Alaska Statute 12.72.030 says that PCRs "shall be filed . . . at the court location where the underlying criminal case is filed." Venue was appropriate in McGrath as this was the location Haeg committed his

---

(footnote continued ...)

<sup>1</sup> The State will not claim that Haeg used his only preempt against Magistrate Woodmancy given that Magistrate Woodmancy was not qualified to hear Haeg's PCR application.

Opposition to Motion for Change of Venue  
3HO-10-00064 CI

Page 2 of 4

underlying offenses. If this Court elects to change venue from Valdez, the only appropriate place in the State is McGrath, not Kenai. The convenience of the witnesses was not a factor in determining venue in the underlying criminal case and similarly it should not be a factor in determining venue in the PCR application.

Finally, this Court should deny Haeg's Notice of Change of Judge if Haeg proceeds with his motion for change of venue. Alaska Rules of Civil Procedure 42(c)(4) provides that a party waives the right to change a judge as a matter of right if that party knowingly participates before that judge in any judicial proceeding on the merits of the action. In this case, Haeg is asking this court to consider the merits of his claim for a change of venue, but in the alternative, he plans to file a change of judge. Haeg cannot have it both ways and should elect in advance of a ruling on his motion for change of venue if he wants to proceed with the change of venue motion or file his notice of change of judge.

Based on the above reasons, the State respectfully requests that this Court deny Haeg's motion for change of venue, or in the alternative, re-assign this matter to an appropriate judicial officer in McGrath. Finally, this court should also deny Haeg's notice for change of judge if Haeg proceeds with asking this Court to rule on his motion for

change of venue.

DATED November 8, 2010.

DANIEL S. SULLIVAN  
ATTORNEY GENERAL

By:



Andrew Peterson  
Assistant Attorney General  
Alaska Bar No. 0601002

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

This is to certify that a copy of the foregoing <sup>w/order</sup> is being  
~~mailed / faxed / delivered to:~~

David Haeg

[Signature] 11/8/10  
Signed Dated

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT VALDEZ

DAVID HAEG )

Applicant )

v. )

STATE OF ALASKA )

POST-CONVICTION RELIEF  
CASE NO. 3HO-10-00064 CI

\_\_\_\_\_  
Trial Case No. 4MC-04-00024 CR

Having considered the defendant's motion to change venue,  
the State's opposition and any response thereto,

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

Having considered the defendant's notice of change of judge,  
the State's opposition and any response thereto,

IT IS HEREBY ORDERED that the defendant's notice of  
change of judge is DENIED.

DONE at Valdez, Alaska, this \_\_\_\_\_ day of \_\_\_\_\_, 2010.

\_\_\_\_\_  
Judge Daniel Schally

**CIVIL DEFICIENCY MEMO**

**FROM:**

Alaska Court System  
3670 Lake St, Bld A  
Homer, AK 99603

DATE: November 10, 2010

CASE NO: 3HO-10-00064CI

CASE NAME: David S Haeg vs State of Alaska

CLERK: DTredway

**TO:**

DAVID S HAEG  
PO BOX 123  
SOLDOTNA, AK 99669

Your documents are being returned to you.

Please provide the information or items indicated below:

- Provide proof of service as required under Civil Rule 45(d).
- Other: We have received your Motion for Change of Venue but it is not the original. Please send the original signature page. Also there was no certificate of service on the State of Alaska District Attorney's Office.

Return this notice and all items requested to this office at the address shown above.

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

DAVID HAEG, )  
)  
Applicant, )  
)  
v. )  
)  
STATE OF ALASKA, )  
)  
Respondent. )  
)  
(Trial Case No. 4MC-04-00024CR)

~~FILED In the TRIAL COURTS  
State of Alaska  
at Valdez, Alaska  
NOV - 9 2010~~

POST-CONVICTION RELIEF  
Case No. 3HO-10-00064CI  
Filed in the Trial Courts  
State of Alaska Third Judicial District  
At Homer  
NOV 15 2010  
By Clerk of the Trial Courts  
Deputy

**11-3-10 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**

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

COMES NOW Applicant, DAVID HAEG, in the above referenced case and hereby requests a change of venue to Kenai or, if change of venue to Kenai is not granted, to "Notice of Change of Judge" Daniel Schally.

**Facts**

(1) On October 29, 2010 Haeg's PCR case was reassigned to Valdez Judge Daniel Schally after Judge Stephanie Joannides, assigned to review Judge Murphy's decision to hear Haeg's case, disqualified Judge Murphy for cause. (Haeg received notice of Judge Schally's assignment on November 2, 2010.)

(2) Haeg has over 20 material witnesses that are critical to his case.

- (3) Most witness names, substance of their testimony, and proof their testimony is material, is located in Haeg's PCR filings, in his filings to disqualify Judge Murphy for cause, or in Judge Joannides August 27, 2010 referral to the Alaska Commission on Judicial Conduct.
- (4) Not a single witness or party lives in Valdez; most, if not all, live more than 300 road miles from Valdez; and most live within 30 miles of Kenai.
- (5) Haeg lives 28 miles from Kenai and 463 miles by road from Valdez.
- (6) Roundtrip airfare to Valdez for the witnesses and Haeg ranges from \$394 to nearly \$1000.
- (7) Hotel rooms in Valdez average over \$100 per night.
- (8) Haeg estimates his PCR case will take 2 weeks to present and would cost approximately \$50,000 to conduct in Valdez.

### Law

#### AS 22.15.080. Change of Venue.

The court in which an action is pending shall change the place of trial of the action from one place to another place in the same judicial district or to a designated place in another judicial district when the court finds any of the following:

- (1) there is reason to believe that an impartial trial cannot be had;
- (2) the convenience of witnesses and the ends of justice would be promoted by the change;
- (3) the judge or magistrate is disqualified from acting, but if another judge or magistrate is assigned to try the action, no change of place of trial need be made;

(4) the defendant will be put to unnecessary expense and inconvenience, and if the court finds that the expense and inconvenience were intentionally caused, the court may assess costs against the plaintiff.

**Gulf Oil Corp. v. Gilbert**, 330 U.S. 501 (U.S. Supreme Court 1947)

In cases which touch the affairs of many persons, there is reason for holding the trial in their view and reach rather than in remote parts of the country where they can learn of it by report only. There is a local interest in having localized controversies decided at home.

#### **Civil Rule 42. Consolidation--Separate Trials--Change of Judge.**

(c) **Change of Judge as a Matter of Right.** In all courts of the state, a judge or master may be peremptorily challenged as follows:

(1) *Nature of Proceedings.* In an action pending in the Superior or District Courts, each side is entitled as a matter of right to a change of one judge and of one master. Two or more parties aligned on the same side of an action, whether or not consolidated, shall be treated as one side for purposes of the right to a change of judge, but the presiding judge may allow an additional change of judge to a party whose interests in the action are hostile or adverse to the interests of another party on the same side. A party wishing to exercise the right to change of judge shall file a pleading entitled "Notice of Change of Judge." The notice may be signed by an attorney, it shall state the name of the judge to be changed, and it shall neither specify grounds nor be accompanied by an affidavit.

(2) *Filing and Service.* The notice of change of judge shall be filed and copies served on the parties in accordance with Rule 5, Alaska Rules of Civil Procedure.

(3) *Timeliness.* Failure to file a timely notice precludes change of judge as a matter of right. Notice of change of judge is timely if filed before the commencement of trial and within five days after notice that the case has been assigned to a specific judge. Where a party has been served or enters an action after the case has been assigned to a specific judge, a notice of change of judge shall also be timely if filed by the party before the commencement of trial and within five days after a party appears or files a pleading in the action. If a party has moved to disqualify a judge for cause within the time permitted for filing a notice of change of judge,

such time is tolled for all parties and, if the motion to disqualify for cause is denied, a new five-day period runs from notice of the denial of the motion.

(4) *Waiver*. A party waives the right to change as a matter of right a judge who has been permanently assigned to the case by knowingly participating before that judge in:

(i) Any judicial proceeding which concerns the merits of the action and involves the consideration of evidence or of affidavits; or

(ii) A pretrial conference; or

(iii) The commencement of trial; or

(iv) If the parties agree upon a judge to whom the case is to be assigned. Such waiver is to apply only to the agreed upon judge.

(5) *Assignment of Action*. After a notice of change of judge is timely filed, the presiding judge shall immediately assign the matter to a new judge within that judicial district. Should that judge be challenged, the presiding judge shall continue to assign the case to new judges within the judicial district until all parties have exercised or waived their right to change of judge or until all superior court judges, or all district court judges, within the judicial district have been challenged peremptorily or for cause. Should all such judges in the district be disqualified, the presiding judge shall immediately notify the administrative director in writing and request that the administrative director obtain from the Chief Justice an order assigning the case to another judge.

### Discussion

Conducting Haeg's case in Valdez will cost Haeg tens of thousands of dollars. Conducting Haeg's PCR in Kenai, where there would be little to no transportation or hotel costs for Haeg and the majority of the witnesses, would cost a very small fraction. After being put out of business over 6 years ago Haeg cannot afford to conduct PCR in Valdez. Requiring Haeg to conduct PCR in Valdez is the same as denying Haeg a fair PCR proceeding and due process. This meets the AS

22.15.080(4) requirement of a changing venue if the defendant will be put to unnecessary expense and inconvenience.

Having the PCR in Kenai rather than Valdez would serve the convenience of most, if not all, witnesses. This meets the AS 22.15.080(2) requirement the convenience of witnesses and the ends of justice would be promoted by the change.

**“Notice of Change of Judge” Daniel Schally**

If, and only if, the court fails to change venue to Kenai, Haeg files “Notice of Change of Judge” Daniel Schally. This notice does not specify the grounds nor is accompanied by affidavit.

**Conclusion**

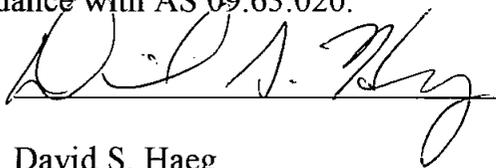
The amount and severity of judicial corruption already exposed in Haeg’s case is shocking. See PCR filings by both Haeg and State. But see especially Judge Joannides August 27, 2010 authentication and referral of evidence to the Alaska Commission on Judicial Conduct. This referral proves Judge Margaret Murphy, who conducted Haeg’s trial, and Trooper Brett Gibbens, who was the main trial witness against Haeg, conspired and lied to cover up their corruption of Haeg’s trial. Judge Joannides referral further proves that Judicial Conduct

investigator Marla Greenstein falsified her investigation of Judge Murphy to cover up for Judge Murphy and Trooper Gibbens' corruption.

Haeg's PCR will expose corruption far more shocking than the above. Conducting Haeg's PCR in remote Valdez, far from Alaska's population center where all parties and witnesses are and when there is no legitimate reason to do so, can only be meant to keep the corruption hidden.

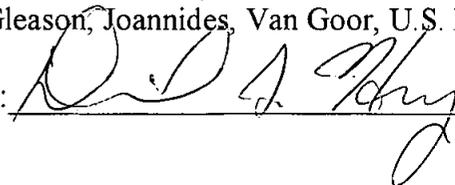
This is unacceptable.

I declare under penalty of perjury the forgoing is true and correct. Executed on November 3, 2010. A notary public or other official empowered to administer oaths is unavailable and thus I am certifying this document in accordance with AS 09.63.020.



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

**Certificate of Service:** I certify that on November 3, 2010 a copy of the forgoing was served by mail to the following parties: Peterson, Greenstein, Maassen, Murphy, Gleason, Joannides, Van Goor, U.S. Department of Justice, and media.

By: 

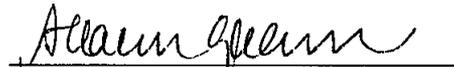
IN THE SUPERIOR COURT FOR THE STATE OF ALASKA  
THIRD JUDICIAL DISTRICT AT ALASKA

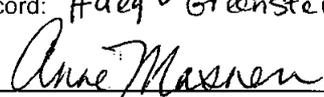
DAVIV HAEG, )  
 )  
 Plaintiff, )  
 v. )  
 )  
 STATE OF ALASKA, )  
 )  
 Defendant. )  
 \_\_\_\_\_ ) Case No. 3HO-10-00064 CI.

Notice of Reassignment

This case is administratively reassigned to Judge Daniel Schally, Superior Court Judge pro tem, for all purposes.

ENTERED this 29<sup>th</sup> day of October 2010 at Anchorage, Alaska.

  
SHARON L. GLEASON  
Presiding Judge  
Third Judicial District

I certify that on 11-1-10 a  
Copy of the above was mailed to the parties of  
Record: Haeg ✓ Greenstein ✓ MAASSEN ✓ PETERSON ✓  
JUDGE MURPHY ✓ JUDGE SCHALLY ✓  
  
\_\_\_\_\_  
Judicial Assistant

D

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)

**CONFIDENTIAL ORDER:**

- (1) SUPPLEMENTING ORDER GRANTING REQUEST FOR DISQUALIFICATION;
- (2) WITHDRAWING JULY 28, 2010 ORDER FOR INFORMATION FROM JUDICIAL CONDUCT COMMISSION; AND
- (3) REFERRING AFFIDAVITS TO COMMISSION FOR ITS CONSIDERATION

8.27.10

Order

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)

**SUPPLEMENT AND CORRECTION ORDER**

One of the issues raised by Haeg and addressed by this court is a claim regarding a missing letter. Haeg claims that

[i]n spite of his attorneys' counsel that it was not a legal defense and over his attorneys' (sic) objections that he do so, Haeg wrote a 16-page pretrial letter to the court detailing how, when, where, and why the SOA told and induced him to do exactly what he was charged with doing. [Exhibit 10] Long after trial, sentencing, and after it could be considered on appeal, Haeg's wife Jackie found that while evidence remained in the record proving it has been submitted, Haeg's letter evidencing the legal and "complete" defense that his attorneys told him was not a legal defense, was removed out of the court record. [Exhibit 13, TR, and AR]<sup>1</sup>

<sup>1</sup> Applicant's Memorandum and Affidavit in Support of David Haeg's Application for Post-Conviction Relief (November 30, 2009) at 35-36.

Haeg clarified in a July 9, 2010 status hearing that the “evidence remain[ing] in the record” was a faxed pleading sent to the court on November 8, 2004 entitled “Notice of Supplemental Letter for Sentencing Hearing.”<sup>2</sup>

A re-review of the electronic trial record revealed that notwithstanding Haeg’s trial counsel’s characterization of the Notice of Supplemental Letter for Sentencing Hearing as faxed for consideration at a November 9, 2004 “sentencing hearing,” Haeg’s November 9, 2004 hearing did not result in his sentencing as the parties were still resolving the terms of his change of plea.<sup>3</sup> Therefore, this court’s finding that there was no prejudice due to the letter being allegedly filed after Haeg’s conviction was incorrect. Notwithstanding this error by the court, the record does not support a finding of fault by Judge Murphy.<sup>4</sup>

DONE this 25th day of August 2010, at Anchorage, Alaska.

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  
[Signature]  
Judicial Assistant

Haeg  
Nassen  
Peterson  
AK Judicial

[Signature]  
Stephanie E. Joannides  
Superior Court Judge

<sup>2</sup> See also Haeg’s 7-25-10 Motion to Supplement the Case to Disqualify Judge Murphy for Cause (July 27, 2010) Ex. 2, Ex. 6 at p. 2.

<sup>3</sup> Haeg’s sentencing hearing took place approximately one year later, on September 29, 2005.

<sup>4</sup> As discussed in the July 28, 2010 Order Narrowing Scope, the pleading submitted two letters attesting to Haeg’s character, not Haeg’s explanatory letter. The faxed pleading appears to provide two additional letters to supplement the large quantity of letters submitted in the November 4, 2004 pleading, entitled Notice of Filing Letters for Sentencing Hearing, purportedly “for consideration during the sentencing in the above-captioned case scheduled before Magistrate Murphy in McGrath on November 9, 2004.”

ORDER FOR INFORMATION FROM J.C.C.

Case No. 3HO-10-00064 CI

Page 2 of 2

Brent R. Cole, Esq.  
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 HOMER**

DAVID HAEG, )  
)  
Plaintiff, )  
vs. )  
STATE OF ALASKA, )  
)  
Defendant. )

Case No.: 3HO-10-00064 CI

**ORDER QUASHING SUBPOENA**

Brent R. Cole, having moved for an order quashing the subpoena requiring his appearance at a hearing on August 25, 2010, at 9:30 am, and the court being advised,

IT IS ORDERED that the subpoena issued July 28, 2010, to Brent Cole is quashed. Mr. Cole is not required to appear at the hearing on August 25, 2010.

DATED this \_\_\_\_ day of \_\_\_\_\_, 2010, at Anchorage, Alaska.

*NOT USED 8.25.10*

Stephanie E. Joannides  
Superior Court Judge

*Lodged 8-25-10 MB*

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

CERTIFICATE OF SERVICE

This is to certify that on this 26 day of August, 2010,  
a true and correct copy of the foregoing document was

- Mailed
- Hand-delivered
- Faxed

to the following:

David Haeg  
P.O. Box 123  
Soldotna, AK 99669  
Fax: 907-262-8867



Brent R. Cole

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

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

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

FILED IN OPEN COURT  
8-25-10-113

IN THE DISTRICT COURT FOR THE STATE OF ALASKA  
THIRD JUDICIAL DISTRICT AT HOMER

DAVID HAEG, )  
)  
Plaintiff, )  
vs. )  
)  
STATE OF ALASKA, )  
)  
Defendant. )  
) Case No.: 3HO-10-00064 CI

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

Plaintiff David Haeg has given caused the attached Subpoena to Appear to be issued and served on Brent R. Cole, commanding him to appear at the hearing on August 25, 2010, at 9:30 am. Mr. Cole requests that the court quash the subpoena for the reasons set forth below.

The August 25 hearing has been confined to a narrow range of issues to be considered, pursuant to this court's order. Plaintiff fired Mr. Cole in November of 2004, so Mr. Cole was not part of the proceedings which are within the scope of the August 25 hearing.

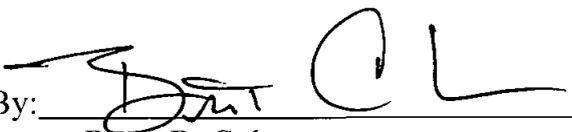
MARSTON & COLE, P.C.  
821 N Street, Suite 208  
Anchorage, Alaska 99501  
(907) 277-8001  
(907) 277-8002 fax

David Haeg commenced a fee arbitration against Mr. Cole in 2006, and the Fee Review Committee rendered its decision on August 25, 2006. *See Exhibit A*, attached. Mr. Haeg appealed the Fee Committee's decision to the Superior Court in Kenai, which affirmed the Committee's decision on June 15, 2007. *See Exhibit B*, attached. Mr. Haeg went on to appeal the decision of the Kenai Superior Court to the Alaska Supreme Court. The Supreme Court affirmed the Superior Court's ruling with one exception, to direct the superior court to delete the affirmative award of fees in favor of Mr. Cole as an award on a claim not submitted. *See Exhibit D*, attached. Mr. Haeg then petitioned for a rehearing on the Supreme Court's decision, which petition was denied. *See Exhibit E*, attached. 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. *See Exhibit F*, attached.

There are no issues left to litigate, and Mr. Cole cannot provide any information about contacts between the trial judge and the trooper. Therefore, the motion to quash should be granted.

DATED this 25<sup>th</sup> day of August, 2010, at Anchorage, Alaska.

MARSTON & COLE, P.C.

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

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

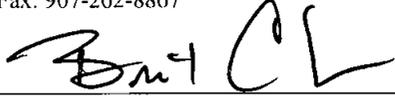
CERTIFICATE OF SERVICE

This is to certify that on this 25 day of August, 2010,  
a true and correct copy of the foregoing document was

- Mailed  
 Hand-delivered  
 Faxed

to the following:

David Haeg  
P.O. Box 123  
Soldotna, AK 99669  
Fax: 907-262-8867



Brent R. Cole

BEFORE THE ALASKA BAR ASSOCIATION

FEE REVIEW COMMITTEE

THIRD JUDICIAL DISTRICT



David S. Haeg, )  
 )  
 Petitioner, )  
 )  
 vs. )  
 )  
 Brent R. Cole, )  
 )  
 Respondent. )  
 \_\_\_\_\_ )

File No. 2006F007

SEP 18 2006

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

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

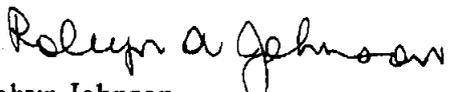
Mr. Cole conceded at the hearing that Mr. Haeg was mistakenly charged \$370 as reimbursement for a plane fare. The panel therefore finds, based on this admission, that the total fee charged Mr. Haeg should be reduced by \$370.

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

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

DAVID S. HAEG, )  
 )  
 Appellant, )  
 )  
 v. )  
 )  
 BRENT R. COLE, )  
 )  
 Appellee. )

RECEIVED  
JUN 19 2007  
MARSTON & COLE, P.C.

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.<sup>1</sup> The court is to give great deference to the arbitrator's findings of fact

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<sup>1</sup> Alaska Bar Rule 34(b).

and law, and is "loathe to vacate an award made by an arbitrator."<sup>2</sup> 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.<sup>3</sup> Further, the court cannot review the decision on its merits.<sup>4</sup> The court can only review the decision based on the reasons set forth in AS 09.43.120 through AS 09.43.180.<sup>5</sup> 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

---

<sup>2</sup> Butler v. Dunlap, 931 P.2d 1036, 1038 (Alaska 1997)(quoting Dept. Of Pub. Safety v. Public Safety Employees, 732 P.2d 1090, 1093 (Alaska 1987)).

<sup>3</sup> Breeze v. Sims, 778 P.2d 215, 217-18 (Alaska 1989).

<sup>4</sup> A. Fred Miller v. Purvis, 921 P.2d 610, 618 (Alaska 1996).

<sup>5</sup> Alaska Bar Rule 40(a)(2).

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.<sup>6</sup> 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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<sup>6</sup> 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 15<sup>th</sup> day of June, 2007.

<b>CERTIFICATION OF DISTRIBUTION</b>	
I certify that a copy of the foregoing was mailed/faxed to the following at their address of record:	
Date: <u>6-18-07</u>	Clerk: <u>NAFC</u> <u>COLE</u>

  
HAROLD M. BROWN  
Superior Court Judge

*Notice: This opinion is subject to correction before publication in the PACIFIC REPORTER. Readers are requested to bring errors to the attention of the Clerk of the Appellate Courts, 303 K Street, Anchorage, Alaska 99501, phone (907) 264-0608, fax (907) 264-0878, e-mail corrections@appellate.courts.state.ak.us.*

THE SUPREME COURT OF THE STATE OF ALASKA

DAVID S. HAEG, )  
 ) Supreme Court No. S-12771  
 Appellant, )  
 ) Superior Court No. 3KN-06-844 CI  
 v. )  
 ) OPINION  
 BRENT R. COLE, )  
 ) No. 6334 – January 30, 2009  
 Appellee. )  
 )  
 \_\_\_\_\_ )

Appeal from the Superior Court of the State of Alaska, Third Judicial District, Kenai, Harold M. Brown, Judge.

Appearances: David S. Haeg, pro se, Soldotna. Brent R. Cole, pro se, Anchorage.

Before: Fabe, Chief Justice, Matthews, Eastaugh, Carpeneti, and Winfree, Justices.

PER CURIAM

David Haeg appeals the decision of the superior court that affirmed an arbitration award regarding fees charged by Haeg’s former attorney, Brent Cole. Haeg hired Cole to represent him in a criminal case and paid for most of Cole’s services. When plea negotiations broke down, Haeg fired Cole and refused to pay the outstanding balance of Cole’s fee. Haeg hired another attorney, went to trial, and lost. Haeg then filed a fee arbitration proceeding with the Alaska Bar Association, arguing that Cole’s services were defective and that Cole should return the fees Haeg had paid. The

arbitration panel decided in Cole's favor and awarded Cole the fees still outstanding. Haeg appealed to the superior court. The superior court modified the amount of the award to remedy a clerical error and otherwise affirmed the panel's decision. Haeg now appeals the superior court's decision to this court. With one exception, we affirm the decision of the superior court for the reasons expressed in the written decision of the superior court.<sup>1</sup>

The exception concerns the arbitration panel's affirmative award to Cole of fees still due him. This amount, as corrected by the superior court, was \$1,689.19. Under the Revised Uniform Arbitration Act applicable in Alaska, a reviewing court is required to modify or correct an award if the arbitrator has made the award on a claim not submitted to the arbitrator.<sup>2</sup> This statute is applicable to attorney fee arbitration awards under Alaska Bar Rule 40(t).<sup>3</sup> Cole did not present a claim for unpaid fees to the arbitration panel. The award to him of unpaid fees was therefore an award on a claim not submitted.<sup>4</sup> On remand we direct that the order of the superior court be modified by deleting the affirmative award of fees in favor of Cole.

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<sup>1</sup> The superior court's decision is appended.

<sup>2</sup> AS 09.43.510(a)(2).

<sup>3</sup> Alaska Bar Rule 40 implies that only questions submitted should be decided. In relevant part, Bar Rule 40(q) states: "The decision will be in writing . . . the decision will include . . . the findings of the arbitrator or panel on all issues and questions submitted which are necessary to resolve the dispute." Alaska Bar R. 40(q)(3).

<sup>4</sup> Haeg's petition for arbitration sought only the fees he had already paid Cole and stated that Cole did not seek any further payments from Haeg. Cole confirmed to the arbitration panel that he was not seeking unpaid fees. At one point in the proceedings members of the panel told Haeg that "the only subject here is . . . [t]he fee that you've already paid." We note that at oral argument before this court Cole also waived any interest in an affirmative recovery.

For these reasons the decision of the superior court is MODIFIED in one respect and as so modified, the decision is AFFIRMED. This case is REMANDED with directions to the superior court to modify the decision in accordance with this opinion.

APPENDIX

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.

## APPENDIX

### 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

## APPENDIX

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.<sup>1</sup> The court is to give great deference to the arbitrator's findings of fact and law, and is "loathe to vacate an award made by an arbitrator."<sup>2</sup> 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.<sup>3</sup> Further, the court cannot review the decision on its merits.<sup>4</sup> The court can only review the decision based on the reasons set forth in AS 09.43.120 through AS 09.43.180.<sup>5</sup> 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).

---

<sup>1</sup> Alaska Bar Rule 34(b).

<sup>2</sup> 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)).

<sup>3</sup> Breeze v. Sims, 778 P.2d 215, 217-18 (Alaska 1989).

<sup>4</sup> A. Fred Miller v. Purvis, 921 P.2d 610, 618 (Alaska 1996).

<sup>5</sup> Alaska Bar Rule 40(a)(2).

## APPENDIX

### 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 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

## APPENDIX

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 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.

## APPENDIX

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

## APPENDIX

if the panel made gross errors in their decision.<sup>6</sup> 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 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

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<sup>6</sup> Alaska State Housing Authority v. Riley Pleas, Inc., 586 P.2d 1244, 1247 (Alaska 1978).

## APPENDIX

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

**In the Supreme Court of the State of Alaska**

David S. Haeg,

Appellant,

v.

Brent R. Cole,

Appellee.

Supreme Court No. S-12771

**Order**

Petition for Rehearing

Date of Order: 2/23/2009

Trial Court Case # **3KN-06-00844CI**

Before: Fabe, Chief Justice, and Matthews, Eastaugh, Carpeneti, and Winfree, Justices

RECEIVED

FEB 24 2008

On consideration of the Petition for Rehearing filed August 27, 2007, **BROWN & COLE, P.C.**

**IT IS ORDERED:**

The Petition for Rehearing is **DENIED**.

Entered by the direction of the court.

Clerk of the Appellate Courts

*Marilyn May*  
Marilyn May

cc: Supreme Court Justices  
Judge Brown  
Trial Court Clerk / Kenai  
Publishers for Opinions (Opinion # 6334, 1/30/2009)

Distribution:

David Haeg  
PO Box 123  
Soldotna AK 99669

Brent Cole  
821 N Street Ste 208  
Anchorage AK 99501

Supreme Court of the United States  
Office of the Clerk  
Washington, DC 20543-0001

William K. Suter  
Clerk of the Court  
(202) 479-3011

October 5, 2009

Mr. Brent Richard Cole  
Marston & Cole, P.C.  
821 N St., Suite 208  
Anchorage, AK 99501

Re: David S. Haeg  
v. Brent R. Cole  
No. 08-1440

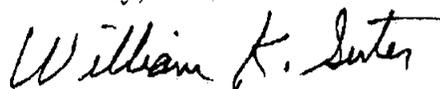
RECEIVED  
OCT 09 2009  
MARSTON & COLE, P.C.

Dear Mr. Cole:

The Court today entered the following order in the above-entitled case:

The petition for a writ of certiorari is denied.

Sincerely,



William K. Suter, Clerk

Brent R. Cole, Esq.  
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 HOMER**

DAVID HAEG, )  
)  
Plaintiff, )  
vs. )  
)  
STATE OF ALASKA, )  
)  
Defendant. )

Case No.: 3HO-10-00064 CI

**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 \_\_\_\_ day of \_\_\_\_\_, 2010, at Anchorage, Alaska.

**NOT USED**

\_\_\_\_\_  
Stephanie E. Joannides  
Superior Court Judge

lodged 8-25-10-103  
MARSTON & COLE, P.C.  
821 N Street, Suite 208  
Anchorage, Alaska 99501  
(907) 277-8001  
(907) 277-8002 fax

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

CERTIFICATE OF SERVICE

This is to certify that on this 25<sup>th</sup> day of August, 2010,  
a true and correct copy of the foregoing document was

- Mailed  
 Hand-delivered  
 Faxed

to the following:

David Haeg  
P.O. Box 123  
Soldotna, AK 99669  
Fax: 907-262-8867

  
Karin Gustafson 

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

FILED IN OPEN COURT  
8-25-10-NB

IN THE DISTRICT COURT FOR THE STATE OF ALASKA  
THIRD JUDICIAL DISTRICT AT HOMER

DAVID HAEG, )  
)  
Plaintiff, )  
vs. )  
STATE OF ALASKA, )  
)  
Defendant. )

Case No.: 3HO-10-00064 CI

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

**AFFIDAVIT OF COUNSEL IN SUPPORT OF  
MOTION FOR EXPEDITED CONSIDERATION**

STATE OF ALASKA )  
) ss  
THIRD JUDICIAL DISTRICT )

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

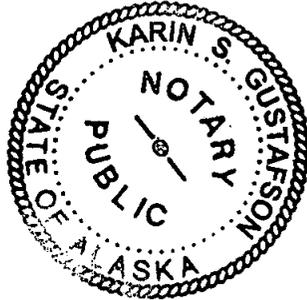
1. On August 20, 2010, I wrote to Mr. Haeg and advised him I had read the court's recent order limiting his inquiry to Judge Murphy's contacts with Trooper Gibbons during his trial, a trial I was not involved in. See Exhibit C, attached. I told Mr. Haeg that I would be filing a motion to quash the subpoena if he did not respond letting me know he was withdrawing his subpoena.

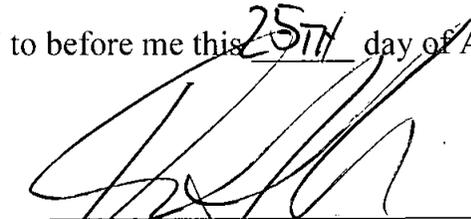
MARSTON & COLE, P.C.  
821 N Street, Suite 208  
Anchorage, Alaska 99501  
(907) 277-8001  
(907) 277-8002 fax

2. I have no information about contacts between Judge Murphy and Trooper Gibbons during the trial because I was not Mr. Haeg's attorney at that time.

  
Brent R. Cole

SUBSCRIBED AND SWORN to before me this 25<sup>th</sup> day of August, 2010.



  
Notary Public in and for Alaska  
My commission expires: 8-14-10

CERTIFICATE OF SERVICE

This is to certify that on this 25 day of August, 2010,  
a true and correct copy of the foregoing document was

- Mailed
- Hand-delivered
- Faxed

to the following:

David Haeg  
P.O. Box 123  
Soldotna, AK 99669  
Fax: 907-262-8867

  
Karin Gustafson  


LAW OFFICES OF

**MARSTON & COLE, P.C.**

ERIN B. MARSTON

BRENT R. COLE

[bcole@marstoncole.com](mailto:bcole@marstoncole.com)

821 N STREET, SUITE 208

ANCHORAGE, ALASKA 99501-2136

TELEPHONE (907) 277-8001

TELECOPIER (907) 277-8002

August 20, 2010

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

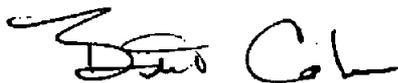
Re: Subpoena  
Our File No. 1037.001

Dear Mr. Haeg:

I have received your subpoena for the hearing on August 25, 2010. I have also reviewed the Court's recent order limiting your inquiry to Judge Murphy's contacts with Trooper Gibbons during your trial. As you know, I was not your attorney during your trial and therefore I have no testimony to give on this subject. Please withdraw the subpoena requiring my appearance at the hearing. I will then send you back the uncashed check. Please be advised that if I don't receive a response to this request by noon on Monday, August 23, 2010, I intend to file a motion on shortened time to quash the subpoena. Thank you for your time and attention to this matter.

Very truly yours,

MARSTON & COLE, P.C.



Brent R. Cole

BRC/ksg

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

FILED IN OPEN COURT  
8-29-10-MB

**IN THE DISTRICT COURT FOR THE STATE OF ALASKA  
THIRD JUDICIAL DISTRICT AT HOMER**

DAVID HAEG, )  
)  
Plaintiff, )  
vs. )  
STATE OF ALASKA, )  
)  
Defendant. )

Case No.: 3HO-10-00064 CI

**MOTION FOR EXPEDITED CONSIDERATION  
OF MOTION TO QUASH SUBPOENA**

Brent R. Cole, by and through counsel, Marston & Cole, P.C., move for expedited consideration of his Motion to Quash Subpoena. Mr. Cole requests his motion be decided on an expedited basis because the hearing is today. This motion is supported by the attached Affidavit of Counsel.

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

DATED this 25<sup>th</sup> day of August, 2010, at Anchorage, Alaska.

MARSTON & COLE, P.C.

By: 

Brent R. Cole

AK State Bar No. 8606074

CERTIFICATE OF SERVICE

This is to certify that on this 25<sup>th</sup> day of August, 2010,  
a true and correct copy of the foregoing document was

- Mailed
- Hand-delivered
- Faxed

to the following:

David Haeg  
P.O. Box 123  
Soldotna, AK 99669  
Fax: 907-262-8867

  
Karin Gustafson

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

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

FILED IN OPEN COURT

8-25-10-113

Attorneys for Brent R. Cole

**IN THE DISTRICT COURT FOR THE STATE OF ALASKA**

**THIRD JUDICIAL DISTRICT AT HOMER**

DAVID HAEG, )  
 )  
 Plaintiff, )  
 vs. )  
 )  
 STATE OF ALASKA, )  
 )  
 Defendant. )

Case No.: 3HO-10-00064 CI

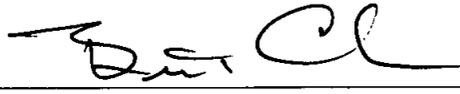
**MOTION TO QUASH SUBPOENA**

Brent R. Cole, by and through his attorneys of records, Marston & Cole, P.C., moves to quash the subpoena to Brent Cole which commands his appearance on August 25, 2010, at 9:30 am. The reasons for this motion are more fully set forth in the memorandum filed herewith.

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

DATED this 25 day of August, 2010, at Anchorage, Alaska.

MARSTON & COLE, P.C.

By: 

Brent R. Cole

AK State Bar No. 8606074

**CERTIFICATE OF SERVICE**

This is to certify that on this 25 day of August, 2010,  
a true and correct copy of the foregoing document was

- Mailed  
 Hand-delivered  
 Faxed

to the following:

David Haeg  
P.O. Box 123  
Soldotna, AK 99669  
Fax: 907-262-8867



Karin Gustafson

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 ANCHORAGE

DAVID S. HAEG, )  
 )  
 Applicant, )  
 )  
 vs. )  
 )  
 STATE OF ALASKA, )  
 )  
 Respondent. )

Case No. 4MC-09-00005 CI  
In Connection w/4MC-04-024 CR

ORDER GRANTING MOTION FOR EXPEDITED CONSIDERATION

This matter having come before this court, and the court being fully advised  
in the premises,

**IT IS ORDERED** that the State's Motion to Quash the subpoena  
issued to Mr. Leaders will be considered on an expedited basis. Mr. Haeg shall  
file his opposition, if any, on or before August 19, 2010 at 4:30 p.m. This court  
will issue its order on or before August 20, 2010 at 3:00 p.m. in order to allow Mr.  
Leaders to give the Kenai court advance notice of this court's ruling.

**ENTERED** at Anchorage, Alaska this 24<sup>th</sup> day of August

2010.

[Signature]  
SUPERIOR COURT JUDGE

AUG 17 2010

*Mook in  
order of court's  
motion granting  
recusal request, separate  
order granting disqualification  
is being issued*

*Haeg  
Mossen  
Leaders*

I certify that on 8-24-10 a copy  
of this order was mailed/faxed/handed to  
each of the following at their address of record  
[Signature]  
Judicial Assistant

D1163

01106

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

FAX TRANSMITTAL

This facsimile transmission may contain privileged or confidential information intended only for the use of the individual or entity named below. If you are not the intended recipient, be aware that any disclosure, copying, distribution or use of the contents of this transmission is prohibited. If you have received this communication in error, please notify us immediately by telephone (collect if necessary) and destroy all parts of transmission. Thank you for your cooperation.

TO: David Haeg  
FAX #: (907) 262.8867

TO: Peter Massen  
FAX #: (907) 258.8751

TO: Andrew Peterson  
FAX: (907) 269.6270 7939

FROM: Stephanie Joannides, Superior Court Judge  
(907) 264-0430  
Fax #: (907) 264-0518

SUBJECT: 3AHO-10-64 CI

DATE: August 24, 2010

NUMBER OF PAGES INCLUDING THIS ONE: 6

MESSAGE: Please call if you experience problems with this transmission.

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

DAVID HAEG

Plaintiff,

vs.

STATE OF ALASKA,

Defendants.

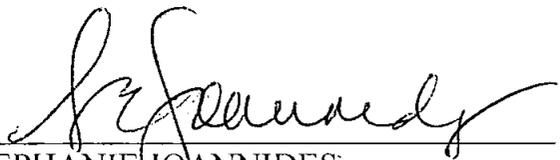
Case No. 3HO-10-00064 CI

**ORDER RE MOTION TO QUASH**

Judge Margaret L. Murphy and Magistrate David Woodmancy having moved to quash the subpoenas requiring their appearance as witnesses at a hearing before this court on August 25, 2010, and the court having considered their motion and any opposition to it,

IT IS ORDERED that the motion be and hereby is GRANTED [in part.] The subpoenas are quashed. [The witnesses may appear telephonically pursuant to Civil Rule 99.]

DATED: 8-24-10

  
STEPHANIE JOANNIDES  
Superior Court Judge

*Moot in light of court's granting of recusal request. Witnesses need not appear. Order granting disqualification is being issued.*

Haeg v. State of Alaska  
Case No. 3HO-10-00064 CI  
ORDER GRANTING MOTION TO QUASH SUBPOENAS

AUG 17 2010

INGALDSON,  
MAASSEN &  
FITZGERALD, P.C.  
Lawyers  
813 W. 3<sup>rd</sup> Avenue  
Anchorage, Alaska  
99501-2001  
(907) 258-8750  
FAX: (907) 258-8751

DH/63

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

DAVID HAEG

Plaintiff,

vs.

STATE OF ALASKA,

Defendants.

Case No. 3HO-10-00064 CI

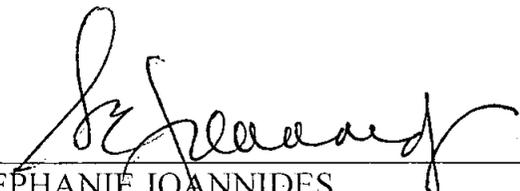
**ORDER GRANTING EXPEDITED CONSIDERATION**

Judge Margaret L. Murphy and Magistrate David Woodmancy having moved for expedited consideration of their Motion to Quash Subpoenas or Alternatively to Allow Telephonic Testimony, and good cause appearing for the motion,

IT IS ORDERED that the motion be and hereby is GRANTED. Any opposition to the Motion to Quash shall be filed no later than 9:00 a.m. on Friday, August 20, 2010.

DATED:

8-23-10

  
STEPHANIE JOANNIDES  
Superior Court Judge

*Mook -  
Opposition  
filed*

AUG 17 2010

INGALDSON,  
MAASSEN &  
FITZGERALD, P.C.  
Lawyers  
813 W. 3<sup>rd</sup> Avenue  
Anchorage, Alaska  
99501-2001  
(907) 258-8750  
FAX: (907) 258-8751

*Haeg v. State of Alaska*  
Case No. 3HO-10-00064 CI  
ORDER GRANTING EXPEDITED CONSIDERATION

D 10/102

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on 18 day of August, 2010, a copy of the foregoing was sent to the following via:

- U.S. mail and e-mail
- Hand-delivery
- Fax
- Federal Express

David Haeg  
Pro Se  
10 Box 123  
Soldotna, AK 99664

A. Andrew Peterson  
Assistant A.G.  
Dept of Law - Criminal Division  
310 K Street, Suite 308  
Anchorage, AK 99501

*[Handwritten signature]*

F:\W\2116.006\Pleadings\Mtn to Quash\order granting expedited consideration.doc

*Haeg  
Maassen  
Peterson*

*I certify that on 8-24-10 a copy of the above was mailed/handed to each of the following at their address of record*

Judicial Assistant

INGALDSON,  
MAASSEN &  
FITZGERALD, P.C.  
Lawyers  
813 W. 3<sup>rd</sup> Avenue  
Anchorage, Alaska  
99501-2001  
(907) 258-8750  
FAX: (907) 258-8751

*Haeg v. State of Alaska*  
Case No. 3HO-10-00064 CI  
ORDER GRANTING EXPEDITED CONSIDERATION

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

FILED  
STATE OF ALASKA  
THIRD DISTRICT  
2010 AUG 18 PM 2:17  
CLERK TRIAL COURTS  
BY: \_\_\_\_\_  
DEPUTY CLERK

DAVID HAEG

Plaintiff,

vs.

STATE OF ALASKA,

Defendants.

Case No. 3HO-10-00064 CI

**AFFIDAVIT IN SUPPORT OF  
MOTION FOR EXPEDITED CONSIDERATION**

STATE OF ALASKA )  
 ) ss.  
THIRD JUDICIAL DISTRICT )

Peter J. Maassen, being duly sworn, deposes and says:

1. I am the attorney of record for District Court Judge Margaret L. Murphy and Magistrate David Woodmancy. Both of these judicial officers have been subpoenaed to appear as witnesses for the applicant, David Haeg, at a hearing scheduled in Anchorage on August 25, 2010, at 9:30 a.m.

2. If required to appear at all, the convenience of the witnesses and of the Court System as their employer would be best served if they could appear telephonically. Their appearance in person will require advance travel arrangements, major adjustments to their work schedules, and, in the case of Magistrate Woodmancy, a likely overnight stay in Anchorage. Magistrate Woodmancy has a jury trial scheduled to begin on

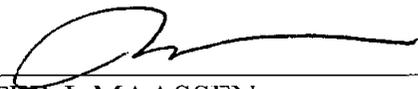
INGALDSON,  
MAASSEN &  
FITZGERALD, P.C.  
Lawyers  
813 W. 3<sup>rd</sup> Avenue  
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*Haeg v. State of Alaska*  
Case No. 3HO-10-00064 CI  
AFFIDAVIT IN SUPPORT OF  
MOTION FOR EXPEDITED CONSIDERATION

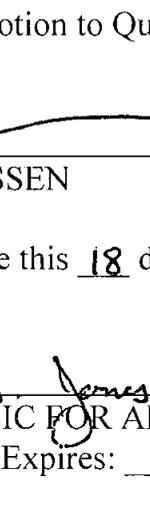
August 23 and needs to know whether jurors should be summoned. For these logistical reasons, it would be best to have a decision of the underlying Motion to Quash no later than noon on Friday, August 20, so that these arrangements can be made if necessary.

3. I have spoken to the attorney for the State of Alaska, Andrew Peterson, and he informs me that the State does not object to this Motion for Expedited Consideration or to the alternative forms of relief requested in the underlying Motion to Quash.

4. I understand that the applicant, Mr. Haeg, is on vacation. I e-mailed him this morning and informed him of my intent to file these motions. I have not yet received a reply. However, given his response to the State's motion to quash the subpoena of Scot Leaders (filed August 17, 2010), I believe it is safe to assume that Mr. Haeg opposes both expedited consideration and the underlying Motion to Quash.

  
\_\_\_\_\_  
PETER J. MAASSEN

SUBSCRIBED AND SWORN TO before me this 18 day of August, 2010.

  
\_\_\_\_\_  
NOTARY PUBLIC FOR ALASKA  
My Commission Expires: 10/24/11

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on 18 day of August, 2010, a copy of the foregoing was sent to the following via:

- U.S. mail and email
- Hand-delivery
- Fax
- Federal Express

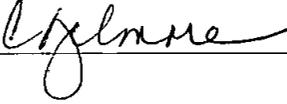
INGALDSON,  
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*Haeg v. State of Alaska*  
Case No. 3HO-10-00064 CI  
AFFIDAVIT IN SUPPORT OF  
MOTION FOR EXPEDITED CONSIDERATION



David Haeg  
Pro Se  
10 Box 123  
Soldotna, AK 99664

A. Andrew Peterson  
Assistant A.G.  
Dept of Law - Criminal Division  
310 K Street, Suite 308  
Anchorage, AK 99501



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MAASSEN &  
FITZGERALD, P.C.  
Lawyers  
813 W. 3<sup>rd</sup> Avenue  
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*Haeg v. State of Alaska*  
Case No. 3HO-10-00064 CI  
AFFIDAVIT IN SUPPORT OF  
MOTION FOR EXPEDITED CONSIDERATION



District Judge. Haeg's attorneys and Zellers attorney, Kevin Fitzgerald, worked closely together to defend Haeg and Zellers, using the same tactics.

After conviction and appeal Haeg filed for Post-Conviction Relief, claiming the attorneys and Judge Murphy had denied him a fair proceedings, trial, and sentencing. Judge Murphy herself was assigned to hear Haeg's PCR case.

On 3-9-10 Haeg filed a motion to disqualify Judge Murphy for cause.

On 4-23-10 Judge Murphy denied Haeg's motion to disqualify herself.

On 4-30-10 Judge Joannides was assigned to review Judge Murphy's refusal to disqualify herself.

On 5-2-10 Haeg filed for an evidentiary hearing, specifically requesting Judge Murphy's testimony, on Judge Murphy's refusal to disqualify herself.

On 6-25-10 Judge Joannides set a Scheduling Conference for 7-9-10, when, after discussing any conflicts of the parties and witnesses, the date of the evidentiary hearing specifically concerning Judge Murphy would be set.

On 6-29-10 and 7-1-10, just prior to the 7-9-10 Scheduling Conference, Haeg contacted both Judge Murphy and Magistrate Woodmancy to see what dates would be acceptable for them to testify in person at the evidentiary hearing. Judge Murphy and Magistrate Woodmancy responded that Haeg should set the date he wished for the evidentiary hearing, subpoena them to testify, and they would adjust their schedules around the date their testimony was required.

On 7-9-10 Judge Joannides, after hearing and discussing these facts, ruled Judge Murphy could be subpoenaed and set the evidentiary hearing for 8-25-10 and 8-26-10.

On 7-28-10 Haeg subpoenaed Judge Murphy and Magistrate Woodmancy to the 8-25-10 hearing.

On 8-21-10 @ 9:22 AM Haeg, on vacation in Idaho, received the following email from Peter Maassen (see attached complete copy), to which Haeg immediately replied:

Mr. Maassen,

I do object to the quashing of the subpoenas or to telephonic testimony. I also object to your law firm representing anyone related to this proceeding or case. One of the named partners of your firm, Kevin Fitzgerald, represented my co-defendant, Tony Zellers, in the same case and in the same manner my attorneys represented me. As I prove my sellout by Judge Murphy and my attorneys so will proof be developed of Zellers sellout by Judge Murphy and Fitzgerald. Because of this your law firm will have a compelling reason to protect itself at the expense of anyone it represents in this proceeding or case. This precludes anyone, such as yourself, from representing anyone in this proceeding or case.

As I am on vacation and unable to put this into a proper opposition to the court I respectfully ask you include this objection in your motion to the court.

Sincerely,

David Haeg

Mr. Haeg,

>

>

>

>

> I'm sorry to have to interrupt your vacation. I'm an  
> attorney in Anchorage and I've been asked to respond to the subpoenas  
> you have had served on Judge Murphy and Magistrate Woodmancy for next  
> week's hearing. I'll be filing a motion later today to quash the  
> subpoenas or, at least, to allow the judge and the magistrate to testify  
> telephonically. I'll also ask that my motion be heard on an expedited  
> basis.

>

>  
>  
> Given your response to Andrew Peterson with regard to  
> the Leader subpoena, I assume that you object to expedited consideration  
> and to telephonic testimony -- is that right? I would like to inform  
> Judge Joannides of your position.

>  
>  
>  
> Thank you.

>  
>  
> Peter Maassen  
> Ingaldson, Maassen & Fitzgerald

On 8-21-10 @ 11 PM Haeg arrived home from Idaho and found, in his mail, a motion signed on 8-18-10 from attorney Peter Maassen, of the firm Ingaldson, Maassen, and Fitzgerald, to quash the subpoenas for Judge Murphy and Magistrate Woodmancy, giving Haeg until 9 AM August 20, 2010 in which to respond. In other words attorney Maassen wrote a motion and then asks to give Haeg less than 2 days to receive the motion, write an opposition, and to then get the opposition into Judge Joannides hands.

#### **Attorney Peter Maassen's Conflict of Interest**

As Haeg's email states, attorney Peter Maassen, of the firm Ingaldson, Maassen, and Fitzgerald, has a direct conflict of interest that prevents him from representing anyone during Haeg's upcoming evidentiary hearing or PCR proceeding. Attorney Kevin Fitzgerald, a named partner of attorney Maassen's law firm, represented Haeg's co-defendant Tony Zellers in the same deficient way Haeg's attorneys represented Haeg. The same exact case, as it is being made against Haeg's attorneys, is being made against Fitzgerald. Fitzgerald is also a

named and material witness in Haeg's PCR application/memorandum. See pages 10 and 14 of Haeg's PCR application and pages 8, 14, 15, 21, and 31 of the memorandum.

Attorney Maassen will have a compelling interest to protect his law firm at the expense of anyone else he represents in this proceeding or case.

**Haeg's Right to Compel Judge Murphy and Magistrate Woodmancy to Testify in Person**

**I**

Haeg has a specific constitutional right to a compulsory process for obtaining witnesses in his favor.

The primary issue to be decided at this evidentiary hearing is whether Judge Murphy testified falsely to the Alaska Commission on Judicial Conduct in response to Haeg's complaint that Trooper Gibbens chauffeured her during Haeg's case. This is in direct contrast to attorney Maassen's claim that the issue is about whether or not it was permissible for Judge Murphy to ride with Trooper Gibbens during Haeg's case, and that since Haeg's complaint was "dismissed" his concerns are moot. While some apparently think it acceptable for the judge of a trial (but probably not if it were their trial) to be chauffeured by the prosecution's main witness, no one would think it acceptable for the judge to testify falsely during the official investigation into the chauffeuring. As prosecutor Andrew Peterson aptly

put it on the record during the 7-9-10 scheduling hearing, “this may be a career ender for Judge Murphy.”

Haeg is not claiming Judge Murphy is a witness to some act by a third party; Haeg is claiming Judge Murphy is the knowing, voluntary, and/or malicious perpetrator of an act so egregious that by itself it would likely overturn Haeg’s conviction and destroy her career; proving she has an overwhelming and undeniable interest in preventing a fair hearing of Haeg’s PCR. In response to attorney Maassen’s additional claims, (1) it is indisputable Judge Murphy possesses factual knowledge, (2) that knowledge is highly pertinent to the fact finders task, and (3) Judge Murphy is the only possible source on whether she knowingly, voluntarily, and/or maliciously committed the act. And, as Haeg’s PCR judge will be incredibly critical to the success or failure of Haeg’s PCR, he must be allowed to exercise his constitutional right to compel Judge Murphy’s testimony about her own acts, unless and until she exercises her right against self-incrimination.

Similarly, Haeg is not just asking Magistrate Woodmancy about what he observed; Haeg is asking what Magistrate Woodmancy did himself.

## II

Citing Ciarlone v. City of Reading, Attorney Maassen claims that “[I]t is imperative when [a judge] is called to testify as to action taken in [her] judicial capacity, to carefully scrutinize the grounds set forth for requiring [her] testimony.”

None of the actions Haeg wishes to question Judge Murphy or Magistrate Woodmancy about were taken in their judicial capacity – eliminating this scrutiny.

Judge Murphy was not acting a judicial capacity when being chauffeured by Trooper Gibbens nor was she acting in a judicial capacity when she testified falsely to the Alaska Commission on Judicial Conduct.

Magistrate Woodmancy was not a magistrate during most of the time Haeg wishes to question him about and thus could not have been acting in a judicial capacity then. And the actions Magistrate Woodmancy took when he was a magistrate, that Haeg wishes to question him about, were not taken in his judicial capacity (asking Trooper Gibbens to chauffeur him and being turned down because of all the trouble Gibbens got into the last time).

### III

Attorney Maassen claims Haeg's questions for Magistrate Woodmancy "apparently focuses on a brief exchange between the magistrate and Trooper Gibbens on August 15, 2006...", that this is "not highly pertinent" and is a "highly collateral subject." This is untrue. Magistrate Woodmancy, before he was a magistrate, was present during Haeg's 2005 prosecution in McGrath and thus is a material and direct witness.

### IV

Attorney Maassen claims that Judge Murphy and Magistrate Woodmancy's "judicial duties" and "cost ... of travel" preclude either from testifying in person. Just prior to the scheduling conference Haeg contacted both to find dates on which

they could testify in person without conflicting with their “judicial duties”. Both replied Judge Joannides should set any date she wished and that they would work around it. It is plainly unfair to now allow Judge Murphy or Magistrate Woodmancy, in order to avoid testifying in person, to claim the date set will interfere with their “judicial duties”. They very clearly waived any right to this claim when they refused to provide acceptable dates and stated they would just adjust their schedules around any date set.

As for the cost of travel, Haeg has already provided advance payment to each for actual travel costs.

#### V

Attorney Maassen claims that since this is a “preliminary hearing” Judge Murphy and Magistrate Woodmancy should be allowed to testify telephonically, even though Maassen admits “[the Supreme Court] has concluded that live testimony may be required where credibility of the licensee or witness is at issue.”

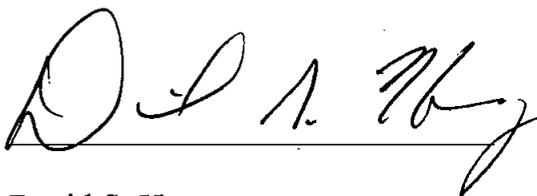
For Haeg this is anything but a “preliminary hearing.” It is the last hearing at which he may prevent Judge Murphy from presiding over his PCR, by proving Judge Murphy lied during an official investigation into her actions and will sabotage Haeg’s PCR proceeding in order to keep this “career ender” covered up.

That Judge Murphy’s credibility will be at issue, requiring live testimony, is a forgone conclusion. The hearing is specifically focused on her credibility.

Conclusion

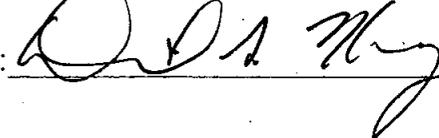
In light of the above Haeg respectfully asks this court to deny Peter Maassen from representing anyone currently involved in this proceeding and to deny the motion to quash Judge Murphy and Magistrate Woodmancy's subpoenas or to allow them to participate telephonically.

I declare under penalty of perjury the forgoing is true and correct. Executed on 8-22-10. A notary public or other official empowered to administer oaths is unavailable and thus I am certifying this document in accordance with AS 09.63.020.



David S. Haeg  
PO Box 123  
Soldotna, Alaska 99669  
(907) 262-9249  
[haeg@alaska.net](mailto:haeg@alaska.net)

**Certificate of Service:** I certify that on 8-22-10 a copy of the forgoing was served by mail to the following parties: Peter Maassen, I.M.F; Andrew Peterson, O.S.P.A, Steve VanGoor, ABA; and U.S. Department of Justice

By: 

From: haeg@alaska.net  
Subject: Re: Murphy and Woodmancy subpoenas  
Date: Sat, August 21, 2010 9:22 am  
To: "Peter Maassen" <Peter@impc-law.com>  
Cc: trzellers@aol.com,tdot2e@mtaonline.net,rwjtcj@msn.com,jones942@ak.net,dksavoie@msn.com,davebr

Mr. Maassen,

I do object to the quashing of the subpoenas or to telephonic testimony. I also object to your law firm representing anyone related to this proceeding or case. One of the named partners of your firm, Kevin Fitzgerald, represented my co-defendant, Tony Zellers, in the same case and in the same manner my attorneys represented me. As I prove my sellout by Judge Murphy and my attorneys so will proof be developed of Zellers sellout by Judge Murphy and Fitzgerald. Because of this your law firm will have a compelling reason to protect itself at the expense of anyone it represents in this proceeding or case. This precludes anyone, such as yourself, from representing anyone in this proceeding or case.

As I am on vacation and unable to put this into a proper opposition to the court I respectfully ask you include this objection in your motion to the court.

Sincerely,

David Haeg

Mr. Haeg,

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> I'm sorry to have to interrupt your vacation. I'm an  
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> week's hearing. I'll be filing a motion later today to quash the  
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>  
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>  
> Thank you.

>  
> Peter Maassen  
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**IN THE SUPERIOR COURT FOR THE STATE OF ALASKA  
THIRD JUDICIAL DISTRICT AT ANCHORAGE**

FILED  
STATE OF ALASKA  
THIRD DISTRICT  
2010 AUG 20 AM 10:35  
CLERK TRIAL COURTS  
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DAVID HAEG, )  
 )  
 Applicant, )  
 )  
 v. )  
 )  
 STATE OF ALASKA, )  
 )  
 Respondent. )

POST-CONVICTION RELIEF  
Case No. 3HO-10-00064CI

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

**8-18-10 OPPOSITION TO STATE'S 8-17-10 MOTION TO QUASH SUBPOENA  
OR TO ALLOW TELEPHONIC TESTIMONY**

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

COMES NOW Applicant, DAVID HAEG, in the above referenced case and hereby opposes the State's 8-17-10 motion to quash Scot Leaders subpoena or to allow him to testify telephonically.

**I**

Haeg's 8-14-10 email reply to the State's email presented Haeg's reasons for opposing the State's justification at that time for quashing Mr. Leaders' subpoena or to allow him to testify telephonically. (See State's exhibit#3) However, when the State actually wrote their motion they presented an entirely new justification for quashing Mr. Leaders subpoena: Mr. Leaders' newly presented affidavit that "I have no information regarding this issue (that Trooper Gibbens chauffeured Judge Murphy during Haeg's

case).” The State cites this affidavit to specifically claim “The basis for the State’s motion is that Mr. Leaders has no knowledge of Judge Murphy spending any time with Trooper Gibbens outside of trial.” (See State’s motion and exhibit #1, Mr. Leaders’ affidavit.)

In direct conflict with Mr. Leaders’ affidavit, the official court record of Haeg’s case irrefutably proves Mr. Leaders has direct knowledge of Judge Murphy spending time with Trooper Gibbens outside of trial. In fact, the official court record proves Mr. Leaders himself actively participated in the specific discussions of Trooper Gibbens giving Judge Murphy rides during Haeg’s case. (See the 9-29-05 official court record of Haeg’s case, pages 1262 and 1263.)

This would appear to prove Mr. Leaders’ affidavit, stating that he has no knowledge of Trooper Gibbens giving Judge Murphy rides during Haeg’s case, to be felony perjury.

Because of his active participation in the discussions admitting Trooper Gibbens chauffeured Judge Murphy during Haeg’s case, Mr. Leaders is undeniably a critical and material witness during the upcoming hearing about whether or not Trooper Gibbens chauffeured Judge Murphy during Haeg’s case. And since the State’s specific “basis” for their motion is provably false, there is no “basis” for the State’s motion.

## II

Mr. Leaders’ affidavit states: “The subpoena I received is a subpoena to appear and produce the document reference[d] above, which I do not have in my possession. I have not received a subpoena to testify.”

At Judge Joannides direction Haeg asked the clerks of the Anchorage Superior Court for a subpoena that would require Mr. Leaders to both testify and produce a document. The clerks provided Haeg with the subpoena Haeg served to Mr. Leaders. This subpoena states: “To: Scot Leaders. You are commanded to appear in court to testify as a witness in the above case at: August 25, 2010 @9:30 AM. Courtroom 604 at Nesbett Courthouse, 825 W. 4<sup>th</sup> Ave., Anchorage, Alaska. You are ordered to bring with you David Haeg’s supplemental letter that you were served with on 11-8-04.” (See State’s Exhibit #2.) This would appear to prove Mr. Leaders affidavit, stating that he has not received a subpoena to testify, to be felony perjury.

### III

Mr. Leaders’ affidavit claims that he cannot testify in Haeg’s case on August 25, 2010 because: “I am scheduled to be in trial in the matter of State of Alaska v. Brandy Gage, 3KN-08-2214 CR on August 25, 2010.”

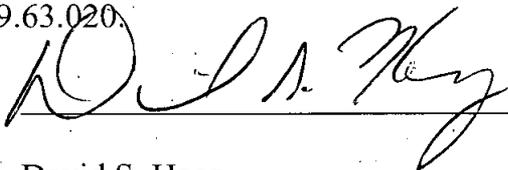
On 8-18-10 Haeg’s investigator called the Kenai court to confirm this and the Kenai court responded the only days scheduled for the Brandy Gage proceeding are August 20, 2010 and August 23, 2010. This would appear to prove Mr. Leaders’ affidavit, stating that he cannot testify because he is in trial in the matter of State of Alaska v. Brandy Gage on August 25, 2010, to be felony perjury.

**Conclusion**

In light of the disturbing facts above Haeg respectfully asks this court to deny the State's motion to quash Mr. Leaders' subpoena or to allow him to testify telephonically.

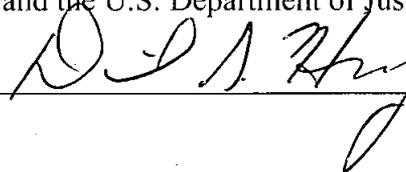
I declare under penalty of perjury the forgoing is true and correct. Executed on 8-18-10. A notary public or other official empowered to administer oaths is unavailable and thus I am certifying this document in accordance with

AS 09.63.020.



David S. Haeg  
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[haeg@alaska.net](mailto:haeg@alaska.net)

**Certificate of Service:** I certify that on 8-18-10 a copy of the forgoing was served by mail to the following parties: Andrew Peterson, O.S.P.A; Steve Van Goor, ABA; and the U.S. Department of Justice.

By: 

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

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

JUN 22 2011

By  Clerk of the Trial Courts  
Deputy

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)

**6-22-11 REPLY TO STATE'S OPPOSITION TO HAEG'S 6-10-11 EMERGENCY  
MOTION FOR IMMEDIATE STAY OF JUNE 8, 2011 ORDER, MODIFYING  
THE JUDGMENT AGAINST HAEG NEARLY 5 YEARS AFTER THE FACT,  
PENDING APPEAL OF THIS ORDER AND EMERGENCY MOTION THAT  
THE STATE IS PREVENTED FROM DISPOSING OF PROPERTY DISPUTED  
IN HAEG'S PCR UNTIL HAEG'S PCR IS CONCLUDED**

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

COMES NOW Applicant, DAVID HAEG, in the above case and hereby files this reply to the State's opposition to Haeg's motion for an immediate stay of the district court's June 8, 2011 order modifying the judgment against Haeg nearly 5 years after the fact and motion that the State is prevented from disposing of property disputed in Haeg's PCR until Haeg's PCR is concluded. This reply is supported by a 6-14-10 prior opposition to this issue; a 7-10-10 prior Citation of Supplemental Authorities to this issue; and a 4-15-11 prior opposition to the issue.

## Information

On April 1, 2004, using affidavits that falsified material evidence locations (from a Game Management Unit (GMU) in which Haeg did not and could not guide to a GMU in which Haeg guided and had a guide lodge – locations proven false by the State’s own GPS coordinates) the State obtained warrants to seize airplane N4011M (a plane that was the primary means by which Haeg provided a livelihood). In violation of established caselaw the State did not give Haeg the prompt postseizure hearing required. See *Waiste v. State*, 10 P.3d 1141 (Alaska 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... *Waiste* and the State agree that the Due Process Clause of the Alaska Constitution requires a prompt postseizure hearing upon the seizure of a fishing boat potentially subject to forfeiture... 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...”

Proving the seizure immediately harmed Haeg is the fact the State documented that during the seizure Haeg asked when he could get N4011M back because he had clients coming in the next day and he had to set up bear camps.

The State told Haeg that he would “never” get N4011M back and still no prompt postseizure hearing was held or offered to then ignorant Haeg – so the

devastating injustice of being put out of business with materially false warrants for years before conviction (using the same false evidence) was never protested.

Before conviction Haeg tried to bond N4011M out so he could again use it to provide a livelihood for his family and the State successfully prevented him from bonding it out – by arguing it may be “sold to an innocent purchaser”. Again this was in violation of established caselaw:

“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 allow release of the vessel on bond..”Waiste v. State, 10 P.3d 1141 (Alaska Supreme Court 2000)

Starting on July 26, 2006 and continuing until June 2, 2007 Haeg and his wife Jackie (Secretary/Treasurer of the Bush Pilot Inc.) filed numerous motions and affidavits for the mandatory hearings in order to oppose the seizure/forfeiture of N4011M – which was owned by the Bush Pilot Inc. Yet no hearing was ever given Haeg or Jackie concerning N4011M and Magistrate Woodmancy, who has stated he has no legal training, denied all motions concerning N4011M and on July 23, 2007 ruled, “Mrs. Haeg’s Motions are **Denied** as she is not a party to this action.” and refused to order the return of N4011M. See court record.

On June 4, 2010 and June 9, 2010 (nearly 5 years after the judgment against Haeg) the State filed motions with Magistrate Woodmancy to modify the judgment against Haeg. The State claimed they were in the process of selling N4011M before Haeg could conduct his PCR - that, if successful, would require the State to release N4011M. The State explained that the Federal Aviation

Administration would not grant title to the State since the Bush Pilot Inc. owned N4011M and the judgment was against David Haeg. See court record.

On June 14, 2010 Haeg opposed the State's motion; asked for a protection order preventing the State from disposing of disputed property prior to PCR; and for the motions to be decided by the PCR court. See court record.

On July 10, 2010 Haeg filed a citation of supplemental authorities that irrefutably prove the judgment against him could not be modified nearly 5 years after the fact, even if it were a product of fraud, as the court lost jurisdiction 180 days after judgment. See court record; State v. T.M., 860 P.2d 1286 (AK 1993); and Alaska Statute 12.55.088, Modification of Sentence:

State v. T.M., 860 P.2d 1286 (AK 1993):

**“In general, when a statute or rule specifies a time limit on the court's power to modify or vacate a judgement, the court has no power to act outside this time limit. 46 Am.Jur.2d, *Judgments*, § 704, pp. 854-56; W. LaFave & J. Israel, *Criminal Procedure* (1984), § 25.2(e), Vol. 3, p. 131. In *Davenport v. State*, 543 P.2d 1204, 1210-11 (Alaska 1975), the supreme court declared that the superior court has no inherent power to retain jurisdiction over a criminal case and modify its judgement based on later events. Any power the superior court might have to modify a criminal judgement must stem from statute or rule. The rule is the same in civil cases. See *Stone v. Stone*, 647 P.2d 582, 585-86 (Alaska 1982), in which the supreme court held that, after the expiration of the 1-year time limit specified in Alaska Civil Rule 60(b), the superior court no longer has the power to modify a judgement in a civil action on the basis of alleged fraud.”**

**Alaska Statute 12.55.088. Code of Criminal Procedure - Modification of Sentence.**

**(a) The court may modify or reduce a sentence by entering a written order under a motion made within 180 days of the original sentencing.**

On July 28, 2010 Haeg subpoenaed Magistrate Woodmancy to testify as a material witness in a hearing concerning Haeg's PCR. See court record.

On August 16, 2010 private criminal defense attorney Peter Maassen filed an entry of appearance on behalf of Magistrate Woodmancy in Haeg's PCR. See court record.

On August 18, 2010 private criminal defense attorney Peter Maassen filed a motion to quash the subpoena requiring Magistrate Woodmancy to testify as a material witness in Haeg's PCR. See court record.

On August 25, 2010 Superior Court Judge Stephanie Joannides ruled that Haeg did not have to worry about Judge Murphy or Magistrate Woodmancy presiding over Haeg's case any more.

On June 8, 2011 Magistrate Woodmancy, with a conflict of interest, and without jurisdiction, granted the State's request to amend the judgment against Haeg over 5 years after judgment was pronounced against Haeg – so the State could sell N4011M to an innocent purchaser before Haeg could complete his PCR, which would almost certainly require N4011M be returned to its rightful owner, Bush Pilot Inc.

### Discussion

The house of cards/conspiracy the State has built to illegally take N4011M, to illegally prosecute Haeg, and then to cover all this up continues to grow at an astounding rate. With their current request the State now asks another judge to become a party to this injustice in order to help cover up how they seized, kept,

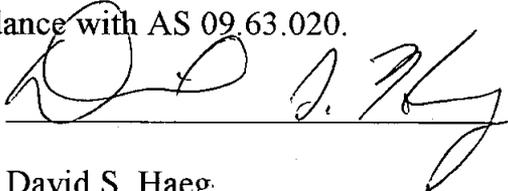
and finally forfeited the Bush Pilot Inc.'s plane by violating an incredible number of basic constitutional rights. And the reason they cite is that they wish to affirmatively sell N4011M before they have to return it. How can this possibly be when before he was ever convicted the State prevented Haeg from bonding N4011M out (thus preventing him from using it to make a livelihood before he was convicted) by claiming he might sell the plane to an innocent purchaser? It is as if the rules and laws change as the State needs so they can unjustly destroy the fragile citizens they prosecute. Look at the State's claim after Haeg's 5-year guide license suspension is finally over: "You can't have it back" – when at sentencing they stated Haeg would get it back in 5 years. And how the State got Magistrate Woodmancy to become the newest conspirator is especially shocking – they simply asked Woodmancy (who Judge Joannides ruled would not preside over Haeg's case) to modify Haeg's judgment without citing a single authority and Magistrate Woodmancy did this over the clear governing authority (AS 12.55.088) Haeg provided that proves it was against the law to do so.

No matter what justification the State provides (even if the claim was fraud by Haeg instead of the State wishing to illegally sell a legal entity's property after failure to provide the required and requested hearings) the judgment against Haeg cannot be modified after the statutory time limit of 180 days. In other words Magistrate Woodmancy's modification of Haeg's judgment is illegal, null, and void – since modification took place over 5 years after Haeg's judgment was pronounced.

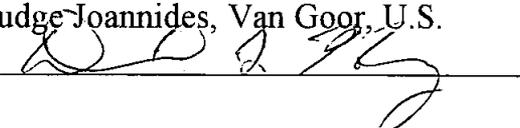
Conclusion

In light of the forgoing Haeg asks for an order declaring Magistrate Woodmancy's modification of Haeg's judgment illegal because it violates Alaska Statute 12.55.088. And as promised before ACJC investigator Greenstein, Magistrate Woodmancy, and attorney Peterson entered the ongoing criminal conspiracy, Haeg will continue to carefully document the growing corruption and cover up in his case; will continue carefully exhausting all State remedies; and will, along with a growing number of those seriously concerned, eventually demand federal prosecution of everyone involved for corruption, conspiracy, and pattern/practice to cover up for attorneys, judges, and law enforcement who, using the color of law, are violating rights to unjustly strip defendants of everything.

I declare under penalty of perjury the forgoing is true and correct. Executed on June 22, 2011. A notary public or other official empowered to administer oaths is unavailable and thus I am certifying this document in accordance with AS 09.63.020.



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**Certificate of Service:** I certify that on June 22, 2011 a copy of the forgoing was served by mail to the following parties: AAG Peterson, Public Defender's Office, Judge Gleason, Judge Joannides, Van Goor, U.S. Department of Justice, FBI, and media. By: 

Sent return receipt on 4/15/11

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA  
FOURTH JUDICIAL DISTRICT AT MCGRATH

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)

**4-15-11 OPPOSITION TO STATE'S APRIL 4, 2011 (received by Haeg on April 13, 2011) RENEWED MOTION FOR MODIFICATION OF JUDGMENT**

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

COMES NOW Applicant, DAVID HAEG, in the above case and hereby opposes the State's renewed motion for modification of judgment.

**Proceedings**

Starting on July 26, 2006 and continuing until June 2, 2007 Haeg and his wife Jackie (Secretary/ Treasurer of the Bush Pilot Inc.) filed numerous motions for the mandatory hearings in order to oppose the seizure/forfeiture of N4011M. N4011M was an airplane owned by the Bush Pilot Inc. that was seized by the State of Alaska during its prosecution of Haeg.

Magistrate Woodmancy, who has stated he has no legal training, denied all motions for a hearing concerning N4011M and on July 23, 2007 ruled, "Mrs. Haeg's motions are **Denied** as she is not a party to this action." and refused to order the return of N4011M. See court record.

On December 1, 2008 Haeg's Alaska Supreme Court appeal concluded and Haeg filed an appeal to the United States Supreme Court. See court record.

On December 2, 2008 state attorney Andrew Peterson filed a request for hearing to set a remand date for Haeg to serve his jail sentence – even though Peterson knew Haeg was appealing his sentence to the Supreme Court and Appellate Rule 206 requires the stay of imprisonment if an appeal is taken and the defendant is released pending appeal. See court record and Appellate Rule 206.

On January 26, 2009 Magistrate Woodmancy, relying upon Peterson's false advice, ordered Haeg to jail on March 2, 2009 for 35 days. See court record. At this ~~same~~ hearing Magistrate Woodmancy stated he did not think the law allowed Haeg to serve his prison sentence by in-home electronic monitoring. State attorney Andrew Peterson stated that even if Haeg did qualify for electronic monitoring the State would oppose this, implicitly reinforcing Woodmancy's mistake that the law did not allow electronic monitoring. (It is indisputable that state law allowed electronic monitoring in Haeg's case. See Alaska Statute 33.30.065.) Again relying on Peterson's misinformation, Woodmancy denied Haeg's request for his jail sentence to be postponed or, in the alternate, to have electronic monitoring while appealing to the United States Supreme Court by himself. See court record.

On June 4, 2010 and June 9, 2010 (nearly 5 years after the judgment against Haeg) Peterson filed motions with Magistrate Woodmancy to modify the judgment against Haeg so the State could sell the plane they had seized in Haeg's case before Haeg could conduct his PCR that, if successful, would require the State to release the plane. Peterson explained that the Federal Aviation Administration would not grant title to the State since the Bush Pilot Inc. owned the plane and the judgment was against David Haeg. See court record.

On June 14, 2010 Haeg opposed Peterson's motion; asked for a protection order preventing the State from disposing of disputed property prior to PCR; and for the motions to be decided by the PCR court. See court record.

On July 10, 2010 Haeg filed a citation of supplemental authorities (copied to Peterson) that irrefutably prove the judgment against him could not be modified nearly 5 years after the fact, even if it were a product of fraud, as the court lost jurisdiction 180 days after judgment. See court record; State v. T.M., 860 P.2d 1286 (AK 1993); and Alaska Statute 12.55.088, Modification of Sentence:

State v. T.M., 860 P.2d 1286 (AK 1993):

"In general, when a statute or rule specifies a time limit on the court's power to modify or vacate a judgement, the court has no power to act outside this time limit. 46 Am.Jur.2d, Judgments, § 704, pp. 854-56; W. LaFave & J. Israel, Criminal Procedure (1984), § 25.2(e), Vol. 3, p. 131. In Davenport v. State, 543 P.2d 1204, 1210-11 (Alaska 1975), the supreme court declared that the superior court has no inherent power to retain jurisdiction over a criminal case and modify its judgement based on later events. Any power the superior court might have to modify a criminal judgement must stem from statute or rule. The rule is the same in civil cases. See Stone v. Stone, 647 P.2d 582, 585-86 (Alaska 1982), in which the supreme court held that, after the expiration of the 1-year time limit specified

in Alaska Civil Rule 60(b), the superior court no longer has the power to modify a judgement in a civil action on the basis of alleged fraud.”

**Alaska Statute 12.55.088. Code of Criminal Procedure - Modification of Sentence.**

(a) The court may modify or reduce a sentence by entering a written order under a motion made within 180 days of the original sentencing.

On July 28, 2010 Haeg subpoenaed Magistrate Woodmancy to testify as a material witness in a hearing concerning Haeg’s PCR. See court record.

On August 16, 2010 private criminal defense attorney Peter Maassen filed an entry of appearance on behalf of Magistrate Woodmancy in Haeg’s PCR. See court record.

On August 18, 2010 private criminal defense attorney Peter Maassen filed a motion to quash the subpoena requiring Magistrate Woodmancy to testify as a material witness in Haeg’s PCR. See court record.

On December 8, 2010 Judge Bauman was assigned to Haeg’s case and on 28, 2010 venue was transferred to Kenai, Alaska. See court record.

On January 19, 2011 Haeg asked for an order that since his court ordered 5-year guide license suspension was over he was entitled to the return of his license. See court record.

On January 24, 2011 Peterson opposed the return of Haeg’s license, arguing that the 5-year suspension of Haeg’s license started after Haeg had served his jail time. Peterson did not inform the court that, at the State’s request (and unlike his jail sentence that was required to be stayed), the license suspension had

not been stayed during appeal. Thus, during Haeg's near 4-year appeal before he was jailed he was prevented from guiding. To now "start" a 5-year suspension from the time he was jailed would not take into account the nearly 4 years Haeg has already been prevented from guiding – effectively turning Haeg's 5-year license suspension into a 9-year suspension. Alaska Statute 08.54.710 specifically states that a court ordered license suspension cannot be increased administratively.

### Discussion

As wielder of state government's incredible power, state attorney Andrew Peterson is not allowed to misrepresent the law. Doing so is prosecutorial misconduct, requiring any conviction obtained, maintained, or otherwise tainted by such conduct to be overturned.

Commonwealth v. Bowie, 243 F.3d 1109 (9<sup>th</sup> 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.")**

In Napue v. Illinois, 360 U.S. 264 (U.S. Supreme Court 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," 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, (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.**

REVERSED and REMANDED for a new trial.

United States v. Blueford, 312 F.3d 962 (9<sup>th</sup> Cir. 2002)

**[I]t is decidedly improper for the government to propound inferences that it knows to be false, or has very strong reason to doubt, particularly when it refuses to acknowledge the error afterwards to either the trial court or this court and instead offers far-fetched explanations of its actions. *Id.* at 1318-19;**

**We conclude that the government in this case failed, both at trial and thereafter, to fulfill its responsibility to "discharge its responsibilities fairly, consistent with due process," *id.*, and that its failure to do so was not harmless. We therefore REVERSE and REMAND for a new trial.**

United States v. Kojayan, 8 F.3d 1315 (9<sup>th</sup> Cir. 1993)

**How can it be that a serious claim of prosecutorial misconduct remains unresolved--even unaddressed--until oral argument in the Court of Appeals? Surely when such a claim is raised, we can expect that someone in the United States Attorney's office will take an independent, objective look at the issue.**

A recent Second Circuit case, Walker v. City of New York, 974 F.2d 293 (2d Cir. 1992), illustrates the disastrous consequences that can follow when this responsibility is not met. **The prosecutors in Walker persisted in prosecuting a defendant--and lied and concealed evidence in the process--even though they were aware of his probable innocence. It took Mr. Walker nearly two decades to win his freedom. The Walker court found that the district attorney's failure to train or supervise her employees as to "such basic norms of human conduct [as] the duty not to lie or persecute the innocent" could be the basis of 42 U.S.C. § 1983 liability. *Id.* at 301.**

**The prosecutorial misconduct in this case deprived the defendants of due process of law. We therefore VACATE the judgment of conviction and REMAND for the district court to determine whether to retry the defendants or dismiss the indictment with prejudice as a sanction for the government's misbehavior.**

United States v. Omni Int'l. Corp., 634 F. Supp. 1414, 1438 (D.Md. 1986)

The AUSA's failure to be fully candid could have had tragic consequences. The Court was faced with the issue of whether or not to permit an evidentiary hearing. If the Court had blindly relied on the AUSA's representations, no hearing would have been held. . . . **In light of all the testimony adduced at the [28-day-long] evidentiary hearing, it is clear that this case rises to the high threshold imposed for invocation of the supervisory power [to dismiss]. The Court condemns the manner in which the Government proceeded, and cannot now stand idly by, implicitly joining the federal judiciary into such unbecoming conduct.**

United States v. V. F. Grace, 461 U.S. 171 (1983)

In essence, the prosecution's argument is that the virtue of its case sanctifies the means chosen to achieve conviction. This argument cannot prevail in a legal system that is designed to ensure fairness in the proceeding when each side follows the rules. Our confidence in the fairness of our system is rooted in the belief that our process is sound. **Useful falsehoods are particularly dangerous in a criminal case, where the cost of wrongful conviction cannot be measured in the impact on the accused alone. Such tainted proof inevitably undermines the process, casting a dark shadow not only on the concept of fairness, but also on the purpose of the exercise of the coercive power of the state over the individual. No man should go free nor lose his liberty on the strength of false, misleading or incomplete proof.**

It is clear that state attorney Peterson is continuing to intentionally falsify the law after he has been notified of his error, to convince Magistrate Woodmancy to illegally cover up that the State was years ago obligated to address the fact they had illegally seized an aircraft that was owned by a legal entity never accused of wrongdoing.

It is clear the judgment against Haeg cannot legally be modified more than 180 days after the judgment was pronounced, let alone nearly 5 years after the fact - no matter what the reason.

It is clear Peterson cannot have motions granted in McGrath by Magistrate Woodmancy after venue has been changed to Kenai and after the case has been assigned to Judge Bauman.

It is clear that Magistrate Woodmancy cannot decide motions in a case in which he is a material witness – especially after he has hired a very expensive criminal defense attorney to prevent his sworn testimony.

It is clear the State cannot be allowed, on the eve of Haeg obtaining an order for the return of all property seized, to dispose of the property so even if Haeg legally wins he in fact loses.

It is clear that the continuing falsification by prosecutor Peterson is criminal prosecutorial misconduct that has resulted in a denial of Haeg's due process rights.

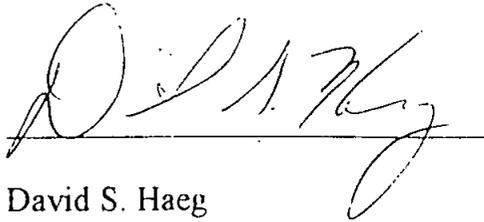
### Conclusion

Haeg is working on amending his PCR application to include Peterson's prosecutorial misconduct and after Peterson's criminal involvement in this case is complete Haeg, and what he believes is an increasing number of those seriously concerned, will demand federal prosecution of Peterson for corruption, conspiracy, and pattern/practice to cover up for attorneys, judges, and law enforcement who, using the color of law, are violating rights to unjustly strip defendants of everything. Any judge who illegally modifies Haeg's judgment to cover up the illegal seizure/forfeiture of N401 IM, as Peterson is continuing to ask for in his present "Renewed Motion for Modification of Judgment", will be included in the criminal complaint as a coconspirator.

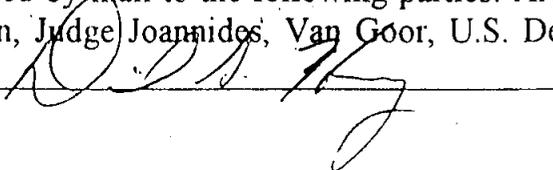
Anyone not believing how serious this has become should talk to the five Department of Justice employees about the criminal case against them for the way they prosecuted Senator Ted Stevens and talk to Judicial Conduct investigator Marla Greenstein whose legal career is now over after she tried to help cover up the chauffeuring of Haeg's trial judge by the main witness against Haeg

The above is just the start of what those who died for our constitution demand of all Americans to address the incomprehensible fact that state prosecutors, judges, troopers, and defense attorneys are conspiring to rig trials in violation of our constitution.

I declare under penalty of perjury the forgoing is true and correct. Executed on April 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.



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

**IN THE DISTRICT/SUPERIOR COURT OF THE STATE OF ALASKA  
FOURTH JUDICIAL DISTRICT IN MCGRATH**

DAVID HAEG, )  
 )  
 Applicant, )  
 )  
 vs. )  
 ) POST-CONVICTION RELIEF  
 STATE OF ALASKA, ) CASE NO. 4MC-09-00005 CI  
 ) and 3HO-10-00064CI  
 Respondent. )  
 )  
 \_\_\_\_\_ )  
 Trial Case No. 4MC-04-00024CR

**7-10-10 CITATION OF SUPPLEMENTAL AUTHORITIES AND  
OPPOSITION TO STATE'S MOTION TO ACCEPT LATE FILED REPLY**

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

COMES NOW Applicant, DAVID HAEG, in the above referenced case and hereby files this citation of supplemental authorities and opposition to State's motion to accept late filed reply.

**Prior Proceedings**

On 6-4-10 and 6-9-10 the State of Alaska, without citing any authority or jurisdiction of the court to do so, filed a motion for modification of the judgment against Haeg over 4 years after judgment was pronounced.

On 6-14-10 Haeg filed and served an opposition within the 10 day time limit for oppositions required by Criminal Rule 42(c).

On 7-7-10, or 23 days after Haeg filed and served his opposition, Haeg received the State's motion to accept a late filed reply. Yet the State's motion states and certifies it was filed and served on 6-9-10, or 28 days prior to Haeg receiving the motion – before Haeg's opposition was even filed.

### 1. Citation of Supplemental Authorities

Under Criminal Rule 42(I) Haeg asks to cite supplemental authorities to his 5-14-10 opposition to the State's motion to modify judgment.

In opposing the State's motion to accept late filed reply Haeg came across further authorities that irrefutably prove the court does not have jurisdiction to modify a judgment against Haeg over four years after judgment was pronounced. These authorities pertain to pages 4, 5, and 9 of Haeg's 6-14-10 opposition.

State v. T.M., 860 P.2d 1286 (AK 1993):

“In general, when a statute or rule specifies a time limit on the court's power to modify or vacate a judgement, the court has no power to act outside this time limit. 46 Am.Jur.2d, Judgments, § 704, pp. 854-56; W. LaFave & J. Israel, Criminal Procedure (1984), § 25.2(e), Vol. 3, p. 131. In *Davenport v. State*, 543 P.2d 1204, 1210-11 (Alaska 1975), the supreme court declared that the superior court has no inherent power to retain jurisdiction over a criminal case and modify its judgement based on later events. Any power the superior court might have to modify a criminal judgement must stem from statute or rule. The rule is the same in civil cases. See *Stone v. Stone*, 647 P.2d 582, 585-86 (Alaska 1982), in which the supreme court held that, after the expiration of the 1-year time limit specified in Alaska Civil Rule 60(b), the superior court no longer has the power to modify a judgement in a civil action on the basis of alleged fraud.

In *Stone*, one of two divorced spouses asked the superior court to modify the property settlement that had been incorporated in the divorce decree; she alleged that her former husband had fraudulently misrepresented the value of certain property. The superior court granted relief, but the supreme court reversed. The supreme court noted Alaska Civil Rule 60(b) specifies a 1-year time limit for seeking relief from a judgement based on allegations of fraud, a time limit that

cannot be relaxed under Civil Rule 6(b). The wife's motion to modify the divorce decree was filed 15 months after the decree was entered. The supreme court held that, because the wife had failed to meet the 1-year deadline, the superior court lacked jurisdiction to modify the divorce decree. Stone, 647 P.2d at 585-86.

Criminal Rule 53 (made applicable to juvenile proceedings by Delinquency Rule 1(e)) authorizes the superior court to relax any delinquency or criminal rule, but it does not authorize the court to relax or ignore statutes; the superior court's broad power to relax rules simply does not extend to statutory enactments. And while it is certainly arguable that the time limit for amending juvenile judgements specified in AS 47.10.100(a) involves a procedural matter that could be dealt with by court rule, the superior court lacks rule-making authority; the supreme court, which possesses sole rule-making authority, has enacted no rule altering the statutory limit.

In short, T.M. and J.B. have not cited any provision of the delinquency rules, the civil rules, the criminal rules, or the common law that addresses the issue of setting aside a valid delinquency adjudication or that provides specific authority for the superior court to ignore the time limitation contained in AS 47.10.100(a). We have found none. We therefore conclude that, even assuming that AS 47.10.100(a) authorizes the superior court to set aside a valid delinquency adjudication because of the minor's subsequent rehabilitation, and even assuming that the time limitation contained in AS 47.10.100(a) is "procedural" for rule-making purposes, the superior court is nevertheless governed by that statutory limitation because the court rules provide no alternative time limit or procedural authority."

#### Criminal Rule 40. Time.

(b) **Enlargement.** When an act is required or allowed to be done at or within a specified time, the court for cause shown may at any time in its discretion:

(2) Upon motion permit the act to be done after the expiration of the specified period if the failure to act was the result of excusable neglect; but the court may not enlarge the period for taking any action under Rules 33, 34 and 35 except as otherwise provided in those rules, or the period for taking an appeal.

#### Criminal Rule 35. Reduction, Correction or Suspension of Sentence.

(b) **Modification or Reduction of Sentence.** The court

(1) may modify or reduce a sentence within 180 days of the distribution of the written judgment upon a motion made in the original criminal case;

(g) Relaxing the Time Period for Request. A court may not relax by more than 10 days the time period in which a request to modify or reduce a sentence under (b) of this rule must be filed.

Alaska Statute 12.55.088. Modification of Sentence.

(a) The court may modify or reduce a sentence by entering a written order under a motion made within 180 days of the original sentencing.

2. Opposition to State's Motion to Accept Late Filed Reply

Criminal Rule 2:

"These rules are intended to provide for the just determination of every criminal proceeding. They shall be construed to secure simplicity in procedure, fairness in administration and the elimination of unjustifiable expenses and delay.

Criminal Rule 42(d):

"Reply and supplemental materials and memoranda, if any, may be served and filed by the moving party within five days of the date of service of the opposition to the motion."

The State cites no authority allowing the filing of a reply 23 days after the filing and service of Haeg's opposition, without justification or request for an extension of time before the Rule 42(d) time limit had expired. The State simply asks to exceed the Criminal Rule 42(d) limit of 5-days by over 4 times.

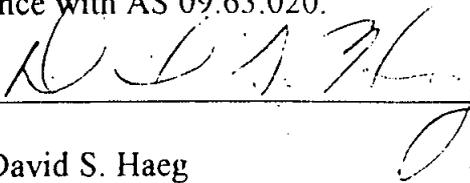
This case has devastated Haeg and his family for over 6 years and counting. Haeg has consistently been required to make filings on time or to ask for an extension of time before time limits had run out.

To allow the State to unjustifiably violate the same rules Haeg must follow, delaying Haeg's right to a prompt adjudication of his case, would be both a violation of the Criminal Rule 2 mandate of fairness in administration and the Criminal Rule 2 mandate to eliminate unjustifiable delay.

Conclusion

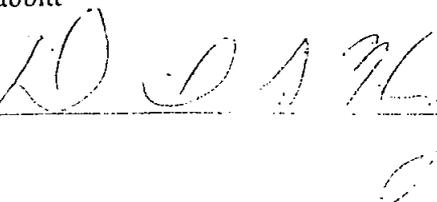
In order to breathe life into the rule of law upon which this nation is founded and to avoid further litigation, Haeg asks the court to very carefully consider the supplemental authorities above in deciding the State's motion to modify Haeg's judgment over 4 years after the fact and to deny the State's motion to accept late filed reply.

I declare under penalty of perjury the forgoing is true and correct. Executed on July 16, 2010. A notary public or other official empowered to administer oaths is unavailable and thus I am certifying this document in accordance with AS 09.63.020.



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Certificate of Service: I certify that on 7-16-10 a copy of the forgoing was served by mail to the following parties: Andrew Peterson, O.S.P.A; Steve VanGoor, ABA; U.S. Department of Justice; Superior Court Judge Joannides; FAA Chief Legal Officer Howard Martin; FAA Deputy Regional Administrator Greg Holt; and FAA Administrator J. Randolph Babbitt

By: 



### Prior Proceedings

On 4-1-04 the State of Alaska seized N4011M, a highly modified Piper PA-12 airplane that was owned by, and registered to, Bush Pilot, Inc., a legal entity under Federal Identification Number 92-0158289. To seize N4011M the State claimed, in warrants and affidavits that falsified evidence locations from the Game Management Unit in which the Wolf Control Program was taking place to David Haeg's guiding GMU, that David Haeg had committed the guiding violation of taking wolves same day airborne – even though Haeg's Wolf Control Program permit allowed this and the State had told and induced Haeg to do exactly what they charged Haeg with doing.

In the 18 months before charges, conviction, or judgment against David Haeg the State successfully opposed all attempts to release N4011M on bond – filing briefs that if N4011M were released on bond there was nothing prevent it from being “sold to an innocent purchaser” and frustrating the State from again obtaining physical possession.

At different points Jackie Haeg filed motions and affidavits that, as an owner/officer of Bush Pilot, Inc., she must have a hearing to protect her and Bush Pilot, Inc.'s interest in N4011M. Yet no hearings were ever held and the court ruled, “Mrs. Haeg's Motions are **Denied** as she is not a party to this action.”

Citing basic federal constitutional violations by the State, including the forfeiture of N4011M without trial, hearing, or judgment against those who owned interests in it, David Haeg has pursued all avenues. This has culminated in Haeg's recent filing for PCR, held by the appellate courts as the proper venue for Haeg's claims. Briefing by Haeg and the State was just recently finished on 4-7-10, with a decision expected soon.

The State just attempted to register, with the Federal Aviation Administration in Oklahoma City, that N4011M was now owned by the State of Alaska, in order to sell it. The FAA in Oklahoma City refused, stating that the judgment presented by the State as proof of ownership of N4011M, that David Haeg was found guilty and was ordered to forfeit N4011M to the State, did not prove ownership of N4011M transferred from Bush Pilot, Inc. (the owner of N4011M registered with the FAA) to the State of Alaska.

Oklahoma City then put the State in contact with Howard Martin, Chief Legal Officer for Alaska's FAA, so he could tell the State what was required for ownership of N4011M to transfer from Bush Pilot, Inc. to the State of Alaska. Chief Legal Officer Martin informed the State that only a judgment specifically against Bush Pilot, Inc., ordering forfeiture of N4011M to the State of Alaska, could legally prove ownership had been transferred.

No charges or complaints have ever been filed against Bush Pilot, Inc. and no prosecution or trial has ever occurred against Bush Pilot, Inc.

On 6-4-10, over 6 years after seizure and nearly 5 years after the judgment against David Haeg, the State has now filed a motion, without citing any authority whatsoever, for an order to "modify" Haeg's judgment with the following:

"IT IS HEREBY ORDERED the ownership interest in one Piper PA-12 registered to Bush Pilot, Inc., N-number N4011M, serial number 12-2888, was forfeited to the State of Alaska on September 30, 2005." See State's proposed order.

The State's justification for "modification of judgment" is:

"The State of Alaska is in the process of selling the Piper PA-12 airplane, but the FAA will not reregister 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. 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." See State's justification.

On 6-8-10 and 6-9-10 Haeg talked extensively with FAA Deputy Regional Administrator Greg Holt and FAA Chief Legal Officer Howard Martin about what the State needed in order to register N4011M in the State's name so they could sell it. The FAA stated that a judgment specifically against the Bush Pilot, Inc. was needed, and that the State had been specifically told this.

### I

The State cites no authority allowing a criminal judgment to be "modified", nor can Haeg find authority in any Rule or Statute to allow a criminal judgment to be "modified". The only modification of judgment allowed is under Alaska Statute 25.24.170, which concerns alimony and child support after a divorce. In addition, even a sentence cannot be "modified" nearly 5 years after imposition and since this time limit is jurisdictional, the court has no jurisdiction to grant the State's motion.

Criminal Rule 32.5 states that a person convicted of a crime in district court, as Haeg was, must appeal a judgment of conviction within 15 days of the judgment.

Criminal Rule 34 states that a motion in arrest of judgment must be made within 5 days after verdict or finding of guilt.

Alaska Statute 12.55.088 and Criminal Rule 35 state that the court may modify or reduce a sentence within 180 days of the original sentencing, and that a court may not relax by more than 10 days the time period in which the request must be filed. Haeg

was sentenced on September 30, 2005 and the State's motion was filed on June 4, 2010, exactly 1708 days after.

Even if the State just wanted to modify Haeg's sentence, instead of the judgment itself, they have missed the 180-day deadline by 1528 days, or over 4 years.

In addition, since the time limit prescribed in Rule 35 is jurisdictional the Court lost jurisdiction to modify Haeg's sentence over 4 years ago. See *United States v. Stump*, 914 F.2d 170 (9<sup>th</sup> Cir 1990):

**The time limit prescribed by Rule 35 "is jurisdictional, and 'unless the 120 day requirement is met, the court has no jurisdiction or power to alter sentence.' " Minor, 846 F.2d at 1189 (quoting *United States v. United States District Court*, 509 F.2d 1352, 1354-55 (9th Cir.), cert. denied sub nom. *Rosselli v. United States*, 421 U.S. 962, 95 S.Ct. 1949, 44 L.Ed.2d 448 (1975)). The government's motion was filed more than five months after Stump's sentence was imposed, well after the time limit set by Rule 35.2**

## II

In its motion the State has falsified what the FAA requires. The FAA told the State that to register N4011M to the State of Alaska there would have to be a judgment specifically against N4011M's owner, Bush Pilot, Inc., forfeiting N4011M to the State of Alaska. The State, in its motion, claims the FAA requires "a modified judgment" against David Haeg to "reflect" that the Bush Pilot, Inc. owned N4011M. This is not true; the FAA told the State that they needed a judgment against Bush Pilot Inc., not a "modified judgment" against David Haeg. A "modified judgment" against David Haeg claiming N4011M was registered to Bush Pilot, Inc. would only make it appear to the ignorant that there was now a judgment against Bush Pilot, Inc.

Even more incredible, is the order the State proposes states "IT IS HEREBY ORDERED the ownership interest in one Piper PA-12 registered to Bush Pilot, Inc., Number N4011Mm, serial number 12-2888, was forfeited to the State of Alaska on September 30, 2005." This makes it seem that all those with an "ownership interest" in N4011M were charged, convicted, and sentenced when this is completely false – as the Bush Pilot, Inc. owns N4011M and it was never charged, convicted, or sentenced.

The State is trying to make it seem there is now a judgment against Bush Pilot, Inc. without the charges, prosecution, trial, or criminal act of Bush Pilot, Inc. required to obtain such a judgment. They are doing so by trying to modify David Haeg's judgment, in the sentencing section only, to include Bush Pilot, Inc.'s name as having registration of N4011M and falsely stating the ownership interest in N4011M was forfeited to the State - hoping this will somehow suffice for the FAA's requirement there must be a judgment against Bush Pilot, Inc. Only if there was a case "State of Alaska v. Bush Pilot, Inc.", and this exact designation was on the court document forfeiting N4011M, does it represent the FAA required "judgment" against Bush Pilot, Inc., the owner of N4011M.

How can Bush Pilot, Inc. be included in a judgment obtained years ago against someone else when Bush Pilot, Inc. was never named as a defendant anywhere in the case from the charging documents to actual judgment - and thus never defended itself?

In addition, Jackie Haeg had filed motions and affidavits that, as an owner/officer of Bush Pilot, Inc., she must have a hearing to protect her and Bush Pilot, Inc.'s interest in N4011M. Yet no hearings were ever held and the court ruled, "Mrs. Haeg's Motions

are **Denied** as she is not a party to this action.” Now the State wants an order that all interest in N4011M was forfeited to the State of Alaska.

It is as if Bush Pilot, Inc. and Jackie Haeg are parties when the State wants their property but are not parties when they want to be heard so they may defend themselves.

The refusal by the FAA to recognize the State’s ownership of N4011M, without a judgment against Bush Pilot, Inc., is further proof that both Bush Pilot, Inc. and Jackie Haeg have been unjustly deprived of their interest in N4011M, without hearing, for over 6 years. It seems inconceivable that a court should now unjustly punish them further by assisting the State’s efforts to fraudulently forfeit their interest in N4011M without the required and asked for charges, hearings, trial, and/or judgment needed to do so.

### III

Before obtaining a judgment against Haeg the State’s specific on-record reason for preventing N4011M from being released on bond was that there was the possibility the plane may be sold to an innocent purchaser, preventing the State from again obtaining N4011M if they prevailed. Now that the situation is reversed, and Haeg is close to obtaining a judgment that the State must release N4011M, the State has stated it is now actually trying to sell N4011M to an innocent purchaser, which would prevent N4011M’s release if Haeg prevails. The State claims it needs the court to “modify” Haeg’s judgment to sell N4011M and then incredibly claims “this will not limit Haeg’s remedies in the pending PCR application”, when this is exactly what the State is seeking to do - as one of Haeg’s PCR remedies is the release of N4011M.

To prevent this injustice and appearance of vindictiveness, Haeg asks the court for a protection order preventing the State from selling or disposing of N4011M or other disputed property pending the outcome of Haeg's PCR proceedings against the State.

#### IV

On June 23, 2009, in a certified return receipt letter, Haeg requested that Alaska Attorney General Daniel Sullivan preserve everything related to Haeg's case. Mr. Sullivan's office promised that everything would be preserved so it would be available for any post conviction proceedings. Haeg asks the court to hold the State to its promise.

#### V

The fraudulent and illegal actions taken by the State in Haeg's case, including those now being taken to prevent N4011M from being returned to Bush Pilot, Inc., will be carefully documented for the coming lawsuits and criminal complaints.

If the court actually grants the State's motion to fraudulently "modify" Haeg's judgment to include a judgment against Bush Pilot, Inc., Haeg believes this would be a criminal conspiracy and will litigate it thoroughly.

If the Federal Aviation Administration actually accepts a fraudulent "judgment" against Bush Pilot, Inc., which the State is seeking with its current motion, Haeg believes this would be a criminal conspiracy and will litigate it thoroughly.

For the FAA to better understand the size of the coming lawsuits and criminal prosecutions Haeg recommends reading the PCR filings by both the State and Haeg, located on the website [www.alaskastateofcorruption.com](http://www.alaskastateofcorruption.com)

The first filing, sent to the U.S. Department of Justice, resulted in a call to Haeg from FBI Assistant Special Agent in Charge David Heller – who insisted personal meetings must take place between Haeg and Alaska Attorney General Daniel Sullivan. Heller told Haeg that to insure the meetings took place Haeg could tell Sullivan that it was FBI Assistant Special Agent in Charge David Heller who recommended the meetings. AG Sullivan still refused any and all meetings.

### Conclusion

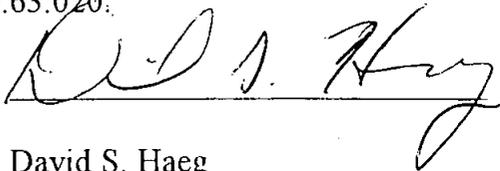
Because there is no authority to “modify” a judgment at all Haeg asks the court to deny the State’s motion. Because the court lost jurisdiction to modify even Haeg’s sentence over 4 years ago Haeg asks the court to deny the State’s motion. Because a judgment against Haeg cannot be “modified” to be a judgment against Bush Pilot, Inc., a legally separate entity Haeg asks the court to deny the State’s motion. Because a judgment depriving interest cannot be made against a person or corporation without the charges, trial, and conviction they are entitled to before doing so, Haeg asks the court to deny the State’s motion.

Because it would be incredibly unjust to allow the State, apparently vindictively, to sell or dispose of N4011M and other property after they promised not to do so and just prior to a judgment that may return the disputed property to rightful owners, Haeg asks the court for a protection order preventing the State from selling or disposing of N4011M and other disputed property prior to resolution of Haeg’s PCR.

Because it is the PCR court that is charged with making all coming decisions concerning the disputed property, Haeg asks that the PCR court decide the State’s motion.

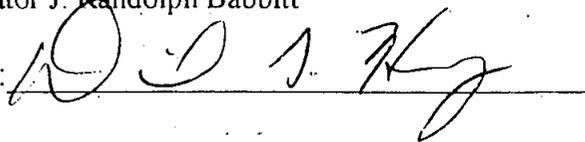
and the motion for a protection order preventing sale or disposal of N4011M and other  
disputed property prior to PCR judgment.

I declare under penalty of perjury the forgoing is true and correct. Executed on  
6-14-10. A notary public or other official empowered to  
administer oaths is unavailable and thus I am certifying this document in accordance with  
AS 09.63.020.



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**Certificate of Service:** I certify that on 6-14-10 a copy of the  
forgoing was served by mail to the following parties: Andrew Peterson, O.S.P.A; Steve  
VanGoor, ABA; U.S. Department of Justice; Superior Court Judge Joannides; FAA Chief Legal  
Officer Howard Martin; FAA Deputy Regional Administrator Greg Holt; and FAA  
Administrator J. Randolph Babbitt

By: 



IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT KENAI Trial Courts  
State of Alaska Third District  
at Kenai, Alaska

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

JUN 20 2011

Clerk of the Trial Courts

By \_\_\_\_\_ Deputy

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

Trial Case No. 4MC-04-00024 CR

**STATE'S OPPOSITION TO APPLICANT'S 6-10-11 EMERGENCY  
MOTION FOR IMMEDIATE STAY OF JUNE 8, 2011 ORDER,  
MODIFYING THE JUDGMENT AGAINST HAEG NEARLY 5 YEARS  
AFTER THE FACT, PENDING APPEAL OF THIS ORDER AND  
EMERGENCY MOTION THAT THE STATE IS PREVENTED FROM  
DISPOSING OF PROPERTY DISPUTED IN HAEG'S PCR UNTIL HAEG'S  
PCR IS CONCLUDED**

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

COMES NOW the State of Alaska, by and through Assistant Attorney General Andrew Peterson and hereby files this opposition to the Applicant's motion for an order challenging action taken by the district court in McGrath. The state's opposition is supported by the attached memorandum, the two prior motions filed regarding this matter and a proposed order.

On September 30, 2005, Haeg was sentenced on ten misdemeanor counts related to his illegal same day airborne killing of

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

wolves outside of a predator control area. See Exh. A (State's Renewed Motion for Modification of Judgment filed April 4, 2011, - Judgments attached as Exh. 1 to the State's prior motion). The orders issued in the matter specifically provide that "[t]he following items are forfeited to the State ...Equipment used in or in aid of the violation: Piper PA-12 plane tail number N4011M." The state filed an initial Motion for Modification of Judgment on June 9, 2010 (See Exh. B), a Reply to Haeg's Opposition to the State's Motion For Modification of Judgment on July 2, 2010 (See Exh. C) and a Renewed Motion for Modification of Judgment on April 4, 2011. See Exh. A. The motions were filed to clarify the fact that the airplane in question was forfeited to the State of Alaska as to all owners, not just Haeg.

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, rather the plane itself is forfeited to the State as to all owners. Haeg's appeal challenged the constitutionality of this statutory provision and the court of appeals denied his claim.

Haeg's corporation is, however, was 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). The State served The Bush Pilot, Inc. with the Renewed Motion for Modification of Judgment, but no opposition was filed. The Bush Pilot, Inc., still has the option of seeking remission of the forfeited airplane and the trial court may order its return to the corporation if the corporation can show that the corporation was not complicit in Haeg's offenses. See id. This may be a difficult burden as the corporation "The Bush Pilot, Inc." is an entity that is 100% owned by Mr. Haeg.

On September 30, Haeg's airplane was forfeited to the State of Alaska on September

DATED: June 15, 2011.

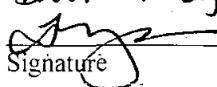
JOHN J. BURNS  
ATTORNEY GENERAL

By: 

Andrew Peterson  
Assistant Attorney General  
Alaska Bar No. 0601002

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

Whitney Glover, David Seid,  
David Haeg

  
Signature

6/15/11  
Date

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

<p>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.</p>
--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

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.

EXHIBIT   A    
PAGE   1   OF   15  

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

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

Alaska law provides that an aircraft used in or in aid of a violation of Title 8.54, Title 16 or a regulation adopted under Title 8.54 or Title 16 may be forfeited to the state upon conviction of the offender in a criminal proceeding. See AS 16.05.195. This statutory provision does not provide that the offender must actually own the airplane forfeited. Haeg's appeal challenged the constitutionality of this statutory provision and the court of appeals denied his claim.

Haeg's corporation is, however, not without recourse to seek remission of the airplane seized. Alaska law provides that an innocent non-negligent owner of an airplane that has been forfeited to the state may seek remission of the item forfeited. See State v. Rice, 626 P.2d 104 (Alaska 1981). Thus Bush Pilot, Inc., may seek remission of the forfeited airplane and this court may order its return to the corporation if the corporation can show that prior to allowing Mr. Haeg to fly the plane the corporation did not have reason to know that the airplane would be used to violate the law.

The state is serving The Bush Pilot, Inc., with a copy of this motion. The state further asks this court to set a briefing deadline for The Bush Pilot, Inc. If the corporation does not file a motion seeking remission of the forfeited airplane by the court's deadline, the state would then ask for this court to issue a modified judgment so that the state may properly dispose of the forfeited airplane.

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

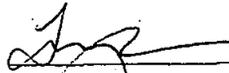
By:



A. Andrew Peterson  
Assistant Attorney General  
Alaska Bar No. 0601002

CERTIFICATE OF SERVICE

This is to certify that a copy of the forgoing was  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

State of Alaska  
vs. DAVID HAEG

CASE NO. 4MC-04-024CR Count No. V  
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 \**

Imposition 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 with 55 days suspended. The unsuspended 5 days are to be served beginning no later than March 02, 2009. Defendant to be credited for time already served in this case.

The following items are forfeited to the State:

Fish taken in the amount of \_\_\_\_\_ pounds.  Fair market value of fish taken: \_\_\_\_\_  
Fish ticket number \_\_\_\_\_

The seized fish or game or any parts thereof: Wolf hides

Equipment used in or in aid of the violation: Piper PA-12 tail # N4011M, guns and ammunition

Defendant's Guiding license is Suspended for 5 years.

Defendant is ordered to pay restitution as stated in the Restitution Judgment and to apply for an Alaska Permanent Fund Dividend, if eligible, each year until restitution is paid in full.

The amount of restitution will be determined as provided in Criminal Rule 32.6(c)(2).

IN THE DISTRICT COURT FOR THE STATE OF ALASKA AT MCGRATH

STATE OF ALASKA

CASE NO. 4MC-04-02

vs.

DAVID HAEG

ATN Tracking No. Count 1

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 147, Aniak, AK 99507 by 7-30-07.

Jail surcharge  \$150 with \$100 suspended (if probation ordered)  \$50 (if no probation)  
 Due now to Attorney General's Office, 1031 W. 4<sup>th</sup> 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 2:33pm at Kenai Court.

The following items are forfeited to the State:

Fish taken in the amount of \_\_\_\_\_ pounds.  Fat market value of fish taken \$ \_\_\_\_\_

Fish Ticket Number \_\_\_\_\_

The seized fish or game or any parts thereof: Wolf Sides

Equipment used in or in aid of the violation: Piper PA-12 plane tail number N4011A,

Gun and ammunition

Defendant's  ~~spot fishing~~  hunting  trapping license is revoked and 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 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.

7-30-05

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: DAVID HAEG, ASST. D.P.S.

Clerk: [Signature]  
 CR-464 (2/05)

Chm. R. 32 AND 32.6



JAN-03-06 TUE 10:22 AM DAO KENAI

FAX NO. 907-283 9553

P. 05

*Need  
draft  
Serial #*

IN THE DISTRICT COURT FOR THE STATE OF ALASKA AT MCGRATH

STATE OF ALASKA

CASE NO. 4MC-04-024

vs.  
DAVID HAEG

ATN Tracking No. Count 1

DOB 1-19-66

ID# 5743491

ATN 107117278

RECEIVED  
OCT 11 2004  
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 142 Aniak AK 99527 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. 4<sup>th</sup> Ave., Suite 200, Anchorage, AK 99501

Defendant is committed to the custody of the Commissioner of Corrections to serve 60 days with 55 (hours) (days) suspended. The unsuspended 5 (hours) (days) are to be served at the direction of the jail. Remand date 11-1-05 at 2:30pm at Kenai Court.

The following items are forfeited to the State:

Fish taken in the amount of \_\_\_\_\_ pounds.  Fair market value of fish taken \$ \_\_\_\_\_  
 Fish Ticket Number \_\_\_\_\_

The seized fish or game or any parts thereof: Wolf hides  
 Equipment used in or in aid of the violation: Piper PA-12 plane tail number N4011M,  
 Gun 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 provide in Criminal Rule 32.6 (c) (2)

Defendant is placed on probation for 7 year(s), subject to the following conditions:

- Comply with all direct court orders listed above by the deadlines stated.
- Commit no fish and game violations during the probation period.
- Commit no commercial fishing violations during the probation period.
- Not participate in any way with any predator control program.

9-30-05  
Effective Date

*Margaret L. Murphy*  
 Judge's Signature  
 Margaret L. Murphy  
 Type or Print Judge's Name

I certify that on 10-5-05 a copy this Judgment was sent to: DAVID HAEG  
 Clerk: [Signature]  
 CR-404 (2/05)

Crim. R. 32 AND 32.6  
 04/28/2009 13:35 FAX 1907 269 7138

JAN-03-06 TUE 10:23 AM DAO KENAI

FAX NO: 907 283 9553

P. 06

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. Court II

DOB 1-19-66

ID# 5743491

ATN. 107137278

JUDGMENT - FISH AND GAME

Date of Offense: March 8, 2004

Statute/Ord./Reg. AS 8.54.720(a)(15)

Offense Charged: Unlawful Acts by a Guide: Same Day Airborne

Misdemeanor

Violation

PLEA:  Not Guilty

Guilty

No Contest

TRIAL:  Court

Jury

The defendant was found and adjudged:

NOT GUILTY: IT IS ORDERED that the defendant is acquitted and discharged.

GUILTY of the offense named above.

GUILTY OF \_\_\_\_\_

Statute/Ord./Reg. \_\_\_\_\_

Any appearance or performance bond in this case is exonerated.

Bail to apply to fine.

SENTENCE

Imposition of sentence is suspended and the defendant is placed on probation. Any restitution ordered below will continue to be civilly enforceable after probation expires.

Sentence is imposed as follows:

Police training surcharge due in 10 days:  \$50 (Misdemeanor)  \$10 (violation)

Defendant is fined \$ 3,500.00 with \$ 1,500.00 suspended. The unsuspended \$ 1,000.00 is to be paid to the McGrath District Court by 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. 4<sup>th</sup> 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 Lodes

Equipment used in or in aid of the violation: Piper P17-12 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 provide in Criminal Rule 32.6 (c) (2)

Defendant is placed on probation for 2 year(s), subject to the following conditions:

Comply with all direct court orders listed above by the deadlines stated.

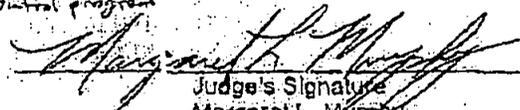
Commit no fish and game violations during the probation period.

Commit no commercial fishing violations during the probation period.

Not participate in any way with any predator control program

9-30-05

Effective Date



Judge's Signature

Margaret L. Murphy

Type or Print Judge's Name

I certify that on 10-30-05 a copy this Judgment was sent to: Defendant, DA, Robinson

Clerk: [Signature]

CR-404 (2/05)

JAN-03-08 TUE 10:24 AM DAD KENAI

FAL NO. 907-983 9553

P. 09

IN THE DISTRICT COURT FOR THE STATE OF ALASKA AT MCGRAITH

STATE OF ALASKA

CASE NO. 4MC-04-024CB

vs.  
DAVID HAEG

ATN Tracking No. Count V

DOR 1-12-66

ID# 5743491

ATN 107137278

JUDGMENT - FISH AND GAME

Date of Offense: March 23, 2004

Statute/Ord./Reg. AS 8.54.720(a)(15)

Offense Charged: Unlawful Acts by a Guide: Same Day Albo ne

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 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. 4<sup>th</sup> 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 Lodes

Equipment used in or in aid of the violation: Piper PA-12 plane, Guns and ammunition

Defendant's  sport fishing  hunting  trapping license is revoked 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 district court orders listed above by the deadline stated.

Commit no fish and game violations during the probation period.

Commit no commercial fishing violations during the probation period.

Not participate in any way with any predator control program.

9-30-05  
Effective Date

Margaret L. Murphy  
Judge's Signature  
Margaret L. Murphy  
Type or Print Judge's Name

I certify that on 10-5-05 a copy this  
Judgment was sent to: Dickinson, DA, Robinson  
Clerk: [Signature]  
CR-464 (2/05)

Online Public Notices

Department of Commerce

find &gt;

# Alaska Corporations, Business and Professional Licensing

- Search
- By Entity Name
  - By AK Entity #
  - By Officer Name
  - By Registered Agent
  - Verify
  - Verify Certification
  - Biennial Report
  - File Online
  - Initial Biennial Report
  - LLC
  - File Online
  - Business Corporation
  - File Online
  - Online Orders
  - Register for Online
  - Orders
  - Order Good Standing
  - Name Registration
  - Register a Business
  - Name Online
  - Renew a Business Name

Date: 4/4/2011

## Filed Documents

(Click above to view filed documents that are available.)

## Print Blank Biennial Report

(To view the report, you must have Acrobat Reader installed.)

### Entity Name History

Name	Name Type
THE BUSH PILOT, INC.	Legal

### Business Corporation Information

AK Entity #:	57078D
Status:	Active - Non Compliant
Entity Effective Date:	11/17/1995
Primary NAICS Code:	
Home State:	AK
Principal Office Address:	PO BOX 123 SOLDOTNA AK 99669
Expiration Date:	Perpetual
Last Biennial Report Filed Date:	10/18/2006
Last Biennial Report Filed:	2007

### Registered Agent

Agent Name:	DAVID HAEG
Office Address:	LOT 3 BLK 2 NORTH SHORE RIDGE SUBD SOLDOTNA AK 99669
Mailing Address:	PO BOX 123 SOLDOTNA AK 99669
Principal Office Address:	PO BOX 123 SOLDOTNA AK 99669

### Officers, Directors, 5% or more Shareholders, Members or Managers

Name:	David S Haeg
Address:	PO Box 123 Soldotna AK 99669
Title:	President
Owner Pct:	100

Name:	David S Haeg
-------	--------------

EXHIBIT 2PAGE 1 OF 2Page 10 of 15

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

Aircraft Inquiries

FAA REGISTRY  
Serial Number Inquiry Results

N-Number

Serial Number

Name

Make / Model

Engine Reference

Dealer

Document Index

State and County

Territory and Country

Pending / Expired /  
Canceled Registration

Reports

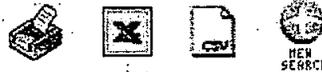
N-number Availability

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)

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

Page 12 of 15 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		

Airworthiness

Page 2 of 3

Page 13 of 15

Definitions

N-Number

Engine Manufacturer LYCOMING

Classification Restricted

Format

Engine Model O-360-A1A

Category Aerial

Registrations at

Advertising

Risk

A/W Date 06/04/2003

Contact Aircraft

Registration

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](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**



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.

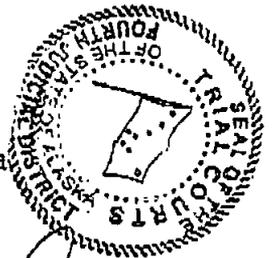
No. 4MC-S04-24 CR.

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 8<sup>th</sup> day of June, 2011 Aniak, Alaska



*David S. Woodman*  
District Court Judge

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

<p>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.</p>
--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

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

STATE OF ALASKA  
DEPARTMENT OF LAW  
OFFICE OF SPECIAL PROSECUTIONS AND APPEALS  
310 K STREET, SUITE 306  
ANCHORAGE, ALASKA 99501  
(907) 269-6250

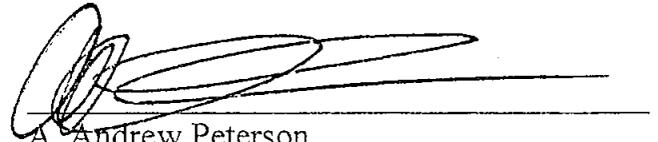
EXHIBIT B  
PAGE 1 OF 5

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

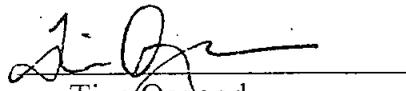
By:



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

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

IN THE DISTRICT COURT FOR THE STATE OF ALASKA  
FOURTH JUDICIAL DISTRICT AT MCGRATH

STATE OF ALASKA, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 DAVID S HAEG, )  
 )  
 DOB: 1/19/1966 )  
 )  
 APSIN ID: 5743491 )  
 )  
 SSN: 471-72-5023 )  
 )  
 Defendant. )

No. 4MC-S04-24 CR.

AFFIDAVIT

STATE OF ALASKA, )  
 ) SS  
 )  
 THIRD JUDICIAL DISTRICT )

I, A. Andrew Peterson, being first duly sworn upon oath, state and depose  
as follows:

1. I am an assistant attorney general in the Office of Special Prosecutions and Appeals – Fish and Game Unit.
2. I spoke with Sherry Hassell of the Department of Public Safety and Howard Martin, Chief Legal Officer for the FAA in the State of Alaska and determined that the State of Alaska will be unable to register the Piper PA-12 that was forfeited to

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

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

the State of Alaska as part of the judgment in this case to the State. Without being able to register the plane in the State's name in accordance with Federal Regulations, the State will be unable to do anything with 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 9<sup>th</sup> day of June, 2010.



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

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

IN THE DISTRICT COURT FOR THE STATE OF ALASKA  
FOURTH JUDICIAL DISTRICT AT MCGRATH

STATE OF ALASKA, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 DAVID S HAEG, )  
 )  
 DOB: 1/19/1966 )  
 )  
 APSIN ID: 5743491 )  
 )  
 SSN: 471-72-5023 )  
 )  
 Defendant. )

No. 4MC-S04-24 CR.

REPLY TO HAEG'S OPPOSITION TO THE STATE'S MOTION FOR  
MODIFICATION OF JUDGMENT

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

COMES NOW the State of Alaska, by and through Assistant Attorney General Andrew Peterson, and hereby files this reply to Haeg's Opposition to the State's Motion for Modification of Judgment, Request for Protective Order and Motion for Consolidation.

Haeg filed an opposition to the State's motion claiming that there is no authority to modify the judgment, that Criminal Rule 35 prohibits modification after 180 days and that the State falsified the FAA's requirements for registering an airplane. Haeg is mistaken in his 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 C  
PAGE 1 OF 14

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

The judgment entered on September 30, 2005 provided that “Piper PA-12 plane tail number N4011M” is forfeited to the State of Alaska. See Exh. 1. This judgment gives title of the airplane to the State of Alaska as against all owners. If there was an innocent third party owner, that owner is entitled to a remission hearing in which the innocent third party owner can establish that they did not know or have reason to believe that the property would be used to violate the law. See State v. Rice, 626 P.2d 104 (Alaska 1981).

In Rice, the defendant was convicted of committing a number of fish and game violations while using an airplane. In addition to other sanctions, the trial court ordered the forfeiture of the Cessna airplane used in committing the offenses. See id at 105. The defendant appealed and Cessna Finance Corp. sought and were granted leave to intervene in the case. Cessna did not challenge the constitutionality of the State’s forfeiture laws, but rather its application as to an innocent holder of a security interest. See id at 111. The Court in Rice found that Cessna was able to assert that it was an innocent holder of a security interest and thus remanded the case for a remission hearing. The purpose of the remission hearing was to allow Cessna the opportunity to show that it was entitled to reimbursement from the state for its share in the forfeited airplane at the time of seizure. Cessna was not entitled to the return of the property in question.

In the present case, Haeg will be unable to show the existence of an innocent third party owner. The corporation “The Bush Pilot, Inc.” is an entity that is 100% owned by David Haeg. See Exh. 2. Haeg’s spouse was listed as a secretary, treasurer and director, but in filings with the State of Alaska, Corporations, Business and Professional Licensing Department, Mrs. Haeg does not have any ownership in “The Bush Pilot, Inc.”.

The Bush Pilot, Inc. is nothing more than an alter ego for David Haeg. The doctrine of piercing the corporate veil refers to instances in which courts disregard the fundamental principle of limited liability of a corporate entity and instead impose

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,

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.<sup>1</sup> 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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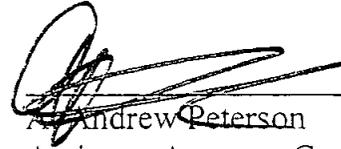
<sup>1</sup> Haeg claims that the State falsified the requirements of the FAA. This claim is without merit. The State attached Exh. 3 to its reply which expressly states that registry "requires that the Amended Judgment cites the name of the registered owner of the aircraft."

will result in nothing more than simply allowing the State to dispose of the airplane as was intended by the original forfeiture order.

DATED: July 2, 2010 at Anchorage, Alaska.

DANIEL S. SULLIVAN  
ATTORNEY GENERAL

By:



Andrew Peterson  
Assistant Attorney General  
Alaska Bar No. 0601002

CERTIFICATE OF SERVICE

This is to certify that a copy of the forgoing was  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

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 147, 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. 4<sup>th</sup> 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 King 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  <sup>guiding</sup> 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 provide in Criminal Rule 32.6 (c) (2)

Defendant is placed on probation for 7 year(s), subject to the following conditions:

Comply with all direct court orders listed above by the deadlines stated.

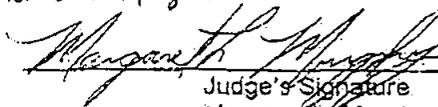
Commit no fish and game violations during the probation period.

Commit no commercial fishing violations during the probation period.

Not participate in any way with any predator control program.

9-30-05

Effective Date



Judge's Signature

Margaret L. Murphy

Type or Print Judge's Name

I certify that on 10-5-05 a copy this Judgment was sent to: DA Rubino

Clark: [Signature]

CR-464 (2/05)

JUDGMENT - DISTRICT COURT - FISH AND GAME

Crim. R. 32 AND 32.6  
AS12.55.041

Page 6 of 14

Exh. 1 01190

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

Any appearance or performance bond in this case is exonerated.  Bail applied to fine Statute/Ord./Reg

\* Amended \* SENTENCE \* Amended \*

Imposition 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).



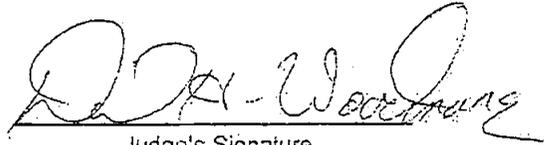
Defendant is ordered to:  
> forfeit wolf hides, equipment used in aid of the violation: Piper PA 12 plane, guns, ammunition.

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)

Page 2 of 2 Pages

Crim. R. 3, 32 and 32.6  
AS 12.55.041

JUDGMENT - DISTRICT COURT - FISH and GAME

Page 8 of 14

Exh. 1  
Pg 3 of 3

01192

# 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

Page 9 of 14

Exh. 2  
Pg. 1 of 4  
01193  
6/21/2010

**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



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	<input checked="" type="checkbox"/> if Director	% Shares Held	<input checked="" type="checkbox"/> if alien affiliate
President	David S Haeg	PO Box 123	Soldotna AK 99669	<input checked="" type="checkbox"/>	100	<input type="checkbox"/>
Vice President				<input type="checkbox"/>		<input type="checkbox"/>
Secretary	Jackie a Haeg	Same As President		<input checked="" type="checkbox"/>		<input type="checkbox"/>
Treasurer	Jackie a Haeg	Same As President		<input checked="" type="checkbox"/>		<input type="checkbox"/>
Director				<input type="checkbox"/>		<input type="checkbox"/>

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	<input checked="" type="checkbox"/> if Director	% Shares Held	<input checked="" type="checkbox"/> if alien affiliate
President				<input type="checkbox"/>		<input type="checkbox"/>
Vice President				<input type="checkbox"/>		<input type="checkbox"/>
Secretary				<input type="checkbox"/>		<input type="checkbox"/>
Treasurer				<input type="checkbox"/>		<input type="checkbox"/>
Director				<input type="checkbox"/>		<input type="checkbox"/>

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
-------------------------------------------------------------------------------	-------------------------------------------------------------------------------------------------------------

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 Community  
and Economic Development

For period ending December 31, 2002

1. Name and Mailing Address of Entity THE BUSH PILOT, INC.  PO BOX 123 SOLDOTNA AK 99669				CORPORATION TAX DUE BIENNIALLY ON JANUARY 2  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 1*			
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	PO Box 123	Soldotna AK 99669	✓	100.00%		
Vice President					0.00%		
Secretary	Jackie A. Haeg	PO Box 123	Soldotna AK 99669	✓	0.00%		
Treasurer	Jackie A. Haeg	PO Box 123	Soldotna AK 99669	✓	0.00%		
<input type="checkbox"/> 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 5 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      David 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

12/5/02

Exh. 2.  
pg. 4 of 4



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  
4327 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 WOODLEY  
Legal Instruments Examiner  
Aircraft Registration Branch

Enclosure: Amended Judgment

AFS-700-LTR-1 (7/04)

Page 13 of 14

Exh. 3  
Pg. 1 of 2

01197

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

Page 14 of 14

EMERGENCY

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

FILED in the Trial Courts  
State of Alaska Third District  
at Kenai, Alaska  
JUN 17 2011  
By: [Signature] Clerk of the Trial Courts  
1:08 Deputy

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)

**6-17-11 EMERGENCY REPLY TO STATE'S SECOND OPPOSITION TO  
HAEG'S MOTION HE MAY IMMEDIATELY RETURN TO GUIDING  
AND RETURN OF HAEG'S MASTER GUIDE LICENSE**

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

COMES NOW Applicant, DAVID HAEG, in the above case and hereby files this emergency reply to the State's second opposition to Haeg's motion he may immediately return to guiding and return of Haeg's master guide license.

**Information**

On January 19, 2011 Haeg asked for an order he may immediately return to guiding and that the State must return his master guide license. On January 24, 2011 the State filed an opposition and on January 31, 2011 Haeg replied to this opposition. Then on June 7, 2011 the State filed another opposition, the court

accepted second opposition during a June 16, 2011 hearing, and this is Haeg's emergency reply as the court stated it is currently in the process of deciding Haeg's motion.

### Discussion

Attached are copies of Haeg's letters to the Division of Corporations, Business and Professional Licensing, which the State failed to include when it presented the Divisions letters to Haeg to the court for its consideration. In other words this is "the other side of the story".

Please note that Haeg investigated an "initial" license application until he found out it would take nearly 2 years at a minimum.

Also attached are copies of 5 permit renewal forms that Haeg just got in the mail after the June 16, 2011 hearing. These permits are for the guide lodge and camps that Haeg needs to conduct his guiding business. These permits cost Haeg about \$10,000 per year and must be paid whether or not Haeg is guiding. In other words each year the State tells Haeg he cannot guide is like fining him another \$10,000. The State has Haeg over a barrel. It knows, just as this court knows, from Haeg's financial statement for a public defender, he will be starved out if he cannot guide for several more years (in addition to the nearly 7 they have already deprived Haeg of by using illegal and unconstitutional tactics) - as the State now wants with their request Haeg obtain a new guide license instead of giving him back the one that was suspended. Haeg wants this court to decide how Haeg is

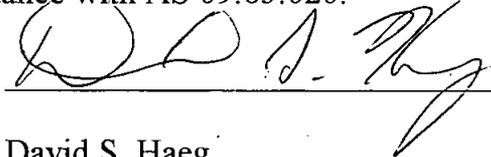
going to pay for this \$10,000 bill that arrived yesterday – and who will pay for all the additional years the State wants with its unjust request.

In direct effect the State is insisting Haeg be sentenced to at least 2 more years of license suspension and at least a \$20,000 fine. And to do this they are breaking the constitutional contract that was made when the sentencing judge said Haeg would get his guide license back in 5 years.

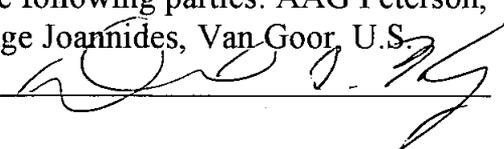
### Conclusion

We live in a country governed by a constitution that requires the government to treat its citizens fairly. The above crushing injustice to Haeg and his family is unacceptable.

I declare under penalty of perjury the forgoing is true and correct. Executed on June 17, 2011. A notary public or other official empowered to administer oaths is unavailable and thus I am certifying this document in accordance with AS 09.63.020.



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

**Certificate of Service:** I certify that on June 17, 2011 a copy of the forgoing was served by mail to the following parties: AAG Peterson, Public Defender's Office, Judge Gleason, Judge Joannides, Van Goor, U.S. Department of Justice, FBI, and media. By: 

Don Habeger, Director  
Corporations, Business, & Professional Licensing

November 17, 2010

Mr. Habeger,

7610 1060 0000 8961 6722

I just received a letter dated November 4, 2010, signed by both you and licensing examiner Karl Marx and a letter dated November 5, 2010, signed by just Mr. Marx.

Your letter states the Department is unable to process my license renewal and "interprets" AS 08.54.670 to mean that I must start over with an initial license application. This is in direct conflict with AS 08.54.710(e) and your statement that if I had paid my debt to society I should immediately be able to again provide for my family.

Mr. Marx claims the investigation and waiting requirements alone will take nearly 2 years for an initial license. These years are in addition to the year of guiding my wife and I gave up for a plea agreement State attorneys promised us (guaranteeing minor charges and that we would only have to give up guiding for one year). Who then, after the year given up was past, broke by changing the already filed charges so they could justify the 5-year "suspension" which you now say is a lifetime revocation. State attorneys turned a one-year suspension into a lifetime revocation - by violating due process and other rights.

I wish to know exactly who interprets the statutes to claim my court ordered 5-year suspension is now turned into a lifetime revocation. Is it you, Karl Marx, Big Game Commercial Services Board members, State attorneys (names?), or someone else? Also very important is can you inform me if AS 08.54.710(e) was considered in making this decision, along with specifically how and why it is claimed this statute can allow a court ordered suspension to be turned into a permanent revocation by this Department?

Please inform me if Mr. Marx has been forwarding all correspondence on this issue (to include this letter) to the Big Game Commercial Services Board members, as I requested by email and certified letter, signed for on November 2, 2010?

Mr. Marx has now provided me proof that indeed he had my license renewal application and payment in his possession (check for \$450) when he claimed he did not. When Mr. Marx told me he had received no application and no money from me I immediately sent another application and another \$450, so now you department has a total of \$900 from my family. I told you that if I found out Mr. Marx lied about this issue I would demand he be fired. What do you intend to do about this?

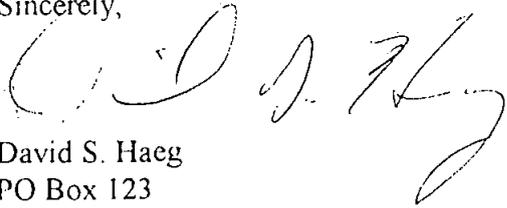
I am also curious about the statement on all correspondence that "an application is considered abandoned when 12 months have elapsed since correspondence was last received from or on behalf of the applicant." Is this some code that will allow Mr. Marx or the Department to somehow to forfeit my family's \$900?

Mr. Marx's November 5 letter states to "Please submit a written request for a refund or a request to apply this amount (\$900) towards a license." I request this money be applied toward my license renewal, as both applications clearly stated. And, as my wife points out, since you have cashed the checks I have now paid for 4 years of renewals and you have an obligation to send my license promptly.

I write to you with hat in hand because I can now prove Mr. Marx knowingly lied to me and because when we talked you seemed to understand and appreciate all of the injustice my family has suffered.

My family looks forward to your prompt, accurate, and complete response to all of the above questions.

Sincerely,



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

**SEND TO 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:  
*Don Habeger / DCCED*  
*PO Box 110800*  
*Juneau AK 99811*

**COMPLETE THIS SECTION ON DELIVERY**

A. Signature: *X*  Agent  Address

B. Received by (Printed Name) C. Date of Delivery

D. Is delivery address different from item 1?  Yes  No  
 If YES, enter delivery address below:

**NOV 22 2000**  
 STATE OF ALASKA  
 DEPARTMENT OF ADMINISTRATION  
 CENTRAL MAIL SERVICES

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) 11 17010 1060 0000 8961 6722

This letter has three purposes:

- (1) To address the injustice of this Board's position (as stated by licensing agent Karl Marx) that I no longer have a valid master guide license after my court ordered 5-year license suspension is up, in effect claiming the 5-year suspension is now a lifetime revocation.
- (2) That I wish to renew my master guide license # 146 and answered "yes" on questions 4 and 5 of my Master Guide License Renewal form and am required to explain.
- (3) To again formally ask for an immediate hearing before the entire board, complete with my right to subpoena witnesses, so I may present the case that I should not be punished further by this board and can go back to guiding immediately.

#### Proceedings

On September 30, 2005, for violations including AS 08.54.720 "Unlawful Acts by a Guide: Same Day Airborne" I was sentenced to "revocation" of my guide license for 5 years – along with forfeiture of \$100,000 in property, \$19,500 fine, restitution of \$4500, and nearly 2 years in jail. See attached judgment. At the time of "revocation" my license was valid and did not have to be renewed until 2006. See attached license.

On September 10, 2008 the Court of Appeals, citing an error caused by a preprinted judgment, ordered my license "revocation" be amended to a 5-year license suspension.

On January 26, 2009 the District Court amended my 5-year license "revocation" to a 5-year license suspension. See attached amended judgment.

On November 12, 2009 I asked this board in a sworn affidavit for a hearing before I was further harmed by this board. In spite of this request I received no hearing.

On August 25, 2010 Superior Court Judge Joannides disqualified Judge Murphy (my trial judge) from jurisdiction over my ongoing case because of evidence of Murphy's corruption and conspiracy with Trooper Gibbens, the main witness against me. The evidence also indicated Judicial Conduct investigator Marla Greenstein falsified her investigation to cover up for Murphy and Gibbens. See attached disqualification.

On August 27, 2010 Judge Joannides certified and referred the evidence of corruption to the Alaska Commission on Judicial Conduct. This referral contained the certified evidence of corruption, conspiracy, and cover up by Judge Margaret Murphy, Trooper Brett Gibbens, and investigator Marla Greenstein. See attached referral.

On October 1, 2010 I contacted the Big Game Commercial Services Board to confirm I could go back to guiding immediately. Licensing agent Marx stated I could not, that my

guide license was no longer valid, and that I would have to go through all steps to receive a master guide license as if I had never held one -- a process that would take many years. Mr. Marx told me others were in my same position as I, with licenses that had "expired" because of a court ordered suspension, and that these people were proceeding to go through all the steps as if they never had a license. Licensing agent Marx told me he would "make it easy" for me to get a license, however.

*Licensing agent Marx told me I would no longer have a valid license even if my conviction was overturned and I was declared innocent.*

### Law

Alaska statute 08.54.710(e):

The board shall suspend or permanently revoke a transporter license or any class of guide license without a hearing if the court orders the board to suspend or permanently revoke the license as penalty for conviction of an unlawful act. *If the board suspends or permanently revokes a license under this subsection, the board may not also impose an administrative disciplinary sanction of suspension or permanent revocation of the same license for the same offense for which the court ordered the suspension or permanent revocation under AS 08.54.720.*

Alaska statute 08.54.605:

(a) Notwithstanding AS 08.54.610, 08.54.620, 08.54.630, 08.54.650, and 08.54.660, a person may not receive or renew a registered guide-outfitter license, master guide-outfitter license, class-A assistant guide license, assistant guide license, or transporter license if:

(2) the person's right to obtain, or exercise the privileges granted by, a hunting, guiding, outfitting, or transportation services license is suspended or revoked in this state or another state or in Canada.

Alaska statute 08.54.670:

The department may not issue a license to a person who held a registered guide-outfitter, class-A assistant guide, or assistant guide license and who failed to renew the license under this chapter for four consecutive years unless the person again meets the qualifications for initial issuance of the license.

*Green v. Bock Laundry Machine Co.*, 490 U.S. 504 (U.S. Supreme Court 1989):

We are confronted here with a statute which, if interpreted literally, produces an absurd, and perhaps unconstitutional, result. On this basis, it was appropriate to consult all public materials . . . to verify that what seems to us an unthinkable disposition (civil defendants but not civil plaintiffs receive the benefit of weighing prejudice) was indeed unthought of

[T]he word "criminal" in front of the word "defendant" was a qualification that could understandably have been omitted by inadvertence—and sometimes is omitted in normal conversation... Since petitioner has not produced, and we have not ourselves discovered, even a snippet of support for this absurd result, we may confidently assume that the word was not used (as it normally would be) to refer to all defendants and only all defendants.

*United States v. Ron Pair Enters., Inc.*, 489 U.S. 235 (U.S. Supreme Court 1989):

A court must look beyond that plain language where a literal interpretation would lead to an absurd result, or would otherwise produce a result demonstrably at odds with the intentions of the drafters.

*United States v. Kirby*, 74 U.S. 482 (U.S. Supreme Court 1868)

[A] sheriff executed an arrest warrant against a mail carrier for murder. A prosecutor then filed charges against the sheriff under a federal statute that made it a crime to willfully interfere with the delivery of the mail. [We] concluded that the law did not apply in these circumstances, in light of common sense. The same common sense accepts the ruling... which enacts that a prisoner who breaks prison shall be guilty of felony, does not extend to a prisoner who breaks out when the prison is on fire—'for he is not to be hanged because he would not stay to be burnt.'

*Koons v. Nigh*, 543 U.S. (U.S. Supreme Court 2004)

In recent years the Court has suggested that we should only look at legislative history for the purpose of resolving textual ambiguities or to avoid absurdities.

*Small v. United States*, 544 U.S. 385 (U.S. Supreme Court 2005)

[T]he applicable statute made possession of a firearm unlawful for any person who had been "convicted in any court" of a crime punishable by imprisonment for more than one year. Mr. Small was convicted under the statute for possession of a firearm, and had previously been convicted for attempted smuggling of firearms into Japan. At issue was whether Small's prior conviction in a Japanese court counted as being "convicted in any court." Justice Breyer, writing for the majority, concluded that "any court" did not include foreign courts.

*Scurto v. Le Blanc*, 184 So. 567 (La. 1938)

A statute... permitted litigants to impeach witness testimony "in any unlawful way." Should one take this statute literally, all manner of illegal methods could be used to demonstrate that a witness is lying. Instead, the Court made a straightforward determination that "this substitution of the word 'unlawful' for the word 'lawful' was an accident," and interpreted the statute as if it had said "lawful." [I]f a party sought to test the credibility of an opponent by submerging the opponent under water to see whether the opponent floated, then—such conduct clearly being an unlawful means of impeachment—the party could not be estopped under the rule.

*Riggs v. Palmer*, 22 N.E. 188 (NY 1889)

An heir laid claim to the estate of his grandfather, whom he had murdered. The Court applied the absurdity doctrine to avoid giving this individual his inheritance.

*Absurd Results, Scriveners Errors, and Statutory Interpretation*, Andrew S. Gold  
Assistant Professor, DePaul University College of Law.

It is impossible to anticipate ahead of time all of the assumptions which might matter when a statute is applied, although they are easy enough to discern after the fact. Given the lack of clairvoyance of human actors, there is no way to avoid all possibility of absurd applications, no matter how carefully a statute is drafted.

*Cornell University Law School, Statutory Interpretation*

Any question of statutory interpretation begins with looking at the plain language of the statute to discover its original intent.

Statutes should be internally consistent. A particular section of the statute should not be inconsistent with the rest of the statute.

The Rule of Lenity: in construing an ambiguous criminal statute, a court should resolve the ambiguity in favor of the defendant.

*UNIVERSITY OF CINCINNATI LAW REVIEW* [Vol. 75, page 56]

[T]here is something not only absurd, but monstrous, in applying the statutory language to the particular case.

*JOHN R. SEARLE, THE REDISCOVERY OF THE MIND* 179 (1992)

"If I say 'Cut the grass,' and you rush out and stab it with a knife, or I say 'Cut the cake,' and you run over it with a lawn mower, there is a perfectly ordinary sense in which you did not do exactly what I asked you to do."

*Holy Trinity Church v. United States*, 143 U.S. 457 (U.S. Supreme Court 1892)

[T]he Alien Contract Labor Act... made it unlawful for any person, company, partnership, or corporation to "in any way assist or encourage the importation or migration, of any alien or aliens" into the United States. The Holy Trinity Church had contracted with a Reverend Warren to immigrate to the United States as a pastor for the church. The church's contract fell within the letter of the statute. However, the Supreme Court concluded that the statute did not apply in this context, despite the statutory text. As the Court explained its reasoning:

"This is not the substitution of the will of the judge for that of the legislator; for frequently words of general meaning are used in a statute, words broad enough to include

an act in question, and yet a consideration of the whole legislation, or of the circumstances surrounding its enactment, or of the absurd results which follow from giving such broad meaning to the words, makes it unreasonable to believe that the legislator intended to include the particular act.

*Antonin Scalia, U.S. Supreme Court Justice, A Matter of Interpretation: Federal Courts and the Law* (Princeton University Press, hardcover, 1997)

“We look for a sort of ‘objectified’ intent—the intent that a reasonable person would gather from the text of the law, placed alongside the remainder of the *corpus juris*.”

WILLIAM BLACKSTONE, 1 COMMENTARIES \*60.

“[T]he Bolognian law, mentioned by Puffendorf, which enacted ‘that whoever drew blood in the streets should be punished with the utmost severity,’ was held after long debate not to extend to the surgeon, who opened the vein of a person who fell down in the street with a fit.”

*Amalgamated v. Laidlaw*, 435 F.3d 1140 (9<sup>th</sup> Cir. 2006):

The Tenth Circuit concluded that the statute contains a “typographical error,” and the word “less” should be read as “more,” thereby avoiding “a result demonstrably at odds with the intentions of its drafters.” When reviewing the language of a statute, our purpose is always to discern the intent of Congress. *Northwest Forest Res. Council v. Glickman*, 82 F.3d 825 (9th Cir. 1996).

[E]ven where the plain language appears to settle the question, we may nonetheless look to the legislative history to determine whether there is clearly expressed legislative intention contrary to that language that overcomes the strong presumption that Congress has expressed its intent in the language it chose. We see no logical purpose attained by requiring a party to wait seven days before seeking to appeal an order granting or denying a motion to remand, and then allowing that party to seek appellate review at any time in the future after the period has passed. That result is entirely illogical. Not surprisingly, the legislative history shows that the statute was intended to create a time *limit* for appeal, specifically to require that the party seeking to appeal do so not *more* than seven days after the district court’s order.

We remain somewhat troubled that, in contrast to most statutory construction cases where we are usually asked to construe the meaning of an ambiguous phrase or word, we are here faced with the task of striking a word passed on by both Houses of Congress and approved by the President, and replacing it with a word of the exact opposite meaning. We nonetheless agree with the Tenth Circuit, the only other circuit to address this issue, that there is no apparent logical reason for the choice of the word “less” in the statute, use of the word “less” is, in fact, illogical and contrary to the stated purpose of the provision, and the statute should therefore be read to require that an application to appeal under § 1453(c)(1) must be filed—in accordance with the requirements of FRAP 5—not *more* than 7 days after the district court’s order.

*Carson Harbor Village, Ltd. v. Unocal Corp.*, 270 F.3d 863 (9th Cir. 2001):

We will resort to legislative history, even where the plain language is unambiguous, where the legislative history clearly indicates that Congress meant something other than what it said.

*Sotto v. Wainright*, 601 F.2d 184 (5<sup>th</sup> Cir. 1979)

If strict construction of a statute's language would produce an absurd, unjust, or unintended result, or 'merely an unreasonable one' at odds with the statute's purpose, the provision must be construed so as to avoid that result.

*In re Kaiser Aluminum Corp.*, 456 F.3d 328, 330 (3d Cir. 2006)

A basic principle of statutory construction is that we should avoid a statutory interpretation that leads to absurd results.

United States Constitution, Amendment V

[N]or shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor be deprived of life, liberty, or property, without due process of law;

*Kastigar v. U.S.*, 406 U.S. 441 (U.S. Supreme Court 1972)

The Fifth Amendment can be asserted in any proceeding, civil or criminal, administrative or judicial, investigatory or adjudicatory;

*Baldwin v. Hale*, 1 Wall 223 (U.S. Supreme Court 1864)

Common justice requires that no man shall be condemned in his person or property without notice and an opportunity to make his defense.

*Bell v. Burson*, 402 U.S. 535 (U.S. Supreme Court 1971)

[T] here must be an opportunity for a fair hearing before the mere suspension of a driver's license.

*Fuentes V. Shevin*, 407 U.S. 67 (U.S. Supreme Court 1972)

Appellant Fuentes was deprived of due process of law by state statutes that allowed her stove and stereo to be seized without opportunity for prior hearing. While deprivation of wages and welfare benefits command the greatest concern, any significant property interest is extended the protection of due process.

Discussion

The court ordered this board to suspend my guide license, the primary means by which I put food in my wife and two daughters mouths, for 5 years. For these 5 years I did not guide or advertise guiding services. It is undisputed I paid my debt in full. Yet after 5 years I am now prevented from again providing for my family.

The court's unambiguous intent was that I should be able to guide again and put food in my family's mouth immediately after my 5-year license suspension was up.

The unambiguous intent of AS 08.54.710(e) is that the board can take no further action on my guide license if the court had already done so; that I should be able to again feed my family immediately after my 5-year license suspension was up.

The unambiguous intent of AS 08.54.605 is that if your guide license is suspended or revoked you cannot renew a suspended license or obtain a new license to thwart a court ordered license suspension or revocation and immediately go back to guiding by obtaining a different license or renewing a suspended one.

The unambiguous intent of AS 08.54.670 is that if you are not using your license, you may only skip one biennial renewal cycle (for a total of 4 years) before you must pay, so that the department still obtains a reasonable amount of revenue to cover the board's cost of keeping track of licenses – and to cull licenses that, voluntarily, are no longer used.

For this board to claim that AS 08.54.605 and AS 08.54.670 can be combined so a license suspended by court order during the period in which it must be renewed will expire forever, is the same absurd, unconstitutional, irrational, bizarre, contrary, and monstrous result articulated in the overwhelming caselaw cited above.

How Alaska's legislature could have overlooked this absurd interpretation is far more easily explained than any case cited above. The wording within a single statute created the absurdities above, so it should have been fairly obvious to the lawmakers as the statute's wording was considered and debated. In this instance, however, the absurdity only appears when two separate statutes are combined, making it far more easily overlooked.

Consider this. If someone commits a *serious* offense immediately after they renew their license, and is sentenced by the court to just under a 4 year license suspension, that person will get his license back immediately after their suspension is up. But if someone commits a *minor* offense 3 years and 11 months since they last renewed and is sentenced by the court to only a 1-month license suspension, that person will lose their license forever. This is an undeniably absurd, unconstitutional, irrational, bizarre, contrary, and monstrous effect of combining AS 08.54.605 and AS 08.54.670.

AS 08.54.710(e) leaves the court, licensee, legislature, and public under the impression, when a sentence is fashioned, that the court imposed license action is the only license action that *can* happen. It is only after it is too late, and the time limit for amending a sentence to avoid this result is past, that a defendant and/or court will know this board will claim the license expired forever.

With help from our legislators, I researched the legislative "intent" of AS 08.54.670 and AS 08.54.605 and found nothing whatsoever that they should be combined to turn any court ordered license suspension into a lifetime revocation if it bridges the time at which the license must be renewed. The intent of AS 08.54.710(e) is plainly stated.

It is obvious the legislature never intended court ordered suspensions bridging the renewal date to be effectively turned into a permanent revocation imposed by this board.

One reason is because the same penalty imposed twice for the same crime violates the United States and Alaska constitutions. See constitutional rights above.

Also not allowed is the due process violation when this Board, without providing an effective hearing, tells a guide he cannot go back to providing for his family after his court ordered suspension is up. The right not to be harmed until being informed and heard is the very cornerstone of our entire judicial system, expressed in cases too many to count since the seminal U.S. Supreme Court case *Baldwin v. Hale*. See caselaw above.

In other words it is only after giving me an effective opportunity to be heard can this board further punish me. These are limited under AS 08.54.710(c) and (e):

(c) The board may impose the following disciplinary sanctions, singly or in combination:

- (1) permanently revoke a license;
- (2) suspend a license for a specified period;
- (3) censure or reprimand a licensee;
- (4) Impose limitations or conditions on the professional practice of a licensee;
- (5) Impose requirements for remedial professional education to correct deficiencies in the education, training, and skill of the licensee;
- (6) Impose probation requiring a licensee to report regularly to the board on matters related to the grounds for probation;
- (7) Impose a civil fine not to exceed \$5,000.

(e) The board shall suspend or permanently revoke a transporter license or any class of guide license without a hearing if the court orders the board to suspend or permanently revoke the license as a penalty for conviction of an unlawful act. *If the board suspends or permanently revokes a license under this subsection, the board may not also impose an administrative disciplinary sanction of suspension or permanent revocation of the same license for the same offense for which the court ordered the suspension or permanent revocation under AS 08.54.720.*

After the court ordered my license to be suspended for 5 years this board cannot now claim my license expired forever because it was suspended. And, until I am given an effective hearing, this board cannot impose other punishments that are allowed.

### Conclusion

Our constitution is designed to protect the fragile citizen, and especially that citizen's way of providing for their family, from unfair treatment by the all-powerful government.

I believe our courts, legislature, and juries will agree that after I was sentenced by a court to the deprivation of my livelihood for 5 years and those 5 years have been paid in full, it is now wrong, unfair, illegal, and/or unconstitutional for this board to now take, without even the cloak of a hearing, my livelihood forever for the same crime. No matter what justification this board claims.

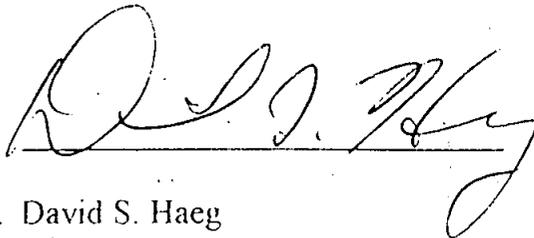
If I do not get a positive response from this board by November 20, 2010, I will file for a court order declaring this board's policy absurd, unacceptable, illegal, and/or unconstitutional. In addition to compensatory damages I will seek punitive damages to stop this board from unfairly harming others in the future. If I can find others who have been, or will be, unfairly affected I will ask for class action status.

If I am unable to secure such an order within a reasonable time I will go back to providing a livelihood for my wife and two daughters until I am arrested and a jury decides the issue.

If this board is hell-bent on perverting the clear intent of our legislature into further monstrous violence upon my right to provide for my family I say do your damndest.

And I will do mine.

I declare under penalty of perjury the forgoing is true and correct. Executed on October 21, 2010. A notary public or other official empowered to administer oaths is unavailable and thus I am certifying this document in accordance with AS 09.63.020.



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

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:  
*Big Game Comm. Ser. Board*  
*PO Box 110806*  
*Juneau, AK 99811*

COMPLETE THIS SECTION ON DELIVERY

A. Signature  Agent  Addre  
 X

B. Received by (Printed Name) C. Date of Del

D. Is delivery address different from Item 1?  Yes  
 If YES, enter delivery address below:  No

STATE OF ALASKA  
 DEPARTMENT OF ADMINISTRATION  
 CENTRAL MAIL SERVICES

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 0290 0001 6040 6282

Dear Permittee:

The Southcentral Region Land Office, Division of Mining, Land and Water wishes to notify you that Land Use Permit #LAS 25800 expires on August 31, 2011. If permit renewal is being requested the following items should be prepared and sent to the division a minimum of 45 days prior to permit expiration: (a) a written request for renewal which includes a statement confirming that the permit operation(s) will be identical to the one/those authorized under the current permit and (b) a non-refundable \$100 filing fee.

If permit renewal is not being requested, a completion report is due on or before September 30, 2011. The completion report must address the items specified in Special Stipulation 7, and verify the site has been vacated and restored to a satisfactory condition. Photographs clearly depicting compliance with approved site development plans and site restoration guidelines must accompany the report. If more than one site is authorized under the permit, file a report on each site. Identify each site by its geographic description. (Please label the report(s) with the applicable permit number.)

Failure to provide a satisfactory report along with the required photographs will subject the site(s) to a field inspection for which you may be assessed, at the discretion of the Director, a fee equal to the costs incurred by the division or a minimum of \$100.

Send requests for permit renewal and completion reports to the DMLW, Southcentral Region, Land Office, 550 W. 7th Ave., Ste. 900C, Anchorage, AK 99501-3577.

If you have any questions, please contact Andie Snow at 269-8569.

Dear Permittee:

The Southcentral Region Land Office, Division of Mining, Land and Water wishes to notify you that Land Use Permit #LAS 25796 expires on August 31, 2011. If permit renewal is being requested the following items should be prepared and sent to the division a minimum of 45 days prior to permit expiration: (a) a written request for renewal which includes a statement confirming that the permit operation(s) will be identical to the one/those authorized under the current permit and (b) a non-refundable \$100 filing fee.

If permit renewal is not being requested, a completion report is due on or before September 30, 2011. The completion report must address the items specified in Special Stipulation 7, and verify the site has been vacated and restored to a satisfactory condition. Photographs clearly depicting compliance with approved site development plans and site restoration guidelines must accompany the report. If more than one site is authorized under the permit, file a report on each site. Identify each site by its geographic description. (Please label the report(s) with the applicable permit number.)

Failure to provide a satisfactory report along with the required photographs will subject the site(s) to a field inspection for which you may be assessed, at the discretion of the Director, a fee equal to the costs incurred by the division or a minimum of \$100.

Send requests for permit renewal and completion reports to the DMLW, Southcentral Region, Land Office, 550 W. 7th Ave., Ste. 900C, Anchorage, AK 99501-3577.

If you have any questions, please contact Andie Snow at 269-8569.

Dear Permittee:

The Southcentral Region, Land Office, Division of Mining, Land and Water, wishes to notify you that Land Use Permit #LAS 25797 expires on August 31, 2011. If permit renewal is being requested the following items should be prepared and sent to the division a minimum of 45 days prior to permit expiration: (a) a written request for renewal which includes a statement confirming that the permit operation(s) will be identical to the one/those authorized under the current permit and (b) a non-refundable \$100 filing fee.

If permit renewal is not being requested, a completion report is due on or before September 30, 2011. The completion report must address the items specified in Special Stipulation 17, and verify the site has been vacated and restored to a satisfactory condition. Photographs clearly depicting compliance with approved site development plans and site restoration guidelines must accompany the report. If more than one site is authorized under the permit, file a report on each site. Identify each site by its geographic description. (Please label the report(s) with the applicable permit number.)

Failure to provide a satisfactory report along with the required photographs will subject the site(s) to a field inspection for which you may be assessed, at the discretion of the Director, a fee equal to the costs incurred by the division or a minimum of \$100.

Send requests for permit renewal and completion reports to the DMLW, Southcentral Region, Land Office, 550 W. 7th Ave., Ste. 900C, Anchorage, AK 99501-3577.

If you have any questions, please contact Candice Snow at 269-8569.

Dear Permittee:

The Southcentral Region, Land Office, Division of Mining, Land and Water, wishes to notify you that Land Use Permit #LAS 25790 expires on August 31, 2011. If permit renewal is being requested the following items should be prepared and sent to the division a minimum of 45 days prior to permit expiration: (a) a written request for renewal which includes a statement confirming that the permit operation(s) will be identical to the one/those authorized under the current permit and (b) a non-refundable \$100 filing fee.

If permit renewal is not being requested, a completion report is due on or before September 30, 2011. The completion report must address the items specified in Special Stipulation 17, and verify the site has been vacated and restored to a satisfactory condition. Photographs clearly depicting compliance with approved site development plans and site restoration guidelines must accompany the report. If more than one site is authorized under the permit, file a report on each site. Identify each site by its geographic description. (Please label the report(s) with the applicable permit number.)

Failure to provide a satisfactory report along with the required photographs will subject the site(s) to a field inspection for which you may be assessed, at the discretion of the Director, a fee equal to the costs incurred by the division or a minimum of \$100.

Send requests for permit renewal and completion reports to the DMLW, Southcentral Region, Land Office, 550 W. 7th Ave., Ste. 900C, Anchorage, AK 99501-3577.

If you have any questions, please contact Candice Snow at 269-8569.

Dear Permittee:

The Southcentral Region, Land Office, Division of Mining, Land and Water wishes to notify you that Land Use Perm. #LAS 23799 expires on August 31, 2011. If permit renewal is being requested the following items should be prepared and sent to the division a minimum of 45 days prior to permit expiration: (a) a written request for renewal which includes a statement confirming that the permit operation(s) will be identical to the one/those authorized under the current permit and (b) a non-refundable \$100 filing fee.

If permit renewal is not being requested, a completion report is due on or before September 30, 2011. The completion report must address the items specified in Special Stipulation 17, and verify the site has been vacated and restored to a satisfactory condition. Photographs clearly depicting compliance with approved site development plans and site restoration guidelines must accompany the report. If more than one site is authorized under the permit, file a report on each site. Identify each site by its geographic description. (Please label the report(s) with the applicable permit number.)

Failure to provide a satisfactory report along with the required photographs will subject the site(s) to a field inspection for which you may be assessed, at the discretion of the Director, a fee equal to the costs incurred by the division or a minimum of \$100.

Send requests for permit renewal and completion reports to the: DMLW, Southcentral Region, Land Office, 550 W. 7th Ave., Ste. 900C, Anchorage, AK 99501-3577.

If you have any questions, please contact Candice Snow at 269-8569.

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

David S Haeg,  
vs.  
State of Alaska,

Applicant,  
  
Respondent.

CASE NO: 3KN-10-01295CI

**NOTICE OF HEARING**

Event: Status Hearing  
Courtroom: Courtroom 1, Kenai Courthouse  
Location: 125 Trading Bay Drive, Suite 100  
Kenai, AK 99611  
Date: 07/06/2011  
Time: 4:00 pm  
Event Judge: Carl Bauman

CLERK OF COURT

6/16/2011

Date

By: JRoberts

Deputy Clerk

I certify that on 6-17-11  
a copy of this notice was mailed or delivered to:  
Peterson  
Haeg

Clerk: JRoberts

Hearing/Event information for this case may also be available online at  
<http://www.courtrecords.alaska.gov>.

**FILE COPY**

EMERGENCY

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

FILED in the Trial Courts  
State of Alaska Third District  
Kenai, Alaska

JUN 10 2011

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

Clerk of the Trial Courts  
By \_\_\_\_\_ Deputy

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

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

**6-10-11 EMERGENCY MOTION FOR IMMEDIATE STAY OF JUNE 8, 2011 ORDER, MODIFYING THE JUDGMENT AGAINST HAEG NEARLY 5 YEARS AFTER THE FACT, PENDING APPEAL OF THIS ORDER AND EMERGENCY MOTION THAT THE STATE IS PREVENTED FROM DISPOSING OF PROPERTY DISPUTED IN HAEG'S PCR UNTIL HAEG'S PCR IS CONCLUDED**

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

COMES NOW Applicant, DAVID HAEG, in the above case and hereby files this 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.

**Information**

D

On June 8, 2010 and on April 7, 2011 Assistant Attorney General Andrew Peterson filed motions to modify Haeg's judgment nearly 5 years after judgment against Haeg was pronounced. Peterson did not cite any authority that allowed this to be done and claimed the State needed to modify the judgment so the State could sell the airplane that had been seized during the case against Haeg. The State claimed the Federal Aviation Administration would not grant title to the State as the judgment was against Haeg and the airplane was owned by the Bush Pilot Inc. – a legal entity never charged, never convicted, or never given the required and requested hearings when its property was seized.

On June 15, 2010 and on April 19, 2011 Haeg opposed by citing overwhelming authority that established beyond doubt that the court lost jurisdiction to modify Haeg's judgment after 180 days of the judgment being pronounced. See AS 12.55.088 and *State v. T.M.*, 860 P.2d 1286 (AK 1993)

State v. T.M., 860 P.2d 1286 (AK 1993):

“In general, when a statute or rule specifies a time limit on the court's power to modify or vacate a judgement, the court has no power to act outside this time limit. 46 Am.Jur.2d, *Judgments*, § 704, pp. 854-56; W. LaFave & J. Israel, *Criminal Procedure* (1984), § 25.2(e), Vol. 3, p. 131. In *Davenport v. State*, 543 P.2d 1204, 1210-11 (Alaska 1975), the supreme court declared that the superior court has no inherent power to retain jurisdiction over a criminal case and modify its judgement based on later events. Any power the superior court might have to modify a criminal judgement must stem from statute or rule. The rule is the same in civil cases. See *Stone v. Stone*, 647 P.2d 582, 585-86 (Alaska 1982), in which the supreme court held that, after the expiration of the 1-year time limit specified in Alaska Civil Rule 60(b), the superior court no longer has the power to modify a judgement in a civil action on the basis of alleged fraud.”

**Alaska Statute 12.55.088. Code of Criminal Procedure - Modification of Sentence.**

(a) The court may modify or reduce a sentence by entering a written order under a motion made within 180 days of the original sentencing.

Haeg also asked for an order preventing the State from disposing of the property disputed in Haeg's PCR until Haeg's PCR was resolved and that all motions be decided by Haeg's PCR court.

On July 28, 2010 Haeg subpoenaed Magistrate Woodmancy to testify as a material witness in a hearing concerning Haeg's PCR. See court record.

Magistrate Woodmancy hired private criminal defense attorney Peter Maassen and on August 16, 2010 Maassen filed an entry of appearance on behalf of Magistrate Woodmancy in Haeg's PCR. See court record.

On August 18, 2010 private criminal defense attorney Peter Maassen filed a motion to quash the subpoena requiring Magistrate Woodmancy to testify as a material witness in Haeg's PCR. See court record.

On December 8, 2010 Judge Bauman was assigned to Haeg's PCR case and on 28, 2010 venue was transferred to Kenai, Alaska. See court record.

On June 8, 2011 and over 5 years after the judgment against Haeg was pronounced, Magistrate Woodmancy granted the State's motion to modify Haeg's judgment and signed an order 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."

On June 10, 2011 Haeg attempted to contact AAG Peterson to see if he would oppose an immediate stay of Magistrate Woodmancy's order pending appeal and to see if he would oppose an immediate order preventing the disposal of disputed property prior to the conclusion of Haeg's PCR. Peterson's secretary stated Peterson was on the phone and for Haeg to leave a detailed message and Peterson would call back. Haeg did so both in the morning and afternoon of June 10, 2011 and Peterson never called back.

### Discussion

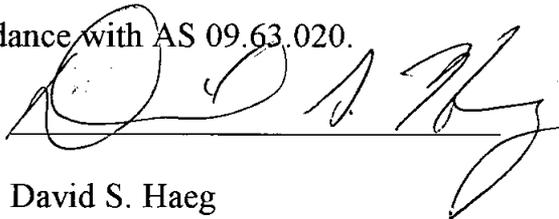
1. It is clear the court had no jurisdiction to modify the judgment more than 180 days after the judgment was pronounced, let alone nearly 5 years after the fact - no matter what the reason.
2. It is clear a judgment against one person or legal entity cannot be modified to forfeit property owned by a different legal entity that was never charged, convicted, or was never even given the required and asked for hearings to protect its property.
2. It is clear that Magistrate Woodmancy has a direct conflict of interest and bias in Haeg's case as a result of Woodmancy having to hire a private attorney to prevent his testimony, which would have been favorable to Haeg.
3. It is clear that Magistrate Woodmancy cannot decide motions in a case in which he is a material witness.
4. It is clear motions concerning Haeg's PCR should be decided by the judge presiding over Haeg's PCR.

5. It is clear the State cannot be allowed, on the eve of Haeg's PCR which will almost certainly require the return of all property seized, to dispose of the disputed property so even if Haeg legally wins he in fact loses.

**Conclusion**

Based on the above Haeg will, as soon as he is able, appeal Magistrate Woodmancy's modification of judgment. To prevent harm before this takes place Haeg asks for an immediate stay of Magistrate Woodmancy's June 8, 2011 order modifying the judgment against Haeg until Haeg's appeal is concluded. In addition Haeg asks for an immediate order preventing the State from disposing of property disputed in Haeg's PCR until Haeg's PCR is concluded.

I declare under penalty of perjury the forgoing is true and correct. Executed on June 10, 2011. A notary public or other official empowered to administer oaths is unavailable and thus I am certifying this document in accordance with AS 09.63.020.



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

**Certificate of Service:** I certify that on June 10, 2011 a copy of the forgoing was served by mail to the following parties: AAG Peterson, Public Defender's Office, Judge Gleason, Judge Joannides, Van Goor, U.S. Department of Justice, FBI, and media. By: David S. Haeg by fax also

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  
APSN 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 PIPEK 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 8<sup>th</sup> day of June, 2011 AMIAK  
2010, McGrath, Alaska



D. H. Woodman  
District Court Judge

I certify that on 6-8-11 Def  
copied of the above motion to:  
Clerk: CSA

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

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

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

JUN 10 2011

Clerk of the Trial Courts

By \_\_\_\_\_ Deputy

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

Trial Case No. 4MC-04-00024 CR

**STATE'S OPPOSITION TO APPLICANT'S MOTION FOR  
IMMEDIATE RETURN TO GUIDING AND RETURN OF HAEG'S  
MASTER GUIDE LICENSE**

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

COMES NOW the State of Alaska, by and through Assistant Attorney General Andrew Peterson and hereby files this opposition to the Applicant's motion for an order that he may immediately return to guiding and the state must return his master guide's license.

On September 30, 2005, Haeg was sentenced on ten misdemeanor counts related to his illegal same day airborne killing of wolves outside of a predator control area. See Exh. 1, *Unpublished Opinion of Haeg v. State*, 2008 WL 4181432, 5 (Alaska App. 2008). In addition to fine, jail and forfeiture, the trial court revoked Haeg's big game guide license for a period of five years. See *id.* Haeg appealed his

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

conviction and sentence on numerous grounds following his conviction. The Court of Appeals upheld Haeg's conviction, but remanded his sentence for modification of the license revocation. *See id.*, p. 11. The Court of Appeals ordered the trial court to modify the judgments to reflect that Haeg's license was suspended for a period of five years from September 30, 2005 as opposed to revoked. *See id.*

Haeg's guide license expired on December 31, 2005 and was up for renewal in January 2006. *See* Exh. 2 (Copy of Haeg's guide license issued November 13, 2003 with an expiration date of December 31, 2005). Due to the suspension of his guide's license, Haeg was not eligible to renew his license in 2006, 2007, 2008 and 2009. Guide licenses are issued for a period of two years at a time. Thus Haeg was ineligible from applying for a license renewal for two complete cycles, or until September 30, 2010.

On October 25, 2010, the Division of Corporations, Business and Professional Licensing Agency received an application for a master or registered guide-outfitter biennial license renewal by Haeg. *See* Exh. 3.<sup>1</sup> On November 4, 2010, Licensing Examiner Carl Marx replied to Haeg via letter and informed Haeg that he was ineligible for renewal per Alaska

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<sup>1</sup> A master guide-outfitter license authorizes a registered guide-outfitter to use the title master guide-outfitter, but is for all other purposes under this chapter a registered guide-outfitter license. *See* AS 08.54.610(b).

Statute 08.54.670 which provides that “[t]he department may not issue a license to a person who held a registered guide-outfitter, class A assistant guide or assistant guide license and who has failed to renew the license under this chapter for four consecutive years unless the person again meets the qualifications for initial issuance of the license.” See Exh. 4. Haeg was informed that he could apply to take the registered guide-outfitter examination. See *id.*

On November 2, 2010, Haeg filed a second application for master or registered guide-outfitter biennial license renewal. See Exh. 5. Haeg was again informed by letter that the Department was unable to process his renewal due to the fact that he had not renewed his license for four consecutive years. See Exh. 6. Haeg was again instructed to file an initial license application and the process for submitting the application. See *id.*

On December 28, 2010, Don Habeger, Director of Corporations, Business and Professional Licensing, responded to concerns raised by Haeg regarding his license status. See Exh. 7. Habeger informed Haeg that he must follow the proper application process as Alaska Statute 08.54.670 prevents Haeg from simply renewing his license. Habeger makes it clear in his letter that the Big Game Commercial Services Board (“Board”) may not impose any additional

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

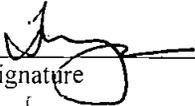
penalty upon Haeg, but that the Department of Occupational Licensing ("Department") must still follow state law in issuing guide licenses. See *id.*, p. 1. Habeger further informs Haeg that all of his prior experience will be used in his favor as credentials for his license. See *id.*, p. 2. Despite this clear direction, Haeg has still not filed for a registered guide's license.

Haeg is entitled to apply for a registered guide's license at which time the Division of Corporations, Business and Professional Licensing will evaluate his application. If denied, Haeg has the option of filing for an administrative appeal or filing a civil suit against the Division. Filing a motion seeking to order the Division to reinstate his license as part of his post conviction relief application is not the appropriate course of action. Haeg's PCR claims should focus on alleged errors that took place during his trial, not alleged wrongs by other administrative agencies five years after his conviction. Consequently, this Court should deny Haeg's motion and direct him to seek the appropriate remedy to address his alleged wrong.

DATED: June 7, 2011.

JOHN J. BURNS  
ATTORNEY GENERAL

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

David Haeg  
  
Signature \_\_\_\_\_ Date 6/7/11

By:

  
Andrew Peterson  
Assistant Attorney General  
Alaska Bar No. 0601002

Not Reported in P.3d, 2008 WL 4181532 (Alaska App.)  
(Cite as: 2008 WL 4181532 (Alaska App.))

**H**

Only the Westlaw citation is currently available.

## NOTICE: UNPUBLISHED OPINION

NOTICE: Memorandum decisions of this court do not create legal precedent. See Alaska Appellate Rule 214(d) and Paragraph 7 of the Guidelines for Publication of Court of Appeals Decisions (Court of Appeals Order No. 3). Accordingly, this memorandum decision may not be cited as binding precedent for any proposition of law.

Court of Appeals of Alaska.  
David S. HAEG, Appellant,  
v.  
STATE of Alaska, Appellee.

No. A-9455/10015.  
Sept. 10, 2008.  
Rehearing Denied Sept. 26, 2008.

Appeal from the District Court, Fourth Judicial District, McGrath, Margaret L. Murphy, Judge, and David Woodmancy, Magistrate.  
David Haeg, pro se, Soldotna.

A. Andrew Peterson, Assistant Attorney General, Office of Special Prosecutions and Appeals, Anchorage, and Talis J. Colberg, Attorney General, Juneau, for the Appellee.

Before: COATS, Chief Judge, and MANNHEIMER and STEWART, Judges.

*MEMORANDUM OPINION AND JUDGMENT*  
COATS, Chief Judge.

\*1 David S. Haeg was convicted of five counts of unlawful acts by a guide: hunting wolves same day airborne; <sup>FN1</sup> two counts of unlawful possession of game; <sup>FN2</sup> one count of unsworn falsification; <sup>FN3</sup> and one count of trapping wolverine in a closed season. <sup>FN4</sup> Haeg appeals these convictions in Case No. A-9455.

FN1. AS 8.54.720(a)(15) & 5 AAC

92.085(8).

FN2. 5 AAC 92.140(a).

FN3. AS 11.56.210(a)(2).

FN4. 5 AAC 84.270(14).

While this appeal was pending, Haeg asked the district court to suppress the evidence used during his trial that the State had seized from him during its criminal investigation and to have the property returned to him. The district court denied the motion, and Haeg appeals this decision in Case No. A-10015.

In Case No. A-9455, Haeg primarily argues that the State used perjured testimony to obtain search warrants and that he should not have been charged as a guide for hunting wolves same day airborne-first, because he was not guiding at the time, and second, because he was not hunting at the time. He also argues that the prosecutor violated Alaska Evidence Rule 410 by using statements that Haeg made during the parties' failed plea negotiations. And he asserts that his attorneys provided ineffective assistance of counsel.

In addition, Haeg claims that the district court committed various errors during the course of the proceedings. In particular, he contends that the district 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. In a separate claim, he contends that the district court erred by revoking his guide license instead of suspending it.

EXHIBIT 1  
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In Case No. A-10015, Haeg asserts that the district court erred when it denied his post-conviction motion to suppress the evidence that the State had seized from him during its criminal investigation and to return the property to him. He also contends that AS 12.35.020, AS 12.35.025, AS 16.05.190, and AS 16.05.195 (criminal seizure and forfeiture statutes) are unconstitutional because these statutes do not require the government to inform defendants in a criminal case that they have the right to contest the seizure of their property.

For the reasons explained here, we affirm Haeg's convictions. But we conclude that the district court meant to suspend rather than to revoke his guide license. Therefore we direct the district court to modify Haeg's judgment to reflect that Haeg's guide license was suspended for five years.

*Facts and proceedings*

\*2 Haeg was a licensed master big game guide operating in game management unit 19. In early March 2004, he and Zellers received permits allowing them to participate in a predator control program near McGrath.

The predator control program applied to wolves in game management unit 19D-East, which was located inside unit 19D. Within unit 19D-East, participants in the program were allowed to kill wolves by shooting them from an airborne aircraft or by landing the aircraft, exiting it, and immediately shooting them. <sup>FN5</sup> The purpose of the program was to increase the numbers of moose in unit 19D-East by decreasing the number of wolves preying on them. In March 2004, unit 19D-East was the only unit where this type of predator control was permitted.

FN5. See 5 AAC 92.039(h)(1), (3).

To help the Department of Fish and Game monitor the progress of the predator control program, the participants were required to separately identify and seal the hides of all wolves taken under the program and to report the locations where the wolves were killed. Alaska State Trooper Brett Gibbens, among others, was notified whenever wolves were taken under the program. One of his duties was to verify the locations where the wolves were reportedly killed.

Soon after Haeg and Zellers received their permit, they reported that on March 6, 2004, they had taken three gray wolves in the area of Lone Mountain near the Big River. When Gibbens was notified of this report, he suspected that the information was inaccurate. The coordinates that Haeg and Zellers gave placed the kill site just within unit 19D-East. But Gibbens knew that the wolves in the pack then frequenting that area were predominately black, with only two that might be considered gray.

On March 11, 2004, Gibbens inspected the reported kill site. He found wolf tracks but no kill site near the reported location. In addition to this discrepancy, Gibbens recalled that on the day of the reported kills, when he was off-duty, he had seen Haeg's distinctive airplane. The airplane was a mile or two outside of unit 19D-East and was flying away from that unit. To Gibbens, it appeared that the pilot was following a fresh wolf track.

On March 21, Gibbens met and spoke to Haeg and Zellers when they returned to McGrath to seal the three wolf hides. While Haeg refueled his airplane, Gibbens and Haeg talked about the airplane's skis and its oversized tail wheel. Gibbens noticed that the airplane's skis and its oversized tail wheel would leave a distinctive track when it landed in snow. Gibbens and Zellers discussed the weapons and the shotgun ammunition that Zellers was using to shoot the wolves. This ammunition was a relatively new variety of buckshot. During this meeting, Haeg said that he knew the boundaries of the area where he was allowed to take wolves under the predator control program.

On March 26, while flying his airplane, Gibbens spotted wolf tracks from a large pack of wolves on the Swift River. He also saw where another airplane had landed to examine the track and determine the wolves' direction of travel. Because his airplane was low on fuel, Gibbens continued home. The next day, he returned to investigate. From the air, he confirmed that the area was not a trap site or kill site. He then followed the wolf tracks up the Swift River and found where wolves had killed a moose on an island in the river. The island was covered with heavy brush and had numerous wolf trails. Gibbens saw that someone had set snares and leg traps on the island.

\*3 Gibbens followed the wolf tracks further up-

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river. About a half mile away from the moose kill, he saw where a wolf had been killed. It looked like the wolf had been shot from the air, and there was a set of airplane tracks that had taxied over the wolf kill site. He continued to follow the wolf tracks up the Swift River and found three more places where wolves had been shot from the air. He saw evidence that the wolf carcasses had been picked up and placed in an airplane, and he saw a staging area nearby where the airplane had landed several times.

These kill sites were all about forty to fifty-five miles from the nearest boundary of unit 19D-East. There was no evidence near these sites of snaring or trapping, nor of any ground transportation like a snow machine. Rather, the evidence indicated that an airplane had landed near the kill sites and that someone had gotten out of the airplane, approached the wolf carcasses, and hauled them back to the airplane. The airplane tracks at the kill sites and at the staging area appeared to be the same. Gibbens recognized that they were similar to Haeg's airplane's distinctive ski and tail wheel arrangement.

With the help of other troopers, Gibbens more thoroughly investigated the kill sites. The troopers found shotgun pellets that were consistent with the type of buckshot Haeg and Zellers were using. They also found a spent .223 cartridge stamped with ".223 Rem-Wolf." At the staging area, they found where a carcass had been placed in the snow.

After finding this evidence, Gibbens applied for and obtained a search warrant for **Haeg's airplane** and for his lodge at Trophy Lake. The lodge was listed as **Haeg's** base of operations for the predator control program and was not far away. The lodge was located in unit 19C.

At the lodge, the troopers found wolf carcasses, evidence that the wolves had been recently skinned, and rifle magazines loaded with ammunition stamped with ".223 Rem-Wolf." Gibbens also saw airplane ski tracks leading up to the front of the lodge that matched the tracks from the kill sites and the staging area. Troopers seized six carcasses from the lodge. Gibbens later performed a necropsy on each carcass. The necropsies indicated that all six wolves had been shot from the air with a shotgun.

Other evidence found during the search indicated

that the leg traps set around the moose kill on the Swift River island belonged to Haeg. On April 2, Gibbens found that six of those leg traps were still set and catching game even though leg trap season for wolves and wolverines had ended. He also saw that two wolverines were caught in nearby snares. The season for taking wolverines with traps or snares had ended March 31.

Based on the evidence found during the search of the lodge, additional search warrants were issued, including one for **Haeg's** residence in Soldotna. While searching **Haeg's** residence, troopers seized a 12 gauge shotgun and a .223 caliber rifle along with magazines, spent casings, and ammunition. The .223 ammunition seized was stamped with ".223 Rem-Wolf." The troopers also seized **Haeg's airplane**.

\*4 Evidence seized at the residence indicated that the snares set around the moose kill on the Swift River belonged to **Haeg**. Gibbens later went back to the Swift River moose kill site after the snare season for wolf ended and found that the snares were still active and catching game. The remains of two wolves were in these snares.

Later, executing one of the search warrants obtained after searching **Haeg's** residence, troopers seized nine wolf hides from a business in Anchorage. These hides had been dropped off by Zellers. Eight of the nine hides clearly showed that the wolves had been shot with a shotgun. Of these eight hides, many had damage indicating that the wolves had been shot from the air. But despite this evidence, only three of the hides had been sealed under the predator control program. According to the sealing certificates and despite evidence to the contrary-Haeg and Zellers claimed that the remaining six hides had not been shot from an airplane. Rather, when sealing these six hides, Haeg and Zellers reported that they had killed the wolves in unit 16B by shooting them from the ground and transporting them with snowmobiles.

After completing this investigation, Gibbens concluded that the nine wolves had been shot from an airplane, that none had been taken in unit 19D-East, that the sealing certificates had been falsified, and that Haeg and Zellers had unlawfully possessed the hides. He also concluded that the relevant leg traps and the snares belonged to Haeg and that they were still actively catching game after the relevant leg trap

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and the snare seasons had closed.

Sometime after Gibbens completed his investigation, the State entered separate plea negotiations with Haeg and Zellers. The negotiations with Haeg broke down, but the State reached a plea agreement with Zellers. Among other things, Zellers was required to enter a plea for two consolidated counts of violating AS 8.54.720(a)(8)(A), unlawful acts by a guide. He was also required to testify against Haeg.

In April 2005, Haeg moved to dismiss the information. Among other things, he argued that the State could not charge him for hunting wolves same day airborne because his predator control permit allowed him to do so, even if only in unit 19D-East. In a written decision, District Court Judge Margaret L. Murphy rejected Haeg's arguments and denied the motion.

A jury trial began July 26, 2005, with Judge Murphy presiding. Among others, Gibbens, Zellers, and Haeg testified. The gist of Gibbens's testimony is set out in the preceding paragraphs. This testimony was corroborated not only by Zellers, but by Haeg himself.

Haeg testified that he was a licensed guide. He conceded that he and Zellers knew (or, in one instance, should have known) that they were taking the wolves outside of unit 19D-East, that they had intentionally falsified the sealing certificates for all nine wolves, and that they had possessed the wolves and hides illegally. He also admitted that he was responsible for the leg traps that were still catching game after the leg trap season had closed.

\*5 But in his defense against the hunting charges, Haeg testified that he was not unlawfully "hunting" the wolves, but was only violating his predator control permit. Haeg denied responsibility for snaring wolves out of season and explained that the snares had been turned over to another trapper who was supposed to close them out when the season ended.

The jury found Haeg guilty of all five counts of unlawful acts by a guide: hunting wolves same day airborne; two counts of unlawful possession of game; one count of unsworn falsification; and of one count of trapping wolverines in a closed season. The jury

found Haeg not guilty of one count of snaring wolves in a closed season<sup>FN6</sup> and of failure to salvage game.<sup>FN7</sup>

FN6. 5 AAC 84.270(13).

FN7. 5 AAC 92.220(a)(1).

At sentencing, Judge Murphy ordered Haeg to forfeit the nine wolf hides, a wolverine hide, the airplane, and the guns and ammunition used to take the wolves. She also revoked Haeg's guiding license for five years. This appeal followed.

While this appeal was pending, Haeg filed a motion requesting this court to order the State to return to him the property that had been seized during the criminal investigation. We remanded the case for the limited purpose of allowing the district court to resolve Haeg's motion. Relying on Criminal Rule 37, Haeg asked the district court to suppress the evidence seized during the investigation and to return the property to him. Magistrate David Woodmancy denied Haeg's motion. Haeg appeals this decision.

Another of Haeg's motions asks this court to modify part of his sentence. Haeg asserts that Judge Murphy erred when she revoked his guide license instead of suspending it.

#### *Discussion*

*Haeg's appeal in No. A-9455*

*Haeg's claim that the State used perjured testimony*

Haeg contends that Trooper Gibbens intentionally made false statements in his search warrant affidavit. In particular, Haeg claims that Gibbens lied when he said in his affidavit that he found evidence in unit 19C that Haeg had taken wolves. But Haeg did not challenge the search warrant affidavit prior to trial. Because of this, his claim is forfeited.<sup>FN8</sup> And, under Moreau v. State,<sup>FN9</sup> he is barred from bringing this claim on appeal, even as a matter of plain error.<sup>FN10</sup>

FN8. See Alaska R.Crim. P. 12(b) and (e).

FN9. 588 P.2d 275 (Alaska 1978).

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FN10. *Id.* at 279-80.

In *Moreau*, the Alaska Supreme Court acknowledged that it was “clear that a false affidavit in support of a search warrant can, in appropriate circumstances, nullify the warrant.” <sup>FN11</sup> But the court went on to rule that “[w]hile we do not state that search and seizure issues are incapable of plain error analysis, we believe that the exclusionary rule which requires the suppression of illegally obtained evidence is usually not appropriately raised for the first time on appeal.” <sup>FN12</sup> The court explained that the exclusionary rule “is a prophylactic device to curb improper police conduct and to protect the integrity of the judicial process. Thus, justice does not generally require that it be applied on appeal where it is not urged at trial [.]” <sup>FN13</sup> In light of *Moreau*, Haeg cannot pursue this claim.

FN11. *Id.* at 279.

FN12. *Id.* at 280 (footnote omitted).

FN13. *Id.*

*Why we conclude that Haeg could be convicted of unlawful acts by a guide: hunting wolves same day airborne*

\*6 In a related argument, Haeg contends that it was Gibbens's perjured affidavit that allowed the State to charge Haeg with unlawful acts as a guide. 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 further contends that even if he did kill wolves beyond the authority granted by his predator control permit, he was not engaged in the “hunting” of wolves-and, thus, he did not violate any statute or regulation that prohibits same-day airborne hunting.

This argument is mistaken. Under the definition codified in AS 16.05.940(21), the term “hunting” is not confined to the killing of animals for food or sport. Rather, “hunting” is defined as “[any] taking of game under AS 16.05-AS 16.40 and the regulations adopted under those chapters [of the Alaska Statutes].” The term “taking of game” includes more than simply the killing of game. As defined in AS 16.05.940(34), “take” means the “taking, pursuing, hunting, ... disturbing, capturing, or killing [of] game,” as well as any attempt to engage in these acts.

The predator control program that Haeg participated in was established under 5 AAC 92.110-125; these regulations were adopted by the Board of Game under Title 16, Chapter 5. Thus, Haeg's chasing and killing of wolves under this predator control program constituted “hunting” under Alaska law. And because Haeg's acts of chasing and killing wolves were not authorized under the terms of his predator control permit, these acts constituted unlawful hunting. Under Alaska law (specifically, AS 16.05.920(a)), all taking of game is unlawful unless it is permitted by AS 16.05-AS 16.40, AS 41.14, or a regulation adopted under those chapters of the Alaska Statutes. <sup>FN14</sup>

FN14. See *State v. Eluska*, 724 P.2d 514, 515 (Alaska 1986); *Jones v. State*, 936 P.2d 1263, 1266 (Alaska App.1997).

For these reasons, Haeg could lawfully be convicted of violating AS 08.54.720(a)(15), the statute that makes it a crime for a licensed guide to knowingly violate a statute or regulation that prohibits same-day airborne hunting.

We understand that Haeg was not guiding when he and Zellers were taking the wolves. But this does not matter. Alaska Statute 08.54.720(a)(15) does not make it a crime to knowingly violate a statute or regulation prohibiting same day airborne *while guiding*. Rather, that statute makes it a crime for any *person licensed to guide* to knowingly violate a statute or

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regulation prohibiting same-day airborne hunting.

\*7 Haeg suggests that he was convicted of the hunting offenses because Gibbens lied when he testified that some wolves were killed in unit 19C. But Gibbens retracted this testimony during cross examination, clarifying that the wolves were killed in unit 19D but not in unit 19D-East. As already noted, Haeg admitted that none of the wolves was killed in unit 19D-East.

Haeg also asserts that Gibbens lied by testifying at sentencing that he did not know why Haeg had not guided for an entire year. Haeg argues that this alleged testimony was perjury because Gibbens—according to Haeg—was aware that part of the failed plea agreement required Haeg to give up guiding for a year. But because Haeg did not litigate the terms of the failed plea agreement in the district court, there are no factual findings supporting Haeg's claim. Furthermore, Haeg had the opportunity to refute any testimony Gibbens gave during the sentencing proceedings, and it was up to Judge Murphy to determine whether Gibbens was credible.

*Haeg's claim that the prosecutor violated Evidence Rule 410*

Haeg claims 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 had initially faced. But Haeg did not litigate this issue in the district court. Because he did not preserve this claim of error below, Haeg now has to show plain error.<sup>FN15</sup> As we have explained in the past, “[o]ne of the components of plain error is proof that the asserted error manifestly prejudiced the defendant.”<sup>FN16</sup>

<sup>FN15.</sup> See Wettanen v. Cowper, 749 P.2d 362, 364 (Alaska 1988) (issues and arguments not raised below are considered waived on appeal absent plain error); see also John v. State, 35 P.3d 53, 63 (Alaska App.2001) (where record reflected no lower court ruling on appellant's Evidence Rule 410 claim, appellate court declined to address it).

<sup>FN16.</sup> Baker v. State, 22 P.3d 493, 501 (Alaska App.2001); see also Crutchfield v. State, 627 P.2d 196, 198 (Alaska 1980)

(“[A]n alleged error is reviewable as plain error only if it raises a substantial and important question and is obviously prejudicial.”).

In this case, the State filed an initial information and then amended it twice. Each version of the information was supported by a probable cause statement that set out Gibbens's investigation and a summation of the statements made by Haeg and Zellers. Thus, even had Haeg's statements been removed from the charging document, the remaining evidence from Gibbens and Zellers would still support the charges against Haeg.<sup>FN17</sup> And even though the State initially charged Haeg with less serious charges, the State had the discretion to file more serious charges.<sup>FN18</sup> In other words, even if the State had not used his statement's to support the information, Haeg would still have faced charges that he committed unlawful acts by a guide, hunting same day airborne. Because Haeg has not shown that the error he asserts manifestly prejudiced him, he has not shown that plain error occurred.

<sup>FN17.</sup> Cf. State v. McDonald, 872 P.2d 627, 638 (Alaska App.1994) (If inadmissible evidence is presented to a grand jury, “the indictment will be vitiated only ‘if the remaining evidence was insufficient to support [the] indictment or the improper evidence was likely to have had an overriding influence on the grand jury's decision.’ “ (quoting Bogges v. State, 783 P.2d 1173, 1176 (Alaska App.1989) (alteration in McDonald)).

<sup>FN18.</sup> See State v. District Court, 53 P.3d 629, 633 (Alaska App.2002) (The State “[has] the discretion to decide whether to bring charges against a person who has broken the law and, if so, to decide what those charges will be.”).

Haeg also suggests that the State used his interview to convict him. But Haeg did not raise this issue at trial, nor does the record support this conclusion. The record shows that the State did not offer Haeg's pre-trial statement during its case-in-chief or during its rebuttal case. In addition, Zellers testified for the State and his testimony, along with Gibbens's, was sufficient to support Haeg's convictions. Finally, in

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his own testimony, Haeg admitted that he had committed all but two of the charged offenses (and he was acquitted of those two). As we explained earlier in this decision, 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 has not shown that plain error occurred.

*Haeg's claim that his attorneys were ineffective*

\*8 Haeg claims that his attorneys provided ineffective assistance of counsel. We have consistently held that we will not consider claims of ineffective assistance for the first time on appeal because, in most instances, the appellate record is inadequate to allow us to meaningfully assess the competence of the attorney's efforts.<sup>FN19</sup> Haeg's case is typical—that is, the appellate record is inadequate to allow us to meaningfully assess the competence of Haeg's attorneys' efforts. Haeg's claim of ineffective assistance must be raised in the trial court in an application for post-conviction relief under Alaska Criminal Rule 35.1.

FN19. See *Tazruk v. State*, 67 P.3d 687, 688 (Alaska App.2003); *Hutchings v. State*, 53 P.3d 1132, 1135 (Alaska App.2002); *Sharp v. State*, 837 P.2d 718, 722 (Alaska App.1992); *Barry v. State*, 675 P.2d 1292, 1295-96 (Alaska App.1984).

*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.<sup>FN20</sup> 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).

*Haeg's claim that the district court failed to rule on an outstanding motion*

Haeg claims that Judge Murphy failed to rule on his motion "protesting the State's use" of the statement Haeg claims he gave during plea negotiations. But Haeg mischaracterizes the motion that was filed seeking dismissal of the charges. Although he moved to dismiss the charges on various grounds, he did not assert that the State had violated Evidence Rule 410. He did not mention this issue until he replied to the State's opposition to his motion to dismiss the information, where he told the court that "[t]here is another piece of information that needs to be addressed."

Judge Murphy was not required to rule on Haeg's new contention. A trial court can properly disregard an issue first raised in a reply to an opposition.<sup>FN21</sup> If Haeg wanted a ruling on this issue, he was obligated to file a new motion asking for one. Because he did not ask for a ruling, he has waived this claim.<sup>FN22</sup>

FN21. See *Demmert v. Kootznoowoo, Inc.*, 960 P.2d 606, 611 (Alaska 1998) ("The function of a reply memorandum is to respond to the opposition to the primary motion, not to raise new issues or arguments..."); *Alaska State Employees Ass'n v. Alaska Pub. Employees Ass'n*, 813 P.2d 669, 671 n. 6 (Alaska 1991) ("As a matter of fairness, the trial court could not consider an argument raised for the first time in a reply brief.").

FN22. See *Stavenjord v. State*, 66 P.3d 762, 767 (Alaska App.2003); *Marino v. State*, 934 P.2d 1321, 1327 (Alaska App.1997).

*Haeg's claim that the district court prejudiced his defense*

Haeg contends that Judge Murphy made inconsistent rulings about who the court or the jury would determine whether Haeg was "hunting" when he took the wolves. But Haeg has not shown that Judge Murphy's rulings prejudiced his defense.

The first ruling that Haeg refers to came when he moved to dismiss the information. There, he argued that the hunting same day airborne charges were improper because he was acting under the authority of the predator control program. In his view, even though he had taken the wolves outside the area where the predator control program was authorized,

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the State could only charge him for violating the conditions of the permit. Judge Murphy rejected this argument, noting that the State had charged Haeg for taking wolves outside of the permit area. She explained that Haeg might defend against these charges on the grounds that he was acting in accordance with his permit, but that this was a factual issue that would be decided by the fact finder at trial.

\*9 The second ruling that Haeg refers to occurred when Judge Murphy addressed Haeg's pre-trial argument that his permit precluded a conviction for any hunting violations. Judge Murphy found that this was a legal question that she, not the jury, had to decide.

Haeg asserts that Judge Murphy's rulings prejudiced his defense because they prevented him from arguing that he was not hunting. But Judge Murphy allowed Haeg to make this very argument.

At trial, the parties had a lengthy discussion concerning Haeg's desire to tell the jury that he was not "hunting" same day airborne when he took the wolves. Haeg's defense was that his conduct was not "hunting" because he was acting under a permit that allowed predator control. He asserted that the statute defining "predator control" excluded "hunting" and, therefore, "he couldn't have been knowingly violating a hunting law."

Judge Murphy ultimately told Haeg that he could argue to the jury that if the jury found that he was acting in accordance with the permit, then he was not hunting. Consequently, Haeg argued at length during his closing that he was not guilty of hunting same day airborne because his predator control permit allowed him to kill wolves same day airborne. Despite this argument, the jury found Haeg guilty of the hunting charges. Haeg's defense was not prejudiced by Judge Murphy's rulings.

*Haeg's claim that the district court failed to give a required jury instruction*

Haeg argues that Judge Murphy was required to sua sponte give a jury instruction that Zeller's plea agreement required him to testify against Haeg. But under Criminal Rule 30(b), there are no required jury instructions. Rather, the rule provides that a trial court "shall instruct the jury on all matters of law which it considers necessary for the jury's informa-

tion in giving their verdict." The rule that required instructing the jury that it should view the testimony of an accomplice with distrust was rescinded in 1975.<sup>FN23</sup> Because Haeg did not request this or a similar instruction, he has not preserved the issue for appeal.<sup>FN24</sup>

<sup>FN23.</sup> See Heaps v. State, 30 P.3d 109, 115 (Alaska App.2001).

<sup>FN24.</sup> See Alaska R.Crim. P. 30(a) (objections to instructions must be raised before the jury retires to deliberate).

*Haeg's claim that the district court held him to a term of the failed plea agreement*

Haeg claims that Judge Murphy unfairly held him to a term of the failed plea agreement. Haeg asserts that this occurred during an exchange between his attorney and the judge during a post-trial status hearing.

The purpose of this status hearing was to establish a date for sentencing and to determine whether a defense witness would be available. The prosecutor indicated that he intended to call witnesses at sentencing in an effort to prove that Haeg had committed uncharged misconduct-in particular, the prosecutor wanted to show that in 2003 Haeg had been involved in unlawfully taking a moose same day airborne.

When Judge Murphy asked why the State had not charged the moose incident along with the current case, the prosecutor explained that initially, during plea negotiations, the parties had discussed litigating the issue at sentencing. Haeg's attorney then said he did not "know how ... [a discussion of a moose case] could be part of any negotiations to the un-negotiated case." Judge Murphy responded, "Well, it was at one point." Haeg argues that in this exchange, Judge Murphy was forcing Haeg to comply with a term of the failed plea agreement. We disagree.

\*10 At sentencing, the State is allowed to put on evidence of a defendant's uncharged offenses even when the defendant objects.<sup>FN25</sup> A sentencing court may consider this evidence if it is sufficiently verified and the defendant is provided the opportunity to rebut it.<sup>FN26</sup> Here, the record reflects that the State, irrespective of the failed plea agreement, was attempting to show that Haeg had committed an un-

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charged offense. The State was entitled to do so. We conclude that Judge Murphy did not force Haeg to abide by a term of the failed plea agreement. We note that she later ruled that the State had not proven that Haeg had committed the uncharged offense and she did not consider it when imposing sentence.

FN25. See *Pascoe v. State*, 628 P.2d 547, 549-50 (Alaska 1980) (State allowed at sentencing, over defendant's objection, to put on evidence of defendant's uncharged offenses).

FN26. See *id.*

*Haeg's claim that the district court erred by not ordering a defense witness to appear at sentencing*

Haeg claims that Judge Murphy committed error by not ordering his first attorney to testify at Haeg's sentencing proceedings. Although Haeg subpoenaed this attorney, the attorney did not appear. The record shows that at sentencing Haeg did not ask Judge Murphy to enforce the subpoena or seek any other relief. Consequently, this claim of error is waived.

*Haeg's claim that the district court erred when it found that most of the wolves were taken in unit 19C*

Haeg asserts that Judge Murphy erred when she found that "a majority, if not all of the wolves taken were in [unit ]19C." It is true that the evidence did not show that most of the wolves were killed in unit 19C. But taking Judge Murphy's sentencing remarks in context, we conclude that she found that Haeg was taking wolves unlawfully in an effort to benefit his own guiding operations. This finding is supported by the record.

At trial, Haeg testified that he and Zellers knew that they were killing the wolves outside of the permit area. And the evidence at trial showed that they spent little time looking for wolves in unit 19D-East, the permit area around McGrath. Instead, the first wolves were taken about thirty-five miles from Haeg's hunting lodge, which was located in unit 19C. Haeg took at least one animal just ten miles from his hunting grounds. Zellers testified that he and Haeg wanted the game board to include unit 19C in the predator control program.

In addition, Haeg testified that he guided moose hunts in units 19C and 19B. He admitted that they

had killed one of the wolves in unit 19B. And although Haeg testified that he did not guide moose hunts on the Swift River where the rest of the wolves were taken, he conceded that some of the moose taken during his guided hunts come from that area. He testified that he could schedule eight or nine moose hunts in a season and that he charged a significant amount of money per person per hunt. He also testified that he and Zellers killed the wolves because they were frustrated that the wolves were killing so many moose.

Based on this record, we conclude that Haeg has not shown that Judge Murphy committed clear error when she found that Haeg was illegally killing wolves for his own commercial benefit.

*Why we find that Judge Murphy intended to suspend, not revoke, Haeg's guide license*

\*11 While this appeal was pending, Haeg filed a motion requesting that we modify the portion of his sentence revoking his guide license. At that time, we indicated that even if Haeg was entitled to any relief, we would not grant it until we decided the appeal. (We also told Haeg that based on his claim that this portion of the sentence was illegal, he could seek immediate relief from the district court. He apparently did not do so.) Although Haeg did not include this issue in his claims of error, we deem the motion a request to amend his points on appeal and resolve it. For the reasons explained here, we conclude that Judge Murphy intended to suspend Haeg's guide license, not to revoke it.

Judge Murphy ordered the guiding license "revoked for five years ." The written judgments reflect the same language. The revocation was part of Haeg's sentence for violating the law and was not a condition of probation.

Under AS 12.55.015(c), Judge Murphy could "invoke any authority conferred by law to suspend or revoke a license." The authority to suspend or revoke a guiding license is provided in AS 08.54.720(f)(3). In Haeg's case, this statute required Judge Murphy to order the game board to suspend Haeg's guide license for a "specified period of not less than three years, or to permanently revoke [it]." But Judge Murphy combined the two alternatives and ordered the license revoked for five years. Under the authorizing statute, Judge Murphy could either order the license sus-

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pending for five years or else revoke it permanently. But the statute did not allow her to revoke it for five years.

Although Judge Murphy had the authority to revoke the license, the circumstances indicate that she meant to suspend it. When Judge Murphy imposed sentence, she was using pre-printed judgments that required her to fill in blank spaces. The judgments have a section where various types of licenses can be “revoked” followed by a blank space for the court to insert the length of the revocation. Judge Murphy wrote “for 5 years” in the blank space. But the option to suspend a license was not offered. Because Judge Murphy wrote “5 years” rather than “permanently,” we conclude that she meant to suspend the license for a specified period of time rather than to revoke it permanently. We therefore order the district court to modify the judgments in this case to show that Haeg’s guide license was suspended for five years.

*Haeg’s appeal in Case No. A-10015*

While his original appeal was pending, Haeg filed a motion in the district court asking for the return of his property that had been seized by the State. Because his case was on appeal, the district court ruled that it lacked jurisdiction to address Haeg’s motions. Haeg then asked this court to order his property released. We remanded the case back to the district court “for the limited purpose of allowing Haeg to file a motion for the return of his property[.]”

Once the case was remanded, Haeg—relying on Alaska Criminal Rule 37—asked the district court to suppress the evidence that had been seized during the criminal investigation and to return the property to him. Haeg argued that the State had violated his fundamental rights by not giving him notice that he had the right to contest the seizure of his property. He also argued that AS 16.05.190 and AS 16 .05.195 were unconstitutional on their face and as applied to him because they did not require the State to provide such notice. Magistrate David Woodmancy ordered some property returned, but otherwise denied Haeg’s request. Haeg initially petitioned for review of this decision, but we concluded that he had the right to appeal.

*Why we uphold the district court’s decision not to suppress evidence or return to Haeg property Judge Murphy had ordered forfeited*

\*12 Haeg contends that Magistrate Woodmancy erred when he refused to suppress the evidence and to return to him the property the State seized during the criminal investigation of this case. 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 contends that he was entitled to have the property suppressed as evidence and returned to him because the State, when it seized the property during the criminal investigation, did not expressly inform him that he had the right to challenge the seizure. He also asserts that the statutes that authorize search and seizure in criminal cases—AS 12.35.020, AS 12.35.025, AS 16.05.190, and AS 16.05.195—are unconstitutional because they do not require the State to provide owners of seized property with notice that they have the right to challenge the seizure. He claims that the federal and state due process clauses require this notice.

To support his claim under the federal due process clause, Haeg relies primarily on the Ninth Circuit’s decision in *Perkins v. City of West Covina*.<sup>FN27</sup> In *City of West Covina*, police lawfully searched a home where a murder suspect was renting a room.<sup>FN28</sup> Pursuant to a search warrant, police officers seized property from the home.<sup>FN29</sup> The police provided the landlord, Perkins, with written notice of the search, an inventory of the property seized, and information necessary for him to contact the police investigators.<sup>FN30</sup> But the written notice did not explain the procedures for retrieving his property.<sup>FN31</sup> Although police later told Perkins that he needed to file an appropriate motion in court, Perkins ran into difficulty when he attempted to retrieve his property.<sup>FN32</sup> Ultimately, he filed a civil suit in federal court, alleging a violation of his constitutional rights in that the notice did not mention he had the right to seek the return of his property.<sup>FN33</sup>

<sup>FN27</sup>. 113 F.3d 1004 (9th Cir.1997), *rev’d*, 525 U.S. 234, 119 S.Ct. 678, 142 L.Ed.2d 636 (1999).

<sup>FN28</sup>. *Id.* at 1006.

<sup>FN29</sup>. *Id.*

<sup>FN30</sup>. *Id.* at 1007.

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FN31. *Id.*

FN32. *Id.*

FN33. *Id.* at 1007, 1012-13.

The Ninth Circuit ruled that in these circumstances, due process required the government to provide written notice explaining to property owners how to retrieve the property.<sup>FN34</sup> The Ninth Circuit held that, among other things, “the notice must inform the ... [property owner] of the procedure for contesting the seizure or retention of the property taken, along with any additional information required for initiating that procedure in the appropriate court.”<sup>FN35</sup> The notice “also must explain the need for a written motion or request to the court stating why the property should be returned.”<sup>FN36</sup>

FN34. *Id.* at 1012-13.

FN35. *Id.* at 1013.

FN36. *Id.*

Relying on the Ninth Circuit's decision, Haeg contends that the federal due process clause required a similar notice when the state troopers seized his property. But in *City of West Covina v. Perkins*,<sup>FN37</sup> the United States Supreme Court reversed the Ninth Circuit's decision and rejected the notice requirement imposed by the Ninth Circuit.<sup>FN38</sup>

FN37. 525 U.S. 234, 119 S.Ct. 678, 142 L.Ed.2d 636 (1999).

FN38. *Id.*

The Supreme Court ruled that when 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.<sup>FN39</sup> The Court explained that “state-law remedies ... are established by published, generally available state statutes and case law.”<sup>FN40</sup> 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.”<sup>FN41</sup> According to the Court, “no ... rationale justifies re-

quiring individualized notice of state-law remedies.”<sup>FN42</sup> 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.”<sup>FN43</sup>

FN39. *Id.* at 240, 119 S.Ct. at 681.

FN40. *Id.* at 241, 119 S.Ct. at 681.

FN41. *Id.* at 241, 119 S.Ct. at 681-82.

FN42. *Id.* at 241, 119 S.Ct. at 681.

FN43. *Id.* at 241, 119 S.Ct. at 682 (quoting *Atkins v. Parker*, 472 U.S. 115, 131, 105 S.Ct. 2520, 86 L.Ed.2d 81 (1985)).

\*13 In other words, federal due process is satisfied if the police give property owners notice that their property has been seized and if state law provides a post-seizure procedure to challenge the seizure and seek the return of the property. In Haeg's case, he received notice that his property was seized, and Alaska Criminal Rule 37 provides for a post-seizure procedure allowing property owners to seek return of their property.<sup>FN44</sup> In light of the Supreme Court's decision in *City of West Covina*, we conclude that Haeg's due process rights under the federal constitution were not violated.

FN44. Alaska R.Crim. P. 37(c) (“[Any] ... person aggrieved by an unlawful search and seizure may move the court in the judicial district in which the property was seized or the court in which the property may be used for the return of the property[.]”).

To support his claim under Alaska's due process clause, Haeg relies primarily on the decisions in *F/V American Eagle v. State*<sup>FN45</sup> and *State v. F/V Baranof*.<sup>FN46</sup> He points out that under these decisions, property owners have “an immediate and unqualified right to contest the [S]tate's justification” when the State seizes their property.<sup>FN47</sup> But nothing in either of these decisions imposes a notice requirement similar to that discussed by the Ninth Circuit in *City of West Covina*. Rather, in both cases, the State provided the property owners notice that their property had been seized.<sup>FN48</sup> This notice and the subsequent

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opportunity to challenge the seizures under Criminal Rule 37 satisfied due process.<sup>FN49</sup> Here, Haeg had notice of the seizure, which in turn provided him with the opportunity to challenge the seizure of his property.

FN45. 620 P.2d 657 (Alaska 1980).

FN46. 677 P.2d 1245 (Alaska 1984).

FN47. F/V American Eagle, 620 P.2d at 667.

FN48. See F/V Baranof, 677 P.2d at 1255-56 (in rem forfeiture action holding that due process was provided when owners were notified that property was seized and were given an opportunity to contest the State's reasons for seizing property); F/V American Eagle, 620 P.2d at 666-68 (in rem forfeiture action).

FN49. F/V Baranof, 677 P.2d at 1255-56; F/V American Eagle, 620 P.2d at 667.

Conceivably, there might be circumstances where the Alaska due process clause would require the government to take affirmative measures to notify a property owner of the right and the procedure to challenge the seizure of his or her property. But nothing in Haeg's case supports a finding that his due process rights were violated. Haeg was present when the troopers searched his residence in Soldotna and seized an airplane of his, a shotgun, and a rifle. Consequently, he knew that his property had been seized as part of a criminal investigation. In addition, less than two weeks after his property was seized, he retained an attorney. Thus, he had access to legal advice regarding the seizure. Finally, Haeg-albeit some months after the seizure-asked the district court to bond out his airplane. Under these circumstances, the fact that the State did not specifically inform Haeg that he had the right to challenge the seizure did not infringe his state due process rights.

Based on the record in Haeg's case, we conclude that neither the federal nor the state constitutions required the State, after giving Haeg notice that his property had been seized, to separately inform him that he had a right to contest the seizure of his prop-

erty. Because neither Haeg's federal nor state due process rights were violated, Magistrate Woodmancy did not err when he denied Haeg's post-conviction motion to suppress evidence seized during the criminal investigation. For similar reasons, we reject Haeg's attack on the constitutionality of Alaska's seizure and forfeiture statutes, AS 12.35.020, AS 12.35.025, AS 16.05.190, and AS 16.05.195. Furthermore, we note that Haeg's motion to suppress was waived because he failed to file it prior to trial.<sup>FN50</sup>

FN50. See Alaska R.Crim. P. 37(c); Alaska R.Crim. P. 12(b) and (e).

\* We also conclude that Haeg provided Magistrate Woodmancy no grounds for overturning Judge Murphy's decision to forfeit property related to Haeg's hunting violations. Haeg argued at sentencing against forfeiture of the airplane. At sentencing, Haeg's attorney did not contest the fact that the airplane was the one that Haeg and Zellers used when unlawfully taking the wolves, nor did he claim that Haeg was not the airplane's owner. Rather, he argued that the airplane should not be forfeited because Haeg used the plane "not only for guiding, but ... also ... for part of his economic livelihood of flight seeing, and if ... [the court forfeits] his plane ... he won't even be able to do that.... [M]aybe over the next few years ... he's going to have ... to beef up more work for his flight seeing business, ... [and with the airplane] at least he'd have the means to do it." The attorney emphasized that "if you take his plane ... he'd be out of the guiding business, he'd be out of the flight seeing business, he'll just be out of business. Period. After twenty-one years of an occupation, just it's gone."

Haeg did not object to the forfeiture of the shotgun, the rifle, or the animal hides. The record supports these forfeitures. At trial, Zellers testified that they had specifically purchased the shotgun to use for the predator control program and that they used it to unlawfully take the wolves. Zellers also testified that the rifle was used to unlawfully take one wolf. And finally, Haeg testified that he and Zellers had taken the animal hides unlawfully. Because the record supports Judge Murphy's forfeiture of the property relating to Haeg's hunting violations and Haeg did not show why the decision to forfeit this property should be overturned, we affirm Magistrate Woodmancy's

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decision to not return the forfeited property to Haeg.

Haeg also claims that Magistrate Woodmancy erred when he resolved Haeg's motion to suppress evidence and return of property without an evidentiary hearing. But Haeg has not shown that Magistrate Woodmancy abused his discretion. The basis of Haeg's post-conviction motion was his assertion that the State, when it seized Haeg's property, was required to tell him that he had a right to challenge the seizure. This was a question of law that Magistrate Woodmancy could resolve without an evidentiary hearing. And as we have already explained, the State was not required to notify Haeg that he had a right to challenge the seizure of his property.

*Other potential claims*

Haeg's briefs and other pleadings are sometimes difficult to understand, and he may have intended to raise other claims besides the ones we have discussed here. To the extent that Haeg may be attempting to raise other claims in his briefs or in any of his other pleadings, we conclude that these claims are inadequately briefed.<sup>FN51</sup>

FN51. See *Petersen v. Mutual Life Ins. Co. of New York*, 803 P.2d 406, 410 (Alaska 1990) (issues that are only cursorily briefed are deemed abandoned); see also *A.H. v. W.P.*, 896 P.2d 240, 243-44 (Alaska 1995) (waiving for inadequate briefing majority of fifty-six arguments raised by pro se appellant).

*Conclusion*

Haeg's convictions are AFFIRMED. The district court shall amend the judgments to reflect that Haeg's guide license was suspended for a period of five years.

Alaska App.,2008.

Haeg v. State

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END OF DOCUMENT

No. 146

State of Alaska

Department of Community and Economic Development  
 Division Of Occupational Licensing

This Cardholder that  
 DAVID SCOTT HAEG  
 is A Licensed  
 MASTER GUIDE

Effective	Expiration	Date of Birth
11/13/2003	12/31/2005	01/19/1966

UNIT: 9. 16. 17. 19

Signature *David Scott Haeg*

EXHIBIT 2  
 PAGE 1 OF 1

3596510



Alaska Department of Commerce, Community, and Economic Development  
Division of Corporations, Business and Professional Licensing  
Big Game Commercial Services Board  
P.O. Box 110806, Juneau, Alaska 99811-0806  
Telephone: (907) 465-2550  
E-mail: license@alaska.gov

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OCT 25 2010

Division of Corporations, Business  
and Professional Licensing

**MASTER OR REGISTERED GUIDE-OUTFITTER  
BIENNIAL LICENSE RENEWAL  
January 1, 2010 – December 31, 2011**

✓ 450 P/B

**IT IS TIME TO RENEW YOUR REGISTERED OR MASTER GUIDE-OUTFITTER LICENSE**

Your license to practice as a Master or Registered Guide-Outfitter in the State of Alaska expires on **December 31, 2009**. It is illegal for you to practice if your license has expired. **There is no grace period.** To renew your license for the period from January 1, 2010 through December 31, 2011, return this completed, **signed** application to the above address with a check or money order payable to the State of Alaska. **This is the only renewal notice you will receive.** Incomplete applications or insufficient fees will result in your renewal being rejected.

Name: Haeg David Scott  
Last First Middle  
PO Box 123 Soldotna AK 99669  
Street or P.O. Box City State ZIP Code

Email Address (optional): haeg@alaska.net

Social Security Number: 471-72-5023 Date of Birth: 1-19-66  
(Mandatory on every renewal – see explanation under "Social Security Numbers" on the coversheet of this application)

Guide-Outfitter License Number: 146 Daytime Telephone Number (optional): 907-262-9249

**NAME CHANGE:** If you have had a legal name change since your last master or registered guide-outfitter license was issued, please enclose a certified true copy of the legal document (marriage certificate, divorce decree, etc.) for proof of your name change.

<b>CHECK APPROPRIATE LICENSE STATUS BOX</b>	Master Guide-Outfitter License Number 1 through 179 Registered Guide-Outfitter License Number 1 through 1273
	<input checked="" type="checkbox"/> Resident Master or Registered Guide-Outfitter License \$450.00 (See coversheet for definition of "resident.")
	<input type="checkbox"/> Nonresident Master or Registered Guide-Outfitter License \$900.00
	Master Guide-Outfitter License Number 180 and above Registered Guide-Outfitter License Number 1274 and above
	<input type="checkbox"/> Resident Master or Registered Guide-Outfitter License \$225.00 (See coversheet for definition of "resident.")
	<input type="checkbox"/> Nonresident Master or Registered Guide-Outfitter License \$450.00

- PROCESSING TIME** The processing time for correct and completed renewal applications can be three to four weeks after receipt. Plan accordingly and submit your form by November 30, 2009, to ensure processing by the expiration date of December 31, 2009.
- EXPIRED LICENSES** There is no "inactive" license status. Licenses which have expired more than four years cannot be renewed.
- EFFECTIVE DATE OF RENEWED LICENSE** The effective date of a renewed license will be the date a complete renewal application is filed with the division as Determined by 12 AAC 02.920 (12 AAC 02.940).
- SOCIAL SECURITY NUMBERS** Alaska Statute 08.01.060(b) requires an applicant for a professional license to provide a United States Social Security Number. Applicants who do not have a social security number must complete the "Request for Requirement" Form 08-4372) located on the Division's website at: www.commerce.state.ak.us/occ or contact the Division for the form.

**PAYMENT OF CHILD SUPPORT AND STUDENT LOANS**

If the Alaska Child Support Enforcement Division has determined that you are in arrears on child support, or if the Alaska Commission on Post-Secondary Education has determined you are in loan default, you may be issued a nonrenewable temporary license valid for 150 days. Contact Child Support Services at (907) 269-6900 or the Post-Secondary Education office at (907) 465-2962 or 1-800-441-2962 to resolve payment issues.

**BUSINESS LICENSES**

Renewal applications for business licenses are processed separately. For more information about business licenses, call (907) 465-2550 or use Internet address: [www.commerce.state.ak.us/occ/home\\_bus\\_licensing.htm](http://www.commerce.state.ak.us/occ/home_bus_licensing.htm)

**ABANDONMENT**

Under 12 AAC 02.190, an application is considered abandoned when 12 months have elapsed since correspondence was last received from or on behalf of the applicant. An abandoned application is denied without prejudice and the application fee is forfeited.

**DEFINITION OF RESIDENT.** According to AS 16.05.940(27), "resident" means a person who for the 12 consecutive months immediately preceding the time when the assertion of residence is made has maintained the person's domicile in the state and who is neither claiming residency in another state, territory, or country nor obtaining benefits under a claim of residency in another state, territory, or country; a partnership, association, joint stock company, trust, or corporation that has its main office or headquarters in the state; a natural person who does not otherwise qualify as a resident under this paragraph may not qualify as a resident by virtue of an interest in a partnership, association, joint stock company, trust, or corporation; a member of the military service, or United States Coast Guard, who has been stationed in the state for the 12 consecutive months immediately preceding the time when the assertion of residence is made; a person who is the dependent of a resident member of the military service, or the United States Coast Guard, and who has lived in the state for the 12 consecutive months immediately preceding the time when the assertion of residence is made; or an alien who for the 12 consecutive months immediately preceding the time when the assertion of residence is made has maintained the person's domicile in the state and who is neither claiming residency in another state, territory, or country nor obtaining benefits under a claim of residency in another state, territory, or country.

**PLEASE FILL OUT THIS SECTION:**

The following questions must be answered.

**SINCE YOUR LAST LICENSE WAS ISSUED:**

**RESIDENCY STATUS**

According to the definition of "resident" on the coversheet of this application are you a resident of the State of Alaska? .....

<b>YES</b>	<b>NO</b>
<input checked="" type="checkbox"/>	<input type="checkbox"/>

**DISCIPLINARY/INVESTIGATION/PROFESSION QUESTIONS**

- 1. Do you have criminal charges pending against you? .....
- 2. Are there any unsatisfied judgments against you resulting from your big game hunting services? .....
- 3. Are you aware of any investigations against you, in any state, jurisdiction or in Canada? .....

<input type="checkbox"/>	<input checked="" type="checkbox"/>
<input type="checkbox"/>	<input checked="" type="checkbox"/>
<input type="checkbox"/>	<input checked="" type="checkbox"/>

**HAVE YOU:**

- 4. been convicted of any crime (convictions include: suspended imposition of sentence, no contest, nolo contendere, etc.)? .....
- 5. been convicted of violating a state or federal hunting, guiding, or transportation services statute or regulation? .....
- 6. been convicted of a state or federal hunting, guiding, or transportation services statute or regulation within the last 12 months, for which you received an unsuspended fine of more than \$2,000? .....
- 7. been convicted of a state or federal hunting, guiding, or transportation services statute or regulation within the last 36 months, for which you received an unsuspended fine of more than \$3,000? .....
- 8. been convicted of a state or federal hunting, guiding, or transportation service statute or regulation within the last 60 months, for which you received an unsuspended fine of more than \$5,000? .....
- 9. provided big game commercial services illegally? .....

<input checked="" type="checkbox"/>	<input type="checkbox"/>
<input checked="" type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	<input checked="" type="checkbox"/>
<input type="checkbox"/>	<input checked="" type="checkbox"/>
<input type="checkbox"/>	<input checked="" type="checkbox"/>
<input type="checkbox"/>	<input checked="" type="checkbox"/>

**HAVE YOU:**

**YES NO**

- 10. secured or attempted to secure a big game commercial services license through deceit, fraud, or intentional misrepresentation?  YES  NO
- 11. failed to comply with a board order?  YES  NO
- 12. continued or attempted to provide big game commercial services after becoming unfit due to professional incompetence?  YES  NO
- 13. been a state or federal law enforcement officer engaged in fish and wildlife protection in the past three months?  YES  NO  
If "yes," state the date of your termination: \_\_\_\_\_
- 14. been employed by the Department of Fish and Game or a federal wildlife management agency as a game or wildlife biologist within the last 12 months?  YES  NO  
If "yes," state your date of employment and the unit(s) you were employed in:  
Hire date: \_\_\_\_\_ Termination date: \_\_\_\_\_  
Game Management Unit(s): \_\_\_\_\_

- 15. Are your rights to obtain or exercise the privileges granted by a hunting, guiding, outfitting, or transportation services license currently revoked or suspended in this state, another state, or in Canada?  YES  NO

**PERSONAL HISTORY QUESTIONS**

**Within the last five years have you:**

**YES NO**

- 16. been or are you currently addicted to, excessively used, or misused alcohol, narcotics, barbiturates or other habit forming drugs?  YES  NO
- 17. been or are you currently being treated for bipolar disorder, schizophrenia, paranoia, a psychotic disorder, substance abuse, depression (except situational or reactive depression) or any other mental or emotional illness?  YES  NO
- 18. had or do you have a physical disability or physical illness which may impair or interfere with your ability to provide big game commercial services?  YES  NO

A "Yes" answer may not prejudice your application, failure to report honestly may.

If you answered "yes" to any of the above questions (1 - 15), please explain dates, locations, and circumstances on a separate piece of paper. Also, submit any/all supporting documents that are applicable (court records, board actions, investigation notices, etc.).

If you answered "yes" to questions 16 - 18 you must also submit a statement from your health care provider indicating your ability to provide big game or transportation services.

**TRANSPORTATION**

**YES NO**

- 19. Did you personally pilot an aircraft and/or watercraft to transport clients in 2008?  YES  NO
- 20. Did you personally pilot an aircraft and/or watercraft to transport clients in 2009?  YES  NO
- 21. Will you personally pilot an aircraft to transport clients in 2010 and/or 2011?  YES  NO
- 22. If "yes" to question 19, 20, and/or 21, do you have at least 500 hours of flying time in Alaska or a valid commercial pilot's license?  YES  NO  
FAA License #: 3423413
- 23. Do you plan to operate a motorized vessel in Navigable Waters?  YES  NO  
If "yes", Us Coast Guard Operator's License #: \_\_\_\_\_ Expiration Date: \_\_\_\_\_

**HUNT RECORDS**

**YES NO**

- 24. Did you provide big game commercial services in 2008?  YES  NO
- 25. Did you provide big game commercial services in 2009?  YES  NO
- 26. If "Yes," have you submitted all hunt records?  YES  NO

**Sec. 08.54.680. FINANCIAL RESPONSIBILITY AND OTHER REQUIREMENTS FOR GUIDES AND TRANSPORTERS.** (a) The department may require a registered guide-outfitter, who contracts to guide or outfit a big game hunt, or a transporter to provide proof of financial responsibility up to the amount of \$100,000. A registered guide or transporter may demonstrate financial responsibility by assets, insurance, or a bond in the requisite amount.

(b) If a registered guide-outfitter, class-A assistant guide, or assistant guide personally pilots an aircraft to transport clients during the provision of big game hunting services, the registered guide-outfitter, class-A assistant guide, or assistant guide shall have a commercial pilot's rating or a minimum of 500 hours of flying time in the state.

(c) On or after January 1, 2006, a registered guide-outfitter may not provide big game hunting services and a transporter may not provide transportation services unless the registered guide-outfitter or transporter has entered into a written contract with the client for the provision of those services. A contract to provide big game hunting services must include at least the following information: the name and guide license number of the registered guide-outfitter, the name of the client, a listing of the big game to be hunted, the approximate time and dates that the client will be in the field, a statement as to what transportation is provided by the registered guide-outfitter, a statement as to whether accommodations and meals in the field are provided by the registered guide-outfitter, and a statement of the amount to be paid for the big game hunting services provided. A contract to provide transportation services must include at least the following information: the name and transporter license number of the transporter, the name of the client, a listing of the big game to be hunted, the approximate time and dates that the client will be in the field, and a statement of the amount to be paid for the transportation services provided. A registered guide-outfitter or transporter shall provide a copy of contracts to provide big game hunting services or transportation service, as appropriate, to the department upon the request of the department. Except as necessary for disciplinary proceedings conducted by the board and as necessary for law enforcement purposes by the Department of Public Safety and the Department of Law, a copy of a contract provided to the department is confidential. The department may provide a copy of contracts in the possession of the department to the Department of Fish and Game or the Department of Natural Resources upon the request of that department if the department receiving the copy agrees to maintain the confidentiality of the contracts.

**12 AAC 75.220. PROOF OF FINANCIAL RESPONSIBILITY.** (a) At the time of application for initial licensure or license renewal, an applicant for a registered guide-outfitter license shall complete the financial responsibility section of the application form. The applicant shall indicate whether the applicant will contract to guide or outfit a big game hunt during the licensing period for which the applicant is applying.

(b) If the applicant will contract to guide or outfit a big game hunt, the applicant shall

(1) certify that the applicant has and will maintain during the licensing period, assets, general liability insurance, or a bond totaling at least a minimum of \$100,000 that will be available for payment of a judgment against the applicant resulting from the applicant's big game hunting services; and

(2) list the assets, insurance, or bond, including, if applicable,

(A) a description of the assets, their fair market value less any liens, identification of any liens against the assets, and the location of the assets; and

(B) the name of the company issuing the insurance or bond, the policy or bond number, and the amount and type of coverage supplied by the insurance or bond.

(c) A registered guide-outfitter who indicated on the application for initial license or renewal that the registered guide-outfitter would not contract to guide or outfit a big game hunt shall notify the department and provide the information required in (b) of this section before the registered guide-outfitter may contract to guide or outfit a big game hunt.

(d) A registered guide-outfitter shall notify the department within 10 days of any change to the information reported under (b) of this section.

(e) The department may require additional documentation to substantiate the information provided in (b) of this section before approving an applicant for initial licensure or license renewal.

**PROOF OF FINANCIAL RESPONSIBILITY FOR CONTRACTED HUNTS**

Will you contract to guide or outfit big game hunts or provide transportation services during the licensing period January 1, 2010 through December 31, 2011?

No. If this should change during the licensing period, I certify that I will notify the department within 10 days of any change to the above (12 AAC 75.220(d)).

Yes, I will be contracting to guide or outfit big game hunts or provide transportation services during the licensing period. I certify that I will possess and maintain, during the licensing period, assets, general liability insurance, or a bond totaling at least a minimum of \$100,000 that will be available for payment of a judgment against me resulting from my big game hunting service (AS 08.54.680 and 12 AAC 75.220). If this should change during the licensing period, I certify that I will notify the department within ten days of any change to the above (12 AAC 75.220(d) and 12 AAC 75.420(c)).

IF "YES," YOU MUST SUBMIT PROOF OF FINANCIAL RESPONSIBILITY IN THE AMOUNT OF \$100,000 TO THIS OFFICE

Check applicable box:  Insurance  Bond  Assets

If you are providing insurance or a bond as proof of financial responsibility, you must provide the following information:

Wells Fargo Insurance Services Inc.  
Name of Company Issuing Insurance or Bond

6C942679  
Insurance Policy or Bond Number  
Each Occurrence: \$500,000 Damages to Rented Premises \$100,000 Med Exp (any one person) \$5000 Personal + ADU Injury: \$500,000 General Aggregate: \$1,000,000  
Amount and Type of Coverage Supplied by the Insurance or Bond

If you are providing assets as proof of financial responsibility, you must attach a signed, dated, itemized, statement to include the following:

1. The current market value if the assets were sold/withdrawn and converted to cash immediately.
2. Identification of any lien on the asset (mortgage, etc.) or penalty for early withdrawal of the account.
3. The current market value of the assets minus any liens or penalties equals or exceeds \$100,000.
4. The assets are available for payment of a legal judgment against you.

**WARNING: The Board may deny, suspend, or revoke the license of a person who has obtained or attempted to obtain a license to practice as a Master or Registered Guide-Outfitter by fraud or deceit. The person may also be subject to criminal charges for unsworn falsification. (AS 11.56.210).**

I certify that the information in this application is true and correct.

SIGN HERE 

[Signature]  
Applicant's Signature  
Date: 10-21-10

**NOTICE OF PROPOSED REGULATIONS CHANGES**

If you would like to receive notice of all proposed Big Game Commercial Services Board regulation changes, please send a written request adding your name to the Big Game Commercial Services Board Interested Parties List to:

**REGULATIONS SPECIALIST**  
Department of Commerce, Community, and Economic Development  
Division of Corporations, Business and Professional Licensing  
P.O. Box 110806  
Juneau, Alaska 99811-0806

November 4, 2010

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

**RE: Request for Guide License Renewal**

Dear Mr. Haeg:

In accordance with AS 08.54.670 this department is unable to process the master guide-outfitter license renewal that you submitted since the master guide-outfitter license which you previously held lapsed 9/30/2005.

**Sec. 08.54.670. FAILURE TO RENEW.** The department may not issue a license to a person who held a registered guide-outfitter, class-A assistant guide, or assistant guide license and who has failed to renew the license under this chapter for four consecutive years unless the person again meets the qualifications for initial issuance of the license.

You currently have a \$450.00 credit with this department. Please submit a written request for a refund or a request to apply this amount towards a license application.

If you choose to apply to take the registered guide-outfitter examination you will need to submit the following:

**Fees:** The nonrefundable application fee is \$100.00; the qualification examination fee is \$50.00, each game management unit (GMU) qualification examination is \$200.00.

A complete notarized application for registered guide-outfitter examination including a client list also available at: <http://www.commerce.state.ak.us/occ/pub/gui4402.pdf>.

A copy of your pilot's license and Affidavit of Flying Experience.

Class-A Assistant & Assistant Guide Evaluation form(s).

A complete report of criminal justice information under AS 12.62, including fish and wildlife violations. The Alaska reports can be obtained by contacting any of the Department of Public Safety, Alaska Troopers from the enclosed list.

All "YES" answers to a question requires that you explain dates, locations, and circumstances on a separate piece of paper. Also, submit any/all supporting documents that are applicable (court records, board actions, investigation notices, etc...).

EXHIBIT 4  
PAGE 1 OF 3

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You are also required to submit a Game Management Unit (GMU) Certification Examination Application also available at: <http://www.commerce.state.ak.us/occ/pub/gui2459.pdf>

A visual recording of you capping a big game animal. Failure to present a DVD or VHS will result in an automatic failure for this portion of the practical examination.

As clarification you can use clients from your previous licenses so long as there is a matching hunt record on file for each client.

For more information including lists of recommended study materials, examination dates, and application dates go to: <http://www.commerce.state.ak.us/occ/pgui9.htm> The next available examination will be in Fairbanks on March 17-18, 2011 for which the application must be submitted by November 17, 2010.

In the event that the Board denies your complete application then you will then have the right to appeal.

If you have any questions or concerns, please submit your questions in writing.

Sincerely,

Karl Marx  
Licensing Examiner (A-K)  
Big Game Commercial Services Board  
FAX 465-2974  
[karl.marx@alaska.gov](mailto:karl.marx@alaska.gov)

Don Habeger  
Director Corporations, Business, & Professional Licensing  
AK Dept. of Commerce, Community, & Economic  
Development

Enclosures





3597069

Alaska Department of Commerce, Community, and Economic Development
Division of Corporations, Business and Professional Licensing
Big Game Commercial Services Board
P.O. Box 110806, Juneau, Alaska 99811-0806
Telephone: (907) 465-2550
E-mail: license@alaska.gov

GUI

RECEIVED
DEPARTMENT OF COMMERCE
JUNEAU
NOV 02 2010

MASTER OR REGISTERED GUIDE-OUTFITTER
BIENNIAL LICENSE RENEWAL
January 1, 2010 - December 31, 2011

Division of Corporations, Business and Professional Licensing

Handwritten signature/initials

IT IS TIME TO RENEW YOUR REGISTERED OR MASTER GUIDE-OUTFITTER LICENSE

Your license to practice as a Master or Registered Guide-Outfitter in the State of Alaska expires on December 31, 2009. It is illegal for you to practice if your license has expired. There is no grace period. To renew your license for the period from January 1, 2010 through December 31, 2011, return this completed, signed application to the above address with a check or money order payable to the State of Alaska. This is the only renewal notice you will receive. Incomplete applications or insufficient fees will result in your renewal being rejected.

Name: Haeg David Scott
Last First Middle
PO Box 123 Soldotna AK 99669
Street or P.O. Box City State ZIP Code

Email Address (optional): haeg@alaska.net

Social Security Number: 471-72-5023 Date of Birth: 1-19-66
(Mandatory on every renewal - see explanation under "Social Security Numbers" on the coversheet of this application)

Guide-Outfitter License Number: 146 Daytime Telephone Number (optional): 907-262-9249

NAME CHANGE: If you have had a legal name change since your last master or registered guide-outfitter license was issued, please enclose a certified true copy of the legal document (marriage certificate, divorce decree, etc.) for proof of your name change.

Form with checkboxes for license renewal options:
CHECK APPROPRIATE LICENSE STATUS BOX
Master Guide-Outfitter License Number 1 through 179
Registered Guide-Outfitter License Number 1 through 1273
[X] Resident Master or Registered Guide-Outfitter License \$460.00
(See coversheet for definition of "resident.")
[ ] Nonresident Master or Registered Guide-Outfitter License \$900.00
Master Guide-Outfitter License Number 180 and above
Registered Guide-Outfitter License Number 1274 and above
[ ] Resident Master or Registered Guide-Outfitter License \$225.00
(See coversheet for definition of "resident.")
[ ] Nonresident Master or Registered Guide-Outfitter License \$450.00

- PROCESSING TIME: The processing time for correct and completed renewal applications can be three to four weeks after receipt. Plan accordingly and submit your form by November 30, 2009, to ensure processing by the expiration date of December 31, 2009.
EXPIRED LICENSES: There is no "inactive" license status. Licenses which have expired more than four years cannot be renewed.
EFFECTIVE DATE OF RENEWED LICENSE: The effective date of a renewed license will be the date a complete renewal application is filed with the division as Determined by 12 AAC 02.920 (12 AAC 02.940).
SOCIAL SECURITY NUMBERS: Alaska Statute 08.01.060(b) requires an applicant for a professional license to provide a United States Social Security Number. Applicants who do not have a social security number must complete the "Request for Requirement" Form 08-4372) located on the Division's website at: www.commerce.state.ak.us/occ or contact the Division for the form.

**PAYMENT OF CHILD SUPPORT AND STUDENT LOANS**

If the Alaska Child Support Enforcement Division has determined that you are in arrears on child support, or if the Alaska Commission on Post-Secondary Education has determined you are in loan default, you may be issued a nonrenewable temporary license valid for 150 days. Contact Child Support Services at (907) 269-6900 or the Post-Secondary Education office at (907) 465-2962 or 1-800-441-2962 to resolve payment issues.

**BUSINESS LICENSES**

Renewal applications for business licenses are processed separately. For more information about business licenses, call (907) 465-2550 or use Internet address: [www.commerce.state.ak.us/occ/home\\_bus\\_licensing.htm](http://www.commerce.state.ak.us/occ/home_bus_licensing.htm)

**ABANDONMENT**

Under 12 AAC 02.190, an application is considered abandoned when 12 months have elapsed since correspondence was last received from or on behalf of the applicant. An abandoned application is denied without prejudice and the application fee is forfeited.

**DEFINITION OF RESIDENT.** According to AS 16.05.940(27), "resident" means a person who for the 12 consecutive months immediately preceding the time when the assertion of residence is made has maintained the person's domicile in the state and who is neither claiming residency in another state, territory, or country nor obtaining benefits under a claim of residency in another state, territory, or country; a partnership, association, joint stock company, trust, or corporation that has its main office or headquarters in the state; a natural person who does not otherwise qualify as a resident under this paragraph may not qualify as a resident by virtue of an interest in a partnership, association, joint stock company, trust, or corporation; a member of the military service, or United States Coast Guard, who has been stationed in the state for the 12 consecutive months immediately preceding the time when the assertion of residence is made; a person who is the dependent of a resident member of the military service, or the United States Coast Guard, and who has lived in the state for the 12 consecutive months immediately preceding the time when the assertion of residence is made; or an alien who for the 12 consecutive months immediately preceding the time when the assertion of residence is made has maintained the person's domicile in the state and who is neither claiming residency in another state, territory, or country nor obtaining benefits under a claim of residency in another state, territory, or country.

**PLEASE FILL OUT THIS SECTION:**

**The following questions must be answered.**

**SINCE YOUR LAST LICENSE WAS ISSUED:**

**RESIDENCY STATUS**

According to the definition of "resident" on the coversheet of this application are you a resident of the State of Alaska? .....

**YES**  **NO**

**DISCIPLINARY/INVESTIGATION/PROFESSION QUESTIONS**

- 1. Do you have criminal charges pending against you? .....
- 2. Are there any unsatisfied judgments against you resulting from your big game hunting services? .....
- 3. Are you aware of any investigations against you, in any state, jurisdiction or in Canada? .....

**HAVE YOU:**

- 4. been convicted of any crime (convictions include: suspended imposition of sentence, no contest, nolo contendere, etc.)? .....
- 5. been convicted of violating a state or federal hunting, guiding, or transportation services statute or regulation? .....
- 6. been convicted of a state or federal hunting, guiding, or transportation services statute or regulation within the last 12 months, for which you received an unsuspended fine of more than \$2,000? .....
- 7. been convicted of a state or federal hunting, guiding, or transportation services statute or regulation within the last 36 months, for which you received an unsuspended fine of more than \$3,000? .....
- 8. been convicted of a state or federal hunting, guiding, or transportation service statute or regulation within the last 60 months, for which you received an unsuspended fine of more than \$5,000? .....
- 9. provided big game commercial services illegally? .....

**HAVE YOU:**

**YES NO**

- 10. secured or attempted to secure a big game commercial services license through deceit, fraud, or intentional misrepresentation?  YES  NO
- 11. failed to comply with a board order?  YES  NO
- 12. continued or attempted to provide big game commercial services after becoming unfit due to professional incompetence?  YES  NO
- 13. been a state or federal law enforcement officer engaged in fish and wildlife protection in the past three months?  YES  NO  
If "yes," state the date of your termination: \_\_\_\_\_
- 14. been employed by the Department of Fish and Game or a federal wildlife management agency as a game or wildlife biologist within the last 12 months?  YES  NO  
If "yes," state your date of employment and the unit(s) you were employed in:  
Hire date: \_\_\_\_\_ Termination date: \_\_\_\_\_  
Game Management Unit(s): \_\_\_\_\_

- 15. Are your rights to obtain or exercise the privileges granted by a hunting, guiding, outfitting, or transportation services license currently revoked or suspended in this state, another state, or in Canada?  YES  NO

**PERSONAL HISTORY QUESTIONS**

Within the last five years have you:

**YES NO**

- 16. been or are you currently addicted to, excessively used, or misused alcohol, narcotics, barbiturates or other habit forming drugs?  YES  NO
- 17. been or are you currently being treated for bipolar disorder, schizophrenia, paranoia, a psychotic disorder, substance abuse, depression (except situational or reactive depression) or any other mental or emotional illness?  YES  NO
- 18. had or do you have a physical disability or physical illness which may impair or interfere with your ability to provide big game commercial services?  YES  NO

A "Yes" answer may not prejudice your application, failure to report honestly may.

If you answered "yes" to any of the above questions (1 - 15), please explain dates, locations, and circumstances on a separate piece of paper. Also, submit any/all supporting documents that are applicable (court records, board actions, investigation notices, etc.).

If you answered "yes" to questions 16 - 18 you must also submit a statement from your health care provider indicating your ability to provide big game or transportation services.

**TRANSPORTATION**

**YES NO**

- 19. Did you personally pilot an aircraft and/or watercraft to transport clients in 2008?  YES  NO
- 20. Did you personally pilot an aircraft and/or watercraft to transport clients in 2009?  YES  NO
- 21. Will you personally pilot an aircraft to transport clients in 2010 and/or 2011?  YES  NO
- 22. If "yes" to question 19, 20, and/or 21, do you have at least 500 hours of flying time in Alaska or a valid commercial pilot's license?  YES  NO  
FAA License #: 3423413
- 23. Do you plan to operate a motorized vessel in Navigable Waters?  YES  NO  
If "yes", Us Coast Guard Operator's License #: \_\_\_\_\_ Expiration Date: \_\_\_\_\_

**HUNT RECORDS**

- 24. Did you provide big game commercial services in 2008?  YES  NO
- 25. Did you provide big game commercial services in 2009?  YES  NO
- 26. If "Yes," have you submitted all hunt records?  YES  NO

**PROOF OF FINANCIAL RESPONSIBILITY FOR CONTRACTED HUNTS**

Will you contract to guide or outfit big game hunts or provide transportation services during the licensing period January 1, 2010 through December 31, 2011?

- No. If this should change during the licensing period, I certify that I will notify the department within 10 days of any change to the above (12 AAC 75.220(d)).
- Yes, I will be contracting to guide or outfit big game hunts or provide transportation services during the licensing period. I certify that I will possess and maintain, during the licensing period, assets, general liability insurance, or a bond totaling at least a minimum of \$100,000 that will be available for payment of a judgment against me resulting from my big game hunting service (AS 08.54.680 and 12 AAC 75.220). If this should change during the licensing period, I certify that I will notify the department within ten days of any change to the above (12 AAC 75.220(d) and 12 AAC 75.420(c)).

**IF "YES," YOU MUST SUBMIT PROOF OF FINANCIAL RESPONSIBILITY IN THE AMOUNT OF \$100,000 TO THIS OFFICE**

Check applicable box:  Insurance  Bond  Assets

If you are providing insurance or a bond as proof of financial responsibility, you must provide the following information:

Wells Fargo Insurance Services Inc.  
Name of Company issuing Insurance or Bond

GC 942679  
Insurance Policy or Bond Number

Each Occurrence: \$500,000 Damages: \$100,000 Med. Exp. (any one person) \$5000  
Personal + ADU Injury: \$500,000 General Aggregate: \$1,000,000  
Amount and Type of Coverage Supplied by the Insurance or Bond

If you are providing assets as proof of financial responsibility, you must attach a signed, dated, itemized, statement to include the following:

1. The current market value if the assets were sold/withdrawn and converted to cash immediately.
2. Identification of any lien on the asset (mortgage, etc.) or penalty for early withdrawal of the account.
3. The current market value of the assets minus any liens or penalties equals or exceeds \$100,000.
4. The assets are available for payment of a legal judgment against you.

**WARNING:** The Board may deny, suspend, or revoke the license of a person who has obtained or attempted to obtain a license to practice as a Master or Registered Guide-Outfitter by fraud or deceit. The person may also be subject to criminal charges for unsworn falsification. (AS 11.56.210).

I certify that the information in this application is true and correct.

SIGN HERE 

D. D. J. J. G.  
Applicant's Signature

Date: 10-29-10

**NOTICE OF PROPOSED REGULATIONS CHANGES**

If you would like to receive notice of all proposed Big Game Commercial Services Board regulation changes, please send a written request adding your name to the Big Game Commercial Services Board Interested Parties List to:

**REGULATIONS SPECIALIST**  
Department of Commerce, Community, and Economic Development  
Division of Corporations, Business and Professional Licensing  
P.O. Box 110806  
Juneau, Alaska 99811-0806



STATE OF ALASKA  
DEPARTMENT OF  
**COMMERCE**  
COMMUNITY AND  
ECONOMIC DEVELOPMENT  
Division of Corporations, Business and Professional Licensing

*Sean Parnell, Governor*  
*Susan Bell, Commissioner*  
*Don Habeger, Director*

November 4, 2010

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

**RE: Request for Guide License Renewal**

Dear Mr. Haeg:

In accordance with AS 08.54.670 this Department is unable to process the Master Guide-Outfitter license renewal that you submitted as statute prohibits the Department from issuing a license to a person who held a registered guide-outfitter, class-A assistant guide, or assistant guide license and who has failed to renew the license under this chapter for four consecutive years unless the person again meets the qualifications for initial issuance of the license.

Further, the Department interprets AS 08.54.670 to mean that given your situation you will need to file an initial license application found on our website: <http://www.commerce.state.ak.us/occ/pgui.htm>

You currently have a \$450.00 credit with this Department. Please submit a written request for a refund or a request to apply this amount towards a license application. Please note, in accordance with 12 AAC 02.910, an application is considered abandoned when 12 months have elapsed since correspondence was last received from or on behalf of the applicant.

If you choose to apply to take the Registered Guide-Outfitter examination you will need to submit the following:

- A complete notarized application for registered guide-outfitter examination including a client list also available at: <http://www.commerce.state.ak.us/occ/pub/gui4402.pdf>.
- Fees: The nonrefundable application fee is \$100.00; the qualification examination fee is \$50.00, each game management unit (GMU) qualification examination is \$200.00. As noted above, these fees can be taken out of the monies already on file at your request.
- A copy of your pilot's license and Affidavit of Flying Experience.
- Class-A Assistant & Assistant Guide Evaluation form(s).
- A complete report of criminal justice information under AS 12.62, including fish and wildlife violations. The Alaska reports can be obtained by contacting any of the Department of Public Safety, Alaska Troopers from the enclosed list.

P.O. Box 110806, Juneau, AK 99811-0806

Fax: (907) 465-2974 Website: <http://www.commerce.state.ak.us/occ/pgui.htm>

EXHIBIT 6  
PAGE 1 OF 1

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STATE OF ALASKA  
DEPARTMENT OF  
**COMMERCE**  
COMMUNITY AND  
ECONOMIC DEVELOPMENT

Sean Parnell, Governor  
Susan K. Bell, Commissioner  
Don Habeger, Director

Division of Corporations, Business and Professional Licensing

December 28, 2010

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

Dear Mr. Haeg,

Thank you for your letter dated November 17<sup>th</sup>, 2010. I want to assure you that we, the Division of Corporations, Business and Professional Licensing (CBPL), would like to facilitate your efforts to return afield as a Master Guide. To do so, we need application, as prescribed by law, in order to be able to assist you. Without following the proper application process there is little more we can do for you at this time.

First, I would like to clarify that **AS 08.54.670** *The department may not issue a license to a person who held a registered guide-outfitter, class-A assistant guide or assistant guide license and who has failed to renew the license under this chapter for four consecutive years unless the person again meets the qualifications for initial issuance of the license* is not in conflict with **AS 08.54.710(e)** *The board shall suspend or permanently revoke a transporter license or any class of guide license without a hearing if the court orders the board to suspend or permanently revoke the license as a penalty for conviction of an unlawful act. If the board suspends or permanently revokes a license under this subsection, the board may not also impose an administrative disciplinary sanction of suspension or permanent revocation of the same license for the same offense for which the court ordered the suspension of permanent revocation under AS 08.54.720.* The board and the department are identified as separate entities per **AS 08.54.790**, and each is fulfilling their respective duties as authorized in the State's Central Licensing statutes **AS 08.01**.

**AS 08.54.670** is addressing the Department of Commerce, Community and Economic Development's (administrated by CBPL) requirements for accepting application for licensure. The Division is obligated to follow Alaska State statutes and regulations. This statute is supported in Centralized Licensing Statutes per **AS 08.01.100(d)** *Except as otherwise provided, a license may not be renewed if it has been lapsed for five years or more.*

PO Box 110806, Juneau, AK 99811-0806  
Telephone: (907) 465-2550 Fax: (907) 465-2974 Text Tel: (907) 465-5437 Website: [www.commerce.state.ak.us/occ](http://www.commerce.state.ak.us/occ)

EXHIBIT 7  
PAGE 1 OF 3

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Based on our records you are no longer eligible for a Master Guide license renewal per AS 08.54.670, AS 08.01.100(d) and AS 08.54.610 (b) *A master guide-outfitter license authorizes a registered guide-outfitter to use the title master guide-outfitter, but is for all purposes under this chapter a registered guide-outfitter license. A natural person is entitled to receive a renewable master guide-outfitter license if the person*

- (1) *Is, at the time of application for a master guide-outfitter license, licensed as a registered guide-outfitter under this section;*
- (2) *Has been licensed in this state as a registered guide or a guide-outfitter, under former AS 08.54.010 – 08.54.240, former AS 08.54.300 – 08.54.590, or in this chapter for at least 12 of the last 15 years, including the year immediately preceding the year in which the person applies for a master guide-outfitter license;*

As sufficient time has elapsed; you will need to file an initial application. Please note that all credentials documented from previous experience will be used in your favor as credentials towards your application.

Should you choose to submit an application as required (per AS 08.01.060(a) *All applications for examination or licensing to engage in the business or profession covered by this chapter shall be made in writing to the department*), the department will certainly submit it to the Board for consideration. It will then be the Board's responsibility to consider your application in accordance with all governing statutes and regulations.

Please understand, the Division has not said your license is permanently revoked but we need a complete initial application from you in order to be able to properly complete the licensure process.

The Division is more than willing to assist you in getting back on your feet and out into the field but we have to make sure we are following the statutes required. I want to assure you that Mr. Marx takes this situation very seriously and has kept all appropriate parties informed of correspondence and updates (per AS 08.54.595 *State agencies shall provide the board with information, data, or technical assistance requested by the board for the purposes of licensing and regulating the activities of providers of commercial services to big game hunters*), including myself. I believe that staff have been assisting you to the best of their abilities, and are following required procedures, therefore I see no need for any disciplinary action to be taken.

While it does clearly state in 12 AAC 02.910(a) *Except if procedures are otherwise expressly provided in this title for a particular board or occupation, an application is considered abandoned when*

- (1) *12 months have lapsed since correspondence was last received from or on behalf of the applicant; or*
  - (2) *The applicant has failed to appear for two successful examinations.*
- (b) *An Abandoned application is denied without prejudice and the application fee if forfeited.*
- (c) *At the time an application is considered abandoned, the division will send notification of abandonment to the last known address of the applicant. An applicant may request a refund within 30 days from the date notification of abandonment was mailed by the division. If no request for refund is received, all fees are forfeited.*

The department has no interest of making you forfeit your family's money. We encourage you to submit a complete initial application along with a statement of which eligible fees and/or exams you would like your credit with the department to be applied too; or a request for refund in writing. If neither of those are received within 12 months from the date of your last correspondence the department will be required (as outlined above in 12 AAC 02.910) to consider the incorrect application we have received abandoned.

I hope the contents above help clarify the roles and responsibilities of the Division of Corporations, Business and Professional Licensing and what is required at this time. Please let me know if there is anything else I can do to help or clarify for you.

We look forward to receiving your application and assisting you in getting back into the field.

Sincerely,

A handwritten signature in black ink, appearing to read "Don Habeger", with a long horizontal flourish extending to the right.

Don Habeger  
Director; Corporations, Business and Professional Licensing  
AK Dept. of Commerce, Community and Economic Development



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

*Immediate Hearing to Resolve  
How & When the Public Defender  
Office will Assist Haeg.*

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:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Date

**NOT USED**  
Judge's Signature

\_\_\_\_\_  
Type or Print Judge's Name

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

Clerk: \_\_\_\_\_

6/3/11

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

FILED in the Trial Courts  
State of Alaska Third District  
at Kenai, Alaska  
JUN - 3 2011  
By \_\_\_\_\_ Clerk of the Trial Courts  
Deputy

DAVID HAEG,	)	
	)	
Applicant,	)	
	)	
v.	)	POST-CONVICTION RELIEF
	)	Case No. 3KN-10-01295CI
STATE OF ALASKA,	)	(formerly 3HO-10-00064CI)
	)	
Respondent.	)	
	)	
<hr/>		
(Trial Case No. 4MC-04-00024CR)		

**6-3-11 MOTION FOR IMMEDIATE HEARING TO RESOLVE HOW AND  
WHEN THE PUBLIC DEFENDER'S OFFICE WILL ASSIST HAEG**

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

COMES NOW Applicant, DAVID HAEG, in the above case and hereby files this motion for an immediate hearing to resolve how and when the public defender's office will assist Haeg.

**Information**

On August 25, 2010 Superior Court Judge Stephanie Joannides held a representation hearing in Haeg's case. During this hearing Judge Joannides convinced Haeg that, because of shocking evidence Haeg's first 3 private defense attorneys had sold him out, he should obtain a "hybrid" public defender that would

not fully represent him but would help Haeg represent himself. See McCracken v. State, 518 P2d 85 (AK 1974):

“Where pleadings filed by a petitioner seeking post-conviction relief demonstrate a certain knowledge of the merits of his allegations, and indicate at least to some extent that he might have the ability to represent himself, **his rights might best be vindicated by an order permitting him to represent himself with the assistance of counsel from the public defenders office appointed by the court.**”

During this same hearing Judge Joannides articulated her concern of how long Haeg had been required to pursue justice. Judge Joannides reinforced this concern in a March 25, 2011 order. See court record.

On February 15, 2011 another representation hearing was held before Judge Bauman, during which Haeg stated the only attorney he would trust as full representation was his long-time business attorney Dale Dolifka and, if another attorney were to assist, that he would only accept them as “hybrid” or co-counsel. Haeg explained that after what happened with his first three attorneys he refused to entrust anyone, other than Dolifka, with primary control of how his representation was conducted. See court record.

On February 17, 2011 Haeg filed a motion, supported by a financial statement, that Dolifka was unwilling to represent Haeg and that Haeg requested the court appoint him “hybrid” public defender counsel. See court record.

On April 20, 2011, after obtaining further financial information, the court declared Haeg indigent for the purposes of appointing counsel and “hereby

appoints the Public Defender Agency to represent Mr. Haeg in all matters related to his PCR proceeding.” See court record.

Starting on April 21, 2011 and continuing until May 20, 2011, Haeg made numerous attempts to consult with a public defender.

On May 20, 2011 assistant public defender Whitney Glover, who is based in Anchorage, called Haeg and stated the following:

- (1) She had been assigned Haeg’s case.
- (2) She dealt with cases on a first come first serve basis.
- (3) She was presently representing 53 other people.
- (4) There was no possibility she could evaluate Haeg’s case within 6 months and it may be 6 years before she could evaluate Haeg’s case.
- (5) That it was general policy not to act as “hybrid” counsel and until evaluation she would not know if Haeg could have “hybrid” counsel.
- (6) That Haeg could not file a motion to again represent himself.

Haeg told Glover the time frame for her assistance was unacceptable to him and his family and if nothing changed he would have to try representing himself again. Haeg’s wife stated they must abandon PCR and try to get on with life.

On May 21, 2011 Haeg found that Criminal Rule 35.1 specifically held that counsel appointed to an indigent defendant must complete an in-depth evaluation within 60 days of being appointed and that Criminal Rule 50/Civil Rule 81 holds that until an attorney files an entry of appearance or some other motion a pro se defendant could still represent himself. To Haeg, his wife, and everyone else

consulted it seemed Glover had not mentioned Rule 35.1 so Haeg could be deprived of the protection of the rules requiring a prompt PCR evaluation – and had not mentioned Criminal Rule 50/Civil Rule 81 so Haeg would not protest.

From May 21, 2011 until May 23, 2011 Haeg made numerous attempts to contact Glover to discuss the rules.

On May 24, 2011 Glover emailed Haeg that she had received Haeg's messages; did not have time to speak immediately; and requested they talk on the morning of May 27, 2011.

On May 27, 2011 Haeg and 3 witnesses tried calling Glover from 9 am until 2 pm without success; Haeg finally called Quinlan Steiner, Glover's boss, to voice his concern; and at 3 pm Glover called Haeg. When Haeg pointed out Glover's 6-month to 6-year time frame for evaluation conflicted with the Rule 35.1 limit of 60 days, Glover stated motions would be filed to negate Rule 35.1. Haeg stated this was unacceptable; that after 7 years of hell only complete compliance with the rules requiring prompt consideration was acceptable. Glover stated this was not possible because the public defender agency did not have enough attorneys to comply with the rules. Then Glover stated she could not help anyway as her last day was June 15, 2011 and someone else was taking over for the 54 people she was currently representing.

### **Discussion**

Haeg cannot describe the feelings of confusion, injustice, and betrayal since the public defender agency was ordered to "represent" him over a month ago.

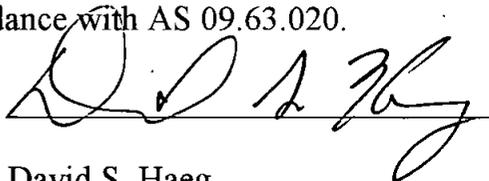
To now wait 6 months to 6 years for an "evaluation" that the rules require be done within 60 days, after pursuing justice for over 7 years, is unacceptable. The delay could be much longer than Glover's estimate of 6 months to 6 years – for Glover's replacement will start from scratch on all 54 cases.

And for Haeg to be forced to accept full representation, when he clearly and specifically stated on the court record he would continue representing himself unless he was provided "hybrid" counsel, is also unacceptable.

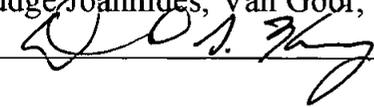
### Conclusion

In light of the above Haeg respectfully asks for an immediate hearing to resolve, in open court, how and when the public defender's office will assist Haeg.

I declare under penalty of perjury the forgoing is true and correct. Executed on June 3, 2011. A notary public or other official empowered to administer oaths is unavailable and thus I am certifying this document in accordance with AS 09.63.020.



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

**Certificate of Service:** I certify that on June 3, 2011 a copy of the forgoing was served by mail to the following parties: AAG Peterson, Public Defender's Office, Judge Gleason, Judge Joannides, Van Goor, 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 OF STAY PENDING AMENDED APPLICATION FOR  
POST-CONVICTION RELIEF**

Based upon the complexity of the case, the issues involved, the number of motions, and the appointment of counsel on April 20, 2011, the court hereby stays this proceeding until the provisions of Criminal Rule 35.1(e)(2) have been fulfilled.

Additionally, the counsel is ordered to respond within 20 days regarding Mr. Haeg's previously filed January 21, 2011 motion THAT HAEG MAY IMMEDIATELY RETURN TO GUIDING AND THAT THE STATE MUST RETURN HAEG'S MASTER GUIDE LICENSE.

Dated at Kenai, Alaska this 27<sup>th</sup> day of May, 2011.

  
\_\_\_\_\_  
Carl Bauman  
Superior Court Judge

<b>CERTIFICATION OF DISTRIBUTION</b>	
I certify that a copy of the foregoing was mailed to the following at their addresses of record:	
Haeg, OSPA/ PD - in box	
Date	Clerk
5-27-11	Roberts

Email from Judge Miller's law clerk to Judge Bauman's law clerk requesting fax transmittal of case documents

Hey Jeremy,

Not sure if you still have the Hage file with your chambers, but if so can you check to see if Judge Joannides March 25, 2011 Order is in there? (titled ORDER(*Notifying Parties of Court Error in Serving Orders on Commission, Confirming August 27, 2010 Order, and Referring Materials to Judicial Conduct Commission for Review*)). We sent it out to a bunch of parties, but according to courtview the one sent to Alaska Bar Counsel Louise Driscoll was returned because a bad address. Haeg called the ABA and they called me to see if we could resend it to them. If you find it can you fax it to: Attn: Alaska Bar Counsel Louise Driscoll. The fax number is 272-2932.

Thanks for your help!

Pat

Patrick Sherry  
Law Clerk for the Honorable Gregory A. Miller  
Superior Court for the State of Alaska at Anchorage  
(907) 264-0773

Complete  
5/11/2011  
JMC

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

FAX TRANSMITTAL

TO: ABA  
ATTN: Alaska Bar Counsel Louise Driscoll  
FAX: 907-272-2932

FROM: Judge Bauman's chambers  
(Jeremy Collier - law clerk)  
PHONE: 907-283-8510  
FAX: 907-283-8547

DATE: 5/11/2011  
RE: David Haeg

Number of pages including this one: 4

Message: I was contacted by Judge Miller's law clerk (in Anchorage) and asked to provide you with a copy of Judge Joannides 3/25/2011 order titled *ORDER (Notifying Parties of Court Error in Serving Orders on Commission, Confirming August 27, 2010 Order, and Referring Materials to Judicial Conduct Commission for Review)*. This transmittal completes that request.

FILE NUMBER : 035  
STATUS : OK  
SENT PAGES : 004  
END TIME : MAY-11 11:36AM  
START TIME : MAY-11 11:35AM  
DOCUMENT PAGES : 004  
TO : 919072722932  
DATE : MAY-11 11:35AM  
FILE NUMBER : 035

TIME : MAY-11-2011 11:36AM  
TEL NUMBER : +  
NAME : AK COURT SYSTEM

MEMORY TRANSMISSION REPORT

01268

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

FAX TRANSMITTAL

TO: ABA  
ATTN: Alaska Bar Counsel Louise Driscoll  
FAX: 907-272-2932

FROM: Judge Bauman's chambers  
(Jeremy Collier – law clerk)  
PHONE: 907-283-8510  
FAX: 907-283-8547

DATE: 5/11/2011  
RE: David Haeg

Number of pages including this one: 4

Message: I was contacted by Judge Miller's law clerk (in Anchorage) and asked to provide you with a copy of Judge Joannides 3/25/2011 order titled *ORDER(Notifying Parties of Court Error in Serving Orders on Commission, Confirming August 27, 2010 Order, and Referring Materials to Judicial Conduct Commission for Review)*. This transmittal completes that request.

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

DAVID HAEG )

Plaintiff, )

v. )

STATE OF ALASKA )

Defendant. )

Case No. 3KN-10-01295 CI

(Previously identified as PCR Case No. 3HO-10-00064 CI  
and Trial Case No. 4MC-04-00024 CR)

**ORDER**

*(Notifying Parties of Court Error in Serving Orders on Commission,  
Confirming August 27, 2010 Order, and  
Referring Materials to Judicial Conduct Commission for Review)*

Mr. Haeg contacted my law clerk, both by phone and by letter,<sup>1</sup> and requested formal confirmation that my chambers sent the Executive Director of the Alaska Commission on Judicial Conduct, Marla N. Greenstein, a copy of my August 27, 2010 order wherein I referred certain documents to the Alaska Commission on Judicial Conduct for their consideration. The original order and fax transmittal sheet in question were located in the file which is now in Kenai. Therefore, the court obtained a faxed copy of the original order and a copy of the transmittal sheet which are attached to this order as Exhibit 2.<sup>2</sup> Based upon my review of the documents it appears that the Alaska Judicial Conduct Commission was not properly served. The fax transmittal sheet shows their telephone number as their fax number. Therefore, unless they were provided the order from Mr. Haeg, or another

<sup>1</sup> See Exhibit 1, faxed letter of March 22, 2011 and attachments (11 pages).

<sup>2</sup> The fax transmittal sheet reflects that 43 pages were faxed to the interested parties. A review of the document and attachments received from the Kenai court reveals that 54 pages are in the file. It appears that Attachment of I of Exhibit 2 consists of two versions of the transcript. Only one of them must have been sent. Since the other version is easier to read we have attached both versions to this order. Because of this error, and in an abundance of caution, the entire document with its attachments is being provided with this order. See Exhibit 2 with attachments A through I. (54 pages)

interested party requesting that they take action on the order, they would not have known the court referred the matter back to the Commission for review.

Over the last couple of months, Mr. Haeg has sent me courtesy copies of the materials he is filing in his case. Because there are no pending issues before me, I have not taken any action on them. Because of this recent request, I reviewed the submitted documents, including Ms. Greenstein's letter to Assistant Bar Counsel Louise Driscoll. Ms. Greenstein notes that Courtview does not include a reference to the court's August 27, 2010 order. Ms. Greenstein is correct, it does not. This error is being corrected and the docket shall now reflect the August 27, 2010 order.

Because of the discovery of the errors in the service of the August 27, 2010 order and in the failure to enter the order in Courtview, I requested copies of the two August 25, 2010 orders. The orders faxed to me from the Kenai court reveal that these documents were served on the Alaska Judicial Council rather than the Alaska Commission on Judicial Conduct.<sup>3</sup> This error is being corrected by the service of the documents as attachments in this case.

In summary, it is unacceptable that this series of errors occurred and I must apologize to the parties for the errors in service and in Courtview.<sup>4</sup> These errors have further frustrated a long and fairly complicated case that required careful review. As the August 27, 2010 order states, my task was limited in scope. At the conclusion of my review, I granted Mr. Haeg's request to disqualify Judge Murphy from the Post Conviction Relief case because I found that, at a minimum, there was an appearance of impropriety. Because I was not privy to the parameters of the Commission's investigation of Mr. Haeg's complaint

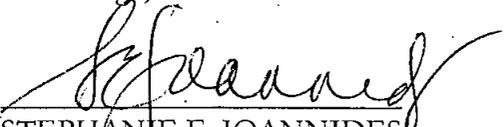
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<sup>3</sup> See Exhibits 3 (5 pages) and 4 (2 pages).

<sup>4</sup> In an abundance of caution, this order with the attachments is being served on all the individuals who should have been previously served. In addition, this order is being served on Assistant Bar Counsel Driscoll and Assistant Ombudsman Higgins since the issue of the receipt of the documents is being reviewed by them.

and because I was unable to evaluate any alleged factual discrepancies<sup>5</sup> between the affidavits submitted by Mr. Haeg's witnesses and (1) the information in the taped conversations between Mr. Haeg and Ms. Greenstein and (2) the statements made by Judge Murphy and Trooper Gibbens, I referred the matter back to the Commission so they could evaluate the consistency of the statements. Therefore, I provided pages of information, along with the August 27, 2010 order, to the Commission for their consideration.<sup>6</sup>

DONE this 25<sup>th</sup> day of March 2011 in Anchorage, Alaska.

  
STEPHANIE E. JOANNIDES  
Superior Court Judge pro tem

I certify that on 3/29/11  
a copy of the above was mailed and/or faxed to  
each of the following at their  
addresses of record:

David Haeg, by fax and mail  
Judge Bauman, assigned judge, by mail  
Members of the Alaska Commission on Judicial Conduct, by mail  
Assistant Bar Counsel Louise Driscoll, by mail  
Assistant Ombudsman Kate Higgins, by mail  
Marla Greenstein, by fax and mail  
Peter Maasen, counsel for Judge Murphy, by mail  
A. Andrew Peterson, Office of Special Prosecutions, by mail  
Original order sent to Kenai Court to be placed in the file

  
\_\_\_\_\_  
Judicial Assistant

<sup>5</sup> Some of the factual conflicts that Mr. Haeg raised are addressed in the court's August 27, 2010 order.

<sup>6</sup> In addition to the courtesy copies of the pleadings and the letter discussed above, Mr. Haeg provided the court with a CD of what appears to be a February 2011 conversation between Mr. Robinson, Mr. Haeg's attorney, and Mr. Haeg. During the conversation, Mr. Robinson states he spoke to Ms. Greenstein about this matter. Mr. Haeg supplied this CD because he believes that it directly contradicts Ms. Greenstein's verified January 21, 2011 letter to the Alaska Bar Association Bar Counsel that she spoke to Mr. Robinson. Because these issues are not ones assigned to me, I do not intend to address the substantive issue. I only note it for the record because it is unclear to me if I was provided a courtesy copy of the CD or if this is an original that should be made part of the record in Mr. Haeg's PCR case or his other complaints. Mr. Haeg should file notice with the court no later than April 15, 2011 if he wishes the CD provided to me to be made part of the record in his PCR case or any other case. If he has already provided it to the Kenai court or other agencies, it need not be made part of the record a second time.



STATE OF ALASKA  
DEPARTMENT OF ADMINISTRATION  
PUBLIC DEFENDER AGENCY

JULIAN STEINER, PUBLIC DEFENDER

Kenai Public Defender Agency  
130 Trading Bay Dr., Suite 390  
Kenai, AK 99517  
Phone: (907) 283-3729  
FAX: (907) 283-4127

Filed in the Trial Court  
State of Alaska, Third District  
At Kenai, Alaska

APR 27 2011  
By Clerk of the Trial Courts  
Deputy

Confidential Fax

IF RECEIVED IN ERROR PLEASE IMMEDIATELY SEND BACK TO THE ABOVE ADDRESS.

TO: Shelly Bird DATE: 4-27-11  
FROM: Claudia Feltman PAGES: 1 (including cover)  
RE: \_\_\_\_\_ FAX #: \_\_\_\_\_

Hey Shelly,

Could you please fax a copy of the  
order appointing us to Mr. Hoeg's PCR.

Thanks  
Claudia

Dore  
4/27/11

THE INFORMATION CONTAINED IN THIS FAX MESSAGE CONSTITUTES CONFIDENTIAL INFORMATION AND MAY BE SUBJECT TO THE ATTORNEY/CLIENT PRIVILEGE. THE INFORMATION IS INTENDED ONLY FOR THE USE OF THE INDIVIDUAL OR ENTITY NAMED ABOVE. IF THE INDIVIDUAL WHO RECEIVES THIS MESSAGE IS NOT THE INTENDED RECIPIENT, YOU ARE HEREBY NOTIFIED THAT ANY DISSEMINATION, DISTRIBUTION OR COPYING OF THIS COMMUNICATION IS STRICTLY PROHIBITED. IF YOU HAVE RECEIVED THIS COMMUNICATION IN ERROR, PLEASE IMMEDIATELY NOTIFY US BY E-MAIL OR TELEPHONE AND DESTROY THE ORIGINAL FAX, WITHOUT COPYING. THANK YOU.

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

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

APR 21 2011

By \_\_\_\_\_  
Clerk of the Trial Courts  
Deputy

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)

**4-21-11 MOTION TO SUPPLEMENT PCR APPLICATION WITH CLAIMS  
AND EVIDENCE**

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

COMES NOW Applicant, DAVID HAEG, in the above case and hereby files this motion to supplement his PCR application with claims and evidence.

**Information**

Starting on July 26, 2006 and continuing until June 2, 2007 Haeg and his wife Jackie (Secretary/ Treasurer of the Bush Pilot Inc.) filed numerous motions for the mandatory hearings in order to oppose the seizure/forfeiture of N4011M. N4011M was an airplane owned by the Bush Pilot Inc. that was seized by the State of Alaska during its prosecution of Haeg.

D

**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, (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.**

REVERSED and REMANDED for a new trial.

Magistrate Woodmancy, who has stated he has no legal training, denied all motions for a hearing concerning N4011M and on July 23, 2007 ruled, “Mrs. Haeg’s motions are **Denied** as she is not a party to this action.” and refused to order the return of N4011M. See court record.

On December 1, 2008 Haeg’s Alaska Supreme Court appeal concluded and Haeg filed an appeal to the United States Supreme Court. See court record.

On December 2, 2008 state attorney Andrew Peterson filed a request for hearing to set a remand date for Haeg to serve his jail sentence – even though Peterson knew Haeg was appealing his sentence to the Supreme Court and Appellate Rule 206 requires the stay of imprisonment if an appeal is taken and the defendant is released pending appeal. See court record and Appellate Rule 206.

On January 26, 2009 Magistrate Woodmancy, relying upon Peterson’s false advice, ordered Haeg to jail on March 2, 2009 for 35 days. See court record. At this same hearing Magistrate Woodmancy stated he did not think the law allowed Haeg to serve his prison sentence by in-home electronic monitoring. State attorney Andrew Peterson stated that even if Haeg did qualify for electronic monitoring the State would oppose this, implicitly reinforcing Woodmancy’s mistake that the law did not allow electronic monitoring. (It is indisputable that state law allowed electronic monitoring in Haeg’s case. See Alaska Statute 33.30.065.) Again relying on Peterson’s misinformation, Woodmancy denied Haeg’s request for his jail sentence to be postponed or, in the alternate, to have electronic monitoring while appealing to the United States Supreme Court by himself. See court record.

On June 4, 2010 and June 9, 2010 (nearly 5 years after the judgment against Haeg) Peterson filed motions with Magistrate Woodmancy to modify the judgment against Haeg so the State could sell the plane they had seized in Haeg's case before Haeg could conduct his PCR that, if successful, would require the State to release the plane. Peterson explained that the Federal Aviation Administration would not grant title to the State since the Bush Pilot Inc. owned the plane and the judgment was against David Haeg. See court record.

On June 14, 2010 Haeg opposed Peterson's motion; asked for a protection order preventing the State from disposing of disputed property prior to PCR; and for the motions to be decided by the PCR court. See court record.

On July 10, 2010 Haeg filed a citation of supplemental authorities (copied to Peterson) that irrefutably prove the judgment against him could not be modified nearly 5 years after the fact, even if it were a product of fraud, as the court lost jurisdiction 180 days after judgment. See court record; State v. T.M., 860 P.2d 1286 (AK 1993); and Alaska Statute 12.55.088, Modification of Sentence:

State v. T.M., 860 P.2d 1286 (AK 1993):

"In general, when a statute or rule specifies a time limit on the court's power to modify or vacate a judgement, the court has no power to act outside this time limit. 46 Am.Jur.2d, Judgments, § 704, pp. 854-56; W. LaFave & J. Israel, Criminal Procedure (1984), § 25.2(e), Vol. 3, p. 131. In Davenport v. State, 543 P.2d 1204, 1210-11 (Alaska 1975), the supreme court declared that the superior court has no inherent power to retain jurisdiction over a criminal case and modify its judgement based on later events. Any power the superior court might have to modify a criminal judgement must stem from statute or rule. The rule is the same in civil cases. See Stone v. Stone, 647 P.2d 582, 585-86 (Alaska 1982), in which the supreme court held that, after the expiration of the 1-year time limit specified

in Alaska Civil Rule 60(b), the superior court no longer has the power to modify a judgement in a civil action on the basis of alleged fraud.”

**Alaska Statute 12.55.088. Code of Criminal Procedure - Modification of Sentence.**

(a) The court may modify or reduce a sentence by entering a written order under a motion made within 180 days of the original sentencing.

On July 28, 2010 Haeg subpoenaed Magistrate Woodmancy to testify as a material witness in a hearing concerning Haeg’s PCR. See court record.

On August 16, 2010 private criminal defense attorney Peter Maassen filed an entry of appearance on behalf of Magistrate Woodmancy in Haeg’s PCR. See court record.

On August 18, 2010 private criminal defense attorney Peter Maassen filed a motion to quash the subpoena requiring Magistrate Woodmancy to testify as a material witness in Haeg’s PCR. See court record.

On December 8, 2010 Judge Bauman was assigned to Haeg’s case and on December 28, 2010 venue was transferred to Kenai, Alaska. See court record.

On January 19, 2011 Haeg asked for an order that since his court ordered 5-year guide license suspension was over he was entitled to the return of his license. See court record.

On January 24, 2011 Peterson opposed the return of Haeg’s license, arguing that the 5-year suspension of Haeg’s license started after Haeg had served his jail time. Peterson did not inform the court that, at the State’s request (and unlike his jail sentence that was required to be stayed), the license suspension had

not been stayed during appeal. Thus, during Haeg's near 4-year appeal before he was jailed he was prevented from guiding. To now "start" a 5-year suspension from the time he was jailed would not take into account the nearly 4 years Haeg has already been prevented from guiding – effectively turning Haeg's 5-year license suspension into a 9-year suspension. Alaska Statute 08.54.710 specifically states that a court ordered license suspension cannot be increased administratively.

### Discussion

As wielder of state government's incredible power, state attorney Andrew Peterson is not allowed to misrepresent the law. Doing so is prosecutorial misconduct, requiring any conviction obtained, maintained, or otherwise tainted by such conduct to be overturned.

Commonwealth v. Bowie, 243 F.3d 1109 (9<sup>th</sup> 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.' ")

In *Napue v. Illinois*, 360 U.S. 264 (U.S. Supreme Court 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," 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

United States v. Blueford, 312 F. 3d 962 (9<sup>th</sup> Cir. 2002)

**[I]t is decidedly improper for the government to propound inferences that it knows to be false, or has very strong reason to doubt, particularly when it refuses to acknowledge the error afterwards to either the trial court or this court and instead offers far-fetched explanations of its actions. *Id.* at 1318-19;**

**We conclude that the government in this case failed, both at trial and thereafter, to fulfill its responsibility to "discharge its responsibilities fairly, consistent with due process," *id.*, and that its failure to do so was not harmless. We therefore REVERSE and REMAND for a new trial.**

United States v. Kojayan, 8 F.3d 1315 (9<sup>th</sup> Cir. 1993)

**How can it be that a serious claim of prosecutorial misconduct remains unresolved--even unaddressed--until oral argument in the Court of Appeals? Surely when such a claim is raised, we can expect that someone in the United States Attorney's office will take an independent, objective look at the issue.**

A recent Second Circuit case, Walker v. City of New York, 974 F.2d 293 (2d Cir. 1992), illustrates the disastrous consequences that can follow when this responsibility is not met. **The prosecutors in Walker persisted in prosecuting a defendant--and lied and concealed evidence in the process--even though they were aware of his probable innocence. It took Mr. Walker nearly two decades to win his freedom.** The Walker court found that the district attorney's failure to train or supervise her employees as to "such basic norms of human conduct [as] the duty not to lie or persecute the innocent" could be the basis of 42 U.S.C. § 1983 liability. *Id.* at 301.

The prosecutorial misconduct in this case deprived the defendants of due process of law. **We therefore VACATE the judgment of conviction and REMAND for the district court to determine whether to retry the defendants or dismiss the indictment with prejudice as a sanction for the government's misbehavior.**

United States v. Omni Int'l. Corp., 634 F. Supp. 1414, 1438 (D.Md. 1986)

The AUSA's failure to be fully candid could have had tragic consequences. The Court was faced with the issue of whether or not to permit an evidentiary hearing. If the Court had blindly relied on the AUSA's representations, no hearing would have been held . . . **In light of all the testimony adduced at the [28-day-long] evidentiary hearing, it is clear that this case rises to the high threshold imposed for invocation of the supervisory power [to dismiss]. The Court condemns the manner in which the Government proceeded, and cannot now stand idly by, implicitly joining the federal judiciary into such unbecoming conduct.**

United States v. V. F. Grace, 461 U.S. 171 (1983)

In essence, the prosecution's argument is that the virtue of its case sanctifies the means chosen to achieve conviction. This argument cannot prevail in a legal system that is designed to ensure fairness in the proceeding when each side follows the rules. Our confidence in the fairness of our system is rooted in the belief that our process is sound. **Useful falsehoods are particularly dangerous in a criminal case, where the cost of wrongful conviction cannot be measured in the impact on the accused alone. Such tainted proof inevitably undermines the process, casting a dark shadow not only on the concept of fairness, but also on the purpose of the exercise of the coercive power of the state over the individual. No man should go free nor lose his liberty on the strength of false, misleading or incomplete proof.**

It is clear that state attorney Peterson is continuing to intentionally falsify the law after he has been notified of his error, to convince Magistrate Woodmancy to illegally cover up that the State was years ago obligated to address the fact they had illegally seized an aircraft that was owned by a legal entity never accused of wrongdoing.

It is clear the judgment against Haeg cannot legally be modified more than 180 days after the judgment was pronounced, let alone nearly 5 years after the fact - no matter what the reason.

It is clear Peterson cannot have motions granted in McGrath by Magistrate Woodmancy after venue has been changed to Kenai and after the case has been assigned to Judge Bauman.

It is clear that Magistrate Woodmancy cannot decide motions in a case in which he is a material witness – especially after he has hired a very expensive criminal defense attorney to prevent his sworn testimony.

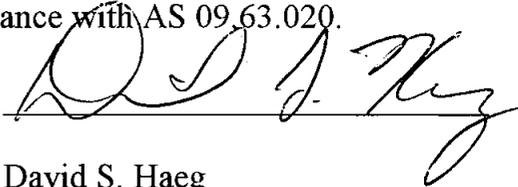
It is clear the State cannot be allowed, on the eve of Haeg obtaining an order for the return of all property seized, to dispose of the property so even if Haeg legally wins he in fact loses.

It is clear that the continuing falsification by prosecutor Peterson is criminal prosecutorial misconduct that has resulted in a denial of Haeg's due process rights.

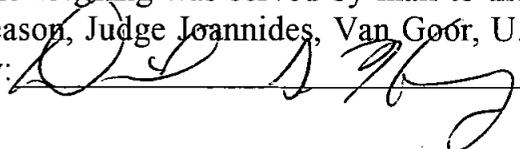
### Conclusion

In light of the above Haeg asks his PCR application be supplemented to include claims of prosecutorial misconduct against state attorney Andrew Peterson (to supplement Haeg's other PCR claims of prosecutorial misconduct) and to include the court record needed (primarily Peterson's court filings and oral arguments to Magistrate Woodmancy) to support the claims.

I declare under penalty of perjury the forgoing is true and correct. Executed on April 21, 2011. A notary public or other official empowered to administer oaths is unavailable and thus I am certifying this document in accordance with AS 09.63.020.



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

**Certificate of Service:** I certify that on April 21, 2011 a copy of the forgoing was served by mail to the following parties: AAG Peterson, Judge Gleason, Judge Joannides, Van Goor, U.S. Department of Justice, FBI, and media. By: 

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It is clear that the continuing falsification by prosecutor Peterson is criminal prosecutorial misconduct that has resulted in a denial of Haeg's due process rights.

### Conclusion

Haeg is working on amending his PCR application to include Peterson's prosecutorial misconduct and after Peterson's criminal involvement in this case is complete Haeg, and what he believes is an increasing number of those seriously concerned, will demand federal prosecution of Peterson for corruption, conspiracy, and pattern/practice to cover up for attorneys, judges, and law enforcement who, using the color of law, are violating rights to unjustly strip defendants of everything. Any judge who illegally modifies Haeg's judgment to cover up the illegal seizure/forfeiture of N4011M, as Peterson is continuing to ask for in his present "Renewed Motion for Modification of Judgment", will be included in the criminal complaint as a coconspirator.

Anyone not believing how serious this has become should talk to the five Department of Justice employees about the criminal case against them for the way they prosecuted Senator Ted Stevens and talk to Judicial Conduct investigator Marla Greenstein whose legal career is now over after she tried to help cover up the chauffeuring of Haeg's trial judge by the main witness against Haeg.



# 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

March 31, 2011

Civil Clerk  
125 Trading Bay Drive, Suite 100  
Kenai, AK 99611-7717

**RE: 3KN-10-01295 CI (David Haeg v. State of Alaska)**

Dear Clerk:

I recently received the enclosed order with attachments from Judge Joannides in the above referenced matter. Because the documents were faxed and then copied, apart from the order itself, the materials are not readable. I will require good copies and, because the full Commission will need to review these, copies that are good enough to copy several times.

Because there was a significant delay in getting the original order to us, would appreciate receiving the copies at your earliest convenience. Let me know if you have any questions.

Sincerely,

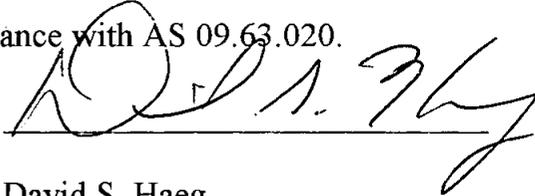
A handwritten signature in black ink, appearing to read "Marla N. Greenstein".

Marla N. Greenstein  
Executive Director

*Done 4/21/11*

Encl: March 25, 2011 Order & Attachments

I declare under penalty of perjury the forgoing is true and correct. Executed on April 18, 2011. A notary public or other official empowered to administer oaths is unavailable and thus I am certifying this document in accordance with AS 09.63.020.



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

**Certificate of Service:** I certify that on Apr. 18, 2011 a copy of the forgoing was served by mail to the following parties: AAG Peterson, Judge Gleason, Judge Joannides, Van Goof, 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-10-1295 CI

**ORDER ON APPOINTMENT OF COUNSEL**

Upon the sworn statements of Mr. Haeg, and in accordance with AS 18.85.100, Criminal Rule 35.1, and existing case law, the court hereby considers Mr. Haeg "indigent" for the purposes of appointing counsel at public expense. As such, the court hereby appoints the Public Defender Agency to represent Mr. Haeg in all matters related to his PCR proceeding.

Dated at Kenai, Alaska this <sup>pm</sup> 20 day of April, 2011.

  
\_\_\_\_\_  
Carl Bauman  
Superior Court Judge

<b>CERTIFICATION OF DISTRIBUTION</b>	
I certify that a copy of the foregoing was mailed to the following at their addresses of record: <i>faxed</i>	
<i>OSPA, PD</i>	
<u>4-20-11</u> Date	<u><i>Roberts</i></u> Clerk

*mailed to Haeg 4-21-11*

D

*Bauman's Copy*

**IN THE SUPERIOR COURT FOR THE STATE OF ALASKA  
FOURTH JUDICIAL DISTRICT AT MCGRATH**

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)

**4-15-11 OPPOSITION TO STATE'S APRIL 4, 2011 (received by Haeg on April 13, 2011) RENEWED MOTION FOR MODIFICATION OF JUDGMENT**

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

COMES NOW Applicant DAVID HAEG, in the above case and hereby opposes the State's renewed motion for modification of judgment.

**Proceedings**

Starting on July 26, 2006 and continuing until June 2, 2007 Haeg and his wife Jackie (Secretary/ Treasurer of the Bush Pilot Inc.) filed numerous motions for the mandatory hearings in order to oppose the seizure/forfeiture of N4011M. N4011M was an airplane owned by the Bush Pilot Inc. that was seized by the State of Alaska during its prosecution of Haeg.

Magistrate Woodmancy, who has stated he has no legal training, denied all motions for a hearing concerning N4011M and on July 23, 2007 ruled, "Mrs. Haeg's motions are **Denied** as she is not a party to this action." and refused to order the return of N4011M. See court record.

On December 1, 2008 Haeg's Alaska Supreme Court appeal concluded and Haeg filed an appeal to the United States Supreme Court. See court record.

On December 2, 2008 state attorney Andrew Peterson filed a request for hearing to set a remand date for Haeg to serve his jail sentence – even though Peterson knew Haeg was appealing his sentence to the Supreme Court and Appellate Rule 206 requires the stay of imprisonment if an appeal is taken and the defendant is released pending appeal. See court record and Appellate Rule 206.

On January 26, 2009 Magistrate Woodmancy, relying upon Peterson's false advice, ordered Haeg to jail on March 2, 2009 for 35 days. See court record. At this same hearing Magistrate Woodmancy stated he did not think the law allowed Haeg to serve his prison sentence by in-home electronic monitoring. State attorney Andrew Peterson stated that even if Haeg did qualify for electronic monitoring the State would oppose this, implicitly reinforcing Woodmancy's mistake that the law did not allow electronic monitoring. (It is indisputable that state law allowed electronic monitoring in Haeg's case. See Alaska Statute 33.30.065.) Again relying on Peterson's misinformation, Woodmancy denied Haeg's request for his jail sentence to be postponed or, in the alternate, to have electronic monitoring while appealing to the United States Supreme Court by himself. See court record.

On June 4, 2010 and June 9, 2010 (nearly 5 years after the judgment against Haeg) Peterson filed motions with Magistrate Woodmancy to modify the judgment against Haeg so the State could sell the plane they had seized in Haeg's case before Haeg could conduct his PCR that, if successful, would require the State to release the plane. Peterson explained that the Federal Aviation Administration would not grant title to the State since the Bush Pilot Inc. owned the plane and the judgment was against David Haeg. See court record.

On June 14, 2010 Haeg opposed Peterson's motion; asked for a protection order preventing the State from disposing of disputed property prior to PCR; and for the motions to be decided by the PCR court. See court record.

On July 10, 2010 Haeg filed a citation of supplemental authorities (copied to Peterson) that irrefutably prove the judgment against him could not be modified nearly 5 years after the fact, even if it were a product of fraud, as the court lost jurisdiction 180 days after judgment. See court record; State v. T.M., 860 P.2d 1286 (AK 1993); and Alaska Statute 12.55.088, Modification of Sentence:

State v. T.M., 860 P.2d 1286 (AK 1993):

"In general, when a statute or rule specifies a time limit on the court's power to modify or vacate a judgement, the court has no power to act outside this time limit. 46 Am.Jur.2d, Judgments, § 704, pp. 854-56; W. LaFave & J. Israel, Criminal Procedure (1984), § 25.2(e), Vol. 3, p. 131. In Davenport v. State, 543 P.2d 1204, 1210-11 (Alaska 1975), the supreme court declared that the superior court has no inherent power to retain jurisdiction over a criminal case and modify its judgement based on later events. Any power the superior court might have to modify a criminal judgement must stem from statute or rule. The rule is the same in civil cases. See Stone v. Stone, 647 P.2d 582, 585-86 (Alaska 1982), in which the supreme court held that, after the expiration of the 1-year time limit specified

in Alaska Civil Rule 60(b), the superior court no longer has the power to modify a judgement in a civil action on the basis of alleged fraud.”

**Alaska Statute 12.55.088. Code of Criminal Procedure - Modification of Sentence.**

(a) The court may modify or reduce a sentence by entering a written order under a motion made within 180 days of the original sentencing.

On July 28, 2010 Haeg subpoenaed Magistrate Woodmancy to testify as a material witness in a hearing concerning Haeg’s PCR. See court record.

On August 16, 2010 private criminal defense attorney Peter Maassen filed an entry of appearance on behalf of Magistrate Woodmancy in Haeg’s PCR. See court record.

On August 18, 2010 private criminal defense attorney Peter Maassen filed a motion to quash the subpoena requiring Magistrate Woodmancy to testify as a material witness in Haeg’s PCR. See court record.

On December 8, 2010 Judge Bauman was assigned to Haeg’s case and on 28, 2010 venue was transferred to Kenai, Alaska. See court record.

On January 19, 2011 Haeg asked for an order that since his court ordered 5-year guide license suspension was over he was entitled to the return of his license. See court record.

On January 24, 2011 Peterson opposed the return of Haeg’s license, arguing that the 5-year suspension of Haeg’s license started after Haeg had served his jail time. Peterson did not inform the court that, at the State’s request (and unlike his jail sentence that was required to be stayed), the license suspension had

not been stayed during appeal. Thus, during Haeg's near 4-year appeal before he was jailed he was prevented from guiding. To now "start" a 5-year suspension from the time he was jailed would not take into account the nearly 4 years Haeg has already been prevented from guiding - effectively turning Haeg's 5-year license suspension into a 9-year suspension. Alaska Statute 08.54.710 specifically states that a court ordered license suspension cannot be increased administratively.

### Discussion

As wielder of state government's incredible power, state attorney Andrew Peterson is not allowed to misrepresent the law. Doing so is prosecutorial misconduct, requiring any conviction obtained, maintained, or otherwise tainted by such conduct to be overturned.

Commonwealth v. Bowie, 243 F.3d 1109 (9<sup>th</sup> 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.")

In *Napue v. Illinois*, 360 U.S. 264 (U.S. Supreme Court 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," 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, (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.**

REVERSED and REMANDED for a new trial.

United States v. Blueford, 312 F. 3d 962 (9<sup>th</sup> Cir. 2002)

**[I]t is decidedly improper for the government to propound inferences that it knows to be false, or has very strong reason to doubt, particularly when it refuses to acknowledge the error afterwards to either the trial court or this court and instead offers far-fetched explanations of its actions. *Id.* at 1318-19;**

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The prosecutorial misconduct in this case deprived the defendants of due process of law. **We therefore VACATE the judgment of conviction and REMAND for the district court to determine whether to retry the defendants or dismiss the indictment with prejudice as a sanction for the government's misbehavior.**

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In essence, the prosecution's argument is that the virtue of its case sanctifies the means chosen to achieve conviction. This argument cannot prevail in a legal system that is designed to ensure fairness in the proceeding when each side follows the rules. Our confidence in the fairness of our system is rooted in the belief that our process is sound. **Useful falsehoods are particularly dangerous in a criminal case, where the cost of wrongful conviction cannot be measured in the impact on the accused alone. Such tainted proof inevitably undermines the process, casting a dark shadow not only on the concept of fairness, but also on the purpose of the exercise of the coercive power of the state over the individual. No man should go free nor lose his liberty on the strength of false, misleading or incomplete proof.**

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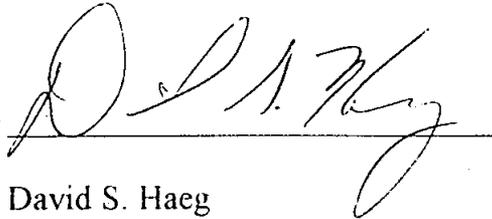
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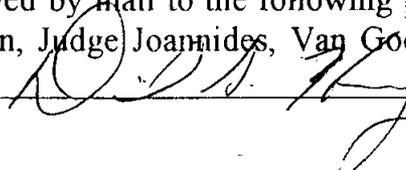
It is clear that Magistrate Woodmancy cannot decide motions in a case in which he is a material witness – especially after he has hired a very expensive criminal defense attorney to prevent his sworn testimony.

The above is just the start of what those who died for our constitution demand of all Americans to address the incomprehensible fact that state prosecutors, judges, troopers, and defense attorneys are conspiring to rig trials in violation of our constitution.

I declare under penalty of perjury the forgoing is true and correct. Executed on April 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.



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

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

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

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

APR 18 2011

By MSM Deputy  
Clerk of the Trial Courts

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)

**4-18-11 REPLY TO 4-11-11 ORDER**

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

COMES NOW Applicant, DAVID HAEG, in the above case and hereby replies to the courts April 11, 2011 order requesting more information from Haeg.

**Information**

- (1) Haeg owns 100% of the shares of the Bush Pilot Inc. (BPI) corporation.
- (2) Bob Lambe of Lambe, Tuter, and Wagner (the CPA firm which prepares BPI's taxes), estimates the corporation's value at \$37,900.

D

- (3) The value of the plane referenced by the State is \$37,900. See attachment #1, appraisal from Alaska Aviation and Property Claims, Inc.
- (4) The referenced plane is not encumbered by loan or otherwise.
- (5) Haeg is unable to obtain a loan using the plane as collateral. Haeg must have and use the plane for his air charter business; it is used almost exclusively for off airport and/or "bush" operations; Haeg cannot afford hull insurance for such high-risk operations; and no one will loan against an aircraft in such circumstances.

#### **Haeg's additional liabilities**

Haeg has identified additional financial liabilities not yet presented to the court. Numerous concerned people have stepped forward to pay for Haeg's household bills and legal defense when he has been unable. Costs such as fuel bills, printing and binding the books needed for briefing before the United States Supreme Court, witness subpoenas, and the fines/restitution imposed on Haeg, have all been paid by those following this case. Haeg has given his word he will repay all of this, thus these payments are loans and not gifts.

So far Haeg has accepted approximately \$45,500 from sources like this, none of which has been previously presented to this court as a liability.

Attachment # 1

Alaska Aviation & Property Claims, Inc.

P.O. Box 141

Soldotna, Alaska 99669

(907) 262-8339 • Fax: (907) 262-7643



Owners name: Bush Pilot Inc.  
Address: PO Box 123  
Soldotna, Alaska 99669

Phone number 907-262-9249

AIRCRAFT DESCRIPTION

Make: Piper Model: PA-18-150 Year of Mfg: 1976  
Serial Number: 18-7609097 Registration number N2025S Location: Soldotna, Alaska

GENERAL CONDITION AND APPEARANCE

Condition: Glass: Avg Paint: Poor  
Main gear: 31" Bushwheel Float fittings  
Interior: Poor Seats: Avg  
Instrumentation: VSI  
Logs up to date: Yes  
Engine: Lycoming O-320 HP: 150 TSMOH: 1439 Engine TBO: 2000 hours  
Total time airframe 3136 hours  
Prop: McCauley Model: 82-41 TYN: 278 hours

AVIONICS/RADIO EQUIPMENT

IC-200 Com

COMMENTS

Major aft airframe repair and fuselage cover 2000. Wings, control surfaces original fabric and paint. Numerous patches and paint peeling, silver showing several areas. 8/3/10 annual. Overall condition of aircraft would be considered rough, typical work bush plane.

EVALUATION

This aircraft was purchased in 1999 for \$42,000.00. Aircraft values have devalued the last several years. Local sales, not asking prices, show extremely poor market. Early model C-182, 2000 value \$70,000+ sells 2011 for \$35,000.00. 1976 PA-18-150, completely rebuilt with new fuselage, wings, control surfaces, landing gear, cowling and O SMHO 160 HP, 5.3 hours, asking \$110,000.00 in 2009, sells for \$75,000.00 April 2011. Checking several comparable's, adjusting for engine time above 500 hours, avionics, paint, interior and logs, I estimate the fair market value of this aircraft to be \$37,900.00. However selling at this price may prove difficult.

I hereby certify that the preceding statements are true and correct to the best of my knowledge.

Date: April 14, 2011

Signature Dennis [Signature]

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

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

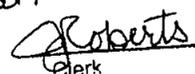
**ORDER ON REPRESENTATION STATUS**

On March 21, 2011, the State filed a NOTICE OF INFORMATION MISSING FROM HAEG'S FINANCIAL STATEMENT. Accordingly, this court is requesting Haeg respond by the close of business April 20, 2011. Haeg's response should detail:

- 1) Haeg's financial interest in The Bush Pilot, Inc. and the value thereof;
- 2) Haeg's estimated fair market value of the referenced plane;
- 3) the extent to which the referenced airplane is encumbered by loan or otherwise; and
- 4) Haeg's ability to obtain a loan using the plane as collateral.

Dated at Kenai, Alaska this <sup>th</sup> 11 day of April, 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  
4-12-11   
Date Clerk



claimed they had no idea why Haeg had given up guiding for a year prior to being sentenced - and then asked for Haeg's license to be taken for 5 more years (which the court did); and (4) the State used the inducement it was for the greater good of everyone who depended on ungulates (moose, caribou, etc) when they told Haeg (who had no criminal record of anything) to help make the first "experimental" Wolf Control Program seem a success by taking wolves wherever found but claim they were taken in the open area of the program, thereby eliminating the widely known concern the program might be shut down as ineffective.

**Commonwealth v. Bowie, 243 F.3d 1109 (9<sup>th</sup> Cir. 2001)**

The Attorney General argues that without actual proof of perjury in the record as it now stands, it is premature to order a new trial. The Attorney General asks us to remand this matter to the trial court for a full evidentiary hearing to determine whether any of the witnesses actually lied as suggested by the letter. As support for this position, **the Attorney General notes that in the controlling cases, the record justified the conclusion that perjury did in fact infect the trial and result in a denial of due process.** The Attorney General's argument misses the mark in this case.

**First, we cannot help but note the irony in an argument that asks years after a trial for an opportunity to do what the Constitution required of the proponent of the argument before the trial began to ensure that it would be fair.** It is the Attorney General who is directly responsible for what he now says is unclear from the record and for the deficiencies in the trial that took place. **Given the manifest reason to question the veracity of the prosecution's witnesses, the Constitution required a prompt pretrial investigation of the integrity of the government's evidence before the witnesses were called to the stand.** This requirement is not satisfied by a tardy evidentiary hearing after the fact. Although the prosecution had leverage before the trial to get to the truth with its witnesses, it is not unlikely now that the Fifth Amendment will shield them from the inquiry the prosecution wishes to launch. By committing the witness under oath to a certain story, an admission now of untruthfulness might well unveil a crime.

**In conclusion, the clear defects in Bowie's trial were the direct result of the prosecutor's pretrial constitutional failure to guard against improbity in the trial process, a failure which rendered the trial itself patently unfair in due process terms. The prosecution saw fit without prophylaxis to call to the stand witnesses**

whom it had clear reason to believe might have conspired to lie under oath. The manner in which the trial unfolded leaves us with the definite conviction that the process itself lacked fundamental fairness and delivered a palpably unreliable result. In this connection, the principles which compel our decision here are not designed to punish society for the misdeeds of a prosecutor, see *United States v. Agurs*, 427 U.S. 97, 110 n.17 (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.

Few things are more repugnant to the constitutional expectations of our criminal justice system than **covert perjury**, and especially perjury that flows from a concerted effort by rewarded criminals to frame a defendant. 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); Cf. *Franks v. Delaware*, 438 U.S. 154 (1978) ("[I]t would be an unthinkable imposition upon [the authority of a magistrate judge] if a warrant affidavit, revealed after the fact to contain a deliberately or recklessly false statement, were to stand beyond impeachment.").

In *Pyle v. Kansas*, 317 U.S. 213 (1942), the Court emphasized this theme: Petitioner's papers are inexpertly drawn, **but they do set forth allegations that his imprisonment resulted from perjured testimony, knowingly used by the State authorities to obtain his conviction, and from the deliberate suppression by those same authorities of evidence favorable to him. These allegations sufficiently charge a deprivation of rights guaranteed by the Federal Constitution, and, if proven, would entitle petitioner to release from his present custody.**

In *Alcorta v. Texas*, 355 U.S. 28 (1957), the Court was confronted with a prosecutor who on direct examination knowingly allowed a witness to create a false impression of his disputed relationship with the defendant's murdered wife: The witness told the prosecutor before trial that he had had sexual intercourse with the wife on five or six occasions, which, if true, would have corroborated the defendant's mitigating version of the reason why he stabbed and killed her. **The prosecutor told the witness not to volunteer any information about the sexual aspect of his relationship with the decedent, and then sat quietly by while his witness lied under oath, claiming that his relationship with the defendant's wife was just a "casual friendship."** Influenced by the false testimony, the jurors rejected Alcorta's bid for a manslaughter conviction and found him guilty of capital murder. In granting Alcorta's petition for a writ of habeas corpus, the court held that the false impression given to the jury by the prosecutor and the State violated his right to due process. *Alcorta*, 355 U.S. at 31.

In *Napue v. Illinois*, 360 U.S. 264 (1959), Chief Justice Warren reinforced this constitutional imperative. He quoted from a New York Court of Appeals case involving false testimony from a witness who had been given substantial consideration for his testimony: **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.**

*Id.* at 269-270 (quoting *People v. Savvides*, 1 N.Y. 2d 554, 557, 136 N.E. 2d 853, 854-855 (N.Y. Ct. App. 1956) (**holding that where witness for the prosecution falsely testified that there was no agreement that he was to receive lenient treatment for testifying against defendant, Assistant District Attorney should have exposed the lie of the witness**))

In 1976, the Court was called on yet again to visit this recurring issue, noting that it "**has consistently held that a conviction obtained by the knowing use of perjured testimony is fundamentally unfair and must be set aside if there is any reasonable likelihood that the false testimony could have affected the judgment of the jury.**" *United States v. Agurs*, 427 U.S. 97, 103 (1976). The Court observed that the Mooney line of cases applied this strict standard "**not just because they involve prosecutorial misconduct, but more importantly because they involve a corruption of the truth-seeking function of the trial process.**" *Id.*

Running parallel to this line of authority is a related series of cases casting light on the responsibility of prosecutors exercising the executive power of the state. The seminal case in this line is *Berger v. United States*, 295 U.S. 78, 88 (1935), the message of which we summarized in *Commonwealth of The Northern Mariana Islands v. Mendiola*, 976 F.2d 475 (9th Cir. 1992) (overruled on other grounds in *George v. Camacho*, 119 F.3d 1393 (9th Cir. 1997))<sup>2</sup> : The prosecuting attorney represents a sovereign whose obligation is to govern impartially and whose interest in a particular case is not necessarily to win, but to do justice. **It is the sworn duty of the prosecutor to assure that the defendant has a fair and impartial trial.**

*Id.* at 486 (internal citation omitted). See also *United States v. LaPage*, 231 F.3d 488, 492 (9th Cir. 2000) ("**A prosecutor has a special duty commensurate with a prosecutor's unique power, to assure that defendants receive fair trials.**")

**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 on the apparent premise that all these accomplices were actually responsible for Laude's**

murder; **and not to develop any evidence or information that would either hurt their case or damage the credibility of their conniving witnesses.** To argue as justification for doing nothing, as the Attorney General has done in his brief, that "the witnesses were subject to full cross-examination concerning the letter," and that "there is little that a police interview not under oath could accomplish that could not be accomplished in sworn testimony, " misapprehends the free standing constitutional duty of the State and its representatives to protect the system against false testimony. Without a doubt, the record in this case establishes bad faith as a matter of law on the part of the Attorney General's Office in refusing to investigate the potentially exonerating evidence that its own witnesses were conspiring to commit perjury. **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).

What may have served Bowie's purposes in trial is different and distinct from the duty of the prosecution to protect the trial process against fraud. **Viewed in this light, what Bowie did in court with the letter is irrelevant. He had certain constitutional rights that he could waive or forfeit, but he could not waive the freestanding ethical and constitutional obligation of the prosecutor as a representative of the government to protect the integrity of the court and the criminal justice system,** as established in *Mooney and Berger*. To quote again from *Mendiola*, "It is the sworn duty of the prosecutor to assure that the defendant has a fair and impartial trial." *Mendiola*, 976 F.2d at 486. Here, the government shirked this duty. In this respect, **the error on which we reverse Bowie's conviction was not simply a trial error, but a fatal due process error committed by the Office of the Attorney General of the Commonwealth of the Northern Mariana Islands.**

**Such false testimony and false evidence corrupts the criminal justice system and makes a mockery out of its constitutional goals and objectives.** Thus, although the truthfulestimony of accomplice witnesses will continue to be of great value to the law, rewarded criminals also represent a great threat to the mission of the criminal justice system. **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.**

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.”**

These duties imposed on police and prosecutors by the requirements of due process are hardly novel or burdensome. Investigating and verifying the credibility of witnesses and the believability of testimony and evidence is a task which they undertake every day in the regular discharge of their ordinary responsibilities, and we cannot conceive of any fair-minded prosecutor chaffing under these mandates. **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.**

REVERSED and REMANDED for a new trial.

**United States v. Blueford, 312 F. 3d 962 (9<sup>th</sup> Cir. 2002)**

Roy Blueford appeals his jury conviction of being a felon in possession of a firearm. Although Blueford raises several challenges on appeal, **we need address only one, namely the allegation that the prosecutor engaged in misconduct that tainted the trial. We conclude that the prosecution's actions in asking the jury to infer that Blueford had fabricated his alibi in certain telephone calls with witnesses in the weeks just before the trial, when in fact the government had evidence contradicting some of its assertions, requires that we reverse and remand to the district court for a new trial.**

It is certainly within the bounds of fair advocacy for a prosecutor, like any lawyer, to ask the jury to draw inferences from the evidence that the prosecutor believes in good faith might be true. **But it is decidedly improper for the government to propound inferences that it knows to be false, or has very strong reason to doubt, particularly when it refuses to acknowledge the error afterwards to either the trial court or this court and instead offers far-fetched explanations of its actions.** *Id.* at 1318-19; *see also id.* at 1321 (the difference between a lawyer "ask[ing] the jury to infer only things that he believed in good faith *might* be true" and making "factual assertions he well knew

were untrue" is "the difference between fair advocacy and misconduct"); *United States v. Udechukwu*, 11 F.3d 1101, 1106 (1st Cir. 1993) ("**[i]t is improper to imply reliance on a fact that the prosecutor knows to be untrue**"); *United States v. Valentine*, 820 F.2d 565, 566 (2nd Cir.1987) (**finding prejudicial misconduct where "the prosecutor misrepresented, at least implicitly, the substance of the testimony of several grand jury witnesses"**).

**We conclude that the government in this case failed, both at trial and thereafter, to fulfill its responsibility to "discharge its responsibilities fairly, consistent with due process," *id.*, and that its failure to do so was not harmless. We therefore REVERSE and REMAND for a new trial.**

The United States Attorney is the representative not of an ordinary party to a controversy, but of a sovereignty whose obligation to govern impartially is as compelling as its obligation to govern at all; and whose interest, therefore, in a criminal prosecution is not that it shall win a case, but that justice shall be done. As such, he is in a peculiar and very definite sense the servant of the law, the twofold aim of which is that guilt shall not escape or innocence suffer. He may prosecute with earnestness and vigor— indeed, he should do so. But, while he may strike hard blows, he is not at liberty to strike foul ones. **It is as much his duty to refrain from improper methods calculated to produce a wrongful conviction as it is to use every legitimate means to bring about a just one.** *Berger v. United States*, 295 U.S. 78, 88 (1935)

... it is the responsibility of the United States Attorney and his senior staff to create a culture where 'win-at-any-cost' prosecution is not permitted. Indeed, such a culture must be mandated from the highest levels of the United States Department of Justice and the United States Attorney General. **It is equally important that the courts of the United States must let it be known that, when substantial abuses occur, sanctions will be imposed to make the risk of non-compliance too costly.** *United States v. Shaygan*, 661 F.Supp.2d 1289, 1292 (S.D.Fla. 2009)

"The Court finds [the government's] explanation wholly incredible."  
*United States v. Stevens*, 593 F.Supp.2d 177, 181 (D.D.Ct. 2009)

**How can it be that a serious claim of prosecutorial misconduct remains unresolved – even unaddressed – until oral argument in the Court of Appeals? Surely when such a claim is raised, we can expect that someone in the United States Attorney's office will take an independent, objective look at the issue.** The claim here turned entirely on verifiable facts: A dispassionate comparison between the transcript of the AUSA's statement to the jury and Nourian's plea agreement would have disclosed that the defense was right and the government was wrong. Yet the United States Attorney allowed the filing of a brief in our court that did not own up to the problem, a brief that itself skated perilously close to misrepresentation. *United States v. Kojayan*, 8 F.3d 1315, 1320 (9th Cir. 1993).

### **Attorney Fees and Litigation Expenses to Defense**

Pub.L. 105-119, Title VI, § 617, Nov. 26, 1997, 111 Stat. 2519, provided that: "During fiscal year 1998 and in any fiscal year thereafter, the court, in any criminal case (other than a case in which the defendant is represented by assigned counsel paid for by the public) pending on or after the date of the enactment of this Act [Nov. 26, 1997], may award to a prevailing party, other than the United States, a reasonable attorney's fee and other litigation expenses, where the court finds that the position of the United States was vexatious, frivolous, or in bad faith, unless the court finds that special circumstances make such an award unjust. Fees and other expenses awarded under this provision to a party shall be paid by the agency over which the party prevails from any funds made available to the agency by appropriation. *See also United States v. Aisenberg*, No. 899-CR-324-T23 MAP, 2003 WL 403071, \*39 (M.D. Fla. Jan. 31, 2003) ("Pursuant to the Hyde Amendment, the Aisenbergs are entitled to a reasonable attorney's fee in the amount of \$2,680,602.22 and other litigation expenses in the amount of \$195,670.32."); *United States v. Shaygan*, 661 F.Supp.2d 1289, 1324 (S.D.Fla 2009) (attorney's fees and costs in the amount of \$601,795.88 awarded to the defendant); *United States v. Claro*, 579 F.3d 452, 456 (5th Cir. 2009) (noting the district court awarded and government paid \$391,292.29 in attorneys fees pursuant to Hyde Amendment); *See also Brown v. United States*, SA- 03-CV-0792-WRF (W.D.Tex. 2007)(wherein parties reached settlement agreement and government agreed to pay plaintiff \$1,340,000 to settle plaintiff's complaint filed under the Federal Tort Claims Act based on nature of government's criminal investigation and prosecution of plaintiffs).

### **Criminal Contempt**

The five DOJ employees who prosecuted Senator Ted Stevens in *United States v. Stevens* are currently the subject of criminal contempt proceedings instigated by U.S. District Court Judge Emmet Sullivan based in part on allegations of *Brady* and *Giglio* violations.<sup>8</sup> Judge Sullivan appointed a special counsel to examine the conduct of the prosecutors after the Justice Department moved to dismiss the case with prejudice.

### **B. *Brady*, Due Process, and State Ethical Rules on Discovery**

Even before state ethical obligations were extended to federal prosecutors, some federal courts did not hesitate to impose sanctions for prosecutorial misconduct relating to *Brady* violations. One inspiring example is found in *United States v. Ramming*, 915 F. Supp. 854 (S.D. Texas 1996). In that case, the district court carefully chronicled the various *Brady* and *Giglio* violations of the federal government in a banking prosecution. *Id.* at 868. **The court concluded, "the government's contentions of equal access, neutral evidence, that the defendants were aware of the information possessed by the Grand Jury, that the testimony was merely impeachment, and that they acted in good faith, is incredible. Only a person blinded by ambition or ignorance of the law and ethics would have proceeded down this dangerous path."** The defendant's motion to dismiss because of prosecutorial misconduct was granted. *Id.*

**"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 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.”** Other useful cases on perjured testimony include *United States v. Valentine*, 820 F.2d 565 (2d Cir. 1987) **(reversing conviction when AUSA mischaracterized grand jury testimony during trial)**, and *United States v. LaPage*, 231 F.3d 488 (9th Cir. 2000) **(reversing conviction when AUSA tolerated perjury from central government witness).**

In *United States v. Reyes*, 577 F.3d 1069, 1076-79 (9th Cir. 2009), the court reversed and remanded for a new trial based on the prosecutor’s remarks in closing argument. **The Ninth Circuit found that the government had asserted material facts to the jury that it knew were false or had strong reason to doubt, based on contradictory evidence that was not presented to the jury.** *Id.* The Ninth Circuit sternly warned the DOJ that, “[w]e do not lightly tolerate” such conduct, and that there was “no reason to tolerate such misconduct here.” *Id.* at 1078.

In *Gunn v. Ignacio*, 263 F.3d 965 (9th Cir. 2001), the Ninth Circuit granted a petition for a writ of habeas corpus when a district attorney breached a plea agreement regarding concurrent time. *Id.* at 969. **Because the Court granted relief, it did not get to the second issue raised by the Petitioner – a claim of ineffective assistance of counsel for failing to object to the prosecutorial misconduct arising from this breach!** *Id.* at 968. Although *Gunn* did not consider the issue, Petitioner’s claim is sobering: **defense counsel too timid to raise prosecutorial misconduct challenges may regret their decision when faced with a later I.A.C. claim.** If sufficiently dramatic, a prosecutor’s breach of a plea agreement may even prompt a Court to enforce promises that were actually unfulfillable! Such was the case in *Palermo v. Warden, Green Haven State Prison*, 545 F.2d 286 (2d Cir. 1976). While contesting the habeas petition, the state argued that the prosecutors never had the authority to offer a bargain from another jurisdiction – the state parole commission. The Court was unimpressed. The Second Circuit proclaimed **“fundamental fairness and public confidence in government officials require that prosecutors be held to meticulous standards of both promise and performance.”** The district court’s unconditional release order was affirmed. *Id.*

**Olmstead v. United States, 277 U.S. 438, 485 (1928).**

The ends in our system do not justify the means. Our Constitution does not promise every criminal will go to jail, it promises due process of law. It is regrettable that the final day of judgment for those who killed Laude and kidnaped Rivera has not yet arrived, but as Justice Oliver Wendell Holmes put it, "It is a less evil that some criminals should escape than that the government should play an ignoble role." *Id.* at 469 (Holmes, J., dissenting). It is for this reason that the law places the duty to manage this difficult business with the utmost care upon those in the best position and with the power to ensure that it does not go awry. Although the public has an interest in effective law enforcement, and although we expect law enforcement officers and prosecutors to be tough on crime and criminals, we do not expect them to be tough on the Constitution. As Justice Clark remarked in *Mapp v. Ohio*, 367 U.S. 643, 659 (1961), **"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."

**United States v. Lapage, 231 F.3d 488 (9<sup>th</sup> Cir. 2000)**

The due process clause entitles defendants in criminal cases to fundamentally fair procedures. **It is fundamentally unfair for a prosecutor to knowingly present perjury to the jury. Over forty years ago, the Supreme Court made it clear that "a conviction obtained through the use of false evidence, known to be such by representatives of the State, must fall under the Fourteenth Amendment."**<sup>7</sup> **"The same result obtains when the State, although not soliciting false evidence, allows it to go uncorrected when it appears."**<sup>8</sup> **The Court explained that this principle "does not cease to apply merely because the false testimony goes only to the credibility of the witness."**<sup>9</sup> **Rather, "[a] lie is a lie, no matter what its subject."**<sup>10</sup> **Because the use of known lies to get a conviction deprives a defendant of his constitutional right to due process of law, we must reverse LaPage's conviction unless Manes's false testimony was "harmless beyond a reasonable doubt."**<sup>11</sup> **That is, we must reverse "if there is any reasonable likelihood that the false testimony could have affected the judgment of the jury.'**

The government correctly argues that there was other evidence from which the jury could have figured out that Manes had lied about Pinkston and other matters, and that the defense knew as plainly as the prosecutor that Manes had lied. **But the government's duty to correct perjury by its witnesses is not discharged merely because defense counsel knows, and the jury may figure out, that the testimony is false. Where the prosecutor knows that his witness has lied, he has a constitutional duty to correct the false impression of the facts.**<sup>13</sup> **Many prosecutors, when this occurs, interrupt their own questioning, and work out in a bench conference with the judge and defense counsel how to inform the jury immediately that the testimony is false. By contrast, in this case, the prosecutor sat silently as his witness lied, and sat silently as his witness evaded defense counsel's ineffectual cross-examination. In closing argument, the prosecutor continued to do nothing to remedy the falsehood.** Only after the defense has used up its last chance to address the jury in closing argument did the prosecutor concede on rebuttal that Manes had lied about Pinkston. Though making the concession, the prosecutor argued that Manes's lie about Pinkston was not about anything important so it should not affect the verdict. Because the prosecutor delayed the correction until rebuttal argument, the defense could no longer explain why the lie about Pinkston was important.

**All perjury pollutes a trial, making it hard for jurors to see the truth. No lawyer, prosecutor, or defense counsel, civil or criminal, may knowingly present lies to a jury and then sit idly by while opposing counsel struggles to contain this pollution of the trial.** The jury understands defense counsel's duty of advocacy and frequently listens to defense counsel with skepticism. A prosecutor has a special duty commensurate with a prosecutor's unique power, to assure that defendants receive fair trials. "It is as much his duty to refrain from improper methods calculated to produce a wrongful conviction as it is to use every legitimate method to bring about one."

**The failure to correct prosecutorial testimony known to be false may have made a difference to the outcome in this case, so the conviction cannot stand.**

REVERSED.

**United States v. Kojayan, 8 F.3d 1315 (9<sup>th</sup> Cir. 1993)**

The AUSA, however, was not telling the truth. Defense counsel had guessed right-- Nourian had entered into a cooperation agreement with the government and had promised to "truthfully testify ... at any trial or other court proceeding with respect to any matters about which [the government] may request his testimony." Cooperation Agreement at 2.

Anyone can make a mistake. Words uttered spontaneously sometimes come out wrong; the exigencies of trial may make it hard to consider all the implications of a particular assertion. The mere fact of a misstatement to the jury therefore isn't the end of the matter. In determining the proper remedy, we must consider the government's willfulness in committing the misconduct and its willingness to own up to it. See pp. 1323-24 *infra*; *United States v. Lopez-Alvarez*, 970 F.2d 583, 597 (9th Cir. 1992). **We also must consider whether the misstatement likely affected the verdict.**

Troubled as we are by the prosecutor's conduct, we're more troubled still by the lack of supervision and control exercised by those above him. The AUSA's superiors seem to have been unaware that anything at all was amiss until after oral argument in this court.

**How can it be that a serious claim of prosecutorial misconduct remains unresolved--even unaddressed--until oral argument in the Court of Appeals? Surely when such a claim is raised, we can expect that someone in the United States Attorney's office will take an independent, objective look at the issue. The claim here turned entirely on verifiable facts: A dispassionate comparison between the transcript of the AUSA's statement to the jury and Nourian's plea agreement would have disclosed that the defense was right and the government was wrong. Yet the United States Attorney allowed the filing of a brief in our court that did not own up to the problem, a brief that itself skated perilously close to misrepresentation. See p. 1319.**

How can the government possibly say this? Unlike defense counsel, who carefully preceded each departure from the record with a qualifier like "I submit," the prosecutor categorically asserted that Nourian "has Fifth Amendment rights. He has the right to remain silent." The AUSA also admonished the jury: "Don't be misled that the government could have called Nourian." Contrary to the government's characterization, the prosecutor much more than "only noted that there 'was not a shred of evidence' relating to such agreement" in the record; he told them point-blank that no such agreement existed. In a misguided attempt to stand by its lawyer, the government sweeps under the rug the most troublesome part of his statement to the jury.

Most disappointing of all, perhaps, is the government's failure to acknowledge that the prosecutor's misconduct was far more than a simple slip of the tongue, more than a

temporary misstep. As we discussed at some length above, the Assistant United States Attorney did nothing whatever to own up to the problem; he did not inform the district court, this court or opposing counsel of the misstatement of fact in his closing argument.

Prosecutors are subject to constraints and responsibilities that don't apply to other lawyers. See, e.g., *Berger v. United States*, 295 U.S. 78, 88, 55 S.Ct. 629, 633, 79 L.Ed. 1314 (1935). While lawyers representing private parties may--indeed, must--do everything ethically permissible to advance their clients' interests, lawyers representing the government in criminal cases serve truth and justice first. The prosecutor's job isn't just to win, but to win fairly, staying well within the rules. See *United States v. Hill*, 953 F.2d 452, 458 (9th Cir.1991); As Justice Douglas once warned, "[t]he function of the prosecutor under the Federal Constitution is not to tack as many skins of victims as possible to the wall. His function is to vindicate the right of people as expressed in the laws and give those accused of crime a fair trial." *Donnelly v. DeChristoforo*, 416 U.S. 637, 648-49, 94 S.Ct. 1868, 1874, 40 L.Ed.2d 431 (1974) (Douglas, J., dissenting).

The government here has strayed from this responsibility. **Quite aside from the major and minor trespasses and evasions catalogued above, we must ask the broader question: How did all this come about?** The answer isn't particularly edifying: It is because the government's lawyer made a strategic decision to present Nourian's evidence by way of hearsay, and then did everything he could to keep the defense from learning Nourian's whereabouts and the existence and nature of the cooperation agreement. While we're in no position to second-guess the government's decision not to bring Nourian to court, we see no justification for the prosecutor's refusal to give the defense whatever information he had about Nourian--the status of his criminal case, the nature and extent of any cooperation agreement. The government has never articulated why it withheld this information, saying only that "[t]he government ... is not required to be defendant's investigator." CR 23 at 4. Such hard-bitten litigation tactics are unbecoming a prosecutor. See Monroe H. Freedman, *Understanding Lawyers' Ethics* (Chapter 11--"Prosecutors' Ethics") (1990).

Turning to the remedy, the government vigorously argues that whatever error may have been committed by its lawyer, it was minor and harmless, and that defendants would have been convicted anyhow. We are less sanguine. Evidence of Nourian's plea agreement might well have helped convince the jury to reach a not guilty verdict for one or both of the defendants. Had the prosecutor done his job--had he disclosed to the defendants that Nourian was cooperating, as required by Brady, had he stuck to the truth in his arguments--the verdict could well have been different. Evidence matters; closing argument matters; statements from the prosecutor matter a great deal. **The government deprived the defendants of an opportunity to put on what could have been a powerful defense.** See *United States v. Agurs*, 427 U.S. 97, 103, 96 S.Ct. 2392, 2397, 49 L.Ed.2d 342 (1976) (**where prosecutor knowingly uses perjured testimony, error isn't harmless unless there's no reasonable likelihood that the misconduct influenced the verdict**).

Having determined the convictions must be reversed, we must next consider whether to allow the government to retry the defendants. The normal rule, of course, is that where prejudicial error is committed at trial, the case will be sent back for a retrial. But where, as here, the error is one of prosecutorial misconduct, we must take into account considerations beyond this case. **Quite as important as assuring a fair trial to the defendants now before us is assuring that the circumstances that gave rise to the misconduct won't be repeated in other cases.**

Much of what the United States Attorney's office does isn't open to public scrutiny or judicial review. See, e.g., *United States v. Redondo-Lemos*, 955 F.2d 1296 (9th Cir.1992). It is therefore particularly important that the government discharge its responsibilities fairly, consistent with due process. The overwhelming majority of prosecutors are decent, ethical, honorable lawyers who understand the awesome power they wield, and the responsibility that goes with it. But the temptation is always there: **It's the easiest thing in the world for people trained in the adversarial ethic to think a prosecutor's job is simply to win.** See, e.g., *United States v. Montgomery*, 998 F.2d 1468, 1477 (9th Cir. July 13, 1993) (finding a "complete absence of effort, a complete absence of control, and a near complete absence of demonstrated cooperation" on part of government in producing confidential informant); *United States v. Wallach*, 935 F.2d 445, 457 (2d Cir.1991) ("**We fear that given the importance of [a witness's] testimony to the case, the prosecutors may have consciously avoided recognizing the obvious-- [that he] was not telling the truth.**"); *Brown v. Borg*, 951 F.2d 1011, 1015 (9th Cir.1991) (state prosecutor kept exculpatory evidence secret); *Reutter v. Solem*, 888 F.2d 578, 581 (8th Cir.1989) (state prosecutor withheld Brady information and made grossly misleading statements in closing argument); *United States v. Kattar*, 840 F.2d 118, 127 (1st Cir.1988) ("[I]t is disturbing to see the Justice Department change the color of its stripes to such a significant degree, portraying an organization, individual, or series of events variously as virtuous and honorable or as corrupt and perfidious, depending on the strategic necessities of the separate litigations.").

One of the most important responsibilities of the United States Attorney and his senior deputies is ensuring that line attorneys are aware of the special ethical responsibilities of prosecutors, and that they resist the temptation to overreach. "[T]raining to impart awareness of constitutional rights is an essential function of an office ... whose administration of justice the public [relies on]." *United States v. Foster*, 985 F.2d 466, 469 (9th Cir.1993). A recent Second Circuit case, *Walker v. City of New York*, 974 F.2d 293 (2d Cir.1992), illustrates the disastrous consequences that can follow when this responsibility is not met. **The prosecutors in Walker persisted in prosecuting a defendant--and lied and concealed evidence in the process--even though they were aware of his probable innocence. It took Mr. Walker nearly two decades to win his freedom.** The Walker court found that the district attorney's failure to train or supervise her employees as to "such basic norms of human conduct [as] the duty not to lie or persecute the innocent" **could be the basis of 42 U.S.C. § 1983 liability.** *Id.* at 301.

Commenting on Mr. Walker's plight, Professor Stephen Gillers noted the great danger in "[u]ntrained lawyers wielding public power." *Under Color of Law*, ABA J., Dec. 1992, at

121. We share his concern. **What we find most troubling about this case is not the AUSA's initial transgression, but that he seemed to be totally unaware he'd done anything at all wrong, and that there was no one in the United States Attorney's office to set him straight.** Nor does the government's considered response, filed after we pointed out the problem, inspire our confidence that this kind of thing won't happen again.

The prosecutorial misconduct in this case deprived the defendants of due process of law. **It contaminated their trial, and we cannot say it was harmless.** See *United States v. Kerr*, 981 F.2d 1050 (9th Cir.1992) (prejudicial vouching cause for reversal); *Brown v. Borg*, 951 F.2d 1011 (9th Cir.1991) (**reversal where prosecutor knowingly introduced and argued from false evidence**). In a situation like this, the judiciary--especially the court before which the primary misbehavior took place--may exercise its supervisory power to make it clear that the misconduct was serious, that the government's unwillingness to own up to it was more serious still and that steps must be taken to avoid a recurrence of this chain of events. **We therefore VACATE the judgment of conviction and REMAND for the district court to determine whether to retry the defendants or dismiss the indictment with prejudice as a sanction for the government's misbehavior.** See *United States v. Williams*, --- U.S. ----, ----, 112 S.Ct. 1735, 1742, 118 L.Ed.2d 352 (1992) (supervisory power "may be used as a means of establishing standards of prosecutorial conduct before the courts themselves."); *United States v. Bernal-Obeso*, 989 F.2d 331, 337 (9th Cir.1993); *United States v. Restrepo*, 930 F.2d 705, 712 (9th Cir.1991); *United States v. Barrera-Moreno*, 951 F.2d 1089, 1091 (9th Cir.1991).

**United States v. Reyes, No. 08-10047 (9<sup>th</sup> Cir. 2009)**

It was not, however, the defense's burden to prove Reyes was innocent. It was the prosecutor's burden to prove he was guilty. **Defense counsel made no knowingly false statements. The prosecutor did.** Indeed, on appeal the government does not seriously dispute the falsity of the prosecutor's statements or the duty of the prosecutor to refrain from making such statements. **Instead, it argues the misconduct was harmless. In representing the United States, a federal prosecutor has a special duty not to impede the truth.** The United States Department of Justice's Mission Statement describes the government's duty as one "to ensure fair and impartial administration of justice for all Americans." United States Department of Justice, About DOJ, <http://www.usdoj.gov/> There is good reason for such a high standard. A **"prosecutor's opinion carries with it the imprimatur of the Government and may induce the jury to trust the Government's judgment rather than its own view of the evidence."** *United States v. Young*, 470 U.S. 1, 18-19 (1985) (citing *Berger v. United States*, 295 U.S. 78, 88-89 (1935)). **For this reason, it is improper for the government to present to the jury statements or inferences it knows to be false or has very strong reason to doubt.** *United States v. Blueford*, 312 F.3d 962, 968 (9th Cir. 2002) (citing *United States v. Kojayan*, 8 F.3d 1315, 1318-19 (9th Cir. 1993)). Deliberate false statements by those privileged to represent the United States harm the trial process and the integrity of our prosecutorial system. **We do not lightly tolerate a prosecutor asserting as a fact to the**

jury something known to be untrue or, at the very least, that the prosecution had very strong reason to doubt. *See Blueford*, 312 F.3d at 968.

**Theodore F. Stevens, April 7, 2009 Hearing:**

“Until recently, my faith in the criminal system, particularly the judicial system, was unwavering, but what some members of the prosecution team did nearly destroyed that faith. **Their conduct has consequences for me that they will never realize and can never be reversed.**”

***United States v. Quinn*, 537 F. Supp. 2d 99, 120 (D.D.C. 2008)**

“*Napue* sets forth a very defense-friendly standard. A defendant need only show that false testimony was presented at trial, that the government knew, or should have known, that the testimony was false, and that there is reasonable likelihood that the false testimony could have affected the judgment of the jury. Because the integrity of our justice system relies on the presentation of truthful evidence for a jury to evaluate, the prosecution’s knowing use of false testimony entails a veritable hair trigger for setting aside the conviction.”

***United States v. Omni Int’l. Corp.*, 634 F. Supp. 1414, 1438 (D.Md. 1986)**

The AUSA’s failure to be fully candid could have had tragic consequences. The Court was faced with the issue of whether or not to permit an evidentiary hearing. If the Court had blindly relied on the AUSA’s representations, no hearing would have been held . . . **In light of all the testimony adduced at the [28-day-long] evidentiary hearing, it is clear that this case rises to the high threshold imposed for invocation of the supervisory power [to dismiss]. The Court condemns the manner in which the Government proceeded, and cannot now stand idly by, implicitly joining the federal judiciary into such unbecoming conduct.**

***United States v. V. F. Grace*, 461 U.S. 171 (1983)**

In essence, the prosecution’s argument is that the virtue of its case sanctifies the means chosen to achieve conviction. This argument cannot prevail in a legal system that is designed to ensure fairness in the proceeding when each side follows the rules. Our confidence in the fairness of our system is rooted in the belief that our process is sound. **Useful falsehoods are particularly dangerous in a criminal case, where the cost of wrongful conviction cannot be measured in the impact on the accused alone. Such tainted proof inevitably undermines the process, casting a dark shadow not only on the concept of fairness, but also on the purpose of the exercise of the coercive power of the state over the individual. No man should go free nor lose his liberty on the strength of false, misleading or incomplete proof.** In one sense the pending motions present distinct legal issues: the reliability of Locke’s testimony on one hand, and the government’s discovery and constitutional violations on the other. As the arguments on these issues have demonstrated, however, they are intertwined to the point that the discussion of one will eventually require consideration of both. While the

motions are discussed separately below, they are addressed collectively in the implementation of the remedy.

The Court and the parties have given extensive consideration to the Ninth Circuit opinion in *United States v. Chapman*, 524 F.3d 1073 (9th Cir. 2008), in which the court of appeals upheld the district court's dismissal of the indictment after declaring a mistrial due to Brady and Giglio violations. Based on the record in this case, Chapman puts this Court well within its discretion to declare a mistrial and dismiss the Superseding Indictment. There are, however, two critical distinctions between this case and the facts in Chapman. The witnesses at issue in Chapman had left the stand, and could not practically be recalled. *Id.* at 1079-80. Here the government revealed its breach during the cross-examination of Locke and he remains under subpoena. Unlike the situation in Chapman, continued cross-examination of the relevant witness is a viable remedy. **A more important distinction is the fact that the district court in Chapman found that the government had acted "flagrantly, willfully, and in bad faith."**

*United States v. Kott*, 07-30496 (9<sup>th</sup> Cir. 2011)

Judge B. Fletcher, concurring in part and dissenting in part:

I concur in the majority's memorandum to the extent it establishes that the prosecution suppressed evidence favorable to the defense in violation of *Brady* and *Giglio* and that the suppression prejudiced Kott. I respectfully dissent, however, from the majority's conclusion that there is insufficient evidence that the prosecution "acted flagrantly, wilfully, or in bad faith," *United States v. Chapman*, 524 F.3d 1073, 1085 (9th Cir. 2008), such that the exercise of this court's supervisory authority to dismiss the indictment is not warranted. The principles guiding the exercise of this court's supervisory powers are set forth in my dissent in *United States v. Kohring*, No. 08-30170. **One of those principles instructs that, "[i]n determining the proper remedy [for prosecutorial misconduct], we must consider the government's willfulness in committing the misconduct and its willingness to own up to it."** *Chapman*, 524 F.3d at 1087, quoting *United States v. Kojayan*, 8 F.3d 131, 1318 (9th Cir. 1993). I am deeply troubled by the government's lack of contrition in this case. Despite their assurances that they take this matter seriously, the government attorneys have attempted to minimize the extent and seriousness of the prosecutorial misconduct and even assert that Kott received a fair trial—despite the government's failure to disclose thousands of pages that reveal, in part, prior inconsistent statements by the government's star witnesses, Bill Allen and Rick Smith, regarding the payments Kott allegedly received. The undisclosed pages also reveal an ongoing investigation of Allen for sexual exploitation of minors and his attempts to suborn perjurious testimony from one of the minors, and information regarding Smith's questionable mental health around the time of Kott's trial. **The government's stance on appeal leads me to conclude that it still has failed to fully grasp the egregiousness of its misconduct, as well as the importance of its constitutionally imposed discovery obligations. Because a new trial, in my view, is insufficient to remedy the violation of Kott's constitutional right to a fair trial and to deter future illegal conduct, I would exercise our supervisory authority to dismiss the indictment with prejudice.**

**United States v. Theodore F. Stevens No. 08-231**

**MOTION OF THE UNITED STATES TO SET ASIDE THE VERDICT  
AND DISMISS THE INDICTMENT WITH PREJUDICE**

In February 2009, the Acting Assistant Attorney General for the Criminal Division appointed undersigned counsel to conduct the post-trial litigation in this matter.

Defendant Stevens was not informed prior to or during trial of the statements by Bill Allen on April 15, 2008. This information could have been used by the defendant to crossexamine Bill Allen and in arguments to the jury. **The Government also acknowledges that the Government's Opposition to Defendant's Motion for a New Trial provided an account of the Government's interviews of Bill Allen that is inaccurate.** See Opposition at 42-43 (Dkt. No. 269). **Given the facts of this particular case, the Government believes that granting a new trial is in the interest of justice.** See Fed. R. Crim. P. 33(a). **The Government has further determined that, based on the totality of circumstances and in the interest of justice, it will not seek a new verdict and dismiss the indictment with prejudice.**

Further, as the Court is aware, certain matters in this case previously have been referred to the Office of Professional Responsibility of the Department of Justice. The Government has supplemented the referral to include the facts concerning the April 15th Bill Allen interview. Once the inquiry into this matter is completed by the Office of Professional Responsibility, the Government will share the findings of that inquiry with the Court.

Respectfully submitted,  
PAULM. O'BRIEN  
Chief, Narcotic and Dangerous Drug Section  
Criminal Division  
U.S. Department of Justice

The judge told those gathered in the courtroom that **“this is not about prosecution by any means necessary”** and that the government had “repeatedly failed” to meet its most basic discovery obligations.<sup>33</sup> Looking beyond the case at bar, he offered a dire warning: “We must never forget the Supreme Court’s directive that a criminal trial is a search for the truth. Yet in several cases recently this court has seen troubling failures to produce exculpatory evidence in violation of the law and this court’s orders.”<sup>34</sup> To combat that perceived failing, he urged his “judicial colleagues on every trial court everywhere to be vigilant and to consider entering an exculpatory evidence order at the outset of every criminal case, whether requested to do so or not, and to require that the exculpatory material be turned over in a usable format.”<sup>35</sup> He then granted the government’s motion **and delivered a final blow by appointing a special prosecutor to investigate the possibility of bringing criminal contempt charges against the prosecutors.**<sup>36</sup> See, e.g., *United States v. Chapman*, 524 F.3d 1073 (9th Cir. 2008) (affirming dismissal of indictment with prejudice where the trial judge found that the government attorney

acted “flagrantly, willfully, and in bad faith,” in connection with Brady and Giglio violations); United States v. Shaygan, No. 08-20112-CR, 2009 WL 980289, at \*2 (S.D. Fla. Apr. 14, 2009) (“**I write in detail to make clear what happened here because it is necessary to get to the bottom of what went wrong. I do so in hope that it will not happen again. Our system of criminal justice cannot long survive unless prosecutors strictly adhere to their ethical obligations, avoid even the appearance of partiality, and directly obey discovery obligations and court orders.**”); United States v. Quinn, 537 F. Supp. 2d 99, 121-22 (D.D.C. 2008) For example, Assistant U.S. Attorney Richard Convertino, lead prosecutor in United States v. Koubriti, was charged with conspiracy, obstruction of justice, and making false declarations in connection with concealment of information and presentation of false testimony in connection with that prosecution. See Press Release, U.S. Dep’t of Justice, Former Federal Prosecutor, State Department Agent Indicted for Obstruction of Justice and Presenting False Evidence in Terrorism Trial (Mar. 29, 2006).

### **Alaska Rule of Professional Conduct 3.8. Special Responsibilities of a Prosecutor.**

The prosecutor in a criminal case shall:

- (a) refrain from prosecuting a charge that the prosecutor knows is not supported by probable cause;
- (b) make reasonable efforts to assure that the accused has been advised of the right to, and the procedure for obtaining, counsel and has been given reasonable opportunity to obtain counsel;
- (c) [Deleted]
- (d) **make timely disclosure to the defense of all evidence or information known to the prosecutor that tends to negate the guilt of the accused or mitigates the offense, and, in connection with sentencing, disclose to the defense and to the tribunal all unprivileged mitigating information known to the prosecutor, except when the prosecutor is relieved of this responsibility by a protective order of the tribunal;**

(SCO 1123 effective July 15, 1993; rescinded and repromulgated by SCO 1680 effective April 15, 2009)

## **Entrapment Law**

### **Ninth Circuit Model Criminal Jury Instructions 6.2 ENTRAPMENT**

The government has the burden of proving beyond a reasonable doubt that the defendant

was not entrapped. The government must prove the following:

1. the defendant was predisposed to commit the crime before being contacted by government agents, or
2. the defendant was not induced by the government agents to commit the crime.

### Comment

**Only slight evidence raising the issue of entrapment is necessary for submission of the issue to the jury.** *United States v. Kessie*, 992 F.2d 1001, 1003 (9th Cir. 1993).

The government is not required to prove both lack of inducement and predisposition. *United States v. McClelland*, 72 F.3d 717, 722 (9th Cir. 1995) ("If the defendant is found to be predisposed to commit a crime, an entrapment defense is unavailable regardless of the inducement."), *cert. denied*, 517 U.S. 1148 (1996); *United States v. Simas*, 937 F.2d 459, 462 (9th Cir. 1991) (in absence of inducement, evidence of lack of predisposition is irrelevant).

*See also United States v. Manarite*, 44 F.3d 1407, 1418 (9th Cir.) ("**Inducement is government conduct that creates a substantial risk that an otherwise law-abiding person will commit a crime.**"), *cert. denied*, 516 U.S. 851 (1995); *United States v. Davis*, 36 F.3d 1424, 1430 (9th Cir. 1994) (listing examples of types of conduct that may constitute inducement), *cert. denied*, 513 U.S. 1171 (1995); *United States v. Garza-Juarez*, 992 F.2d 896, 909 (9th Cir. 1993), *cert. denied*, 510 U.S. 1058 (1994).

**When there is evidence of entrapment, an additional element may be added to the instruction on the substantive offense, e.g., "Fourth, the defendant was not entrapped."** *See also* Instruction 6.7 (Self-Defense).

**The government must prove that the defendant was disposed to commit the crime prior to being approached by the government.** *Jacobson v. United States*, 503 U.S. 540, 553 (1992). However, evidence gained after government contact with the defendant can be used to prove that the defendant was predisposed before the contact. *Id.* at 550-53.

A defendant need not concede that he or she committed the crime to be entitled to an entrapment instruction. *United States v. Derma*, 523 F.2d 981, 982 (9th Cir. 1975); *cf.*

There are a significant number of Ninth Circuit cases describing the five factors that should be considered when determining "predisposition." It may also be helpful to include the time period requirement imposed by *Jacobson*, 503 U.S. 540 (1992), as a factor. *See also United States v. Kim*, 176 F.3d 1126, 1128 n. 1 (9th Cir. 1993), *cert. denied*, 120 S. Ct. 142 (1999). The following instruction could be given:

**In determining whether the defendant was predisposed to commit the crime before being approached by government agents you may consider the following:**

- 1) the defendant's character and reputation;
- 2) whether the government initially suggested criminal activity;
- 3) whether the defendant engaged in activity for profit;
- 4) the nature of the government's inducement; and
- 5) any other factors related to predisposition.

See *United States v. Tucker*, 133 F.3d 1208, 1217 (9th Cir. 1998).

**United States v. Williams**, 547 F.3d 1187 (9th Cir. 2008)

"To establish entrapment as a matter of law, the defendant must point to undisputed evidence making it patently clear that an otherwise innocent person was induced to commit the illegal act by trickery, persuasion, or fraud of a government agent." *United States v. Smith*, 802 F.2d 1119, 1124 (9th Cir. 1986). **This is a subjective inquiry into whether "the Government's deception actually implants the criminal design in the mind of the defendant."** *United States v. Russell*, 411 U.S. 423, 436, 93 S.Ct. 1637, 36 L.Ed.2d 366 (1973). **"Inducement can be any government conduct creating a substantial risk that an otherwise law-abiding citizen would commit an offense, including persuasion, fraudulent representations, threats, coercive tactics, harassment, promises of reward, or pleas based on need, sympathy or friendship."** *United States v. Davis*, 36 F.3d 1424, 1430 (9th Cir. 1994).

The defense of entrapment fails "[i]f the defendant is predisposed to commit the crime." We use five factors to determine whether a defendant was predisposed, though no single factor is controlling. See *Smith*, 802 F.2d at 1124. *United States v. Busby*, 780 F.2d 804, 807 (9th Cir. 1986). **These factors include:**

**the character or reputation of the defendant, including any prior (1) criminal record;  (2) whether the government initially made the suggestion of criminal activity;  (3) whether the defendant engaged in the criminal activity for profit;  (4) whether the defendant evidenced reluctance to commit the offense that was overcome by repeated government inducement or persuasion;  and (5) the nature of the inducement or persuasion supplied by the government.**

Williams argues that he was induced as a matter of law because the government offered him hundreds of thousands to perhaps more than a million dollars in potential cocaine sales. But even assuming that Williams was induced to enter the conspiracy by the lure of substantial financial gain, the government proved that he was predisposed to commit the crime. Williams correctly points out that the question of predisposition is to be determined prior to the time the government agent suggested the criminal activity. See

United States v. Poehlman, 217 F.3d 692, 703 (9th Cir.2000). Even with that limitation, ample evidence on each of the five Smith factors supported a jury finding that Williams was predisposed to commit the crime. First, **Williams was a fugitive from justice for a bank robbery in Texas, he had engaged in previous criminal gun sales, and he had been introduced to Tony as a middleman drug dealer.** There was strong evidence of the latter, as Williams planned a drug deal involving about \$700,000 in marijuana. The first factor relevant to the determination of his predisposition, his character and reputation **including his prior criminal record**, suggests that he was predisposed to this type of criminal activity. See Smith, 802 F.2d at 1124-25.

The second factor also supports the conclusion that Williams was predisposed to commit the robbery. Although the government initially suggested the stash house robbery, **it did so only after Williams told the agents of his plans to commit bank robbery, which he concocted entirely on his own.** While the criminal schemes are not identical, they both involve stealing property with force as well as the use of firearms. See id.

The third Smith factor counts squarely against Williams. **It is undisputed that Williams engaged in the conspiracy for a profit**, which weighs against an entrapment defense.

The fourth and most important Smith factor does not support Williams' argument, either. **There is no evidence that Williams expressed any reluctance about the robbery that needed to be "overcome by repeated government inducement or persuasion."** The evidence indicated that Williams was ready and willing at all times to participate in the robbery. Id. at 1125. Penate told Williams on more than one occasion that he could decline the job, but Williams responded: Like I said, all I gotta do is get the car. □ "I'm ready to do it tomorrow! If push comes to shove I'll use my own car." When Penate told Williams that he needed an answer by the next day, Williams stated, "You got your answer right now!" **Williams needed no persuasion from the government agent to enter into this conspiracy, which counts heavily against his entrapment argument.**

The fifth Smith factor, the nature of the inducement provided by the government, also provides no support for Williams. The stash house robbery was suggested as an alternative to a bank robbery, which Williams thought would net a similar amount of money.

Viewing the evidence as a whole in the government's favor, a reasonable jury could find that Williams was predisposed to commit the crime and therefore the government disproved the elements of entrapment.

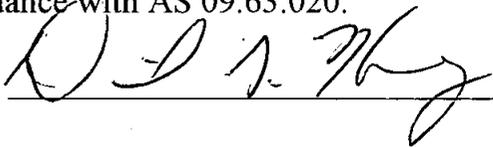
#### **United States v. Matthews, 87 F.3d 1324 (9<sup>th</sup> Cir. 1996)**

Matthews contends that the court's answer to a question from the jury allowed the jury to find that Matthews was predisposed to commit the crime solely on the basis of his admitted prior drug dealings. The record belies this contention. Here, the jury sent a note to the judge during deliberations asking "[c]an the defendant's admission of cocaine sales prior to his 1988 conviction serve as a predisposition?" The judge responded:

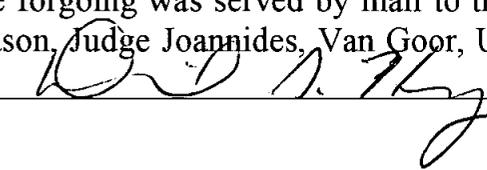
**In evaluating predisposition prior to contact with law enforcement officers you may consider five factors: (1) the character and reputation of the defendant; (2) whether the government made the initial suggestion of criminal activity; (3) whether the defendant engaged in the activity for profit; (4) whether the defendant showed any reluctance; and (5) the nature of the government's inducement. The evidence which you have asked about specifically in your note is one item to be considered in evaluating these factors. You should consider all the evidence.**

The court's reply was an accurate statement of the law. See United States v. Jackson, 72 F.3d 1370, 1378 (9th Cir.1995), cert. denied, 116 S.Ct. 1546 (1996) (**noting that similar previous conviction was strong evidence of predisposition**). In addition, a plain reading of the court's reply belies Matthews' argument that the jury was misled.<sup>2</sup> Any misapprehension in the jurors minds on the basis of the prosecution's argument on the issue of predisposition was cured by the district court's subsequent admonishment "**that the defendant's prior felony narcotics conviction standing alone just taken by itself, that 1988 conviction taken by itself, does not establish the defendant's predisposition to commit the crime charged.**"

I declare under penalty of perjury the forgoing is true and correct. Executed on April 11, 2011. A notary public or other official empowered to administer oaths is unavailable and thus I am certifying this document in accordance with AS 09.63.020.



David S. Haeg  
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**Certificate of Service:** I certify that on April 11, 2011 a copy of the forgoing was served by mail to the following parties: AAG Peterson, Judge Gleason, Judge Joannides, Van Goor, U.S. Department of Justice, FBI, and media. By: 

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

DAVID HAEG, )  
 )  
 )  
 Plaintiff, )  
 )  
 )  
 v. )  
 )  
 )  
 STATE OF ALASKA, )  
 )  
 )  
 Defendant. )  
 \_\_\_\_\_ )

**FILED In the Trial Courts  
State of Alaska Third District  
at Kenai, Alaska**

**APR 12 2011**

**Clerk of the Trial Courts**

**By \_\_\_\_\_ Deputy**

Case No. 3KN-10-01295CI

**ERRATA TO ORDER ISSUED ON MARCH 25, 2011<sup>1</sup>**

Footnote 6 on page 3 of the order requires correction. The footnote states that during a recorded conversation, Mr. Robinson told Mr. Haeg that he had spoken to Ms. Greenstein. This is incorrect. Mr. Robinson told Mr. Haeg that he had not spoken to Ms. Greenstein. Therefore, footnote 6 should state:

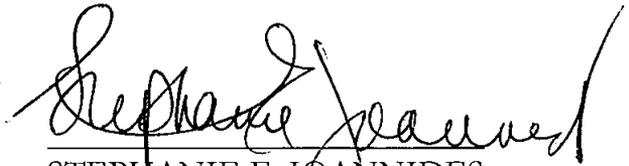
In addition to the courtesy copies of the pleadings and letter discussed above, Mr. Haeg provided the court with a CD of what appears to be a February 2011 conversation between Mr. Robinson, Mr. Haeg's attorney, and Mr. Haeg. During the conversation, Mr. Robinson states *he did not speak* to Ms. Greenstein about this matter. Mr. Haeg supplied this CD because he believes that it directly contradicts Ms. Greenstein's verified January 21, 2011 letter to the Alaska Bar Association Bar Counsel that she spoke to Mr. Robinson. Because these issues are not ones assigned to me, I do not intend to address that substantive issue. I

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<sup>1</sup> Notifying Parties of Court Error in Serving Orders on Commission, Confirming August 27, 2010 Order; and Referring Materials to Judicial Conduct Commission for Review  
3KN-10-01295CI  
Haeg vs. SOA  
Order: Errata

only note it for the record because it is unclear to me if I was provided a courtesy copy of the CD or if this is an original that should be made part of the record in Mr. Haeg's PCR case or his other complaints. Mr. Haeg should file notice with the court no later than April 15, 2011 if he wishes the CD provided to me to be made part of the record in his PCR case or any other case. If he has already provided it to the Kenai court or other agencies, it need not be made part of the record a second time.

**DONE** this 8th day of April 2011 at Anchorage, Alaska.

  
STEPHANIE E. JOANNIDES  
Superior Court Judge pro tem

I certify that on 11 April 2011  
a copy of the above was mailed to  
each of the following at their  
addresses of record:

David Haeg, by fax and mail  
Judge Bauman, assigned judge, by mail  
Members of the Alaska Commission on Judicial Conduct, by mail  
Assistant Bar Counsel Louise Driscoll, by mail  
Assistant Ombudsman Kate Higgins, by mail  
Marla Greenstein, by fax and mail  
Peter Maassen, counsel for Judge Murphy, by mail  
A. Andrew Peterson, OSPA, by mail  
Original order sent to Kenai Court to be placed in the file

  
Judicial Assistant, Ellen Bozzini

## \*\* Transmit Conf. Report \*\*

P.1

Apr 11 2011 12:35

Fax/Phone Number	Mode	Start	Time	Page	Result	Note
92628867	NORMAL	11,12:41	0'00"	0	D.O.7	BRDCAST
↑ Check condition of remote fax.						
92729309	FINE	11,12:35	0'58"	3	# O K	BRDCAST

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

FAX TRANSMITTAL

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TO: D. Haeg 262.8867  
M. Greenstein 272.9309

FROM: *AK* Ellen Bozzini  
Administrative Assistant to Judge Stephanie Joannides  
907.264.0425  
Fax #: 907.264.0518

SUBJECT: D Haeg vs. SOA

DATE: 11 April 2011

NUMBER OF PAGES INCLUDING THIS ONE: 3

MESSAGE: Please call if you experience problems with this transmission.

April 5, 2011

Alaska Commission on Judicial Conduct  
Chairman Ben Esch  
Box 1110  
Nome, AK 99762

FILED in Trial Courts  
State of Alaska, Third District  
at KENAI, ALASKA

APR 07 2011

Clerk of the Trial Courts

By \_\_\_\_\_ Deputy

ACJC Chairman Esch,

I would like to file an official Alaska Commission on Judicial Conduct (ACJC) complaint of the following:

(1) That ACJC executive director Marla Greenstein falsified her investigation of Judge Margaret Murphy to corruptly exonerate Judge Murphy.

Specifically, (a) that Greenstein falsified contacting every witness (Tony Zellers, Wendell Jones, Tom Stepnosky, and Drew Hilterbrand) I had provided for her investigation of whether or not Judge Murphy accepted rides from the main witness against me (Trooper Brett Gibbens) during my trial and/or sentencing; (b) that Greenstein falsified the very essence of what the witnesses would have testified had Greenstein actually contacted them; and (c) that Greenstein destroyed or concealed the letter sent to the ACJC evidencing Jackie Haeg had personally witnessed Judge Murphy accepting rides from Trooper Gibbens during my trial.

(2) That Greenstein falsified a "verified" document to exonerate herself.

Specifically, that in response to an official Alaska Bar Association investigation (ABA File No. 2010D243) of whether or not she falsified her investigation of Judge Murphy, Greenstein certified as true the fact that she had also spoke with attorney Arthur "Chuck" Robinson during her investigation of Judge Murphy – when in fact she had not spoken with Robinson.

(3) That Judge Murphy gave false testimony during Greenstein's official ACJC investigation of Judge Murphy.

Specifically, that Judge Murphy testified that she had never accepted a ride from Trooper Gibbens until after I was sentenced – when in fact Judge Murphy had accepted rides from Trooper Gibbens before I was sentenced. Greenstein has stated that Judge Murphy, in a written response to my ACJC complaint against her, denied being chauffeured by Trooper Gibbens until after I was sentenced.

(4) That Greenstein, Judge Murphy, and/or Trooper Gibbens conspired together to cover up that Trooper Gibbens gave Judge Murphy rides before I was sentenced.

Specifically, that Greenstein, Judge Murphy, and/or Trooper Gibbens agreed together to all falsify evidence and testimony in order to corruptly harm myself and to corruptly exonerate Judge Murphy and Trooper Gibbens.

#### Evidence

(1) Superior Court Judge Stephanie Joannides' August 27, 2010 and March 25, 2011 referrals to the ACJC which includes affidavits of witnesses Tony Zellers, Wendell Jones, Tom Stepnosky, Drew Hilterbrand, and Jackie Haeg; certified recordings of Greenstein explaining her investigation, findings, and that Judge Murphy and Trooper Gibbens testified no chauffeuring took place until after I was sentenced; transcriptions of the court record of my prosecution that captures Judge Murphy and Trooper Gibbens admitting chauffeuring of Judge Murphy by Trooper Gibbens was occurring before I was sentenced.

(2) Greenstein's "verified" Bar response, copies of which I submitted to all ACJC members during the February, 28, 2011 ACJC public meeting.

(3) February 4, 2011 recording of Robinson, copies of which I submitted to all ACJC members during the February, 28, 2011 ACJC public meeting.

(4) My February 4, 2011 reply to Greenstein's "verified" response, copies of which I submitted to all ACJC members during the February, 28, 2011 ACJC public meeting.

(5) The ACJC own record of Greenstein's investigation of Judge Murphy, which proves, (a) the witnesses Greenstein states she contacted during her investigation of Judge Murphy, who Greenstein states testified as never having seen Trooper Gibbens give Judge Murphy rides before I was sentenced, are the same as those who have now provided affidavits (which are in Judge Joannides referral) swearing under penalty of perjury that Greenstein never contacted them and that, had they been contacted, they would have testified they had all personally witnessed Trooper Gibbens giving Judge Murphy rides before I was sentenced; (b) Jackie Haeg's written statement, acknowledged as received by Greenstein and documenting Jackie had personally witnessed Trooper Gibbens giving Judge Murphy rides during my trial, is now missing out of the record of Greenstein's investigation of Judge Murphy; and (c) there is now no record of the ACJC even receiving Jackie Haeg's written statement.

Witnesses

- (1) David Haeg  
907-262-9249 ph.
- (2) Jackie Haeg  
907-262-9249 or 907-714-8822 ph.
- (3) Tony Zellers  
907-696-2319 or 907-355-8174 ph.
- (4) Wendell Jones  
907-424-7607 ph.
- (5) Tom Stepnosky  
907-420-7449 ph.
- (6) Drew Hilterbrand  
907-252-4090 ph.
- (7) Judge Margaret Murphy  
907-235-8171 ph.
- (8) Trooper Brett Gibbens  
907-895-4800 ph.
- (9) Marla Greenstein  
800-478-1033 or 907-272-1033 ph.
- (10) Arthur Robinson  
907-262-9164

Requested Relief

Because Greenstein is the only investigator of Alaskan judges, and has been so for the past 21 years – a position of incredible public trust, I respectfully ask the ACJC take the following actions,

- (1) Greenstein be fired and all benefits/retirement be permanently revoked.
- (2) My original complaint against Judge Murphy be reinvestigated.

(3) Judge Murphy be permanently stripped of her judgeship and all benefits/retirement be permanently revoked.

(4) Recommendation to the U.S. Department Justice that Greenstein, Judge Murphy, and Trooper Gibbens be criminally prosecuted for corruption, perjury, tampering with an official investigation, obstruction of justice, and conspiracy.

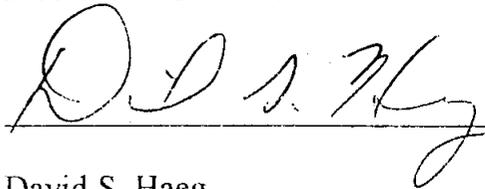
### Conclusion

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

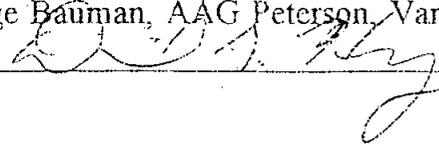
Also, proof of the corruption will be hand delivered to all major news media; including Frontline, 20/20, New York Times, Dateline, and Washington Post.

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

I declare under penalty of perjury the forgoing is true and correct. Executed on April 5, 2011. A notary public or other official empowered to administer oaths is unavailable and thus I am certifying this document in accordance with AS 09.63.020.



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

**Certificate of Service:** I certify that on April 5 2011 a copy of the forgoing was served by mail to the following parties: Greenstein, Judge Joannides, Judge Gleason, Judge Bauman, AAG Peterson, Van Goor, U.S. Department of Justice, and FBI. By: 

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

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

APR - 6 2011

Clerk of the Trial Courts  
By MSK Deputy

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)

**3-31-11 MOTION FOR CORRECTION OF MARCH 25, 2011 ORDER BY  
JUDGE JOANNIDES AND NOTICE THAT HAEG HAS ALREADY  
PROVIDED HIS PCR COURT A COPY OF THE ROBINSON CD**

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

COMES NOW Applicant, DAVID HAEG, in the above case and hereby asks for a correction of Judge Joannides March 25, 2011 order. In addition, Haeg provides notice that a copy of the February 4, 2011 Robinson recording has already been provided to his PCR court.

### Prior Proceedings

On March 25, 2011 Judge Joannides issued an order “Notifying the Parties of Court error in Serving Orders on Commission, Confirming August 27, 2010 Order, and Referring Materials to Judicial Conduct Commission for Review”. See court record.

In this order Judge Joannides states, “Mr. Haeg provided the court with a CD of what appears to be a February 2011 conversation between Mr. Robinson, Mr. Haeg’s attorney, and Mr. Haeg. *During the conversation, Mr. Robinson states he spoke to Ms. Greenstein about this matter.*” See page 3, footnote 6, March 25, 2011 order.

Also in this order Judge Joannides requested to know if Haeg wished the Robinson CD to be made a part of Haeg’s PCR record or if it had already been made a part of the record. See court record.

### Discussion

In the February 4, 2011 recording (the same provided Judge Joannides) Robinson specifically and repeatedly states Greenstein has never spoken with him. See February 4, 2011 Robinson recording.

Not once in the recording does Robinson state he has ever spoke with Greenstein. See February 4, 2011 Robinson recording.

Yet Judge Joannides March 25, 2011 order states that in the recording Robinson states he spoke to Greenstein. See March 25, 2011 order.

On February 10, 2011 Haeg filed a “2-10-11 MOTION TO SUPPLEMENT PCR APPLICATION WITH EVIDENCE”. See court record.

Haeg provided copies of the following and asked they be made a part of the record:

- (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.

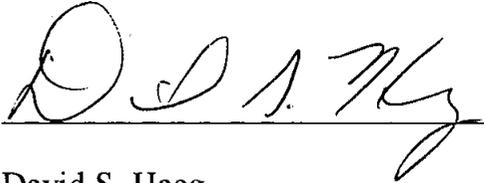
**Conclusion**

(1) Because the issue of whether or not Greenstein talked to Robinson is material to a number of ongoing proceedings, Haeg respectfully asks Judge Joannides March 25, 2011 order be corrected to reflect the fact that in the February 4, 2011 recording Robinson denies Greenstein ever talked with him.

(2) Because this issue is so material Haeg asks the correction be distributed to the same parties as the March 25, 2011 order.

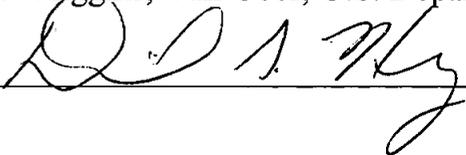
(3) Because the February 4, 2011 recording of Robinson has already been provided to Haeg's PCR court Judge Joannides may keep her copy and does not need to also provide it to Haeg's PCR court.

I declare under penalty of perjury the forgoing is true and correct. Executed on March 31, 2011. A notary public or other official empowered to administer oaths is unavailable and thus I am certifying this document in accordance with AS 09.63.020.



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

**Certificate of Service:** I certify that on March 31, 2011 a copy of the forgoing was served by mail to the following parties: AAG Peterson, Judge Gleason, Judge Bauman, Marla Greenstein, Judge Esch, Assistant Ombudsman Higgins, Van Goor, U.S. Department of Justice, and FBI.

By: 

Judge Bowman's Copy

March 29, 2011

Assistant Ombudsman Kate Higgins  
PO Box 113000  
Juneau, AK 99811

RE: Ombudsman Complaint A2011-0007

Dear Ms. Higgins,

In response to your letters of March 10 and 15, 2011:

A March 25, 2011 order from Judge Stephanie Joannides confirmed an error prevented Alaska Commission on Judicial Conduct (ACJC) investigator Marla Greenstein from receiving Joannides August 27, 2010 referral of evidence to the ACJC for its consideration. See March 25, 2011 order/new referral of evidence to the ACJC – which Joannides' staff certified was mailed to you on March 29, 2011.

Although Greenstein herself may never have personally received Joannides August 27, 2010 referral, this does not mean the ACJC never received the referral. On September 8, 2010, because I thought Greenstein might conceal Joannides' referral (which implicated Greenstein criminally), I personally sent all 9 ACJC members his or her own copy of Joannides' referral. The copy to Judge Esch, the ACJC's Chairman, was sent return receipt and was signed for as received on September 15, 2010. See attached copies of cover letter to ACJC members and return receipt signed by Maureen Dunham for Chairman Esch.

In other words, notwithstanding the error Joannides identified, I believe any reasonable person would agree the ACJC received Joannides' referral of evidence to the ACJC for its "consideration".

A further development has recently occurred that now criminally implicates Greenstein even more than Joannides' referral.

In a January 21, 2011 "verified" response to the Bar complaint against her (that she falsified contacting every witness provided for her investigation of Judge Murphy and that she falsified these witnesses' testimony), Greenstein claimed to have also contacted Arthur "Chuck" Robinson (my attorney during trial and sentencing) during her investigation. See Greenstein's response, attached.

As all other witnesses have provided affidavits that Greenstein had not contacted them and that Greenstein had falsified the testimony they would have given had they been contacted, I made contact with Robinson and taped his testimony.

MAR 31 2011

01333

Robinson also denies that Greenstein ever contacted him and that he also remembers Judge Murphy being chauffeured by Trooper Gibbens during my trial and sentencing. (Greenstein claims not a single witness that she contacted testified they had seen Gibbens chauffeuring Murphy during my trial or sentencing.) Listen to Robinson recording, attached.

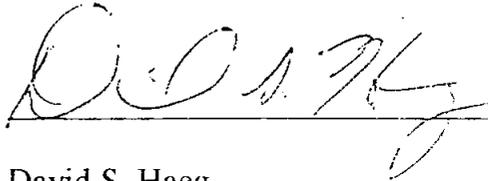
The evidence that Greenstein falsified her official ACJC investigation of Judge Murphy, and is now falsifying her "verified" responses to cover this up, is so overwhelming it's frightening. Especially considering Greenstein has been the only investigator of Alaskan judges for the past 21 years.

Also disturbing is that when the witnesses, whose testimony was falsified by ACJC investigator Greenstein, requested more than 48 hours in advance to testify during the last 2 ACJC public meetings, as specifically allowed by ACJC Rule 1(h), Chairman Esch denied these requests.

My February 4, 2011 reply to Greenstein's response (date stamped February 9, 2011 by the Bar) is a brief synopsis of how Greenstein first corruptly-exonerated Judge Murphy and is now covering this up during the Bar investigation into this corruption. See February 4, 2011 reply, attached.

I respectfully ask that the new evidence attached be made a part of the investigation of Ombudsman Complaint A2011-0007 and that I be informed of the progress of this investigation along with its final determination.

I declare under penalty of perjury the forgoing is true and correct. Executed on March 29, 2011. A notary public or other official empowered to administer oaths is unavailable and thus I am certifying this document in accordance with AS 09.63.020.



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

**Certificate of Service:** I certify that on March 29, 2011 a copy of the forgoing was served by mail to the following parties: Judge Esch, Greenstein, Judge Joannides, Judge Bauman, AAG Peterson, Van Goor, U.S. Department of Justice, and FBI. By: David S. Haeg

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

DAVID HAEG )

Plaintiff, )

v. )

STATE OF ALASKA )

Defendant. )

Case No. 3KN-10-01295 CI

(Previously identified as PCR Case No. 3HO-10-00064 CI  
and Trial Case No. 4MC-04-00024 CR)

**ORDER**

*(Notifying Parties of Court Error in Serving Orders on Commission,  
Confirming August 27, 2010 Order, and  
Referring Materials to Judicial Conduct Commission for Review)*

Mr. Haeg contacted my law clerk, both by phone and by letter,<sup>1</sup> and requested formal confirmation that my chambers sent the Executive Director of the Alaska Commission on Judicial Conduct, Marla N. Greenstein, a copy of my August 27, 2010 order wherein I referred certain documents to the Alaska Commission on Judicial Conduct for their consideration. The original order and fax transmittal sheet in question were located in the file which is now in Kenai. Therefore, the court obtained a faxed copy of the original order and a copy of the transmittal sheet which are attached to this order as Exhibit 2.<sup>2</sup> Based upon my review of the documents it appears that the Alaska Judicial Conduct Commission was not properly served. The fax transmittal sheet shows their telephone number as their fax number. Therefore, unless they were provided the order from Mr. Haeg, or another

<sup>1</sup> See Exhibit 1, faxed letter of March 22, 2011 and attachments (11 pages).

<sup>2</sup> The fax transmittal sheet reflects that 43 pages were faxed to the interested parties. A review of the document and attachments received from the Kenai court reveals that 54 pages are in the file. It appears that Attachment of 1 of Exhibit 2 consists of two versions of the transcript. Only one of them must have been sent. Since the other version is easier to read we have attached both versions to this order. Because of this error, and in an abundance of caution, the entire document with its attachments is being provided with this order. See Exhibit 2 with attachments A through I. (54 pages)

interested party requesting that they take action on the order, they would not have known the court referred the matter back to the Commission for review.

Over the last couple of months, Mr. Haeg has sent me courtesy copies of the materials he is filing in his case. Because there are no pending issues before me, I have not taken any action on them. Because of this recent request, I reviewed the submitted documents, including Ms. Greenstein's letter to Assistant Bar Counsel Louise Driscoll. Ms. Greenstein notes that Courtview does not include a reference to the court's August 27, 2010 order. Ms. Greenstein is correct, it does not. This error is being corrected and the docket shall now reflect the August 27, 2010 order.

Because of the discovery of the errors in the service of the August 27, 2010 order and in the failure to enter the order in Courtview, I requested copies of the two August 25, 2010 orders. The orders faxed to me from the Kenai court reveal that these documents were served on the Alaska Judicial Council rather than the Alaska Commission on Judicial Conduct.<sup>3</sup> This error is being corrected by the service of the documents as attachments in this case.

In summary, it is unacceptable that this series of errors occurred and I must apologize to the parties for the errors in service and in Courtview.<sup>4</sup> These errors have further frustrated a long and fairly complicated case that required careful review. As the August 27, 2010 order states, my task was limited in scope. At the conclusion of my review, I granted Mr. Haeg's request to disqualify Judge Murphy from the Post Conviction Relief case because I found that, at a minimum, there was an appearance of impropriety. Because I was not privy to the parameters of the Commission's investigation of Mr. Haeg's complaint

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<sup>3</sup> See Exhibits 3 (5 pages) and 4 (2 pages).

<sup>4</sup> In an abundance of caution, this order with the attachments is being served on all the individuals who should have been previously served. In addition, this order is being served on Assistant Bar Counsel Driscoll and Assistant Ombudsman Higgins since the issue of the receipt of the documents is being reviewed by them.

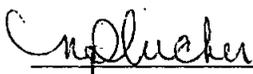
and because I was unable to evaluate any alleged factual discrepancies<sup>5</sup> between the affidavits submitted by Mr. Haeg's witnesses and (1) the information in the taped conversations between Mr. Haeg and Ms. Greenstein and (2) the statements made by Judge Murphy and Trooper Gibbens, I referred the matter back to the Commission so they could evaluate the consistency of the statements. Therefore, I provided pages of information, along with the August 27, 2010 order, to the Commission for their consideration.<sup>6</sup>

DONE this 25<sup>th</sup> day of March 2011 in Anchorage, Alaska.

  
STEPHANIE E. JOANNIDES  
Superior Court Judge pro tem

I certify that on 3/29/11  
a copy of the above was mailed and/or faxed to  
each of the following at their  
addresses of record:

David Haeg, by fax and mail  
Judge Bauman, assigned judge, by mail  
Members of the Alaska Commission on Judicial Conduct, by mail  
Assistant Bar Counsel Louise Driscoll, by mail  
Assistant Ombudsman Kate Higgins, by mail  
Marla Greenstein, by fax and mail  
Peter Maasen, counsel for Judge Murphy, by mail  
A. Andrew Peterson, Office of Special Prosecutions, by mail  
Original order sent to Kenai Court to be placed in the file

  
\_\_\_\_\_  
Judicial Assistant

<sup>5</sup> Some of the factual conflicts that Mr. Haeg raised are addressed in the court's August 27, 2010 order.

<sup>6</sup> In addition to the courtesy copies of the pleadings and the letter discussed above, Mr. Haeg provided the court with a CD of what appears to be a February 2011 conversation between Mr. Robinson, Mr. Haeg's attorney, and Mr. Haeg. During the conversation, Mr. Robinson states he spoke to Ms. Greenstein about this matter. Mr. Haeg supplied this CD because he believes that it directly contradicts Ms. Greenstein's verified January 21, 2011 letter to the Alaska Bar Association Bar Counsel that she spoke to Mr. Robinson. Because these issues are not ones assigned to me, I do not intend to address the substantive issue. I only note it for the record because it is unclear to me if I was provided a courtesy copy of the CD or if this is an original that should be made part of the record in Mr. Haeg's PCR case or his other complaints. Mr. Haeg should file notice with the court no later than April 15, 2011 if he wishes the CD provided to me to be made part of the record in his PCR case or any other case. If he has already provided it to the Kenai court or other agencies, it need not be made part of the record a second time.

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA  
THIRD JUDICIAL DISTRICT AT ANCHORAGE  
CHAMBERS OF JUDGE STEPHANIE E. JOANNIDES

FAX TRANSMITTAL

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TO: D. Haeg  
FAX #: 907-262-8867

TO: Marla Greenstein  
907-272-9309

FROM: Superior Court Judge Stephanie Joannides  
(Patrick Sherry)  
FAX#: (907) 264-0518

SUBJECT: *David Haeg*  
*Numerous Orders*

DATE: March 25, 2011

NUMBER OF PAGES INCLUDING THIS ONE: 77

MESSAGE:

**Fax Transmittal**

To: Patrick Sherry - Judge Joannides' law clerk

Fax #: 907-264-0518

Date: 3-22-11

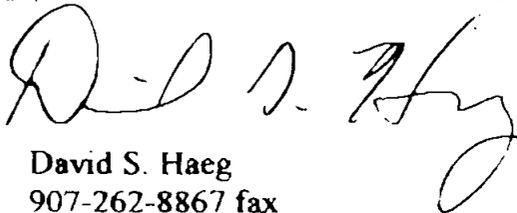
Patrick,

Please find Judge Joannides August 27, 2010 order "referring affidavits to Commission for its consideration", the fax cover page that the referral was sent to Alaska Commission on Judicial Conduct investigator Marla Greenstein, and the recent request by the Assistant Ombudsman Kate Higgins for confirmation the referral was sent to Marla Greenstein (see # 1 on page 3 of Ms. Higgins March 10, 2011 letter regarding Ombudsman Complaint A2011-0007).

As discussed, please send me confirmation this referral was sent to Marla Greenstein on August 27, 2010 as Judge Joannides original fax cover letter indicates, or, if this was not the case, that the referral, in its entirety, was sent to Marla Greenstein more recently.

Ms. Higgins March 15, 2011 letter advises that I have a March 31, 2011 deadline in which to get this information to her

Thank you for your help in this matter.



David S. Haeg  
907-262-8867 fax  
907-262-9249 phone

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

FAX TRANSMITTAL

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TO: David Haeg  
FAX #: (907) 262.8867

TO: Peter Masser  
FAX #: (907) 258.8751

TO: Andrew Peterson  
FAX: (907) 269.6270

TO: Marla Greenstein  
FAX (907) 272.1033

FROM: Stephanie Joannides, Superior Court Judge  
(907) 264-0430  
Fax #: (907) 264-0518

SUBJECT: 3AHO-10-64 CI

DATE: August 27, 2010

NUMBER OF PAGES INCLUDING THIS ONE: 43

MESSAGE: Please call if you experience problems with this transmission

8/27/10

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

DAVID HAEG,

Applicant,

STATE OF ALASKA,

Respondent.

POST-CONVICTION RELIEF  
Case No. 3HO-10-00064CI

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

**CONFIDENTIAL ORDER:**

- (1) SUPPLEMENTING ORDER GRANTING REQUEST FOR DISQUALIFICATION;
- (2) WITHDRAWING JULY 28, 2010 ORDER FOR INFORMATION FROM JUDICIAL CONDUCT COMMISSION; AND
- (3) REFERRING AFFIDAVITS TO COMMISSION FOR ITS CONSIDERATION

This confidential order supplements the August 25, 2010 Order Granting Request for Disqualification on appearance grounds. It is confidential because it addresses the proceedings of the Alaska Commission on Judicial Conduct.

This court was only tasked with resolving David Haeg's disqualification request. It is not proxy to the Commission investigation and the statements made by the witnesses, Judge Murphy, or Trooper Gibbons. Therefore, it takes no position on the materials submitted hereto. In addition, this order does not resolve any allegations

AS 22.30.060 (providing for confidentiality of all commission "proceedings, records, files, and reports"). Notwithstanding the confidentiality of the proceedings before

CONFIDENTIAL ORDER

Case No. 3HO-10-00064 CI

Page 1 of 5

of impropriety. Therefore, the attached materials are being submitted to the Judicial Conduct Commission for its consideration.

Mr. Haeg alleges that during his trial in the remote community of McGrath, Judge Murphy accepted rides from Trooper Gibbens. Mr. Haeg filed a complaint with the Alaska Commission on Judicial Conduct alleging impropriety based upon Judge Murphy's use of Trooper Gibbens for transportation during the trial. The Commission sent Mr. Haeg a letter stating that the rural setting "led to more contact with the community members than usual" but concluded "there were no improper contacts."<sup>2</sup>

In support of his concerns that (1) Judge Murphy and Trooper Gibbens did not provide the Commission accurate information about this issue and (2) the Commission did not adequately investigate their failure to provide full disclosure, Mr. Haeg submitted various witness affidavits<sup>3</sup> and a recording of two phone

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the Judicial Conduct Commission, both Judge Murphy and Mr. Haeg reference in their pleadings the referral and result of the investigation.

<sup>2</sup> Confidential letter from the Alaska Commission on Judicial Conduct to Mr. Haeg dated January 12, 2007 and confidential letter from the Alaska Commission on Judicial Conduct to Mr. Haeg dated January 25, 2007.

<sup>3</sup> The supplied affidavits are attached, as Attachments C-H.

- Attach. C: Affidavit of former Alaska State Trooper Wendell Jones
- Attach. D: Affidavit of retired Air Force Captain Tony Zellers
- Attach. E: Affidavit of Tom Stepanosky
- Attach. F: Affidavit of Drew Hilterbrand
- Attach. G: Affidavit of Greg Pearson
- Attach. H: Affidavit of Jackie Haeg

conversations between himself and Commission Executive Director Marla Greenstein.<sup>4</sup>

The basis of Mr. Haeg's concerns is best addressed in four parts. First, in a phone conversation on or about January 12, 2007, Mr. Haeg claims that Ms. Greenstein stated that Judge Murphy and Trooper Gibbens "didn't share any meals together and the rides were provided by somebody else—that's what everyone I interviewed said."<sup>5</sup> In contrast, a July 21, 2010 notarized affidavit from trial witness Tony Zellars asserts that on July 28, 2005 (on three of Haeg's four-day trial), "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, Mr. Haeg's wife, asserted the same in her own affidavit.<sup>6</sup>

Second, Mr. Haeg claims that in that same telephone conversation with Ms. Greenstein, he was told that "after the completion of the sentencing hearing—until—Trooper Gibbens did give—uh—Magistrate Murphy a ride to the hotel. But that was

<sup>4</sup> Mr. Haeg provided both a digital recording of and a substantially accurate transcript of the phone conversations. The transcripts are attached, as Attachments A and B, with chambers' law clerk's notations regarding minor discrepancies between the audio file and the transcript. Copies of the audio file shall be provided upon request.

<sup>5</sup> Attach. A at 1; see also *id.* at 7 ("[speaking to Haeg's wife] I talked to the people that your husband gave me the list of... they did see—uh— a trooper giving her rides and—but they—they couldn't identify which—who the trooper was") Ms. Greenstein asserted, "It was VPSO Parker who provided the rides." *Id.* at 3, 7.

<sup>6</sup> Attach. D.

after the sentencing hearing.<sup>7</sup> A transcript of the sentencing hearing was provided by the Aniak District Court.<sup>8</sup> The transcript reflects that Judge Murphy raised the issue of obtaining a ride from Trooper Gibbens during the sentencing hearing.<sup>9</sup> A review of the log notes reveals that this statement was approximately five hours before the end of the hearing. In addition, Mr. Haeg provides four affidavits stating that on the date of the sentencing hearing, September 29, 2005, the affiant "personally observed" Judge Margaret Murphy taking rides from Trooper Gibbens throughout the day of the sentencing hearing.<sup>10</sup>

Third, Mr. Haeg claims that the Ms. Greenstein stated that she talked to the people that Mr. Haeg identified in a list he provided to the Commission.<sup>11</sup> Mr. Haeg claims that he provided a list of four people and that the affidavits of these four individuals state that they were not contacted regarding this matter.<sup>12</sup>

Finally, in addition to his concerns regarding the alleged impropriety of Judge Murphy receiving rides from Trooper Gibbens, Mr. Haeg also explains that based upon his understanding of Judge Murphy's and Trooper Gibbens' representations to the Commission, he feels that they were not truthful about their contacts during the trial. Therefore, Mr. Haeg is concerned over Ms. Greenstein's assertion that "even if

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<sup>7</sup> Attach. H

<sup>8</sup> Attach. I

<sup>9</sup> *Id.* at 1262.

<sup>10</sup> Attach. C, D, E, F.

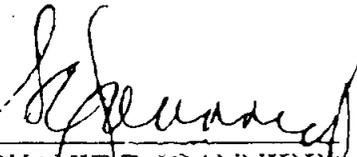
<sup>11</sup> Attach. A at 1, 7.

everything you say is true it wouldn't be that significant -um- a thing. It would be the kind of thing where we would just caution the judge to -um- to try to make other arrangements in small communities in the future. That's all we would do."<sup>13</sup>

In light of this court's ruling granting the disqualification request, the July 28, 2010 Order for Information from Judicial Conductor Commission is hereby

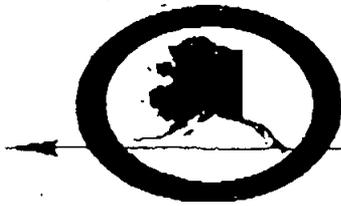
WITHDRAWN.

DONE this 27<sup>th</sup> day of August 2010 at Anchorage, Alaska.

  
STEPHANIE E. JOANNIDES  
Superior Court Judge

<sup>12</sup> Attach. C, D, E, F. One affiant, Tom Stepnosky, stated that "[o]n or about 2006 I contacted ... Macla Greenstein by phone and told her I had personally seen Trooper Gibbens give Judge Murphy rides before David Haeg was sentenced." Attach. E.

<sup>13</sup> Attach. A. at 9.



State of Alaska  
**ombudsman**

Reply to

P O Box 101140  
Anchorage, AK 99510  
(907) 269-5290  
(800) 478-2624  
(FAX) 269-5291

P O Box 113000  
Juneau, AK 99811-3000  
(907) 465-4970  
(800) 478-4970  
(FAX) 465-3330

March 15, 2011

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

RE: Ombudsman Complaint A2011-0007

Dear Mr. Haeg,

I discovered this morning that I inadvertently failed to enclose the final page of my March 10<sup>th</sup> letter to you when I mailed it last week.

Enclosed please find a complete copy of the letter that I intended to send. Although I had asked that you respond by March 25, because of my oversight, I am extending the deadline to respond to March 31. Please respond in writing to me at P.O. Box 113000, Juneau, AK 99811-3000.

Please accept my apologies for the error.

Sincerely,

A handwritten signature in black ink, appearing to read "KHiggins".

Kate Higgins  
Assistant Ombudsman



Reply to:

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Juneau, AK 99811-3000  
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March 10, 2011

David Haeg  
P O Box 123  
Soldotna, AK 99669

RE: Ombudsman Complaint A2011-0007

Dear Mr. Haeg,

I am writing in regard to the letter our office received on January 4, 2011, describing your ongoing issues related to your participation in the state's Wolf Control Program. You were criminally charged and convicted in State v. Haeg, 4MC-04-0002 ICR. You asked that Ombudsman Linda Lord-Jenkins review the documents you enclosed, "investigate further if necessary, and then make a recommendation to the proper authorities that they take action to prevent this from ever happening to another family."

Enclosed with your letter was a copy of a complaint that you submitted to the Alaska Bar Association (Bar) on December 22, 2010 against Maria Greenstein. Ms. Greenstein works for the Alaska Commission on Judicial Conduct (ACJC) and is the agency's investigator. Back in 2006, you filed a complaint with ACJC alleging that Judge Margaret Murphy, who presided over your criminal proceedings, engaged in unethical activities by accepting rides to and from the courthouse during your trial from Alaska State Trooper Brett Gibbens, who was an adverse witness in your case. The ACJC dismissed your complaint in 2007, but you maintain in your complaint to the Bar that Ms. Greenstein did not adequately investigate your complaint. Specifically, you allege that she did not interview your witnesses and then lied about having done so. You did not enclose any other documents pertaining to your Bar complaint, such as the Bar's response.

In addition to reviewing the letter and Bar complaint that you submitted to our office, I also looked at portions of the documents you have posted on your website, [www.alaskastateofecorruption.com](http://www.alaskastateofecorruption.com). It appears that you have raised your issues concerning Ms. Greenstein's investigation of your complaint during your still pending petition for post-conviction relief (PCR) in case 3KN-10-0179501. In that case, you asked that Judge Murphy be disqualified from reviewing your PCR because she accepted transportation from Trooper Gibbens during your trial. In August 2010, the court denied your request for disqualification but did not rule on the merits with respect to your allegations.

David Haeg

- 2 -

March 10, 2011

of judicial impropriety. She also issued a confidential order, which you have posted in full on your website, referring your allegations and affidavits to the ACIC for its consideration.

As you may recall from your prior complaints to this office, we investigate complaints about the administrative acts of State of Alaska agencies. Our office does not have jurisdiction over issues that have been subject to judicial proceedings. Alaska Statute 24.55.110 "Investigation of complaints," states

The ombudsman shall investigate any complaint that is an appropriate subject for investigation under AS 24.55.150, unless the ombudsman reasonably believes that...

(2) the complaint relates to a matter that is outside the jurisdiction of the ombudsman;...

Ombudsman regulation 21 AAC 20.010 "Subjects excluded from investigation," states

(a) In addition to subjects that are specifically excluded from the jurisdiction of the ombudsman by AS 24.55, the ombudsman may not investigate

(1) a complaint that, at the time the complaint is filed, is the subject of a judicial proceeding;

The ombudsman has interpreted the above statute and regulation to mean that if an issue is or has been subject to a court order, we will decline to investigate based on AS 24.55.110. Our office does not have the authority to override the decision of the courts, and we have no authority to review the validity of your criminal convictions.

Additionally, "a complaint that relates to an administrative act of which the complainant has had knowledge for more than one year before the complaint is filed" is also excluded from our jurisdiction under 21 AAC 20.010(a)(3). You filed a complaint against Judge Murphy with the ACIC in 2006, which was dismissed in January 2007. You contend that Ms. Greenstein's investigation of your complaint was inadequate, in part, because she did not interview the witnesses you provided to ACIC, even though she told you that she had interviewed all of your witnesses. You did not, however, obtain affidavits from your witnesses stating that they had not been interviewed by Ms. Greenstein until July 2010, in support of your motion to disqualify Judge Murphy from reviewing your PCR. We cannot review ACIC's 2007 decision to deny your complaint because the decision is more than one year old.

The only issue that I have identified as a possible issue for our office to review is, what, if any, action the ACIC took after Judge Jovanovich referred your allegations to the commission in August 2010. It appears, however, from reading your Bar complaint, as well as Ms. Greenstein's confidential response, which you have posted on your website, that the ACIC asserts it never received the matter from Judge Jovanovich.

David Haeg

- 3 -

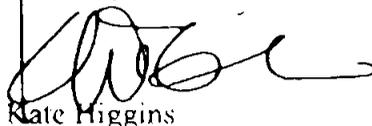
March 10, 2011

If the agency did not receive the referral, it would be unreasonable to expect that the agency would take any action. Therefore, in order to review this issue, we would need several things from you:

1. Proof that the ACJC received Judge Ioannides' confidential order, such as the fax transmission confirmation page from the court's file indicating that the referral was sent to and received by the ACJC, and
2. Your permission to disclose your identity as the complainant when, and if, we need to contact ACJC.

If you are interested in pursuing a complaint to the ombudsman, limited solely to reviewing ACJC's action, or lack thereof, in response to Judge Ioannides August 2010 referral, I need you to provide the items referenced above by March 25, 2011. Please respond in writing to me at P.O. Box 113000, Juneau, AK 99811-3000.

Sincerely,



Kate Higgins  
Assistant Ombudsman

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

## FAX TRANSMITTAL

This facsimile transmission may contain privileged or confidential information intended only for the use of the individual or entity named below. If you are not the intended recipient, be aware that any disclosure, copying, distribution or use of the contents of this transmission is prohibited. If you have received this communication in error, please notify us immediately by telephone (collect if necessary) and destroy all parts of transmission. Thank you for your cooperation.

TO: David Haeg  
FAX #: (907) 262 8867

TO: Peter Massen  
FAX #: (907) 258.8751

TO: Andrew Peterson  
FAX: (907) 269.6270

TO: Marla Greenstein  
FAX: (907) 272.1033

FROM: Stephanie Joannides, Superior Court Judge  
(907) 264-0430  
Fax #: (907) 264-0518

SUBJECT: 3AHO-10-64 CI

DATE: August 27, 2010

NUMBER OF PAGES INCLUDING THIS ONE: 43

MESSAGE: Please call if you experience problems with this transmission.

Exhibit 2

01350

WAAC 1 of 55

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)

**CONFIDENTIAL ORDER:**

- (1) SUPPLEMENTING ORDER GRANTING REQUEST FOR DISQUALIFICATION;
- (2) WITHDRAWING JULY 28, 2010 ORDER FOR INFORMATION FROM JUDICIAL CONDUCT COMMISSION; AND
- (3) REFERRING AFFIDAVITS TO COMMISSION FOR ITS CONSIDERATION

This confidential order supplements the August 25, 2010 Order Granting Request for Disqualification on appearance grounds. It is confidential because it addresses the proceedings of the Alaska Commission on Judicial Conduct.<sup>1</sup>

This court was only tasked with resolving David Haeg's disqualification request. It is not privy to the Commission investigation and the statements made by the witnesses, Judge Murphy, or Trooper Gibbens. Therefore, it takes no position on the materials submitted herein. In addition, this order does not resolve any allegations

<sup>1</sup> AS 22.30.060 (providing for confidentiality of all commission "proceedings, records, files, and reports"). Notwithstanding the confidentiality of the proceedings before

of impropriety. Therefore, the attached materials are being submitted to the Judicial Conduct Commission for its consideration.

Mr. Haeg alleges that during his trial in the remote community of McGrath, Judge Murphy accepted rides from Trooper Gibbens. Mr. Haeg filed a complaint with the Alaska Commission on Judicial Conduct alleging impropriety based upon Judge Murphy's use of Trooper Gibbens for transportation during the trial. The Commission sent Mr. Haeg a letter stating that the rural setting "led to more contact with the community members than usual" but concluded "there were no improper contacts."<sup>2</sup>

In support of his concerns that (1) Judge Murphy and Trooper Gibbens did not provide the Commission accurate information about this issue and (2) the Commission did not adequately investigate their failure to provide full disclosure, Mr. Haeg submitted various witness affidavits<sup>3</sup> and a recording of two phone

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CONFIDENTIAL ORDER

Case No. 3HO-10-00064 CI

Page 2 of 5

Page 01352

conversations between himself and Commission Executive Director Marla Greenstein.<sup>4</sup>

The basis of Mr. Haeg's concerns is best addressed in four parts. First, in a phone conversation on or about January 12, 2007, Mr. Haeg claims that Ms. Greenstein stated that Judge Murphy and Trooper Gibbens "didn't share any meals together and the rides were provided by somebody else . . . that's what everyone I interviewed said."<sup>5</sup> In contrast, a July 21, 2010 notarized affidavit from trial witness Tony Zellers asserts that on July 28, 2005 (day three of Haeg's four-day trial), "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."<sup>6</sup> Jackie Haeg, Mr. Haeg's wife, asserted the same in her own affidavit.<sup>7</sup>

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<sup>6</sup> Attach. D.

after the sentencing hearing." A transcript of the sentencing hearing was provided by the Aniak District Court.<sup>8</sup> The transcript reflects that Judge Murphy raised the issue of obtaining a ride from Trooper Gibbens during the sentencing hearing.<sup>9</sup> A review of the log notes reveals that this statement was approximately five hours before the end of the hearing. In addition, Mr. Haeg provides four affidavits stating that on the date of the sentencing hearing, September 29, 2005, the affiant "personally observed" Judge Margaret Murphy taking rides from Trooper Gibbens throughout the day of the sentencing hearing.<sup>10</sup>

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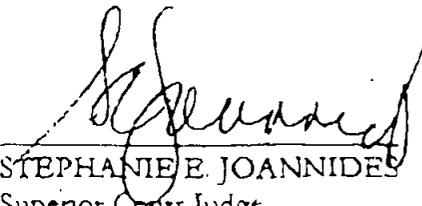
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everything you say is true it wouldn't be that significant -um- a thing. It would be the kind of thing where we would just caution the judge to -um- to try to make other arrangements in small communities in the future. That's all we would do."<sup>13</sup>

In light of this court's ruling granting the disqualification request, the July 28, 2010 Order for Information from Judicial Conduct Commission is hereby  
WITHDRAWN.

DONE this 27<sup>th</sup> day of August 2010 at Anchorage, Alaska.

  
STEPHANIE E. JOANNIDES  
Superior Court Judge

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<sup>12</sup> Attach. C, D, E, F. One affiant, Tom Stepnosky, stated that "[o]n or about 2006 I contacted . . . Marla Greenstein by phone and told her I had personally seen Trooper Gibbens give Judge Murphy rides before David Haeg was sentenced." Attach. E.

<sup>13</sup> Attach. A. at 9.

Transcribed Phone Call between  
Alaska Commission on Judicial Council (Marla Greenstein) and  
David Haeg on or about January 12, 2007

- 1 HAEG: Hey I was wondering whatever became of the investigation into Judge Murphy?
- 2 GREENSTEIN: Yeah we're sending you a letter today. We have a meeting coming up
- 3 on January 22<sup>nd</sup>. Where -um- they'll consider my report and the judge's response
- 4 But - but it sounds like everything was -um- was ok. It sounds like -um- there was no
- 5 communication about the case and they didn't share any meals together and the rides
- 6 were provided by somebody else - not Trooper Gibbens.
- 7 HAEG: They said the rides were provided by somebody other...
- 8 GREENSTEIN: Yes...
- 9 HAEG: ... than Trooper Gibbens?
- 10 GREENSTEIN: Yes
- 11 HAEG: Well that's the biggest pile of shit I've ever heard in my life.
- 12 GREENSTEIN: -Um- that's what - that's what everyone I interviewed said.
- 13 HAEG: And who did you interview - may I ask?
- 14 GREENSTEIN: Well in addition to the names you gave me I talked to Trooper Gibbens,
- 15 and the Judge, and there was one other law enforcement person there
- 16 HAEG: Ok well I'm goanna fly out to McGrath -uh- Marla and I'm goanna get tape
- 17 recordings of everybody - every juror that was there, all the people in McGrath -
- 18 cause there was 300 of them - and I'm goanna walk into your office and I'm goanna
- 19 hand you the tape. Ok?
- 20 GREENSTEIN: I'm just - it's - we don't
- 21 HAEG: Will that be clear enough for you Marla?

22 GREENSTEIN: No. And it's not that serious a thing anyway - even if it did happen

23 Which we don't have any evidence that it did. They.

24 HAEG: Wasn't that serious?

25 GREENSTEIN: No...

26 HAEG: Do you know - you guys wouldn't accept the other stuff that happened in my

27 case? Because 'oh...

28 GREENSTEIN: Yeah...

29 HAEG: ...we can't do whatever' She was changing her decisions 180 degrees to

30 accommodate Trooper Gibbens. Ok?

31 GREENSTEIN: Well I understand that's your perception but the...

32 HAEG: Well...

33 GREENSTEIN: I mean the other people ...

34 HAEG: Yeah my perception Marla...

35 GREENSTEIN: Mmm hmm...

36 HAEG: -Um- if I were you I would look at the Anchorage Daily News back whenever

37 they arrested -uh- Anderson and start looking at what's going on in this state I'd start

38 opening my - my - my views should start expanding a little bit. You - and - I need a

39 copy - can I have a copy of Trooper Gibbens saying he never gave Judge Murphy a

40 ride - ever?

41 GREENSTEIN: He didn't say never ever. It was during that week when you were

42 down there.

43 HAEG: During the week, when we were down there, he never gave her a ride?

44 GREENSTEIN: No.

45 HAEG: Ok and the Judge said that also?

46 GREENSTEIN: Umm hmm...

47 HAEG: -Um- I have to have copies of that. You tell me how - what I need to do to get  
48 copies of that? (talking over GREENSTEIN) And I will be there - in your office as fast  
49 as you could say...

50 GREENSTEIN: Yeah I understand you want

51 HAEG: ...get here.

52 GREENSTEIN: ...the copies. But they're confidential documents so we can't give them  
53 to you. But it wasn't like they... Let me pull it up. Let me see if I could see the exact...  
54 I can tell you what - what's there - hold on... (1 minute passes)

55 HAEG: You believe this shit Jackie?

56 JACKIE HAEG: (Background) No I sure can't.

57 HAEG: Can you believe this?

58 JACKIE HAEG: (Background) She interviewed 2 people and that's just as far as she  
59 got?

60 GREENSTEIN: -Um- it was VPSO Parker who provided the rides..

61 JACKIE HAEG: (Background) She interviewed Tom?

62 HAEG: Ok. VPSO Parker...

63 GREENSTEIN: Yeah

64 HAEG: ...ok

65 GREENSTEIN: ...and -um- and after

66 HAEG: And did you interview – did you interview Mr. Parker?  
67 GREENSTEIN: -Um- I don't remember. And then after  
68 HAEG: Don't remember...Just hang on. Don't remember.  
69 GREENSTEIN: And then after the completion of the sentencing hearing -um- Trooper  
70 Gibbens did give -uh- Magistrate Murphy a ride to the hotel. But that was after the  
71 sentencing hearing.  
72 HAEG: Ok just – after sentencing – was 't. Ok mmm, hmm. Do you read the papers  
73 Marla?  
74 GREENSTEIN: Yeah of course – yes  
75 HAEG: Do you watch TV?  
76 GREENSTEIN: No.  
77 HAEG: Ok. -Um- how long have you been in your post?  
78 GREENSTEIN: -Um- since 1989.  
79 HAEG: Nineteen eighty-nine. So a good long time. Ok. Do you get many people like  
80 me calling you and issuing complaints like this?  
81 GREENSTEIN: -Um- we – we average about 3 complaints – 2 - 2 to 3 complaints a  
82 month that we investigate.  
83 HAEG: Ok. Investigate – ok. And when it was determined that there should be further  
84 investigation were you the only one that investigated?  
85 GREENSTEIN: I'm the staff investigator – yes.  
86 HAEG: Ok are there any other investigators?  
87 GREENSTEIN: No.

- 38 HAEG: Ok so it's just you. Comes in you decide what's going on and that's it?
- 39 GREENSTEIN: No the Commission reviews everything
- 90 HAEG: Ok and do I get a chance to appeal that decision?
- 91 GREENSTEIN: No
- 92 HAEG: Ok - no appeal.
- 93 GREENSTEIN: You can - I mean there might be some - there might be a way to have
- 94 the Supreme Court...
- 95 HAEG: Oh - that's good..
- 96 GREENSTEIN: Do.
- 97 HAEG: Cause I already got - I already got two things heading their way already.
- 98 GREENSTEIN: Ok
- 99 HAEG: Ok - Supreme Court may review - and that would be a - probably a Petition for
- 100 Review?
- 101 GREENSTEIN: No it's called an Original Application.
- 102 HAEG: Ok an Original Application.
- 103 GREENSTEIN: <sup>Totally PS</sup> ~~That~~ discretionary on the part of the court
- 104 HAEG: Ok - Original Application. Not the Petition for Review (Writing notes)
- 105 GREENSTEIN: ... (indecipherable) out of court...
- 106 HAEG: Ok. -Um- (laughs) and what level of liability do Trooper Gibbens and Judge
- 107 Murphy have when they were talking to you? Did you have them under oath? Or was
- 108 it just...
- 109 GREENSTEIN: No it was an informal interview.

110 HAEG: Ok - informal. -Um- if you found out that they lied to you -uh- is there any  
111 liability?

112 GREENSTEIN: -Um- if he -urn- well not for - not for just a witness but if a - if a judge  
113 wasn't telling us the truth we - we could review that as a complaint. But the - you  
114 know there's - it would have to be a - a deliberate kind of thing

115 HAEG: Deliberate? -Um- let me just put my wife on for just one second. Jackie come  
116 here. Ok I want you to tell this lady that under the penalty of perjury you are goanna  
117 tell her how many times Trooper Gibbens drove Judge Murphy back and forth to the  
118 courthouse ..

119 GREENSTEIN: I - I have...

120 HAEG: During my trial and sentencing..

121 GREENSTEIN: I have your wife's statement in writing - I have your wife's statement in  
122 writing. She doesn't need to tell me

123 JACKIE HAEG: Hello.

124 GREENSTEIN: Hi. I have your statement in writing. That's fine.

125 JACKIE HAEG: Ok.

126 GREENSTEIN: You know I don't need you to tell me again cause I have your letter  
127 that you faxed us.

128 JACKIE HAEG: Ok well we did see her every single time that you know she was out of  
129 court and riding around to go to the store to get her pop or whatever and he was the  
130 one driving her everywhere. Back and forth from the hotel.

131 GREENSTEIN: Well he.

132 JACKIE HAEG: ...to eat...

133 GREENSTEIN: Well both he and the judge say that they weren't the people doing it..

134 JACKIE HAEG: Wow.

135 GREENSTEIN: ...It was VPSO Parker who provided the rides

136 HAEG: (in background) tell her ...

137 JACKIE HAEG: Well they're well he's - Dave's pretty upset cause they are both lying

138 - I - you know there were - everybody else that was there with us saw it too and they

139 were all - you know and all the jurors. So - well I don't know what to tell ...

140 GREENSTEIN: Ok.

141 JACKIE HAEG: ... you probably need to ask some more people besides those two.

142 GREENSTEIN: No I talked to the people that your husband gave me the list of. I've

143 spoke to them as well

144 JACKIE HAEG: And what did they tell you?

145 GREENSTEIN: -Um- they said they - that they did see -um- a trooper giving her rides

146 and - but they - they couldn't identify which - who the trooper was.

147 JACKIE HAEG: Hmm...Well I'll let you talk to David again

148 GREENSTEIN: Ok - thank you

149 HAEG: Hi. (BM39S)

150 GREENSTEIN: Ok - well I think I gave you all the information that I can - so -um-

151 you'll get a letter after our Commission meeting on the 22<sup>nd</sup> to let you know exactly

152 what the Commission did

153 HAEG: Ok and when does the Commission meet the next time – where I can talk to  
154 them?

155 GREENSTEIN: You already had an opportunity to talk to them

156 HAEG: I want another opportunity.

157 GREENSTEIN: We only give the public one – one opportunity to talk to...

158 HAEG: Ok – my wife wants an opportunity.

159 GREENSTEIN: No we give each complainant one opportunity.

160 HAEG: She's a different complainant – she's pretty pissed

161 GREENSTEIN: No it's the same complaint She could've appeared when you did as  
162 well.

163 HAEG: Oh really...

164 GREENSTEIN: Yeah.

165 HAEG: Oh.

166 GREENSTEIN: No.

167 HAEG: It's too bad you didn't...

168 GREENSTEIN: ... it's the same...

169 HAEG: ...tell us that.

170 GREENSTEIN: ... complaint

171 HAEG: Ok. -Um- (exhales)

172 GREENSTEIN: So...

173 HAEG: You understand what's going on here?

01363 1401 53

174 GREENSTEIN Well I – I'm telling you even if everything you say is true it wouldn't be  
175 that significant -um- a thing. It would be the kind of thing where we would just caution  
176 the judge to -um- to try to make other arrangements in small communities in the  
177 future. That's all we would do.

178 HAEG: Well if I just made a small little thing if you were in court and just you know -  
179 um- see I've been reading about how important all this stuff is and why people do what  
180 they do. And when she's hanging out with Trooper Gibbens the whole time – he's the  
181 one – he actually perjured his search warrant affidavits to start my whole case and I  
182 mean you - I know that you're just saying I'm convicted and I have sour grapes. And I  
183 understand that and that's a good position to take because it's probably the logical  
184 position. But when she was involved over the entire course of my case and every  
185 decision that she was free to make sided with Trooper Gibbens and then she's riding  
186 around with him all the time and my jury is watching that each and every day. She  
187 leaves with Trooper Gibbens and she arrives with Trooper Gibbens. What they say is  
188 that a jury when they see that they say that trooper is credible..

189 GREENSTEIN: Did you have a lawyer?

190 HAEG: ... because he has the trust of the judge'..

191 GREENSTEIN: You have a lawyer?

192 HAEG: Huh?

193 GREENSTEIN Did you have a lawyer?

194 HAEG: Yeah and I can prove my lawyer was lying to me throughout the whole trial and  
195 I know that's another fantastic idea.

196 GREENSTEIN: Right no I mean if you're telling me everybody is lying including your  
197 lawyer you know I'm...

198 HAEG: Then - then I'm not credible I understand that.

199 GREENSTEIN: Right.

200 HAEG: Ok look at Trooper or I mean not ... Legislator Anderson and I know that I'm  
201 kind of harping on this a little bit. But would you believe one of our legislators was  
202 extorting money from somebody?

203 GREENSTEIN: Well you would be the first to say that somebody ~~excused~~ <sup>accused</sup> (23) should not  
204 be assumed guilty? Right?

205 HAEG: No what I'm saying and I - I understand entirely what you're saying - that you  
206 can't judge people before they're found guilty.

207 GREENSTEIN: Right.

208 HAEG: And that's what you're saying I'm doing. But what everybody's saying to me is  
209 since I've already been found guilty that my word is no longer any good.

210 GREENSTEIN: That's kind of how the system works.

211 HAEG: <sup>well</sup> (24) My wife just told you what happened and she hasn't been found guilty of  
212 anything. And I will go get every jurors -um- affidavit.

213 GREENSTEIN: Well I'm just saying even if what you tell me is true it's a very minor  
214 thing from our perspective on what we address

215 HAEG: Ok if it was so minor a thing in your perspective...

216 GREENSTEIN: Right.

217 HAEG: ...why do you even do it?

218 GREENSTEIN: Because then we could give a cautionary letter to judge -um- warning  
219 them that -um- they should make other arrangements if they're in a small community  
220 without public transportation

221 HAEG: Ok now this is the real question Why do you think Trooper Gibbens and  
222 Judge Murphy lied?

223 GREENSTEIN: I - I don't believe they lied. I understand you do. But I don't believe  
224 they did. If - if your memories differ on those things...

225 HAEG: If my memories different...

226 GREENSTEIN: Mm hmm...

227 HAEG: You know how many times I've been told that? -um- and you know I'll have you  
228 know that I'm taping this conversation as I tape all my conversations. And you know  
229 these allegations that I made about my - my -uh- lawyers they were all on tape.

230 GREENSTEIN: Mm hmm...

231 HAEG: And my first lawyer cause the one that went through trial was the second one.  
232 My first one I had before the Alaska Bar Association and as he lied I think it was  
233 somewhere over 20 times. Actually he was under oath so it was perjury. We played  
234 the - actually didn't play the tape he agreed that the transcriptions my wife made of  
235 the secretly recorded conversations were true and correct and as he read them he  
236 started shaking like a leaf. - And you know there aint - there probably isn't goanna be  
237 much done to him because of people like yourself that when they're faced with the  
238 obvious they don't want to do anything. But I mean I have this - I have - I mean...

239 GREENSTEIN: Well let me.

240 HAEG: my..

241 GREENSTEIN: Let me just reflect back to you

242 HAEG: Ok.

243 GREENSTEIN: I think what you really want to - is a new trial or a retrial or to have

244 everything done over again

245 HAEG: Exactly.

246 GREENSTEIN: I don't have the power -- our agency doesn't have the power to do that.

247 So I'm saying even if you know we found everything that you want us to find all we

248 would do is a cautionary letter to the judge. It won't help you.

249 HAEG: And did she get a cautionary letter?

250 GREENSTEIN: No. She hasn't yet...

251 HAEG: So she didn't even get that?

252 GREENSTEIN: Well until you

253 HAEG: Didn't even...

254 GREENSTEIN: ... our Commission ...

255 HAEG: ...freaking get that?

256 GREENSTEIN: ...I told you our Commission...

257 HAEG: ...I cannot believe that Maria.

258 GREENSTEIN: I told you our Commission hasn't finished with it yet. Didn't I just tell

259 you that we are goanna address it at our January 22<sup>nd</sup> meeting?

260 HAEG: I thought you said it's over and that

261 GREENSTEIN: I said

262 HAEG: ...you said -um-...

263 GREENSTEIN: ...January 22<sup>nd</sup> meeting...

264 HAEG: ...everything - I wrote down -um- everything I wrote down everything was ok...

265 GREENSTEIN: Yeah from my investigation but I told you that we're meeting on

266 January 22<sup>nd</sup>.

267 HAEG: Ok January 22<sup>nd</sup>. Do you have a call in number for that date?

268 GREENSTEIN: I told you you already had your opportunity to address the

269 Commission

270 HAEG: No there's other people that want their opportunity.

271 GREENSTEIN: You're the only - we only allow the complainant to talk about their  
272 complaint. And we'll give the opportunity one time.

273 HAEG: Hmm ...How convenient -Um- And who's your boss in the big scheme of  
274 things here?

275 GREENSTEIN: I work for the Commission.

276 HAEG: Ok Commission. And whose the - is there a president or...

277 GREENSTEIN: There's a Chair

278 HAEG: Ok who's the Chair?

279 GREENSTEIN: Judge Ben Esch.

280 HAEG: Judge - what's the last name again?

281 GREENSTEIN: Esch. E-S-C-H.

282 HAEG: S-C-H?

283 GREENSTEIN: E-S-C-H.

284 HAEG: Ok and how do you pronounce that?

285 GREENSTEIN: Esch.

286 HAEG: Esch? Ok -um- ok well I guess and I probably am not allowed to talk to her or

287 him or... Is it a him or a her?

288 GREENSTEIN: Him.

289 HAEG: Him

290 GREENSTEIN: Yes Mr. Ben Esch.

291 HAEG: -Um- is there any way I can communicate with him?

292 GREENSTEIN: -Um- you can send a letter.

293 HAEG: Ok do you have an address?

294 GREENSTEIN: -Um- He's at the Nome court. Do you have access to the Internet?

295 HAEG: Yep. Nome court?

296 GREENSTEIN: -Uh- huh.

297 HAEG: Ok we can probably manage that one -Um- -uh- well actually this is kind of

298 good. And if I wanted those records. Cause this is gonna be good. Cause I'm going

299 to have Trooper Gibbens and Judge Murphy under oath again <sup>during (S)</sup> at my Post Conviction

300 Relief. And this will be a joy a true joy.

301 GREENSTEIN: Our - our records are confidential ..

302 HAEG: I can - I can subpoena those records, correct?

303 GREENSTEIN: No. Our - our records are confidential by State statute

304 HAEG: Ok and there's no - absolutely no court record - no way of getting those?

305 GREENSTEIN: No.

306 HAEG: Not even through the Supreme Court?

307 GREENSTEIN: -Um- if the...

308 HAEG: Supreme Court? I - I...

309 GREENSTEIN: If the Supreme Court..

310 HAEG: ...I walk into your office with an SCO and I can't have it?

311 GREENSTEIN: I mean if the Supreme Court ordered it they would get it under seal but

312 you probably wouldn't have access to it.

313 HAEG: Ok Well I'll guarantee you those records are goanna be -um- looked at by

314 somebody -um- cause I'm actually starting to enjoy this. This is kind of like - I used to

315 be a trapper and a hunter but this is far more fun. -Um- because it's the most

316 ridiculous thing that's ever happened. This state is so crooked you couldn't get a fair

317 trial here if you tried your hardest - like I did. It's unbelievable. -Um- but anyway you

318 probably heard that before. -Um- and as I said I'm guilty so you don't have to listen to

319 me. -Um- and oh I guess I've taken up enough of your time Marla.

320 GREENSTEIN: Ok

321 HAEG: Thank you very much

322 GREENSTEIN: You're welcome.

323 HAEG: Bye

324 GREENSTEIN: Bye

Transcribed Phone Call between  
Alaska Commission on Judicial Council (Marla Greenstein) and  
David Haeg on or about September 23, 2009

1 HAEG: Yep

2 GREENSTEIN: Marla Greenstein.

3 HAEG: Hey how yah doing?

4 GREENSTEIN: I'm doing fine.

5 HAEG: -Um- hey I have a couple questions for you. I don't know if you remember me

6 but I had a

7 GREENSTEIN: I do

8 HAEG: -Uh-

9 GREENSTEIN: I do it was a hunting thing

10 HAEG: Yep and I'd - I'd filed a complaint I think it was against Judge Murphy.

11 GREENSTEIN: Right

12 HAEG: -um- and -uh- what I was wondering is at the time you had said that -uh- -um-

13 you had interviewed I think Judge Murphy and some of the people that I had...

14 GREENSTEIN: Right the trooper and some of those other people

15 HAEG: Yep And you had said that they -um- denied that the trooper had ever given

16 Judge Murphy rides until I think you said - I'd wrote down some notes until like after I

17 was sentenced. And I was wondering if you -um- I guess have any documentation on

18 what they said or if you could give me some on what they said?

19 GREENSTEIN: I can't share that with anybody I do the documentation but that -

20 that's confidential within our office

21 HAEG: Ok and is there anyway to make it non confidential?

22 GREENSTEIN: No there is not.

23 HAEG: Not even a – like a court proceeding or anything?

24 GREENSTEIN: No our files are confidential by statute.

25 HAEG: Ok and so when you like if I claim what you had told me – I can't even do that  
26 either then?

27 GREENSTEIN: What I said to you? If you – I mean you should have a letter from me  
28 that probably set out the reasons we dismissed the complaint. That's the only thing. If  
29 you don't have that letter we can you another copy of that letter.

30 HAEG: Ok.

31 GREENSTEIN: That's the only thing that you can refer to.

32 HAEG: Ok. Well what – what my problem is is you had said that they – you had  
33 questioned them and they both denied that the trooper had given the judge rides. Ok?  
34 And I – I you know I wrote down -um- all the stuff that you had said because you had –  
35 you actually called me. I don't know if you remember that or not?

36 GREENSTEIN: Let me see. I think have the note - an advisory opinion that wrote as a  
37 result of that I can read. Let me just look it up. I think we wrote a summary of the  
38 opinion that public...

39 HAEG: And what – so this actually went further than what..

40 GREENSTEIN: No – no

41 HAEG: ... just your investigation?

42 GREENSTEIN: No we did a formal opinion. They just - we write opinions to give  
43 judges guidance at times. -Um-

44 HAEG: Well why would there be any guidance if there were never any rides given?

45 GREENSTEIN: No there was (time passes while looking through her stuff) . . . just  
46 trying to help you. Just want to see if there's more information I can give you  
47 HAEG: Ok.  
48 GREENSTEIN: No he did give them rides. It was a question of when the rides were  
49 given. So I can give you this opinion. Their opinion the judicial officer accepted rides  
50 from law enforcement while on duty in small village without any form of public  
51 transportation did not violate the Code of Judicial Conduct where no ex parte  
52 communication concerning the pending criminal matter occurred. The circumstances  
53 in rural Alaska often create a need for accommodations that would not be suitable if  
54 there were other alternatives. Where these accommodations include assistance by  
55 law enforcement officers, great care should be given to avoid any discussion of official  
56 matters while outside the courtroom. The best practice would be to disclose the  
57 special needs and accommodations on the record at the beginning of the court  
58 proceeding to avoid appearance of impropriety questions.  
59 HAEG: Well if.  
60 GREENSTEIN: So that - that was our findings. I can mail that to you if you'd like?  
61 HAEG: Ok well that would be great but what my question is - is you had said that you  
62 investigated  
63 GREENSTEIN: Mm hmm.  
64 HAEG: And you had called me and said that the trooper and the judge denied that any  
65 rides ever took place. Is that correct?  
66 GREENSTEIN: No - until after sentencing

67 HAEG: Ok until after sentencing?

68 GREENSTEIN: Right.

69 HAEG: Ok. Ok the problem I have Marla is I was there with I believe like 7 witnesses  
70 and an attorney and - and...

71 GREENSTEIN: I talked to everybody

72 HAEG: Ok.

73 GREENSTEIN: I talked to the attorneys I talked to everybody. I talked to people in the  
74 courtroom. I talked to a bunch of people. And they view things differently than you.

75 HAEG: Wow...

76 GREENSTEIN: Mm hmm.

77 HAEG: That's unbelievable isn't it? Because ...

78 GREENSTEIN: I talked even to the people in Texas - or whoever they were. I made a  
79 lot of phone calls.

80 HAEG: Ok.

81 GREENSTEIN: That's why I remember it so well

82 HAEG: And you got no indication from anybody that they ever got - ever - the judge  
83 ever took a ride with the trooper during my trial or sentencing, correct?

84 GREENSTEIN: Correct.

85 HAEG: Ok but I have a note here that says you talked VPSO Parker. He doesn't  
86 remember That you never talked to any of the witnesses .

87 GREENSTEIN: Listen are - are you goanna argue with me? I just told you I  
88 interviewed a lot of the people. I talked to them...

89 HAEG: Well the problem – ok I'm not argu... I'm not try – I don't mean to argue with  
90 you. Ok? The problem is – is over this case...

91 GREENSTEIN: Mm hmm...

92 HAEG: ... I lost everything I had built for my family from.

93 GREENSTEIN: I understand that

94 HAEG: ... when I was age 18

95 GREENSTEIN: Nothing we do is going to change that.

96 HAEG: Ok. Correct absolutely. But what I'm saying is when the judge rode in every  
97 morning, every noon to lunch, and it's even on the record. This is what really pisses  
98 me off. Is that they - the State transcribed the record of the case and it has Judge  
99 Murphy 'I'm going to commandeer you again Trooper Gibbens and we're goanna into  
100 to town and get some stuff and blah blah blah'. And then when you tell me that – and  
101 ever day this happened. And it was like I think a 5-day trial and 2 day sentencing.  
102 And when that trooper was the main witness against me and it was proven he'd  
103 committed perjury and the judge overlooked it and they're riding around together the  
104 appearance – how that you are saying that the appearance of bias isn't right - we seen  
105 actual bias because we proved the trooper was lying about where the evidence was  
106 found. They claimed it was found where I guide and so I should be charged as a big  
107 game guide. And so it has to do with real things in life rather than protecting a couple  
108 people that did something they shouldn't be doing and are now denying it. And -um-  
109 you know and I don't mean to jump down your throat Marla but it's now five and a half  
110 years of my life as I know it ending. And I know that – that probably doesn't mean

111 anything to you. You get a paycheck and you go home at night and your jobs secure  
112 but me and my family have a hard time putting - having enough money to put food in  
113 our children's mouths anymore - over this. And Marla do you understand the  
114 determination when you make a claim like I did - and I didn't even know it was that big  
115 of deal but when they claimed it never happened. The judge lied to you and the  
116 trooper lied to you and if I were you I would take that very seriously. And apparently  
117 from what you're saying everybody agrees in fact you said no witnesses said it ever  
118 happened. Didn't I tell you it happened?

119 GREENSTEIN: You - you did but nobody else.

120 HAEG: Nobody else told you it happened?

121 GREENSTEIN: Right

122 HAEG: Did you ever talk to my jurors?

123 GREENSTEIN: No.

124 HAEG: Did I ask that you do?

125 GREENSTEIN: Listen you're arguing with me again so I'm goanna hang up. This has  
126 been over for several years and I was trying to give you additional information. I'm  
127 sorry but there's nothing more I can do... (click)

David S. Haeg  
P.O. Box 123  
Soldotna, AK 99669  
(907) 262-9249

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

DAVID HAEG	)	
Applicant,	)	
vs.	)	
STATE OF ALASKA,	)	Case No: <u>3HO-10-00064CI</u>
Respondent.	)	
	)	
	)	

AFFIDAVIT

1. My name is Wendell Jones and I am a former Alaska State Trooper.

2. I attended David Haeg's sentencing in McGrath on 9-29-05 and 9-30-05.

On these days I was present at the courthouse every hour David Haeg's court was in session. On 9-29-05 sentencing testimony and arguments started at 1 PM and continued straight through the night until the early morning of 9-30-05. David Haeg was finally sentenced at nearly 1 AM on 9-30-05.

3. On 9-29-05 I personally observed Judge Margaret Murphy arrive at court in a white Trooper pickup truck driven by Trooper Brent Gibbens; leave and return with Trooper Gibbens in the same truck during breaks and dinner, and leave with Trooper Gibbens when court was finished on 9-30-05. Nearly all the rides I witnessed Trooper Gibbens give Judge Murphy happened before David Haeg was sentenced.

4. Trooper Gibbens was the primary witness against David Haeg at sentencing and I believe during his trial.

5. During David Haeg's proceedings I never saw Judge Murphy arrive or depart the courthouse alone or with anyone other than Trooper Gibbens.

6. Other than David Haeg himself I was never contacted by anyone investigating whether or not Trooper Gibbens gave Judge Murphy rides.

AFFIDAVIT SWORN TO UNDER PENALTY OF PERJURY

I, WENDELL JONES, swear under penalty of perjury that the statements above and information included are true to the best of my knowledge.

Wendell Jones

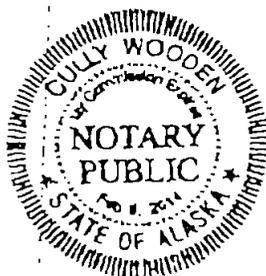
Wendell Jones

SUBSCRIBED AND SWORN to before me this 20<sup>th</sup> day of July, 2010.

Cheryl Wooden

Notary Public in and for Alaska

My Commission Expires: 2-6-14



*Exhibit #6*

David S. Haeg  
P.O. Box 123  
Soldoma, AK 99569  
(907) 262-9249

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

DAVID HAEG	)	
Applicant,	)	
vs.	)	
STATE OF ALASKA,	)	Case No.: <u>3HQ-10-00064CI</u>
Respondent.	)	
	)	
	)	

AFFIDAVIT

1. My name is Tony Zellers and I am a retired Air Force Captain.
2. I was a state witness at David Haeg's trial in McGrath on 7-28-05. I also attended the sentencing in McGrath on 9-29-05 and 9-30-05. On these days I was present at the courthouse while David Haeg's court was in session. On 9-29-05 sentencing testimony and arguments started at 1 PM and continued through the night until the early morning of 9-30-05. David Haeg was finally sentenced at nearly 1 AM on 9-30-05.
3. On 7-28-05 and 9-29-05 I personally observed Judge Margaret Murphy being shuffled 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. Nearly all the rides I witnessed Trooper Gibbens give Judge Murphy happened before David Haeg was sentenced.

ATTACHMENT D

*Page 30 of 55*

4. Trooper Gibbens was the primary witness against David Haeg at trial and sentencing.

5. During David Haeg's proceedings I never saw Judge Murphy arrive or depart the courthouse alone or with anyone other than Trooper Gibbens.

6. Since 1994 to present my phone number has been 907-696-2319.

7. Other than David Haeg himself I was never contacted by anyone investigating whether or not Trooper Gibbens gave Judge Murphy rides.

AFFIDAVIT SWORN TO UNDER PENALTY OF PERJURY

I, TONY ZELLERS, swear under penalty of perjury that the statements above and information included are true to the best of my knowledge.

*Tony Zellers*

Tony Zellers  
9420 Swan Circle  
Eagle River, AK 99577  
907-696-2319

SUBSCRIBED AND SWORN to before me this 21 day of July, 2010.



*Dianne Cornelison*  
Notary Public in and for Mat Su Sea State of Alaska

My Commission Expires: April 5, 2014

*Page 31 of 53*

Exhibit #6

David S. Haeg  
P.O. Box 123  
Soldotna, AK 99669  
(907) 262-9249

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

DAVID HAEG	)	
Applicant,	)	
vs.	)	
	)	
STATE OF ALASKA,	)	Case No.: <u>3HO-10-00064CI</u>
Respondent.	)	
	)	
	)	

AFFIDAVIT

1. My name is Tom Stepnosky and I am retired Vietnam Veteran.
2. I attended David Haeg's sentencing in McGrath on 9-29-05 and 9-30-05. On these days I was present at the courthouse every hour David Haeg's court was in session. On 9-29-05 sentencing testimony and arguments started at 1 PM and continued through the night until the early morning of 9-30-05. David Haeg was finally sentenced at nearly 1 AM on 9-30-05.
3. On 9-29-05 I personally observed Judge Margaret Murphy arrive at court in a white Trooper pickup truck driven by Trooper Brett Gibbens; leave and return with Trooper Gibbens in the same truck during breaks and dinner; and then leave with Trooper Gibbens when sentencing was finished on 9-30-05. Nearly all the rides I witnessed Trooper Gibbens give Judge Murphy happened before David Haeg was sentenced.
4. Trooper Gibbens was the primary witness against David Haeg at sentencing and I believe during his trial.

ATTACHMENT E

*Rec'd 3/28/05*  
**01381**

5 During David Haeg's proceedings I never saw Judge Murphy arrive or  
depart the courthouse alone or with anyone other than Trooper Gibbens.

6 Since 2005 to present my phone number has been 570-727-3130.

7 Other than David Haeg himself I was never contacted by anyone  
investigating whether or not Trooper Gibbens gave Judge Murphy rides.

8 On or about 2005 I contacted Alaska Commission on Judicial Conduct  
investigator Marla Greenstein by phone and told her I had personally seen Trooper  
Gibbens give Judge Murphy rides before David Haeg was sentenced.

AFFIDAVIT SWORN TO UNDER PENALTY OF PERJURY

I, TOM STEP NOSKY, SR., swear under penalty of perjury that the statements above  
and information included are true to the best of my knowledge.

*Thomas J. Stepnosky, Sr.*

Tom Stepnosky, Sr.  
PO Box 205  
Thompson, PA 18465  
570-727-3130

SUBSCRIBED AND SWORN to before me this 16<sup>th</sup> day of July, 2010

*Nina A. Bills*

Notary Public in and for \_\_\_\_\_

My Commission Expires: COMMONWEALTH OF PENNSYLVANIA

Notary Seal  
Nina A. Bills, Notary Public  
Susquehanna Depot Boro, Susquehanna County  
My Commission Expires Jan. 10, 2011

Exhibit #6

David S Haeg  
P.O. Box 123  
Soldotna, AK 99669  
(907) 262-9249

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

DAVID HAEG	)	
Applicant,	)	
vs.	)	
	)	
STATE OF ALASKA,	)	Case No. <u>BHO-10-00054CI</u>
Respondent.	)	
	)	
	)	

AFFIDAVIT

My name is Drew Hilterbrand.

I attended David Haeg's sentencing in McGrath on 9-29-05 and 9-30-05. On these days I was present at the courthouse every hour David Haeg's court was in session. On 9-29-05 sentencing testimony and arguments started at 1 PM and continued through the night until the early morning of 9-30-05 David Haeg was finally sentenced at nearly 1 AM on 9-30-05.

On 9-29-05 I personally observed Judge Margaret Murphy arrive at court in a white Trooper pickup truck driven by Trooper Brett Gibbens; leave and return with Trooper Gibbens in the same truck during breaks and dinner; and leave with Trooper Gibbens when court was finished on 9-30-05. Nearly all the rides I

Page 34 of 55

witnessed Trooper Gibbens give Judge Murphy happened before David Haeg was sentenced.

Trooper Gibbens was the primary witness against David Haeg at sentencing and I believe during his trial.

During David Haeg's proceedings I never saw Judge Murphy arrive or depart the courthouse alone or with anyone other than Trooper Gibbens.

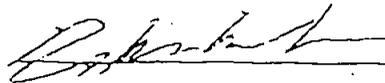
From about 2004 to present my phone number has been 907-252-4090.

Other than David Haeg himself I have never been contacted by anyone investigating whether or not Trooper Gibbens gave Judge Murphy rides.

**AFFIDAVIT SWORN TO UNDER PENALTY OF PERJURY**

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

July 19th 2010 A notary public or other official empowered to administer oaths is unavailable and thus I am certifying this document in accordance with AS 09.63.020.



Drew Hilterbrand  
PO Box 1038  
Soldotna, AK 99669  
907-252-4090

*Exhibit #6*

David S. Haeg  
P.O. Box 123  
Soldotna, AK 99669  
(907) 262-9249

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

DAVID HAEG	)	
Applicant,	)	
vs.	)	
	)	
STATE OF ALASKA,	)	Case No.: <u>3HO-10-00064CI</u>
Respondent.	)	
	)	
	)	

AFFIDAVIT

1. My name is Greg Pearson, I am a husband and father of two.
2. I attended all of David Haeg's 12-hour self-representation hearing that was conducted in McGrath on 8-15-06. The hearing lasted until about 11 PM.
3. During David Haeg's self-representation hearing I heard Magistrate David Woodmancy ask Trooper Brett Gibbens for a ride and Trooper Gibbens responded that he could not give Magistrate Woodmancy a ride because of all the trouble he (Gibbens) got into by doing this the last time.

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

7-25-2010

A notary public or other official empowered to

administer oaths is unavailable and thus I am certifying this document in accordance with

AS 09 63.020.

*Greg Pearson*

Greg Pearson  
PO Box 1456  
Soldotna, Alaska 99669 (907) 262-3935

Exhibit # 6

David S. Haeg  
P.O. Box 123,  
Soldotna, AK 99569  
(907) 262-9249

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

DAVID HAEG )

Applicant, )

vs. )

STATE OF ALASKA )

Respondent. )

Case No.: 3HO-10-00064CI

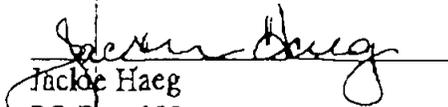
AFFIDAVIT

1. My name is Jackie Haeg. I work for the Kenai Peninsula Borough School District, am married, and mother of two.
2. I attended David Haeg's trial in McGrath on 5-17-05, 5-18-05, 7-25-05, 7-26-05, 7-27-05, 7-28-05, and 7-29-05. Trial went till 11:29 PM some days and I was present at the courthouse every hour of trial.
3. Every day of David Haeg's trial I personally observed Judge Margaret Murphy arrive at court 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 done for the day. All the rides I witnessed Trooper Gibbens give Judge Murphy happened before David Haeg was sentenced.
4. Trooper Gibbens was the primary witness against David Haeg at trial.

Page 37 of 55

- 5. During David Haeg's trial I never saw Judge Murphy arrive or depart the courthouse alone or with anyone other than Trooper Gibbens.
- 6. Since about 1990 to present my phone number has been 907-262-9249.
- 7. Other than David Haeg himself I have never been contacted by anyone investigating whether or not Trooper Gibbens gave Judge Murphy rides.
- 8. I was the one who found David Haeg's 17-page letter (evidencing that the State had told and induced David Haeg to do what the State later charged him with doing) had been removed out of the official court record while proof it had been admitted remained in the official court record
- 9. I attended all of David Haeg's 12-hour self-representation hearing that was conducted in McGrath on 8-15-06 before Magistrate David Woodmancy
- 10. During David Haeg's self-representation hearing I heard Magistrate Woodmancy ask Trooper Brett Gibbens for a ride and Trooper Gibbens responded that he could not give Magistrate Woodmancy a ride because of all the trouble he (Gibbens) got into by doing this the last time

I declare under penalty of perjury the forgoing is true and correct. Executed on July 23, 2010. A notary public or other official empowered to administer oaths is unavailable and thus I am certifying this document in accordance with AS 09.63.020.

  
 Jackie Haeg  
 PO Box 123  
 Soldotna, Alaska 99669  
 (907) 262-9249



ANIAK DISTRICT COURT Fax 9076754278

Aug 6 2010 04:08pm P001/005

Alaska Court System  
P.O. Box 147  
Aniak, AK 99557-0147  
Phone: (907) 675-4325  
Fax: (907) 675-4278

**ANIAK DISTRICT COURT**

**Fax**

To:	Judge Joandes	From:	Jean Ekemo/Clerk of Court
Fax:	907-264-0518	Pages:	5 w/cover
Phone:		Date:	8/6/10
Re:	David Haeg - 4MC-04-24CR selected transcripts	CC:	

**• Comments:**

Following this cover you should find

- 1 page) a copy of the cover of 'Transcript of Proceeding' Volume III
- 3 pages) Pages 1257-1268 (4 pages per 8x11 page so actually (3) 8x11 size pages)

ATTACHMENT I

*Page 39 of 55*  
**01389**

ALASKA DISTRICT COURT Fax 9076754278

Aug 6 2010 04:08pm P002/005

FILED  
STATE OF ALASKA  
APPELLATE COURTS  
IN THE DISTRICT COURT FOR THE STATE OF ALASKA  
FOURTH JUDICIAL DISTRICT

2007 NOV 14 AM 11:16  
CLERK, APPELLATE COURTS  
BY DEPUTY CLERK

STATE OF ALASKA,  
Plaintiff,  
vs.  
DAVID HAEG,  
Defendant.

A09455

Case No. 4MC-04-24 CR

VOLUME III

TRANSCRIPT OF PROCEEDINGS

September 29, 2005 - Page 1037 through Page 1454

DISCLAIMER

Transcripts prepared for the Alaska Court System

The Alaska Court System accepted this transcript based on either review of a random sample or without review because the transcriber's prior work has consistently met court system standards. Because it is possible that this transcript may contain some errors, the court system encourages parties to listen to the recordings of critical portions of the proceedings and to bring any significant errors to the ACS Transcript Coordinator's attention immediately.

AURORA COURT REPORTING

STATE OF ALASKA v DAVID HAEG 4MC-04-24CR

Aurora Court Reporting

A I never – I never saw that moose.

Q Okay. That's the one you told Mr. Haeg that had been chased off or whatever, right?

THE COURT: That was on the 5th.

MR. LEADERS: Okay. Apologize, that's the 5th, okay.

Q But you don't note that anywhere?

A No.

Q The -- is it possible you -- the days may have somehow gotten mixed up or confused in any way during your hunt?

A No.

Q All right. The -- Mr. Jayo's moose was taken fairly early in the morning?

A Yes, as -- as I stated, around 7.30 that morning.

Q Okay. Shortly after light then?

A Yes.

Q You guys had to hike how far?

A We hiked approximately two and a half miles. We started about 5:00 o'clock in the morning. At that time of year about 5:30 is when it starts getting twilight out, and by 6:00 o'clock you've got enough -- plenty of light to -- to hunt. 7:00 o'clock the -- the sun wasn't up over the -- the Revelation Mountains yet.

Q So it took you almost a couple hours to get down to this location?

A Yes.

## STATE OF ALASKA v DAVID HAEG 4MC-04-24CR

Aurora Court Reporting

Q Roughly, I guess, we heard the pace is about a mile an hour earlier?

A Roughly -- roughly, yeah.

Q That's pretty accurate?

A Yes. Uh-huh (Affirmative).

Q The -- were you -- I guess I was a little but unclear on some of this.

Someone -- you climbed a tree for observation once you crossed the river and that's where you first see the cows?

A No.

Q Oh, okay.

A We did not see any moose from -- from the tree.

Q From the tree, I see, okay.

Q When we came down and I decided to take Doug a little further down the ridge so I could see a little further down river, that the river bend made a shallow bend to the left and then it came back hard to the right, down by the sandbar that Dave landed on, later, and that's where I saw the -- the two cows along the river.

Q And that's where you then called -- from that location is where you called the bull to?

A Correct, I went down maybe 20 yards near a big rock or a husgik(ph) for Doug to have a laying down steady rest.

Q Okay. And it was two shots ultimately to kill this moose?

STATE OF ALASKA v DAVID HAEG 4MC-04-24CR

Aurora Court Reporting

- A Two shots, yes.
- Q The initial?
- A One from the.....
- Q To take it down?
- A One from -- one from my rifle a .375, and one from Doug Jayo's rifle which is I believe he was shooting .330.
- Q Okay. They were spaced approximately 15, 20 minutes apart or so?
- A Correct.
- Q And then there was a lot of flying activity after that?
- A Yes.
- Q Mr. Haeg's plane?
- A Correct.
- Q He hadn't -- you hadn't noticed any other planes in that area flying during the few days that you -- the couple days you were hunting that specific area?
- A No, I did not. I've heard other planes but I did not observe them with my eyes. Maybe not fly up into that valley.
- Q So you heard them in the distance type thing?
- A Correct.
- Q I mean you can hear planes off for miles away at times (indiscernible)?
- A At times, yeah, you can hear them a long ways.
- Q Okay.

STATE OF ALASKA v DAVID HAEG 4MC-04-24CR

Aurora Court Reporting

A The weather wasn't conducive to -- to seeing a lot of them.

MR. LEADERS: I have no further questions.

TONY ZELLERS

testified as follows on:

REDIRECT EXAMINATION

BY MR. ROBINSON:

Q Mr. Zellers, you entered a plea of, I think, no-contest to your charges in this wolf case, right?

A That's correct.

Q And you were required to come to court and testify truthfully were you not?

A Correct.

Q And in your opinion when you came to testify at the trial did you give truthful testimony?

A Yes, I did.

Q And anything you said today, was it truthful testimony?

A Yes, it was.

Q Particularly with your diary concerning when you noted the day that Mr. Jayo shot this moose, is there anything untruthful about that?

A No, there isn't.

Q Is there anything untruthful about the fact that before Mr. Jayo took that moose on the morning of September 7th that Mr. Haeg was not flying around, was not using any

STATE OF ALASKA v DAVID HAEG 4MC-04-24CR

Aurora Court Reporting

kind of communications from the airplane to direct that hunt for Mr. Jayo?

A No, he wasn't.

Q And that's truthful?

A That's truthful.

Q As truthful as you testified about matters at trial here?

A Yes, it is.

MR. ROBINSON: I don't have anything further.

TONY ZELLERS

testified as follows on:

RECROSS EXAMINATION

BY MR. LEADERS:

Q The -- let me ask you. In your mind, your perception of the wolf charges which you pled to and that now Mr. Haeg's -- do you consider those less serious based on the nature that they were wolves taken than you do what we're discussing here, whether or not a moose, a game animal was taken from the -- with the use of an airplane?

A No, it's the same charge. Same day -- same day airborne, so.

Q So you don't see -- okay, you don't perceive any difference between the wolves or the moose or anything like that? As to the way they should be treated?

STATE OF ALASKA v DAVID HAEG 4MC-04-24CR

Aurora Court Reporting

A No, I've got probably – I don't like the wolves any more than anybody else out in this area.

Q Right.

A But – because I mean if I look at this charge versus this charge they're the same charge, so.

Q Shouldn't be treated any differently in your mind?

A No.

MR. LEADERS: Nothing further.

THE COURT: Anything else?

MR. ROBINSON: No.

THE COURT: Okay. Thank you, Mr. Zellers, you can go back.

MR. ROBINSON: 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.

MR. ROBINSON: All right.

THE COURT: All right, Trooper Gibbens?

TROOPER GIBBENS: Well, yeah.

MR. ROBINSON: You've been commandeered.

STATE OF ALASKA v DAVID HAEG 4MC-04-24CR

Aurora Court Reporting

MR. LEADERS: 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.

MR. ROBINSON: Mr. Wendell Jones.

THE COURT: Okay.

(Whispered conversation)

THE COURT: Mr. Jones, if you'd raise your right hand.

(Oath administered)

MR. JONES: I do.

THE COURT: Okay. Please be seated.

MR. JONES: Thank you.

WENDELL L. JONES

STATE OF ALASKA v DAVID HAEG 4MC-04-24CR

Aurora Court Reporting

called as a witness on behalf of the defendant, testified as follows on:

DIRECT EXAMINATION

THE COURT: Spell your first and last name for the record, please.

A Wendell L. Jones, W-e-n-d-e-l-l L. J-o-n-e-s.

THE COURT: Okay. Thank you, sir.

BY MR. ROBINSON:

Q Good evening, Mr. Jones. Where do you live?

A I live in Cordova, Alaska.

Q And how long have you lived there?

A Well, I first moved there in '76 and I moved to Soldotna in about '84. Moved back to Cordova about '94.

Q And what is your occupation?

A I'm sorry?

Q What is your occupation?

A I'm a commercial fisherman.

Q (Coughing) Excuse me. How long have you been a commercial fisherman?

A Since 1978.

Q What kind of commercial fisherman? (Indiscernible).

A I purseine, I gill net and I used to spot herring when we had herring.

Q So when you were a purseiner or gill netter was that in the salmon fisheries? Was that for salmon?

STATE OF ALASKA v DAVID HAEG 4MC-04-24CR

Aurora Court Reporting

A Salmon. Salmon. I'm sorry, I don't hear well.

Q Okay. And that was in the salmon fisheries?

A Yes.

Q And where in the state did you do your salmon fishing?

A In Prince William Sound, and on the Copper River Delta.

Q Other than being a commercial fisherman have you had any other occupations?

A Yes. I was a fish and wildlife protection officer for five years and prior to that I was a commercial pilot, prior to that I was an A&P mechanic. And prior to that I was a kid.

Q What years were you a fish and wildlife enforcement officer?

A From '73 to '78.

Q And where was that at?

A In Ketchikan and then in Cordova.

Q Are you still fishing commercially?

A Yes, I am.

Q Do you know the defendant in this case, David Haeg?

A Very well.

Q And how do you know him?

A Let's see. He was about 19, maybe 20 when he wanted Dan France to build an airplane for him and Dan was busy so Dan referred David to -- referred me to David (indiscernible) to me. So he came and talked to me

STATE OF ALASKA v DAVID HAEG 4MC-04-24CR

Aurora Court Reporting

about this airplane that he wanted to build, and wanted to know if I'd work with him on it. We made an agreement and we went to work in the winter time. He was commercial fishing during the summer and so was I, so it was -- it took us a couple years to finish -- couple winters to finish it. And so I got to know him very well.

Q All right. What kind of plane was this?

A This was the Batcub, the PA-12.

Q The PA-12, the airplane that we've all come to call in this proceeding the Batman plane?

A Well, it's been redone since he and I did it, but, yes, it's the same design, yes.

Q So how long has he had this plane?

A Since he was 20 years old, something like that. Well, it took two years to build it, so -- let's see, so 22 and he's 38 now, aren't you, Dave?

MR. HAEG. (Indiscernible).

Q All right. So he's had it for quite some time?

A Oh, yeah.

Q Tell us the kind of -- other than the contacts you had with him in building the plane, what other kind of contacts have you had with David over the years?

A Well, in herring spotting he -- I took him over to the Sound. He flew back seat for me for part of a season

STATE OF ALASKA v DAVID HAEG 4MC-04-24CR

Aurora Court Reporting

and then there was a fatality in the herring fishery and David took over that position, and was very successful. He's good at whatever he does.

Q Okay. Over the years, Mr. Jones, have you developed an opinion about Mr. -- about David's character since you've known him?

A Without a doubt.

Q And what is that opinion?

A I wouldn't be surprised if he couldn't walk on water. No. I think he's -- he's -- well, I love him like he's my son. He -- I think he's just a wonderful person, he's got a beautiful family.

Q Now you know that he was convicted in this case of several fishing -- I mean hunting violations?

A That's true, I know.....

Q And several counts of.....

A Concerning the wolves, yes.

Q Concerning hunting wolves, same day airborne, unlawful possession of game, making a false statement regarding the taking of game. Also hunting wolverine out of season -- trapping out of season. Despite your knowledge of these convictions what do you think of Mr. Haeg?

A Well, I wasn't familiar with wolverine, I don't understand that charge, but the wolves -- first off, you

STATE OF ALASKA v DAVID HAEG 4MC-04-24CR

Aurora Court Reporting

have to look at David's life. He was raised in Chinitna Bay in the wilderness. His dog -- his folks dog was killed by wolves. Then you have to look at what's going on. We all know that there's mismanagement by our fish and game that we're not -- we aren't doing the charge that we have as far as managing our resources on a sustained yield basis. And we all sitting here know that they -- that the influence of the Sierra Club and -- and all the Walt Disney lovers that are influencing our state government to where they're not allowing management by fish and game of the wolves. We used to have poison programs and all kinds of programs to keep them in balance with our other game that we used. They -- they are a predator and the other ones are -- are game that we harvest and we don't harvest the wolves for -- as consumption. So -- but we aren't managing them as a predator so that we can maintain the moose in a balanced situation. And -- so it's -- it's hap -- it's gone on for so long that the frustration level is very high. I don't -- I admit that what David has done, the way he handled the situation is wrong. He'll admit it's wrong to me, but -- but the frustration of it -- have you read -- well, I shouldn't ask you the questions, I'm sorry. But if you've read Harrower's letters to Governor Knowles. The -- the frustration level has been

STATE OF ALASKA V DAVID HAEG 4MC-04-24 CR

Aerona Court Reporting

1 A I never -- I never saw him move

2 Q Okay. That's the one you told Mr. Haeg that had been

3 chased off of whatever, right?

4 THE COURT: That was on the 5th

5 MR. LEADERS: Okay. Apologies, that's the 5th, okay

6 Q But you don't note that anywhere?

7 A No

8 Q The -- if it possible you -- the days may have somehow

9 gotten mixed up or confused in any way during your hunt?

10 A No

11 Q All right. The -- Mr. Jayo's moose was taken fairly

12 early in the morning?

13 A Yes, as -- as I stated, around 7:30 that morning.

14 Q Okay. Shortly after light then?

15 A Yes

16 Q You guys had to hike how far?

17 A We hiked approximately two and a half miles. We started

18 about 5:00 o'clock in the morning. At that time of year

19 about 5:30 is when it starts getting twilight on, and

20 by 6:00 o'clock you've got enough -- plenty of light to

21 -- to hunt. 7:00 o'clock the -- the sun wasn't up over

22 the -- the Revelation Mountains yet

23 Q So it took you almost a couple hours to get down to this

24 location?

25 A Yes

- 1257 -

1 A Two shots, yes

2 Q The initial?

3 A One from the --

4 Q To take it down?

5 A One from -- one from my rifle # 375 and one from Doug

6 Jayo's rifle which is I believe he was shooting 330

7 Q Okay. They were spaced approximately 15, 20 minutes

8 apart or so?

9 A Correct

10 Q And then there was a lot of flying activity after that?

11 A Yes

12 Q Mr. Haeg's phone?

13 A Correct

14 Q He hadn't -- you hadn't noticed any other planes in that

15 area flying during the few days that you -- the couple

16 days you were hunting that specific area?

17 A No, I did not. I've heard other planes but I did not

18 observe them with my eyes. Maybe not fly up into that

19 valley.

20 Q So you heard them in the distance type thing?

21 A Correct

22 Q I mean you can hear planes off for miles away at times

23 (indiscernible)?

24 A At times, yeah, you can hear them a long ways

25 Q Okay

- 1259 -

1 Q Roughly, I guess, we heard the pack is about a mile or

2 four earlier?

3 A Roughly -- roughly, yeah

4 Q That's pretty accurate?

5 A Yes. Uh-huh (Affirmative)

6 Q The -- were you -- I guess I was a little bit unclear on

7 some of this. Someone -- you climbed a tree for

8 observation once you crossed the river and that's where

9 you first see the cows?

10 A No

11 Q Oh, okay

12 A We did not see any moose from -- from the tree

13 Q From the tree, I see, okay

14 Q When we came down and I decided to take Doug a hike

15 further down the ridge so I could see a little further

16 down river, that the river bend made a shallow bend to

17 the left and then it came back hard to the right, down

18 by the sandbar that Dave landed on, later, and that's

19 where I saw the -- the two cows along the river

20 Q And that's where you then called -- from that location

21 is where you called the bull to?

22 A Correct. I went down maybe 20 yards over a big rock or a

23 boulder (high) to Doug to have a logging down steady rest

24 Q Okay. And it was not close observation to kill this

25 moose?

- 1258 -

1 A The weather wasn't conducive to -- to seeing a lot of

2 them

3 MR. LEADERS: I have no further questions

4 TONY ZELLERS

5 testified as follows on:

6 REDIRECT EXAMINATION

7 BY MR. ROBINSON

8 Q Mr. Zellers, you entered a plea of, I think, no contest

9 to your charges in this wolf case, right?

10 A That's correct

11 Q And you were required to come to court and testify

12 truthfully were you not?

13 A Correct

14 Q And in your opinion, when you came to testify in the

15 trial did you give truthful testimony?

16 A Yes, I did

17 Q And anything you said today, was it truthful testimony?

18 A Yes, it was

19 Q Particularly with your diary concerning when you noted

20 the day that Mr. Jayo shot this moose, is there anything

21 untruthful about that?

22 A No, there isn't.

23 Q Is there anything untruthful about the fact that before

24 Mr. Jayo took this moose on the morning of September 7th

25 that Mr. Haeg was not flying around, was not -- was not

- 1260 -

5326155

STATE OF ALASKA v DAVID HAEG 4MC-04-24 CR

Aurora Court Reporting

1 Kind of communications from the airplane to direct that  
 2 hunt for Mr. Jupp?  
 3 A No, he wasn't.  
 4 Q And that's truthful?  
 5 A That's truthful.  
 6 Q As truthful as you testified about manners of trial  
 7 here?  
 8 A Yes, it is.  
 9 MR. ROBINSON: I don't have anything further.  
 10 TONY ZELLERS  
 11 testified as follows on  
 12 RE-CROSS EXAMINATION  
 13 BY MR. LEADERS  
 14 Q The -- let me ask you. In your mind, your perception of  
 15 the wolf charges which you pled to and that now Mr.  
 16 Haeg's -- do you consider those less serious based on  
 17 the nature that they were wolves taken than you do what  
 18 we're discussing here, whether or not a moose, a game  
 19 animal was taken from the -- with the use of an  
 20 airplane?  
 21 A No, it's the same charge. Same day -- same day  
 22 airborne, so.  
 23 Q So you don't see -- okay, you don't perceive any  
 24 difference between the wolves or the moose or anything  
 25 like that? As to the way they should be treated?  
 - 1261 -

1 A No, I've got probably -- I don't like the wolves any  
 2 more than anybody else out in this area.  
 3 Q Right.  
 4 A But -- because I mean if I look at this charge versus  
 5 this charge they're the same charge, so.  
 6 Q Should it be treated any differently in your mind?  
 7 A No.  
 8 MR. LEADERS: Nothing further.  
 9 THE COURT: Anything else?  
 10 MR. ROBINSON: No.  
 11 THE COURT: Okay. Thank you, Mr. Zellers, you can go  
 12 back.  
 13 MR. ROBINSON: Before we get going again I think we're  
 14 going to need about a 10 minute break.  
 15 THE COURT: At least I have to get to the store because  
 16 I need to get some...  
 17 MR. ROBINSON: So why don't we take long enough to go to  
 18 the store and...  
 19 THE COURT: Get some diet Coke. And I'm going to  
 20 commander Trooper Gibbens and his vehicle to take for his use.  
 21 I don't have any transportation.  
 22 MR. ROBINSON: All right.  
 23 THE COURT: All right, Trooper Gibbens?  
 24 TROOPER GIBBENS: Well, yeah.  
 25 MR. ROBINSON: You're okay with that?  
 - 1262 -

1 MR. LEADERS: As long as there's no issue of...  
 2 MR. ROBINSON: Oh, no, no, I don't have any problem.  
 3 THE COURT: Yeah, I'm just telling you that I -- I can  
 4 see you're not going to talk about the case.  
 5 MR. ROBINSON: You've been commandeered.  
 6 THE COURT: He's just going to drive me over there to get  
 7 some diet Coke and we'll be back.  
 8 MR. ROBINSON: All right.  
 9 THE COURT: Why don't we start back up in like 10...  
 10 MR. ROBINSON: Okay.  
 11 THE COURT: Okay?  
 12 (Whispered conversation)  
 13 THE COURT: Off record.  
 14 (Off record)  
 15 THE COURT: Okay. We're back on record. Who did you  
 16 want to call, Mr. Leaders? Or Mr. Robinson, I'm sorry.  
 17 MR. ROBINSON: Mr. Wendell Jones.  
 18 THE COURT: Okay.  
 19 (Whispered conversation)  
 20 THE COURT: Mr. Jones, if you'd raise your right hand  
 21 (Oath administered).  
 22 MR. JONES: I do.  
 23 THE COURT: Okay. Please be seated.  
 24 MR. JONES: Thank you.  
 25 WENDELL L. JONES  
 - 1263 -

1 called as a witness on behalf of the defendant, testified as  
 2 follows on.  
 3 DIRECT EXAMINATION  
 4 THE COURT: Spell your first and last name for the  
 5 record, please.  
 6 A Wendell L. Jones, W-e-n-d-e-l-l L. J-o-n-e-s.  
 7 THE COURT: Okay. Thank you, sir.  
 8 BY MR. ROBINSON  
 9 Q Good evening, Mr. Jones. Where do you live?  
 10 A I live in Cordova, Alaska.  
 11 Q And how long have you lived there?  
 12 A Well, I first moved there in '76 and I moved to Soldotna  
 13 in about '84. Moved back to Cordova about '94.  
 14 Q And what is your occupation?  
 15 A I'm sorry?  
 16 Q What is your occupation?  
 17 A I'm a commercial fisherman.  
 18 Q (Coughing) Excuse me. How long have you been a  
 19 commercial fisherman?  
 20 A Since 1978.  
 21 Q What kind of commercial fisherman? (Indiscernible)  
 22 A I put mine, I gill net and I used to spot herring when  
 23 we had herring.  
 24 Q So when you were a pursener or gill netter was that in  
 25 the section 55a(b)? Was that for salmon?  
 - 1264 -



STATE OF ALASKA V DAVID HAEG 4MC-04-24 CR

Aurora Court Reporting

1 A Salmon. Salmon. I'm sorry I don't hear well.  
 2 Q Okay. And that was in the salmon fisheries?  
 3 A Yes.  
 4 Q And where in the state did you do your salmon fishing?  
 5 A In Prince William Sound, and on the Copper River Delta.  
 6 Q Other than being a commercial fisherman, have you had any  
 7 other occupations?  
 8 A Yes. I was a fish and wildlife protection officer for  
 9 five years and prior to that I was a commercial pilot.  
 10 prior to that I was an A&P mechanic. And prior to that  
 11 I was a kid.  
 12 Q What years were you a fish and wildlife enforcement  
 13 officer?  
 14 A From '73 to '78.  
 15 Q And where was that at?  
 16 A In Ketchikan and then in Cordova.  
 17 Q Are you still fishing commercially?  
 18 A Yes, I am.  
 19 Q Do you know the defendant in this case, David Haeg?  
 20 A Very well.  
 21 Q And how do you know him?  
 22 A Let's see. He was about 19, maybe 20 when he wanted Dan  
 23 France to build an airplane for him and Dan was busy so  
 24 Dan referred David to -- referred me to David  
 25 (indiscernible) to me. So he came and talked to me  
 - 126 -

1 and then there was a fatality in the herring fishery and  
 2 David took over the position, and was very successful.  
 3 He's good at whatever he does.  
 4 Q Okay. Over the years, Mr. Jones, have you developed an  
 5 opinion about Mr. -- about David's character since  
 6 you've known him?  
 7 A Without a doubt.  
 8 Q And what is that opinion?  
 9 A I wouldn't be surprised if he couldn't walk on water.  
 10 No. I think he's -- he's -- well, I love him like he's  
 11 my son. He -- I think he's just a wonderful person,  
 12 he's got a beautiful family.  
 13 Q Now you know that he was convicted in this case of  
 14 several fishing -- I mean hunting violations?  
 15 A That's true, I know.  
 16 Q And several counts of --  
 17 A Concerning the wolves, yes.  
 18 Q Concerning hunting wolves, same day airborne, unlawful  
 19 possession of game, making a false statement regarding  
 20 the taking of game. Also hunting wolverine out of  
 21 season -- trapping out of season. Despite your  
 22 knowledge of these convictions what do you think of Mr.  
 23 Haeg?  
 24 A Well, I wasn't familiar with wolverine, I don't  
 25 understand that charge, but the wolves -- Sure, off you  
 - 1267 -

1 about this airplane that he wanted to build, and wanted  
 2 to know if I'd work with him on it. We made an  
 3 agreement and we went to work in the winter time. He  
 4 was commercial fishing during the summer and so we L  
 5 so it was -- it took us a couple years to finish --  
 6 couple winters to finish it. And so I got to know him  
 7 very well.  
 8 Q All right. What kind of plane was that?  
 9 A This was the Outcab, the PA-12.  
 10 Q The PA-12, the airplane that we've all come to call it  
 11 this preceding the Bauman plane?  
 12 A Well, it's been redone since he and I did it, but yes,  
 13 it's the same design, yes.  
 14 Q So how long has he had this plane?  
 15 A Since he was 20 years old, something like that. Well,  
 16 it took two years to build it, so -- let's see, so 22  
 17 and he's 38 now, aren't you, Dave?  
 18 MR. HAEG. (Indiscernible)  
 19 Q All right. So he's had it for quite some time?  
 20 A Oh, yeah.  
 21 Q Tell us the kind of -- other than the contract you had  
 22 with him in building the plane, what other kind of  
 23 contacts have you had with David over the years?  
 24 A Well, in normal speaking he -- I took him over to the  
 25 Sound. He fish boat was for me for one of a season  
 - 1268 -

1 have to look at David's life. He was raised in Chinma  
 2 Bay in the wilderness. His dog -- his father dog was  
 3 killed by wolves. Then you have to look at what's going  
 4 on. We all know that there's mismanagement by our fish  
 5 and game that we're not -- we aren't doing the charge  
 6 that we have as far as managing our resources on a  
 7 sustained yield basis. And we all sitting here know  
 8 that they -- that the influence of the Sierra Club and  
 9 -- and all the Walt Disney lovers that are influencing  
 10 our state government to where they're not allowing  
 11 management by fish and game of the wolves. We used to  
 12 have poison programs and all kinds of programs to keep  
 13 them in balance with our other game that we used. They  
 14 -- they are a predator and the other ones are -- are  
 15 game that we harvest and we don't harvest the wolves for  
 16 -- as consumption. So -- but we aren't managing them as  
 17 a predator so that we can maintain the moose in a  
 18 balanced situation. And -- so it's -- it's -- it's  
 19 gone on for so long that the situation level is very  
 20 high. I don't -- I admit that what David has done, the  
 21 way he handled the situation is wrong. He'll admit it's  
 22 wrong to me, but -- but the frustration of it -- have  
 23 you read -- well, I should ask you the questions, I'm  
 24 sorry. So if you've read Governor's letters to  
 25 Governor Knowles. The -- the frustration level has been  
 1268

Page 55 of 55  
01405

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.<sup>1</sup> 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.<sup>2</sup> After further consideration, David Haeg's request for the disqualification of Judge Murphy is GRANTED for the following reasons.<sup>3</sup>

<sup>1</sup> See Order (April 30, 2010).

<sup>2</sup> 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).

<sup>3</sup> See also the confidential order supplementing this decision not yet issued by the court.

ORDER NARROWING SCOPE OF REVIEW OF RECUSAL IN P.C.R.

Case No. 3HO-10-00064 CI

Page 1 of 5

Exhibit 3

01406

Page 1 of 5

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<sup>4</sup> 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.<sup>5</sup> As the transcript reflects, Judge

---

<sup>4</sup> 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.

<sup>5</sup> 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. . . .

ORDER NARROWING SCOPE OF REVIEW OF RECUSAL IN P.C.R.

Case No. 3HO-10-00064 CI

Page 3 of 5

Page 3 of 5  
01408

matter.<sup>6</sup> The purpose of this rule is to further the important goal of “promoting ‘public confidence in the integrity and impartiality of the judiciary.’”<sup>7</sup>

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.<sup>8</sup> 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.<sup>9</sup> 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,<sup>10</sup> 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.

---

<sup>6</sup> *Perotti v. State*, 806 P.2d 325, 327-28 (Alaska 1991).

<sup>7</sup> *Arnidon v. State*, 604 P.2d 575, 578 (Alaska 1979) (quoting Canon 2(A)).

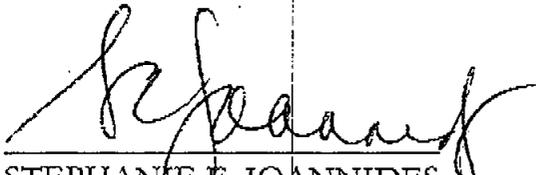
<sup>8</sup> For a more detailed discussion of Haeg’s concerns, see this court’s confidential order supplementing this order, to be issued hereafter.

<sup>9</sup> 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 25<sup>th</sup> 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/handed to each of the following at their address of record  
J. Mori  
Judicial Assistant

Haeg  
Mussen  
Peterson  
AK Judicial Council

<sup>10</sup> Cf. transcript of proceedings, quoted *supra* at n. 5.

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)

SUPPLEMENT AND CORRECTION ORDER

One of the issues raised by Haeg and addressed by this court is a claim regarding a missing letter. Haig claims that

[i]n spite of his attorneys' counsel that it was not a legal defense and over his attorneys' (sic) objections that he do so, Haeg wrote a 16-page pretrial letter to the court detailing how, when, where, and why the SOA told and induced him to do exactly what he was charged with doing. [Exhibit 10] Long after trial, sentencing, and after it could be considered on appeal, Haeg's wife Jackie found that while evidence remained in the record proving it has been submitted, Haeg's letter evidencing the legal and "complete" defense that his attorneys told him was not a legal defense, was removed out of the court record. [Exhibit 13, TR, and AR]<sup>1</sup>

<sup>1</sup> Applicant's Memorandum and Affidavit in Support of David Haeg's Application for Post-Conviction Relief (November 30, 2009) at 35-36.

Haeg clarified in a July 9, 2010 status hearing that the "evidence remain[ing] in the record" was a faxed pleading sent to the court on November 8, 2004 entitled "Notice of Supplemental Letter for Sentencing Hearing."<sup>2</sup>

A re-review of the electronic trial record revealed that notwithstanding Haeg's trial counsel's characterization of the Notice of Supplemental Letter for Sentencing Hearing as faxed for consideration at a November 9, 2004 "sentencing hearing," Haeg's November 9, 2004 hearing did not result in his sentencing as the parties were still resolving the terms of his change of plea.<sup>3</sup> Therefore, this court's finding that there was no prejudice due to the letter being allegedly filed after Haeg's conviction was incorrect. Notwithstanding this error by the court, the record does not support a finding of fault by Judge Murphy.<sup>4</sup>

DONE this 25th day of August 2010, at Anchorage, Alaska.

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  
[Signature]  
Judicial Assistant

Haeg  
Nasser  
Peterson  
AK Judicial

[Signature]  
Stephanie E. Joannides  
Superior Court Judge

<sup>2</sup> See also Haeg's 7-25-10 Motion to Supplement the Case to Disqualify Judge Murphy for Cause (July 27, 2010) Ex. 2, Ex. 6 at p. 2.

<sup>3</sup> Haeg's sentencing hearing took place approximately one year later, on September 29, 2005.

<sup>4</sup> As discussed in the July 28, 2010 Order Narrowing Scope, the pleading submitted two letters attesting to Haeg's character, not Haeg's explanatory letter. The faxed pleading appears to provide two additional letters to supplement the large quantity of letters submitted in the November 4, 2004 pleading, entitled Notice of Filing Letters for Sentencing Hearing, purportedly "for consideration during the sentencing in the above-captioned case scheduled before Magistrate Murphy in McGrath on November 9, 2004."

*Page 2 of 2*  
01412

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA  
 THIRD JUDICIAL DISTRICT AT ANCHORAGE  
 CHAMBERS OF JUDGE STEPHANIE E. JOANNIDES

FAX TRANSMITTAL

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TO: D. Haeg  
 FAX #: 907-262-8867

TO: Maria Greenstein  
 907-272-9309

FROM: Superior Court Judge Stephanie Joannides  
 (Patrick Sherry)  
 FAX#: (907) 264-0518

SUBJECT: *David Haeg*  
*Numerous Orders*

DATE: March 25, 2011

NUMBER OF PAGES INCLUDING THIS ONE: 77

MESSAGE:

	OK	16	8'45"	25:04:44pm	Normal	919072628867
Note	Result	Page	Time	Start	Mode	Fax/Phone Number

P.1 ALASKA COURT SYSTEM Fax 92640503  
 Mar 25 2011 04:53pm

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IN THE SUPERIOR COURT FOR THE STATE OF ALASKA  
 THIRD JUDICIAL DISTRICT AT ANCHORAGE  
 CHAMBERS OF JUDGE STEPHANIE E. JOANNIDES

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TO: D. Haeg  
 FAX #: 907-262-8867

TO: Marla Greenstein  
 907-272-9309

FROM: Superior Court Judge Stephanie Joannides  
 (Patrick Sherry)

FAX#: (907) 264-0518

SUBJECT: *David Haeg*  
*Numerous Orders*

DATE: March 25, 2011

NUMBER OF PAGES INCLUDING THIS ONE: 77

MESSAGE:

		62	8.27"	25:03:35pm	Normal	92729309
Note	Result	Page	Time	Start	Mode	Fax/Phone Number

P.1  
 AKCOURTSYSTEMANCHORAGE Fax 9072640710  
 Mar 25 2011 03:44pm

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IN THE SUPERIOR COURT FOR THE STATE OF ALASKA  
 THIRD JUDICIAL DISTRICT AT ANCHORAGE  
 CHAMBERS OF JUDGE STEPHANIE E. JOANNIDES

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TO: D. Haeg  
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 907-272-9309

FROM: Superior Court Judge Stephanie Joannides  
 (Patrick Sherry)  
 FAX#: (907) 264-0518

SUBJECT: *David Haeg*  
*Numerous Orders*

DATE: March 25, 2011

NUMBER OF PAGES INCLUDING THIS ONE: 77

MESSAGE:

			25:03:31pm	2.26	15	# 0 K	92729309
Note	Result	Page	Start	Time	Page	Result	Fax/Phone Number

P:1  
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 Mar 25 2011 03:34pm

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**Fax Header Information**

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Alaska Court System  
907-264-0720  
2011-Mar-25 04:02 PM

<b>Fax Job</b>	<b>Date/Time</b>	<b>Type</b>	<b>Identification</b>	<b>Duration</b>	<b>Pgs</b>	<b>Result</b>
14054	2011-Mar-25 03:33 PM	Send	919072628867	28:27	51	Success

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA  
 THIRD JUDICIAL DISTRICT AT ANCHORAGE  
 CHAMBERS OF JUDGE STEPHANIE E. JOANNIDES

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 (Patrick Sherry)  
 FAX#: (907) 264-0518

SUBJECT: *David Haeg*  
*Numerous Orders*

DATE: March 25, 2011

NUMBER OF PAGES INCLUDING THIS ONE: 77

MESSAGE:

Fax Job	Date/Time	Type	Identification	Duration	Pgs	Result
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Alaska Court System  
 907-264-0720  
 2011-Mar-25 03:33 PM

Fax Header Information

Fax Call Report

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HP LaserJet M3035 MFP Series

Page 1

Check Message

Mar 25 2011 04:44pm

Repeat transmission.

919072628867

Error on scan at page 17

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

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TO: David Haeg  
FAX #: (907) 262 8867

TO: Peter Masser  
FAX #: (907) 258 8751

TO: Andrew Peterson  
FAX: (907) 269 6270

TO: Marla Greenstein  
FAX: (907) 272 1033

FROM: Stephanie Joannides, Superior Court Judge  
(907) 264-0430  
Fax #: (907) 264-0518

SUBJECT: 3AHO-10-64 CI

DATE: August 27, 2010

NUMBER OF PAGES INCLUDING THIS ONE: 43

MESSAGE: Please call if you experience problems with this transmission.

Exhibit 2

10/27/2010

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Note	Result	Page	Time	Start	Mode	Fax/Phone Number

P.1 ALASKA COURT SYSTEM Fax 92640503 Mar 25 2011 05:46pm

\*\* Transmittal Conf. Report \*\*

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

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TO: David Haeg  
FAX #: (907) 262-8867

TO: Peter Masser  
FAX #: (907) 258-8751

TO: Andrew Peterson  
FAX: (907) 269-6270

TO: Marla Greenstein  
FAX: (907) 272-1033

FROM: Stephanie Juanides, Superior Court Judge  
(907) 264-0430  
Fax #: (907) 264-0518

SUBJECT: BAHO-10-64 CI

DATE: August 27, 2010

NUMBER OF PAGES INCLUDING THIS ONE: 43

MESSAGE: Please call if you experience problems with this transmission.

Exhibit 2

Check condition of remote fax.						
919072628867	Normal	25:05:00pm	0'00"	3	D.O.7	
Fax/Phone Number	Mode	Start	Time	Page	Result	Note

P.1 ALASKA COURT SYSTEM Fax 92640503 Mar 25 2011 05:00pm

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

## FAX TRANSMITTAL

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TO: David Haeg  
FAX #: (907) 262 8867

TO: Peter Masser  
FAX #: (907) 258.8751

TO: Andrew Peterson  
FAX: (907) 269.6270

TO: Marla Greenstein  
FAX (907) 272.1033

FROM: Stephanie Joannides, Superior Court Judge  
(907) 264-0430  
Fax #: (907) 264-0518

SUBJECT: 3AHO-10-64 CI

DATE August 27, 2010

NUMBER OF PAGES INCLUDING THIS ONE: 43

MESSAGE: Please call if you experience problems with this transmission.



Exh. 1. Additionally, the state is providing this court with a registry form from the FAA which shows that The Bush Pilot, Inc. has registered a PA-18-150 Super Cub aircraft with N-Number 2025. See Exh. 2. The state believes that the value of this asset and the income received by this corporation should be considered by the court when determining if Haeg is entitled to counsel at public expense.

DATED at Anchorage, Alaska this 18<sup>th</sup> day of March, 2011.

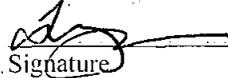
JOHN J. BURNS  
ATTORNEY GENERAL

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*

  
Signature

*3/18/11*

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

# 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: 3/17/2011

### Filed Documents

(Click above to view filed documents that are available.)

### Print Blank Biennial Report

(To view the report, you must have Acrobat Reader installed.)

#### Entity Name History

Name	Name Type
THE BUSH PILOT, INC.	Legal

#### Business Corporation Information

**AK Entity #:** 57078D  
**Status:** Active - Non Compliant  
**Entity Effective Date:** 11/17/1995  
**Primary NAICS Code:**  
**Home State:** AK  
**Principal Office Address:** PO BOX 123  
 SOLDOTNA AK 99669  
**Expiration Date:** Perpetual  
**Last Biennial Report Filed Date:** 10/18/2006  
**Last Biennial Report Filed:** 2007

#### Registered Agent

**Agent Name:** DAVID HAEG  
**Office Address:** LOT 3 BLK 2 NORTH SHORE RIDGE SUBD  
 SOLDOTNA AK 99669  
**Mailing Address:** PO BOX 123  
 SOLDOTNA AK 99669  
**Principal Office Address:** PO BOX 123  
 SOLDOTNA AK 99669

#### Officers, Directors, 5% or more Shareholders, Members or Managers

**Name:** David S Haeg  
**Address:** PO Box 123  
 Soldotna AK 99669  
**Title:** President  
**Owner Pct:** 100

Name: David S Haeg

EXHIBIT 1  
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

Aircraft Inquiries

- [N-Number](#)
- [Serial Number](#)
- [Name](#)
- [Make / Model](#)
- [Engine Reference](#)
- [Dealer](#)
- [Document Index](#)
- [State and County](#)

FAA REGISTRY  
N-Number Inquiry Results

N2025S is Assigned

**Data Updated each Federal Working Day at Midnight**



[Territory and Country](#)

Aircraft Description

- [Pending / Expired / Canceled Registration Reports](#)
- [N-number Availability](#)

Serial Number	18-7609097	Type Registration	Corporation
Manufacturer Name	PIPER	Certificate Issue Date	08/23/1999
Model	PA-18-150	Expiration Date	06/30/2012
Type Aircraft	Fixed Wing Single-Engine	Status	Valid
Pending Number Change	None	Type Engine	Reciprocating
Date Change Authorized	None	Dealer	No
MFR Year	1976	Mode S Code	50316211
		Fractional Owner	NO

- Request a Reserved N-Number:
- [Online](#)
- [In Writing](#)

- Reserved N-Number Renewal
- [Online](#)

- Request for Aircraft Records
- [Online](#)

Registered Owner

Name	BUSH PILOT INC		
Street	PO BOX 123		
City	SOLDOTNA	State	ALASKA
County	KENAI PENINSULA	Zip Code	99669-0123
Country	UNITED STATES		

Help

[Main Menu](#)

[Aircraft Registration](#)

[Aircraft](#)

[Downloadable Database](#)

Airworthiness

EXHIBIT 2  
PAGE 1 OF 2

Definitions

N-Number

Format

Registrations at

Risk

Contact Aircraft

Registration

Engine Manufacturer	LYCOMING	Classification Standard	
Engine Model	0-320 SERIES	Category	Normal
			Utility
		A/W Date	08/26/1999

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](http://aircraft.faa.gov/e.gov/ND/airrecordsND.asp)

**Other Owner Names**

None

**Temporary Certificate**

Certificate Number	T995313	Issue Date	08/23/1999	Expiration Date	09/22/1999
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**Fuel Modifications**

None

**Data Updated each Federal Working Day at Midnight**



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

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

MAR 17 2011

Clerk of the Trial Courts

By NSM Deputy

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)

**3-17-11 REPLY TO JUDGE BAUMAN'S 3-4-11 REPRESENTATION ORDER**

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

COMES NOW Applicant, DAVID HAEG, in the above case and hereby replies to Judge Bauman's 3-4-11 representation order.

**Prior Proceedings**

On February 15, 2011 Judge Bauman held a representation hearing for Haeg. At the conclusion of this hearing Judge Bauman asked Haeg to see if attorney Dale Dolifka would be willing to assist Haeg and for Haeg to provide the court with a financial statement to determine if he was indigent.

On February 22, 2011 Haeg provided the court with a financial statement and notification that Dolifka was unwilling to assist Haeg.

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On March 4, 2011 Judge Bauman issued an order requesting more information from Haeg and presenting Haeg with a number of different options to exercise the right to counsel.

### Discussion

Haeg will address Judge Bauman's questions in order.

(1) On page 4 and 5 of his order Judge Bauman asks if Haeg could "readily convert" his airplane hanger to cash without compromising his ability to earn income and if Haeg could get a loan on the hanger or other property without undue financial strain on his ability to care for his dependants. Haeg's hanger and home are combined in one 60' by 60' building – so Haeg could not sell his hanger without selling his home. In addition, the \$39,164 loan Haeg has is against his hanger/home and he had a hard time obtaining this loan (which was first obtained after, and because of, Haeg's conviction), as the building is nonstandard. Wells Fargo and First National Banks refused to make this loan and Haeg finally obtained it from a private party. Now, with the addition of a private loan against the property, it will be doubly impossible to obtain a loan from a bank.

(2) On page 8 Judge Bauman asks that Haeg provide the income of his wife Jackie. Jackie Haeg makes \$35, 747 per year.

(3) On page 8 Judge Bauman asks Haeg to contact at least two private counsel admitted to practice in Alaska to find out what they would charge to undertake representation of Haeg in his PCR proceeding for hybrid representation or for stand-by or advisory representation. Haeg contacted attorneys Greg Gabriel

and Peter Ehrhardt. Gabriel stated the cost of helping conduct a PCR with so many facts would be at least \$25,000 and Ehrhardt stated help that included ineffective assistance claims against 3 attorneys would be well over \$35,000.

#### **Additional Expenses Not Included in Original Financial Statement**

Haeg and his wife have identified further expenses not include in the original financial statement. Haeg pays the State approximately \$10,000 per year to lease their hunting guide lodge and camps from the State and pays \$50 per month on the \$6500 fine and \$4500 restitution imposed on Haeg.

#### **Conclusion**

Jackie Haeg, because of the Haeg family's financial situation and what happened with the first 3 private attorneys, has stated the Haeg family cannot spend tens of thousands more on another private attorney. Jackie and all following this case wonder if this is why the State illegally seized and forfeited an airplane owned by a corporation that was never charged or found guilty and why the State refuses to return Haeg's guide license after the court ordered 5-year suspension is over – do anything, even if it's illegal, to keep the Haeg's broke so they cannot fight. *“Power over a man's subsistence is power over his will.”* Alexander Hamilton, Founding Father. The ordering of the State to return the airplane and Haeg's guide license would greatly improve the Haeg's financial situation.

Haeg would still like to have the court appoint a public defender to help while letting Haeg control his case. If not appointed such counsel Haeg respectfully asks that Criminal Rule 35.1 (f) (1) be carefully followed:

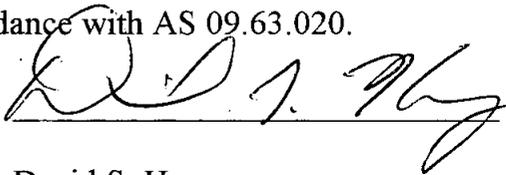
“In considering a pro se [PCR] application the court shall consider substance and disregard defects in form...”

In addition Haeg asks that non-attorneys be allowed to sit with him and take notes and otherwise provide assistance during proceedings:

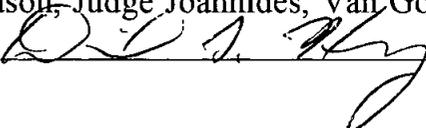
“But rather than request hybrid representation or renew his request for co-counsel, he [defendant] instead asked that the court allow him to have a non-attorney sit with him during trial to take notes and otherwise provide assistance. Judge Suddock granted this request, and Judge Card honored it at trial.” Bradley v. State, 197 P.3d 209 (Ak App. 2008)

Haeg will also continue to explore the surprising list of options Judge Bauman has made available to help insure a just outcome of this PCR proceeding.

I declare under penalty of perjury the forgoing is true and correct. Executed on March 17, 2011. A notary public or other official empowered to administer oaths is unavailable and thus I am certifying this document in accordance with AS 09.63.020.



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

**Certificate of Service:** I certify that on March 17, 2011 a copy of the forgoing was served by mail to the following parties: AAG Peterson, Judge Gleason, Judge Joannides, Van Goor, U.S. Department of Justice, FBI, and media. By: 

Alaska Commission on Judicial Conduct

September 8, 2010

*sent to all members - Return receipt to Judge Ben Esch*

Dear Commission member,

Enclosed is a referral to the Commission from Superior Court Judge Stephanie Joannides

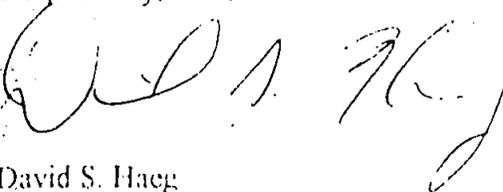
This referral contains irrefutable evidence of corruption in Judge Margaret Murphy and, even more shocking, irrefutable evidence that Judicial Conduct Commission executive director/investigator Marla Greenstein falsified her investigation to cover up the evidence of Judge Murphy's corruption

I formally ask that the Commission require an independent entity, such as the US Department of Justice, to conduct a complete and independent investigation/prosecution of this referral.

With the level of corruption indicated, this is the only way to be sure of an unbiased, complete, and thorough investigation/prosecution

Please let me know how you intend to proceed.

Respectfully,

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

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:  
 Judge Ben Esch  
 Box 1110  
 Nome, AK 99762

2. Article Number (Transfer from service label) 7010 1060 0000 8960 6616

COMPLETE THIS SECTION ON DELIVERY

A. Signature  Agent  Addressee  
*Maurice Dunham*  
 B. Received by (Printed Name) Maurice Dunham C. Date of Delivery 9-15-7  
 D. Is delivery address different from item 1?  Yes  No  
 If YES, enter delivery address below:  No

3. Service Type  
 Certified Mail  Express Mail  
 Registered  Return Receipt for Merchandise  
 Insured Mail  C.O.D.

4. Restricted Delivery? (Extra Fee)  Yes  No

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

FILED in the Trial Courts  
State of Alaska Third District  
at Kenai, Alaska  
MAR - 7 2011  
Clerk of the Trial Courts  
By D Deputy

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)

**3-7-11 MOTION TO SUPPLEMENT HAEG'S PCR APPLICATION WITH  
THE ALASKA BAR ASSOCIATION'S MARCH 1, 2011 LETTER TO  
MARLA GREENSTEIN AND THE ALASKA BAR ASSOCIATION'S  
MARCH 1, 2011 LETTER TO DAVID HAEG**

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

COMES NOW Applicant, DAVID HAEG, in the above case and hereby asks that his PCR application be supplemented with the Alaska Bar Association's letters of March 1, 2001 – one to Marla Greenstein and one to David Haeg. See attached letters.

**Prior Proceedings**

On December 22, 2010 Haeg filed an Alaska Bar Association grievance complaint against attorney Marla Greenstein. See court record.

On January 21, 2011 Greenstein responded to Haeg's complaint with a "verified" document. See court record.

On February 4, 2011, Haeg replied to Greenstein's verified response. See court record. Haeg's replied included compelling evidence that Greenstein had falsified her verified response. See court record.

On March 1, 2011 the Alaska Bar Association wrote one letter to attorney Greenstein and one letter to Haeg. In these letters the Alaska Bar Association states: (1) that Haeg's grievance complaint against attorney Greenstein has been accepted for investigation; (2) that the Bar is "deferring our investigation until Mr. Haeg's post-conviction relief proceedings have concluded since the issues he raised in his complaint will be addressed in the PCR proceedings"; (3) that "The courts have better access to facts; are more familiar with the parties, their circumstances, and local issues"; and (4) that "The Bar Association generally defers its investigation so that the courts and the Bar do not reach inconsistent results about the facts or the law." See attached letters.

### **Conclusion**

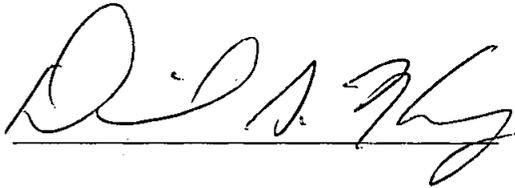
These letters prove the Alaska Bar Association has deferred addressing attorney Greenstein because Haeg's PCR court will do so; Haeg's court is in a better position to determine Haeg's claims against Greenstein; and because the Bar does not want to reach results in conflict with the results of Haeg's PCR. Because of this Haeg respectfully asks these letters be made a part of the record upon which his PCR application is decided.

Attachments

Attachment 1: March 1, 2011 Alaska Bar Association letter to Marla Greenstein

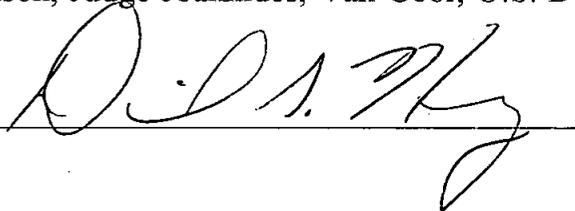
Attachment 2: March 1, 2011 Alaska Bar Association letter to David Haeg

I declare under penalty of perjury the forgoing is true and correct. Executed on March 7, 2011. A notary public or other official empowered to administer oaths is unavailable and thus I am certifying this document in accordance with AS 09.63.020.



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

**Certificate of Service:** I certify that on March 7, 2011 a copy of the forgoing was served by mail to the following parties: AAG Peterson, Judge Gleason, Judge Joannides, Van Goor, U.S. Department of Justice, FBI, and media.

By: 

Attachment 1

**ALASKA BAR**  
**ASSOCIATION**

**COPY**

March 1, 2011

Certified Mail No. 7010 0290 0000 8847 2475  
Return Receipt Requested

**CONFIDENTIAL**

Marla N. Greenstein  
1029 W. 3<sup>rd</sup> Avenue, Suite 550  
Anchorage, AK 99501

RE: ABA File No. 2010D243 (Haeg)  
Grievance against Marla N. Greenstein

Dear Ms. Greenstein:

The Alaska Bar Association received a grievance filed against you by David Haeg on December 28, 2010. After receiving this grievance, we sent a copy to you for initial comment. Your January 21, 2011 reply was considered in determining whether this matter should be accepted for investigation.

Under Alaska Bar Rule 22(a), this matter or grievance has been accepted for investigation. But we are deferring our investigation until Mr. Haeg's post-conviction relief proceedings have concluded since the issues he raised in his complaint will be addressed in the PCR proceedings. No response is due from you at this time. Bar Counsel will notify you when you are required to provide full and fair disclosure in a verified writing of all facts and circumstances pertaining to this grievance under Bar Rule 22(a).

The fact that this matter has been accepted for investigation does not constitute a determination that any ethical violation has occurred. Rather, it reflects Bar Counsel's finding that the grievance meets the criteria for opening an investigation under Alaska Bar Rule 22(a). Please contact me if you have any questions concerning the processing of this matter.

Sincerely,

ALASKA BAR ASSOCIATION



Louise R. Driscoll  
Assistant Bar Counsel

LRD/aib  
cc: David Haeg

20100243603 : C:\D:\DCASE\2010\20100243603\3021a

Attachment ?

**ALASKA BAR  
ASSOCIATION**

March 1, 2011

**CONFIDENTIAL**

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

Re: ABA File No. 2010D243  
Grievance against Marla N. Greenstein

Dear Mr. Haeg:

This letter refers to your grievance against attorney Marla N. Greenstein received December 28, 2010.

Under Alaska Bar Rule 22(a), grievances against attorneys must be in writing, signed by the complainant, and contain a clear statement of details of each act of alleged misconduct. The grievance must contain allegations which, if true, would constitute grounds for attorney discipline. Under Alaska Bar Rule 22(b) you and all persons contacted during the course of an investigation have a duty to maintain the confidentiality of discipline proceedings prior to the initiation of formal proceedings subject to Bar Rule 21(c).

As you know, I sent a copy of your grievance to Ms. Greenstein shortly after you submitted it. Ms. Greenstein was sent a copy of the December 21, 2010, letter and the April 20, 2006, letter as part of your complaint prior to her January 21, 2011, voluntary response. You had an opportunity to reply to Ms. Greenstein's response. You delivered your reply to our office on February 9, 2011.

Your complaint alleges that Ms. Greenstein conspired with Judge Margaret Murphy and Trooper Brett Gibbons to cover up that Trooper Gibbons impermissibly chauffeured Judge Murphy during the time of your trial and sentencing. Your grievance is related to the following court cases: *Haeg v. State*, 3HO-10-00064CI and *State v. Haeg*, 4MC-04-00024CR.<sup>1</sup>

In her August 25, 2010, Supplement and Correction Order relating to these issues, Superior Court Judge Stephanie Joannides concluded that it would be 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 proceedings itself." The record also appears unclear about whether there was any communication related to the specific case before Judge Murphy or whether Judge Murphy exercised appropriate

<sup>1</sup>Your post-conviction relief application (3H)-10-00054CI) has been transferred to Kenai and has been reassigned the following number 3KN-10-01295CI.

David Haeg  
March 1, 2011  
Page 2 of 2

CONFIDENTIAL

vigilance against case-specific ex parte communication when Trooper Gibbons chauffeured her while she was in McGrath.

On February 11, 2011, you moved to supplement your PCR application with a copy of your complaint against Ms. Greenstein. At this time it appears that the issues you raised in your bar complaint will be addressed in your PCR proceedings. It is generally our policy to let civil proceedings run their course without Bar Association intervention. The courts have better access to facts; are more familiar with the parties, their circumstances, and local issues. The Bar Association generally defers its investigation so that the courts and the Bar do not reach inconsistent results about the facts or the law. It seems unlikely that the Bar Association could pursue any of your allegations against Ms. Greenstein without effectively becoming a participant in your PCR application which it cannot do since it has no standing in this proceeding.

Accordingly, bar counsel is opening this file for investigation, but we are deferring our investigation until your post-conviction relief proceedings have concluded. At that time we will determine whether a further investigation is warranted.

Sincerely,

ALASKA BAR ASSOCIATION



Louise R. Driscoll  
Assistant Bar Counsel

LRD/aib

cc: Marla N. Greenstein

2010D243:603 > GAD&MDCASE2010\2010D243\201mod

01439

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT KENAI

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

**ORDER ON REPRESENTATION STATUS**

On February 15, 2011, a representation hearing was held to determine Mr. Haeg's position with regard to counsel and his potential eligibility for counsel at public expense. At that hearing, Mr. Haeg requested time to determine whether attorney Dale Dolifka would be willing to represent him under an Administrative Rule 12 appointment. Alternatively, Mr. Haeg requested appointed counsel to assist him in his PCR application. Mr. Haeg expressed a strong desire to remain in control of the litigation, with the benefit of advice of counsel in what is sometimes called a "hybrid counsel" arrangement. The State requested clarification on whether counsel can be appointed without a determination of indigency. On February 22 Mr. Haeg notified the court that Mr. Dolifka would not be able to represent him. Mr. Haeg renewed his request for court-appointed hybrid counsel.

**Indigency is Required for Court-appointed Counsel.**

Court rules and statutes relating to appointment of counsel at public expense only allow an appointment once a determination of indigency has been made.<sup>1</sup> Criminal Rule 35.1(e)(1) dictates that if an applicant for post-conviction relief is indigent, the applicant is entitled to appointment of counsel "consistent with AS 18.85.100 to assist the applicant." AS 18.85 addresses the Public Defender Agency. AS 18.85.100(c) provides that an indigent person is entitled to representation under AS 18.85.100(a) and (b) for the purpose of bringing a timely application for post conviction relief under AS 12.72. An indigent person is defined for the purposes of AS 18.85 in AS 18.85.170(4) as follows:

"indigent person" means a person who, at the time need is determined, does not have sufficient assets, credit, or other means to provide for payment of an attorney and all other necessary expenses of representation without depriving the party or the party's dependents of food, clothing, or shelter and who has not disposed of any assets since the commission of the offense with the intent or for the purpose of establishing eligibility for assistance under this chapter[.]

Alaska Courts have applied this definition of indigency in other contexts. For example, in Jordan v. Jordan, 983 P.2d 1258 (Alaska 1999), the court interpreted indigency in the context of eligibility for appointed counsel in a divorce case involving the functional equivalent of termination of parental rights. Although not a PCR application, the Jordan case has helpful insights on indigency in light of the assets involved. The court opined:

Lucy was and still is represented by counsel. Michael was originally represented by an attorney but ... was unable to continue to afford counsel. On October 8, 1996, Michael, now *pro se*, asserted that he was indigent and filed a motion for appointment of counsel. Along with this motion, Michael filed a financial statement which listed family assets of \$212,000 and debts of \$36,000, for a total unencumbered net family worth of \$176,000.

The court denied Michael's motion for appointment of counsel, finding: "Mr. Jordan is not indigent, on the face of his financial statement. This court would

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<sup>1</sup> Admin. Rule 12; AS 18.85.100; Criminal Rule 39; Criminal Rule 35.1

consider motions to liquidate part of the marital estate to allow Mr. Jordan to hire an attorney.” ....

The assets listed on Michael's financial statement break out as follows: (1) land, buildings, and trailers, \$190,000; (2) motor vehicles, \$6,000; (3) snow machines and boats, \$16,000 . . . .

. . . The most valuable asset is the family home in Lower Kalskag, . . . , the total value of the Lower Kalskag property was \$212,000.

Prior to the marriage, Michael acquired a one-half interest in sixty acres of land in Copper Center. Michael stated that the value of the one-half interest was \$60,000 less a \$36,000 mortgage, for total equity of \$24,000. . . . Michael listed it as marital property.

Therefore, the value of the Jordans' real property, by Michael's own valuation, was \$236,000.

[Michael] . . . listed significant chattels in his letter to Lucy's attorney including: \$21,418 in household items, \$2,594 in fishing gear and nets, \$2,200 in logging equipment and \$16,730 in building materials. The value of these additional assets totals \$42,942.

Thus, a rough estimate of the value of the Jordans' marital property, using Michael's valuations, was \$300,942 (\$236,000 real property, plus \$6,000 in motor vehicles, plus \$16,000 in boats, plus \$42,942 in other assets, equals \$300,942).

At the beginning of the trial on February 10, 1997, Michael renewed his objections to proceeding without counsel and reiterated that he was indigent. This objection was noted and denied, the court finding that Michael had been given ample time to liquidate assets to hire a lawyer.

**1. *The superior court did not clearly err in determining that Michael was not indigent.***

It is well established that the due process clause of the Alaska Constitution gives an indigent parent, in some instances, the right to court-appointed counsel in a child custody proceeding. Because Michael was not indigent, however, he does not have the right to court-appointed counsel. Indigency is defined in the Public Defender Agency statute as follows:

“indigent person” means a person who, at the time need is determined, does not have sufficient assets, credit, or other means to provide for payment of an attorney and all other necessary expenses of representation without depriving the party or the party's dependents of food, clothing, or shelter....<sup>FN10</sup>

FN10. AS 18.85.170(4).

Given that the Jordans had \$200,000 to \$300,000 in marital assets, it would appear that sufficient assets existed for Michael to pay for an attorney without encumbering the family home. Michael was given ample opportunity to ask the court to allow him to liquidate assets but he chose not to do so.

Jordan v. Jordan, 983 P.2d 1258, 1262-63 (Alaska 1999).

As an attachment to Mr. Haeg's notice, a financial statement for appointment of counsel<sup>2</sup> was provided. Mr. Haeg indicates his after-tax monthly income is \$1,500. With a PFD, Mr. Haeg's yearly income is \$19,500. Mr. Haeg lists his monthly household expenses at \$2,794 (\$33,528 annually). When filling in the category "Land, Homes, Trailers," Mr. Haeg interlined "Airplane Hanger" and listed the total value of this category at \$313,800 with \$39,164 still owed. Mr. Haeg also indicated that the airplane hanger is needed to run his air-charter business.

Because Mr. Haeg has over \$300,000 in assets, the court could find per the Jordan case that Mr. Haeg is not indigent. However, further inquiry is appropriate. In addition to AS 18.80.85(4), Criminal Rule 39.1 is also useful in determining under what circumstances a person is considered indigent. Criminal Rule 39.1(c)(5) provides:

5) *Assets*. The court shall consider the value of all assets that are readily convertible to cash, other than health aids, clothing, and ordinary household furnishings. With the following exceptions, in valuing an asset, the court shall consider either the amount the defendant would realize if the asset were sold or the amount the defendant could borrow using the asset as collateral, whichever is greater.

(A) The court shall consider the loan value of tools and equipment essential to employment or to subsistence activity. Tools and equipment are essential only if the defendant could not earn a living or provide basic necessities without them. If the defendant cannot borrow against these assets while continuing to have use of them, the court shall disregard their value in calculating the defendant's available resources.

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<sup>2</sup> Form CR 206, submitted 2/22/2011.

(B) In valuing the defendant's principal residence, the court shall consider the entire loan value or the amount of the sale value that exceeds the homestead exemption allowed under the Alaska Exemptions Act.<sup>2</sup> If the defendant cannot borrow against the residence and would realize less than the homestead exemption amount if the residence were sold, the court shall disregard the value of the residence in calculating the defendant's available resources.

(C) In assessing the loan value of essential tools and equipment and the principal residence, the court shall consider only the amount the defendant can realistically afford to repay.

The court lacks sufficient information at this time to determine whether Mr. Haeg is indigent under the aforementioned authorities viewed as a whole. Would Mr. Haeg be able to “readily convert” his airplane hanger to cash without compromising his ability to earn income? Can Mr. Haeg get a loan on the hanger or other property without undue financial strain on his ability to care for his dependants? To enable the court to make an informed indigency determination for court-appointed counsel, Mr. Haeg needs to submit information regarding 1) his ability to get a loan against his property<sup>3</sup> for the likely cost of representation,<sup>4</sup> and 2) the financial impact the loan and payments would have on his ability to care for his dependants.

**Are the Income and Assets of Mr. Haeg’s Spouse Relevant?**

A number of jurisdictions have held that a spouse’s income and assets are relevant, primarily based on what some states identify as the duty of mutual spousal support. For example, in Missouri the public defender is responsible for determining indigency, and is required to take a spouse’s income into account. See State v. Albright, 843 S.W.2d 400, 402 (Mo.App., W.D. 1992). In Idaho a criminal defendant’s spouse has a duty to finance the legal defense if financially able. The Idaho Court of Appeals has explained:

---

<sup>3</sup> At least two bank responses to applications by Mr. Haeg for a loan should be presented.

<sup>4</sup> The likely cost of representation is addressed below, but may be presumed for purposes of loan applications to be at least \$10,000 for this case.

The question at hand is whether this duty of support includes a duty to finance the legal defense of a spouse who faces criminal charges. Other courts addressing this question have held that a spouse does have such a duty. In *State v. Clark*, ... 563 P.2d 1253 (1977), a married woman sought appellate review, at public expense, of her conviction for drug offenses. The Washington Supreme Court considered whether the separate property of a criminal defendant's spouse could be considered in assessing the defendant's claim of indigency. The court considered a family-expense statute, which was deemed to be at least as broad as the common law duty to provide necessities for one's family. *Id.* at 1255. The court concluded that necessities included legal expenses to defend against a criminal charge when a spouse's liberty is at stake. *Id.* at 1256. Therefore, the court held the husband's assets were to be considered in determining whether the wife was indigent.

State v. Suiter, 67 P.3d 1274, 1279 (Idaho App. 2003), citing, to the same effect, Read v. Read, 202 P.2d 953 (Colo. 1949); United States v. O'Neill, 478 F. Supp. 852 (E.D.Pa. 1979); United States v. Conn, 645 F. Supp. 44 (E.D.Wis. 1986); DuBois, Sheehan, Hamilton and Dubois v. DeLarm, 578 A.2d 1250 (N.J. Super. 1990). See also Zhu v. Countrywide Realty Co., 148 F.Supp.2d 1154, 1156 (D. Kan. 2001) ("In a number of cases, courts have found that the income and assets of close family members are relevant to a determination of indigency ....").

In State v. Atkins, 723 A.2d 939 (N.H. 1998), the Supreme Court of New Hampshire observed that it had previously determined it would be unconstitutional to reject a defendant's request for counsel at public expense simply because a person liable for the defendant's support is financially able to hire counsel. The court held, "We unambiguously stated that in determining eligibility, 'the court need inquire only into the defendant's own financial status.'" State v. Atkins, 723 A.2d at 941, citing and quoting from Opinion of the Justices, 431 A.2d 144 (N.H. 1981). However, the court went on to hold that an inquiry into a defendant's ability to obtain counsel should not be limited to reviewing a defendant's income and assets in a vacuum. "A spouse's income and assets may be considered insofar as they may reduce a defendant's other expenses and free more of his income to pay for counsel."

State v. Atkins, 723 A.2d at 941. The existing statute in New Hampshire was enacted in the 1960's to provide representation for indigent defendants in response to the decision in Gideon v. Wainwright, 372 U.S. 335 (1963). The proposed amendment in 1981 would have required an inquiry into the financial status of "persons liable" for the defendant's support under a statute that imposes a duty to contribute to the support of a wife, husband, child, father, or mother when in need. See Opinion of the Justices, 431 A.2d at 147. The Justices found nothing unconstitutional about extending the statutory duty of support to include the expense of providing counsel to an indigent criminal defendant, but held that the extension in the proposed amendment could interfere with a defendant's right to speedy trial and the right to have counsel at every stage of the proceeding, citing Fuller v. Oregon, 417 U.S. 40, 53 (1932).

A common law duty to support one's spouse was voiced in Florida:

During the marriage, each party generally owes the other party a duty of support. See Killian v. Lawson, 387 So.2d 960 (Fla.1980) (discussing common law duty to support spouse). While the parties were married, these monthly payments were marital expenses. See Beers v. Pub. Health Trust, 468 So.2d 995, 1001 (Fla. 3d DCA 1985) ("Florida law renders a spouse financially responsible for the other spouse's necessary bills.").

Campagna v. Cope, 971 So.2d 243, 251 (Fla. App. 2 Dist. 2008). In Alaska a spouse is not liable for the separate debts of the other spouse. AS 25.15.050. The Alaska Legislature has not imposed a statutory obligation on a financially able spouse to provide counsel for a financially stressed spouse who is facing criminal charges, or for post-conviction relief purposes. The Alaska Supreme Court has not imposed a common law duty upon a financially able spouse to provide counsel for an indigent spouse facing criminal charges or needing the assistance of counsel on a PCR.

To consider fairly the financial impact of a loan and payments associated therewith on the ability of Mr. Haeg to raise money for private counsel and still support his dependents,

the financial contribution of his spouse to her own support and that of the family's dependent children should be taken into account. An affidavit from the spouse of Mr. Haeg is not required, but Mr. Haeg should provide appropriate information on that point if he wants the court to undertake the indigency analysis under the circumstances.

### **Likely Cost of Representation**

Criminal Rule 39.1(d) dictates the presumed likely costs of representation in certain criminal proceedings. The likely cost of private representation ranges from \$2,000 for a misdemeanor through \$5,000 for a Class C Felony and \$7,500 for a Class B Felony to \$20,000 for an A or Unclassified Felony. The rule allows leeway in determining the likely costs of representation, and authorizes the court to assume that at least 50 percent would be required up front with the total fee to be paid within four months. An application for post-conviction relief is not listed in Criminal Rule 39.1, presumably because a PCR is civil in nature. Due to the number of issues, volume of materials, and the potential malpractice concerns involved in Mr. Haeg's PCR claim, it is unlikely that private counsel would undertake the representation for less than \$10,000. Given the uncertainty regarding the requested division of duty between counsel and client, the court cannot reasonably accurately assess the likely cost of representation without more information. Therefore, if Mr. Haeg wants to pursue an indigency determination, he should contact at least two private counsel admitted to practice in Alaska to find out what they would charge to undertake representation of him in this PCR proceeding for full representation, for hybrid representation, or for lesser involvement such as stand-by or advisory representation.

## Hybrid Counsel, Co-counsel, Stand-By Counsel, and Advisory Counsel

There is no absolute right to hybrid counsel in Alaska in criminal cases or otherwise. In the criminal defense context, the Alaska Court of Appeals has held:

When a competent defendant does not wish to proceed entirely *pro se*, but wishes to partially waive counsel and be permitted to participate in the trial as “co-counsel,” that defendant may, after being fully advised of his or her rights and entering appropriate waivers of full representation by counsel, be permitted to participate as co-counsel. In such a case, a defendant might rely primarily upon counsel to present arguments and evidence, while retaining the right to address the court on certain issues and conduct the examination of certain witnesses.

In cases of hybrid representation someone must be in charge of the defense. If the defendant is to be in charge, the trial court must first obtain a waiver of counsel and make a determination of competency, since such an individual is in effect proceeding *pro se*. No complete waiver of counsel is necessary, provided that it is clear to both defendant and counsel at the time co-counsel status is authorized that counsel is to remain in charge of the defense. Although the right to counsel and the right to self-representation are constitutionally protected, the right to participate as co-counsel or have hybrid representation is not. The trial court has broad discretion to deny hybrid representation or co-counsel status. *Annas*, 726 P.2d at 557; *Cano v. Anchorage*, 627 P.2d 660, 664 (Alaska App. 1981).

Ortberg v. State, 751 P.2d 1368, 1375 (Alaska App. 1988).

Counsel, appointed or otherwise, may be unwilling to engage in hybrid representation for multiple reasons, and the court may either not approve a hybrid counsel arrangement at the outset or during the course of the case if difficulties arise. In Bradley v. State, the Court of Appeals recognized the actions of the superior court:

Bradley filed a motion asking that he be allowed to represent himself or, “preferably[,] obtain an Order ... allow[ing] ... Co-Counsel Status.” Judge Suddock held an ex parte representation hearing. There, Bradley’s attorney told the judge that the Public Defender Agency was “not willing to accept co-counsel status with Mr. Bradley.” She also claimed that it was the Public Defender’s “policy to not accept such legal relationships” and that the agency “refuse[d] to get in[to] contractual relationships with someone in co-counsel status.” For his part, Bradley again asked that he be allowed to either represent himself or act as co-counsel.

Judge Suddock said that he would not give Bradley co-counsel status because his attorney, based on agency policy, was not willing to accept such an arrangement.

He also found that Bradley did not provide sufficient reasons for terminating his current attorney and having another appointed. He told Bradley he had to either proceed with his appointed attorney or proceed pro se. Bradley chose to proceed pro se.

Bradley v. State, 197 P.3d 209, 214 (Alaska App. 2008). Although the Bradley court recognized the logic of the superior court, it declined to analyze the legality, noting:

Bradley also contends that Judge Suddock erred when he accepted the Public Defender Agency's position that it would not act as co-counsel, but we do not need to address this issue. Even if we assume that the Public Defender lacks the authority to refuse to act as co-counsel absent a case-specific reason, the record shows that approximately six weeks after Judge Suddock made his initial ruling, he offered Bradley a second opportunity to have hybrid representation, to have counsel reappointed, or to again ask for co-counsel status. When Judge Suddock asked Bradley if he needed or wanted standby or advisory counsel, Bradley answered, "Absolutely not."

*Id.*, at 215.

#### **Knowing and Voluntary Waiver**

If Mr. Haeg is found to be not indigent, but is nevertheless unwilling to pay a private attorney to represent him, it appears well settled that his right to counsel would not have been violated. The Alaska Supreme Court in Albert opined:

Nonindigents who must pay for counsel may choose to forego counsel because they believe that the benefits of counsel's service are outweighed by its costs. The fact that our market system forces nonindigents to make such a choice has never been regarded as a deprivation of the right to counsel....

State v. Albert, 899 P.2d 103, 112-13 (Alaska 1995).

Likewise, if Mr. Haeg is found to be indigent and counsel is appointed under AS 18.85.100 or Administrative Rule 12, but Mr. Haeg is unable to reach an agreement on hybrid, co-counsel, stand-by, or advisory representation with appointed counsel or unwilling to give up control of his case to his appointed counsel, he may have to represent himself.

After reviewing all his options and the implications thereof, his choice might be viewed as a knowing and voluntary waiver of his right to counsel.

**Private Counsel**

Because a PCR application is a civil case, the Civil Rules apply. If for any reason, Mr. Haeg is not appointed counsel (either because he is determined to be non-indigent or because he is unable to agree on a division of duty with appointed counsel) and still wishes to have some of the benefits of counsel, he could retain private counsel for limited appearance purposes. Civil Rule 81(d) allows an attorney to enter a limited appearance on behalf of a party as long as the provisions of Civil Rule 81(d) are satisfied.

**CONCLUSION**

Whether Mr. Haeg is "indigent" depends on facts not yet presented. Therefore, Mr. Haeg should submit documentation regarding the likely cost of counsel and his ability to get a loan for the likely cost of counsel. As previously explained, this amount will be presumed to be \$10,000 unless Mr. Haeg can demonstrate that a greater amount is necessary to avoid injustice by presenting representation quotes from other attorneys.

If Mr. Haeg is found to be indigent, the court will appoint counsel and Mr. Haeg can explore with the appointed counsel the possibility of hybrid or other alternative form of representation.

Dated at Kenai, Alaska, this 4<sup>th</sup> day of March, 2011.

  
Carl Bauman  
SUPERIOR COURT JUDGE

<b>CERTIFICATION OF DISTRIBUTION</b>	
I certify that a copy of the foregoing was mailed to the following at their addresses of record:	
Haeg, Peterson	
<u>3-4-11</u>	<u>Roberts</u>
Date	Clerk

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT ~~KENAI~~ <sup>in the Trial Courts</sup>  
State of Alaska Third District  
at Kenai, Alaska

DAVID HAEG

FEB 25 2011

Applicant,

Clerk of the Trial Courts

By \_\_\_\_\_ Deputy

v.

STATE OF ALASKA,

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

Respondent.

Trial Case No. 4MC-04-00024 CR

STATE'S RESPONSE TO HAEG'S NOTICE THAT ATTORNEY DALE  
DOLIFKA IS UNWILLING TO REPRESENT HAEG AND THAT HAEG  
REQUESTS THE COURT TO APPOINT "HYBRID" PUBLIC DEFENDER  
COUNSEL

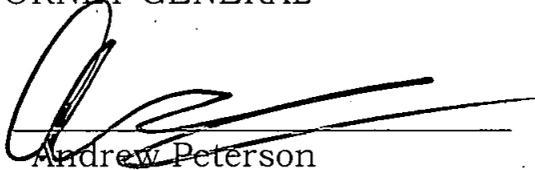
VRA CERTIFICATION. I certify that this document and its attachments do not contain (1) the name of a victim of a sexual offense listed in AS 12.61.140 or (2) a residence or business address or telephone number of a victim or witness to any crime unless it is an address used to identify the place of the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

COMES NOW the State of Alaska, by and through Assistant Attorney General Andrew Peterson and hereby gives notice to the court that the State takes no position on Haeg's notice and motion as the State believes that the Public Defender will take a position regarding "hybrid" counsel.

DATED: February 23, 2011.

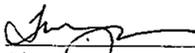
JOHN J. BURNS  
ATTORNEY GENERAL

By: \_\_\_\_\_

  
Andrew Peterson  
Assistant Attorney General  
Alaska Bar No. 0601002

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

David Haeg

  
Signature

2/24/11

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

Clerk of the Trial Courts  
State of Alaska, Third District  
At Kenai, Alaska

FEB 23 2011 FAXSIMILE TRANSMISSION COVER SHEET



Clerk of the Trial Courts  
Deputy

**OFFICE OF SPECIAL PROSECUTIONS AND APPEALS**

310 K Street, Suite 308  
Anchorage, Alaska 99501-2064

**OUR FAX: (907) 269-7939**

**FAX TRANSMITTAL SHEET**

February 23, 2011

**Attention: Shelly**

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 FAX THE FINANCIAL INFORMATION ATTACHED TO HAEG'S NOTICE THAT ATTORNEY DALE DOLIFKA IS UNWILLING TO REPRESENT HAEG AND THAT HAEG REQUESTS THE COURT TO APPOINT "HYBRID" PUBLIC DEFENDER COUNSEL.** He neglected to send us a copy. Thanks.

*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.

*Done 2/24/11*

The information contained in this FAX is confidential and/or privileged. This FAX is intended to be reviewed initially by only the individual named above. If the reader of this TRANSMITTAL PAGE is not the intended recipient or a representative of the intended recipient, you are hereby notified that any review, dissemination, or copying of this FAX or the information contained herein is prohibited. If you have received this FAX in error, please immediately notify the sender by telephone and return this FAX to the sender at the above address. Thank you. (NOTE: With regard to any charges which may be noted in this fax, please note that "the charge is merely an accusation and that the defendant(s) is/are presumed innocent until and unless proven guilty." Rule 3.6(b)(6), Alaska Rules of Professional Conduct.)

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

FILED In the Trial Courts  
State of Alaska Third District  
at Kenai, Alaska  
FEB 22 2011  
Clerk of the Trial Courts  
By JD Deputy

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)

**2-17-11 NOTICE THAT ATTORNEY DALE DOLIFKA IS UNWILLING TO REPRESENT HAEG AND THAT HAEG REQUESTS THE COURT TO APPOINT "HYBRID" PUBLIC DEFENDER COUNSEL**

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

COMES NOW Applicant, DAVID HAEG, in the above case and hereby files notice that attorney Dale Dolifka is unwilling to represent Haeg and that Haeg requests the court to appoint "hybrid" public defender counsel who will allow Haeg to decide how to conduct his PCR proceeding.

**Prior Proceedings**

On August 25, 2010 Judge Joannides held what Haeg thought included a representation hearing, which included sworn testimony from attorney Dale Dolifka and other witnesses, evidencing that Haeg felt forced to represent himself because his 3 attorney's during his criminal case had intentionally given him

ineffective assistance of counsel. At the end of this hearing Judge Joannides emphatically recommended that Haeg conduct his PCR with “hybrid” council (that would assist Haeg while allowing Haeg to decide how to conduct his case) and that if Haeg decided to do this he should submit a sworn financial statement. See the court recorded CD’s of the hearing (attachment 1) and the court log notes (attachment 2).

On August 30, 2010 Haeg submitted a sworn financial statement to Judge Joannides and requested “hybrid” counsel be appointed that would allow Haeg to decide how to conduct his PCR. See court record.

On January 31, 2011 Judge Joannides retired without ever determining if Haeg had voluntarily given up his right to counsel (or if he had been forced to do so) and without determining if Haeg qualified for court appointed counsel. See court record.

On February 9, 2011 Haeg hand delivered to the Alaska Bar Association the tape-recording of Arthur Robinson, which proved attorney Marla Greenstein falsified her “verified” response to Haeg’s grievance complaint (which claimed Greenstein had falsified her investigation of Judge Murphy to cover up Judge Murphy’s corruption). Assistant Bar Counsel Louise Driscoll, who is conducting the investigation of Haeg’s complaint against Greenstein, was recorded claiming Greenstein’s falsification of a “verified” response carried no consequences, which is very puzzling because Judge Murphy, for “unsworn falsification”, sentenced

Haeg to 90 days in jail, a \$2000 fine, and 7 years of probation. See Haeg's judgment.

On February 15, 2011 Judge Bauman held a representation hearing; requested a financial statement from Haeg; requested that Haeg ask attorney Dolifka if he would assist Haeg during Haeg's PCR proceedings; and requested that Haeg inform the court of Dolifka's decision by February 22, 2011. See court record.

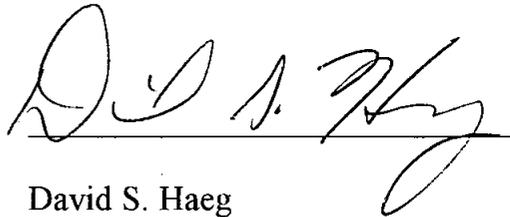
On February 17, 2011 Haeg contacted attorney Dolifka, a material witness in Haeg's PCR case, and attorney Dolifka stated he is unwilling to also counsel Haeg.

### Conclusion

As attorney Dolifka is unwilling to represent Haeg and Haeg has presented evidence that his first 3 attorneys sold him out to protect their own interests (see attachments 1 and 2 documenting Judge Joannides August 25, 2010 hearing), Haeg requests the court appoint "hybrid" counsel from the public defenders agency that will assist Haeg while allowing Haeg to remain in control of how his case is conducted.

This notice is supported by August 25, 2010 CD's (attachment 1); August 25, 2010 court log notes (attachment 2); and sworn financial statement (attachment 3).

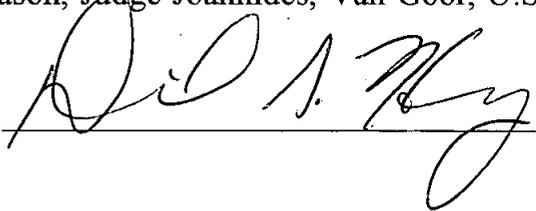
I declare under penalty of perjury the forgoing is true and correct. Executed on February 21, 2011. A notary public or other official empowered to administer oaths is unavailable and thus I am certifying this document in accordance with AS 09.63.020.



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

*and attachments 1, 2, + 3*

**Certificate of Service:** I certify that on February 21, 2011 a copy of the forgoing was served by mail to the following parties: AAG Peterson, Judge Gleason, Judge Joannides, Van Goor, U.S. Department of Justice, FBI, and media.

By: 

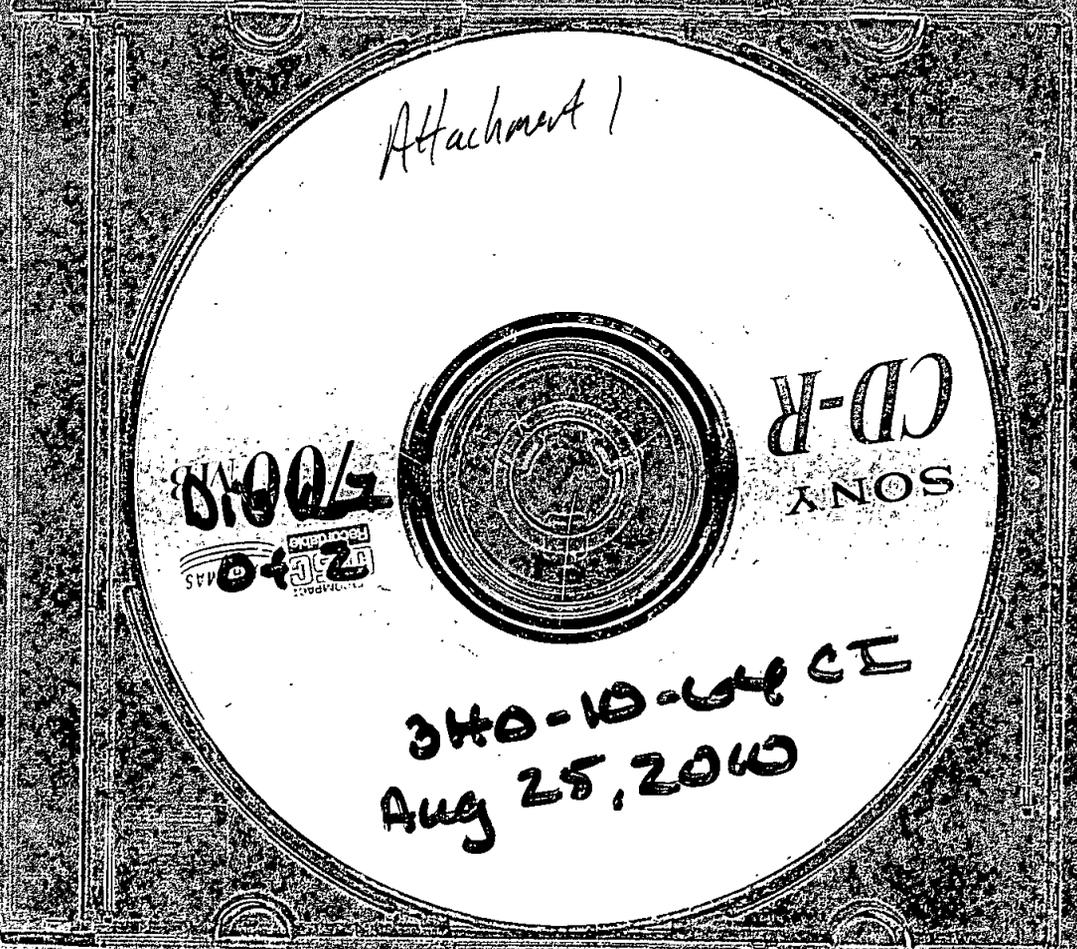
**Attachments:**

<sup>2</sup>  
August 25, 2010 CD's (attachment 1); August 25, 2010 court log notes (attachment 2); and sworn financial statement (attachment 3).

Attachment # 1 to

2-17-11 Notice that

Attorney Dale Dolfla is unwilling  
to represent Hay and that Hay requests  
the Court to appoint "Hybrid" Public  
Defender Council. Filed 2-22-11



Attachment 2

In the Superior Court at Anchorage Alaska

Media No: 604

Judge: S. Joannides

Date: Friday, August 27, 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 qualify, 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
- 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?

9:56:34 AM

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 one 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  
-cohesion 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

10:18:39 AM

(thought you were calling me as a friend  
(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

10:22:49 AM

(do remember the hackles on my neck stand up, that wasn't the only time  
(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

11:03:29 AM (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  
(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

11:19:32 AM

-she has already testified in another hearing  
-it has already been waived -- about the same issues  
-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 1/2, 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  
(3<sup>rd</sup> 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



(1) Haeg asks that his PCR application be supplemented to include, as a reason for overturning his conviction and sentence, ACJC investigator 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.

Haeg has already claimed the chauffeuring of Judge Murphy by Trooper Gibbens during Haeg's prosecution, and Judge Murphy and Trooper Gibbens lying to cover up this up during the official investigation into it, as reason for overturning his conviction and sentence. See Part B, Paragraph 2, Sections X and AAA of Haeg's PCR application and Haeg's supporting PCR Memorandum/Affidavit.

(2) Haeg asks that his PCR application be supplemented to include, as a reason to overturn his conviction and sentence, 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.

See court record.

On January 21, 2011 ACJC investigator Greenstein wrote a "verified" response to Haeg's grievance complaint. See attachment.

On January 25, 2011 the Bar provided Haeg with a copy of ACJC investigator Greenstein's "verified" response and asked for Haeg's written reply. See attachment.

On February 4, 2011 Haeg wrote a "verified" reply to ACJC investigator Greenstein's response. See attachment. Haeg supported his reply with a February 4, 2011 recording of Arthur Robinson, Haeg's attorney during Haeg's trial and sentencing. See attachment. *See attachment 1.*

## I

Haeg has claimed:

(1) That Judge Margaret Murphy was chauffeured by the prosecutions main witness against Haeg (Trooper Brett Gibbens) while Judge Murphy presided over Haeg's prosecution.

(2) That during the ACJC investigation into the chauffeuring Judge Murphy and Trooper Gibbens falsely testified the chauffeuring by Trooper Gibbens of Judge Murphy never happened until after Haeg was sentenced.

(3) That ACJC investigator Greenstein falsified her investigation to corruptly confirm Judge Murphy and Trooper Gibbens' testimony and corruptly exonerate Judge Murphy.

(4) That ACJC investigator Greenstein conspired with Judge Murphy and Trooper Gibbens to cover up that Judge Murphy was chauffeured by Trooper Gibbens before Haeg was sentenced.

## II

To support his PCR claims Haeg has already provided the court with Judge Joannides referral and other documents, which contain the following:

(1) The official court record of Haeg's case that captured Judge Murphy and Trooper Gibbens admitted the chauffeuring was taking place before Haeg was sentenced.

(2) Recordings of ACJC investigator Greenstein stating that Judge Murphy and Trooper Gibbens, during the official ACJC investigation, denied any chauffeuring of Judge Murphy by Trooper Gibbens before Haeg was sentenced.

(3) Documents proving ACJC investigator Greenstein had asked Haeg for a list of witnesses to the chauffeuring; Haeg had provided a list of 4 witnesses to the chauffeuring not including Jackie Haeg; and that the ACJC had received this list of 4 witnesses.

(4) Recordings of ACJC investigator Greenstein telling Jackie Haeg that Jackie did not need to testify verbally about the chauffeuring because ACJC investigator Greenstein already had Jackie's statement/letter in writing.

(5) Recordings of Jackie Haeg testifying verbally to ACJC investigator Greenstein that Jackie had personally witnessed Trooper Gibbens chauffeuring Judge Murphy before Haeg was sentenced.

(4) Recordings of ACJC investigator Greenstein stating that ACJC investigator Greenstein had contacted every witness that Haeg had provided.

(5) Recordings of ACJC investigator Greenstein stating that not a single witness Haeg provided had testified they had seen Trooper Gibbens chauffeuring Judge Murphy before Haeg was sentenced.

(6) Affidavits, made after ACJC investigator Greenstein's investigation was finished and Judge Murphy exonerated, from the 4 witnesses on the list Haeg provided, in which every witness testified they had never been contacted by ACJC investigator Greenstein and, that had they been contacted, they would have testified they had personally seen Trooper Gibbens chauffeuring Judge Murphy before Haeg was sentenced.

(7) A document from the ACJC that, after ACJC investigator Greenstein's investigation of Judge Murphy, the ACJC could not find Jackie Haeg's written statement/letter nor could it confirm the ACJC had ever received Jackie's written statement/letter.

### III

Haeg filed an Alaska Bar Association complaint against ACJC investigator (an attorney) in addition to submitting the above evidence to the court deciding his PCR. See attachment.

ACJC investigator Greenstein responded to Haeg's complaint. In this "verified" response ACJC investigator Greenstein testified that she had only contacted 2 of the witnesses provided by Haeg. This in direct conflict with the recordings of her stating that she had contacted every witness Haeg had provided.

In addition to testifying that she had contacted only 2 of the witnesses that Haeg had provided, ACJC investigator Greenstein testified she had contacted a third witness that Haeg had not provided her – Arthur Robinson, Haeg's attorney at trial and sentencing. This was ACJC investigator Greenstein's first time to have claimed contacting Robinson and tape recordings of ACJC investigator Greenstein conversations capture Haeg telling her he had a falling out with Robinson. See Judge Joannides referral.

As Haeg wrote his reply to ACJC investigator Greenstein's response he realized Robinson was the only one of the witnesses that ACJC investigator Greenstein claimed to have contacted that had not provided an affidavit that ACJC

investigator Greenstein never contacted them and that ACJC investigator Greenstein had falsified the very essence of their testimony.

In spite of the falling out between them, but compelled to see if ACJC investigator Greenstein had also falsified this “new” witness’s testimony, Haeg made contact with Robinson. The recorded conversation is nearly unbelievable.

Not only did Robinson state over and over no one had ever contacted him to ask about Trooper Gibbens chauffeuring Judge Murphy, Robinson testified that he personally witnessed “Trooper Gibbens and Margaret [Judge Murphy] running around together in the Trooper car” before Haeg was sentenced. *See attachment 1.*

#### Conclusion

In a “verified” response ACJC investigator Greenstein has now falsified contacting Arthur Robinson – who has also testified he had personally witnessed Trooper Gibbens chauffeuring Judge Murphy before Haeg was sentenced.

In other words, ACJC investigator Greenstein committed perjury in her “verified” response – to cover up the fact she did not contact a single witness during her investigation of Haeg’s complaint, while repeatedly stating otherwise.

In light of the shocking evidence of corruption and conspiracy above, meant to cover up that Judge Murphy and Trooper Gibbens provided Haeg an unfair and unconstitutional trial and sentencing, Haeg respectfully asks the court to supplement the record of this PCR with:

(1) Haeg’s December 22, 2010 Alaska Bar Association complaint against ACJC investigator Greenstein.

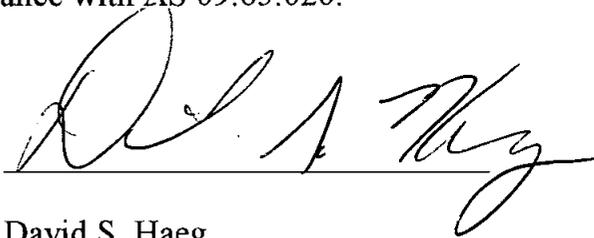
(2) ACJC investigator Greenstein's January 21, 2011 response to Haeg's grievance complaint.

(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.

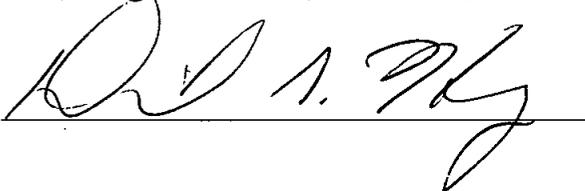
(5) The February 4, 2011 recording of Arthur Robinson. *See attachment 1*

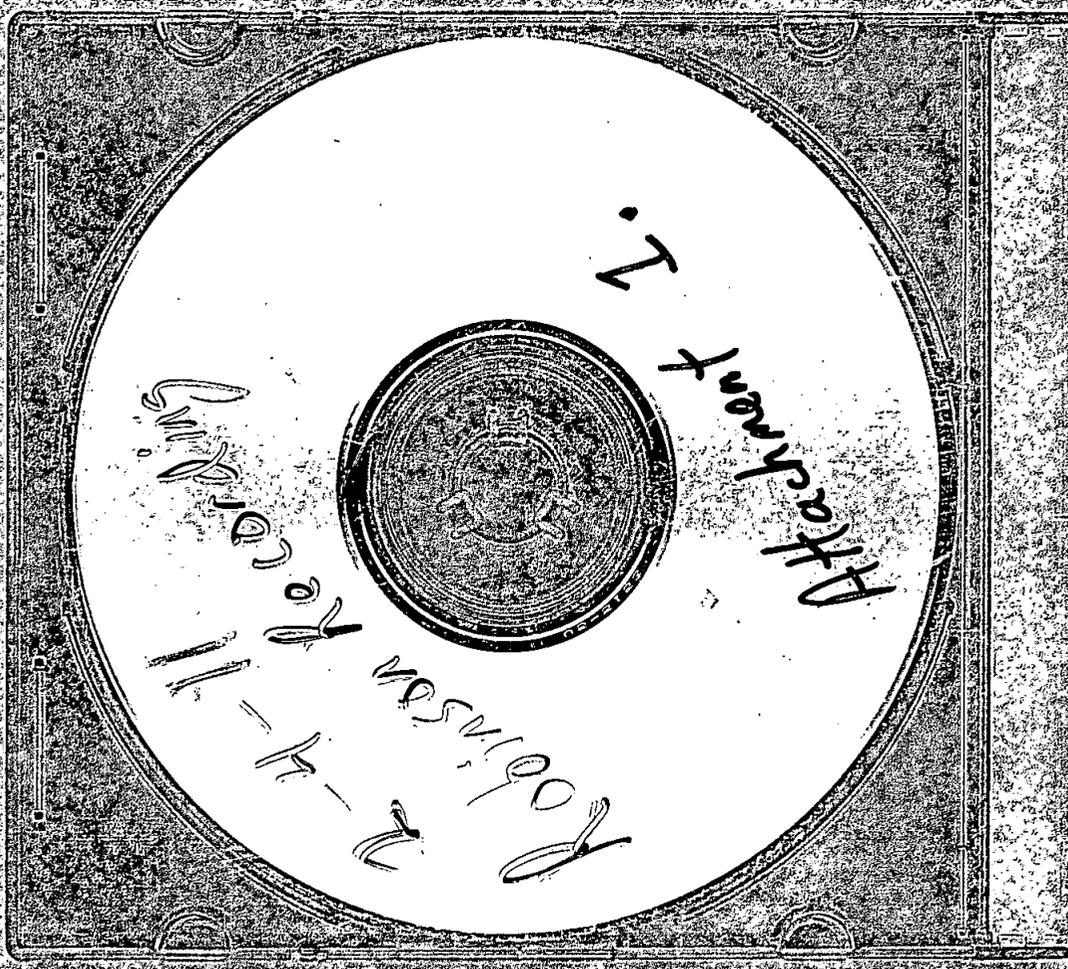
I declare under penalty of perjury the forgoing is true and correct. Executed on February 11, 2011. A notary public or other official empowered to administer oaths is unavailable and thus I am certifying this document in accordance with AS 09.63.020.



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

**Certificate of Service:** I certify that on February 11, 2011 a copy of the forgoing was served by mail to the following parties: AAG Peterson, Judge Gleason, Judge Joannides, Van Goor, U.S. Department of Justice, FBI, and media.

By: 



**ATTORNEY GRIEVANCE FORM**  
**Alaska Bar Association**

ABA File No. 20 \_\_\_\_\_ D \_\_\_\_\_ ABA Date Rec'd Stamp \_\_\_\_\_  
(ABA Use Only)

1. Complainant:

David Haeg  
PO Box 123  
Soldotna, AK 99669  
907-262-9249

2. Attorney:

Marla Greenstein  
1029 W. 3<sup>rd</sup> Ave., Suite 550  
Anchorage, AK 99501  
800-478-1033 or 907-272-1033

3. I am another person with knowledge of attorney's conduct:

4. IF YOU ARE SOMEONE OTHER THAN THE CLIENT:

a. As Executive Director and only attorney/investigator for the Alaska Commission on Judicial Conduct for the past 21 years, Marla Greenstein investigated David Haeg's complaint that Judge Margaret Murphy was chauffeured by the main witness against David Haeg (Trooper Brett Gibbens) during the proceedings against David Haeg.

b. This grievance is related to the following court cases:

Haeg v. State 3HO-10-00064CI and State v. Haeg 4MC-04-00024CR

5. I complain about the following things this attorney did or didn't do:

a. Attorney Greenstein conspired with Judge Murphy and Trooper Gibbens to cover up that Trooper Gibbens, the main witness against David Haeg, impermissibly chauffeured Judge Murphy during David Haeg's trial and/or sentencing. See Judge Joannides referral.

b. Attorney Greenstein claimed she contacted all witnesses to the chauffeuring, that David Haeg provided at her request, when she had not contacted any of them. See Judge Joannides referral.

c. Attorney Greenstein falsified all testimony that would have been given, and that had already been given, by the witnesses to the chauffeuring. Attorney Greenstein claims none of the witnesses provided by David Haeg testified they observed Trooper Gibbens chauffeuring Judge Murphy during the proceedings against David Haeg. Yet every witness David Haeg provided Greenstein subsequently wrote an affidavit that not only were they never contacted by attorney Greenstein, if they had been they would have testified that they had all personally observed Trooper Gibbens chauffeuring Judge Murphy many times - every time Judge Murphy left or arrived the courthouse during the proceedings against David Haeg. Two witness contacted attorney Greenstein on their own (Tom Stepnosky and Jackie Haeg) and affirmatively told attorney Greenstein that they had personally observed Trooper Gibbens chauffeur Judge Murphy during David Haeg's trial and/or sentencing. In other words attorney Greenstein claims the witnesses testified exactly opposite to what they would have had she actually contacted them and falsified the witness testimony actually given her - eliminating evidence that Judge Murphy was guilty of providing David Haeg an illegal and unconstitutional trial/sentencing - and creating false evidence that Judge Murphy had provided David Haeg a legal and constitutional trial/sentencing. See Judge Joannides referral.

d. Attorney Greenstein has stated David Haeg is the only one who has claimed Trooper Gibbens chauffeured Judge Murphy during David Haeg's trial or sentencing. Yet recordings of attorney Greenstein capture her being told by witnesses other than David Haeg that they had also personally seen Trooper Gibbens chauffeuring Judge Murphy during David Haeg's trial or sentencing. See Judge Joannides referral.

e. On or about November 17, 2010 attorney Greenstein stated that Judge Joannides never referred anything to the Alaska Commission on Judicial Conduct, when on August 27, 2010 Judge Joannides certified she was "REFERRING AFFIDAVITS [from all witnesses who attorney Greenstein falsely claims to have contacted and whose testimony she falsified] TO COMMISSION FOR ITS CONSIDERATION." After stating she did not receive anything from Judge Joannides attorney Greenstein stated that she would not reinvestigate Judge Murphy.

By claiming the Commission never received Judge Joannides' referral, attorney Greenstein can justify not reinvestigating Judge Murphy, an investigation that would prove attorney Greenstein falsified her first investigation of Judge Murphy.

f. Attorney Greenstein never made Jackie Haeg's written statement (that she personally observed Trooper Gibbens chauffeuring Judge Murphy during David Haeg's trial) a part of the record of David Haeg's Judicial Conduct complaint against Judge Murphy. Yet Attorney Greenstein claims she received Jackie Haeg's written statement - to keep Jackie Haeg from testifying orally under oath to the chauffeuring (see Judge Joannides referral) - and now the Alaska Commission on Judicial Conduct claims they have no record of ever receiving a written statement from Jackie Haeg.

6. Copies of letters, court papers or other documents already in the Bar's possession that help explain this complaint:

Superior Court Judge Stephanie Joannides August 27, 2010 referral to the Alaska Commission on Judicial Conduct, a referral which Judge Joannides had no obligation to make. This referral contains: (1) affidavits from witnesses whose testimony attorney Greenstein falsified; (2) certified transcripts of phone conversations with attorney Greenstein; (3) certified transcripts of the official court proceedings against David Haeg; and (4) certification it was sent to Marla Greenstein and the Commission for their "consideration".

These referral documents prove: (1) that Trooper Gibbens chauffeured Judge Murphy during David Haeg's trial and/or sentencing; (2) that Judge Murphy and Trooper Gibbens testified, during Greenstein's investigation, that no chauffeuring took place during David Haeg's trial or sentencing; (3) that attorney Greenstein asked David Haeg for witnesses to the chauffeuring; (4) that David Haeg provided attorney Greenstein these witnesses; (5) that attorney Greenstein claimed she had contacted the witnesses provided when she in fact had not; (6) that attorney Greenstein falsified her investigation in order to claim the witnesses, that Haeg provided at attorney Greenstein's request, claimed they did not see Judge Murphy being chauffeured by Trooper Gibbens during the proceedings against David Haeg; (7) that attorney Greenstein stated David Haeg was the only one who had claimed Trooper Gibbens chauffeured Judge Murphy during David Haeg's trial and/or sentencing; and (8) that attorney Greenstein acknowledged Jackie Haeg provided the Alaska Commission on Judicial Conduct a written statement that she had personally witnessed Trooper Gibbens chauffeuring Judge Murphy during David Haeg's trial.

The Bar has acknowledged it has a copy of this referral. Judge Joannides has stated that if the actual voice recordings of attorney Greenstein are needed she can provide them. A copy of the referral is also published at:

[www.alaskastateofcorruption.com](http://www.alaskastateofcorruption.com)

7. The following is a list of letters, court papers or other documents not in my possession which help explain this complaint:

a. Attorney Greenstein's documentation of her investigation of Judge Murphy, although not needed, would provide additional evidence attorney Greenstein falsified her own investigation to cover up that Judge Murphy provided David Haeg an illegal and unconstitutional trial/sentencing. Judge Joannides issued a court order these documents be produced for "in camera" (confidential) review during her investigation into whether or not Judge Murphy should be disqualified. Yet these documents were never provided to Judge Joannides.

b. Judge Joannides July 28, 2010 "ORDER FOR INFORMATION FROM JUDICIAL CONDUCT COMMISSION", information attorney Greenstein and the Judicial Conduct Commission never produced.

c. The court record of Judge Joannides August 25, 2010 hearing concerning David Haeg's Post Conviction Relief and his motion to disqualify Judge Murphy for cause. This hearing resulted in Judge Murphy being disqualified for cause and in the August 27, 2010 referral of evidence of attorney Greenstein's corruption and conspiracy to the Commission on Judicial Conduct for its consideration.

During this hearing Judge Joannides specifically stated on record that she was only tasked with determining whether or not Judge Murphy should be disqualified for cause; that she was not tasked with determining the validity of David Haeg's claims of corruption and conspiracy in attorney Greenstein and Judge Murphy; and thus was referring the affidavits and other evidence of this to the Alaska Commission on Judicial Conduct for its consideration.

In other words Judge Joannides very clearly stated she had no authority to decide the merits of David Haeg's claims of corruption and conspiracy and was thus forwarding the evidence to the proper authorities that could decide David Haeg's claims of corruption and conspiracy (the Alaska Commission on Judicial Conduct) – the same Commission who now claims not to have received this referral.

d. The record of the Alaska Commission on Judicial Conduct October 10, 2010 public meeting, during which testimony exposing attorney Greenstein's corruption was first not allowed and then severely limited by the calling in of a SWAT team made up of Alaska State Troopers and Anchorage City Police.

e. The record of the Alaska Bar Association December 1, 2010 public meeting. Witnesses, whose testimony had been falsified by attorney Greenstein, testified at this meeting. In addition, other physical evidence was presented at this

meeting that may help explain this complaint, including evidence it is this Bar's pattern and practice to cover up for guilty attorneys instead of prosecuting them.

8. The following persons have information concerning this grievance (all of these witnesses, other than Judge Murphy and Trooper Gibbens, have already provided affidavits to Judge Joannides and are a major part of Judge Joannides' August 27, 2010 referral to the Alaska Commission on Judicial Conduct):

Judge Margaret Murphy  
3670 Lake Street, Building A  
Homer, AK 99603  
907-235-8171

Trooper Brett Gibbens  
PO Box 465  
Delta Junction, AK 99737  
907-895-4800

Tony Zellers  
9420 Swan Circle  
Eagle River, AK 99577  
907-696-2319

Tom Stepnosky  
47062 Belmont Court  
Kenai, AK 99611  
907-420-7449

Wendell Jones  
PO Box 942  
Cordova, AK 99574  
907-424-7607

Drew Hilterbrand  
PO Box 1038  
Soldotna, AK 99669  
907-252-4090

Jackie Haeg  
PO Box 123  
Soldotna, AK 99669  
907-262-9249

These persons, other than Judge Murphy and Trooper Gibbens, can provide the following information:

- (a) That attorney Greenstein falsely claimed she contacted them to investigate the complaint that Trooper Gibbens impermissibly chauffeured Judge Murphy during the proceedings against David Haeg
- (b) That attorney Greenstein falsified the testimony they would have given had they been contacted.
- (c) That attorney Greenstein falsified the testimony that they had already given to attorney Greenstein.

These witnesses have sworn affidavits that not only were they not contacted by attorney Greenstein but that if they had been they would have testified they personally observed Trooper Gibbens chauffeuring Judge Murphy many times - every time Judge Murphy left or arrived court during the proceedings against David Haeg - directly opposite to what attorney Greenstein claimed they testified.

One witness (Jackie Haeg) is recorded telling attorney Greenstein that she had personally observed Judge Murphy being chauffeured by Trooper Gibbens during David Haeg's trial and attorney Greenstein is recorded telling this witness (Jackie Haeg) that she does not need to testify to this as she (attorney Greenstein) already has this statement in writing - the same statement that is now missing from the record of attorney Greenstein's investigation of Judge Murphy. And now attorney Greenstein is claiming no witnesses, other than David Haeg, have claimed Trooper Gibbens chauffeured Judge Murphy during David Haeg's trial or sentencing.

David Haeg is not listed as a witness as attorney Greenstein has stated his testimony is no longer valid after he was convicted of a crime.

9. I have made a copy of this Attorney Grievance Form for my own use.
10. I have reviewed "Ethical Grievances Against Attorneys" which provides answers to common questions about the attorney discipline process. If I have other questions, I may contact the Bar Association.
11. Additional Concerns:

Attorney Greenstein has been the sole investigator of all Alaskan judges for the past 21 years. The corruption of most attorneys will only taint the 100 or so cases they participate in each year. Attorney Greenstein's corruption could theoretically

taint every case before every Alaskan judge she investigated. Without any doubt whatsoever Marla Greenstein is the most critically important attorney in Alaska.

Steve Van Goor, chief discipline officer for the Alaska Bar Association, has consistently stated, "The third rail of being an attorney is honesty. If an attorney is dishonest the whole system collapses." How truer could this be when the only investigator of judges in an entire State is covering up for corrupt judges instead of prosecuting them? It is an abomination of unimaginable consequences.

The recordings of attorney Greenstein capture her in one breath telling David Haeg that he is only one who has testified Trooper Gibbens chauffeured Judge Murphy during the proceedings against him (David Haeg) and then in the next breath telling Jackie Haeg three times in a row she need not give further verbal sworn testimony that Trooper Gibbens chauffeured Judge Murphy during the proceedings against David Haeg because "I already have your statement in writing." Attorney Greenstein cannot claim David Haeg is the only witness to the chauffeuring and then, in the very same conversation, tell a different witness three times in a row they don't have to orally testify under oath to the chauffeuring because their testimony was already received in writing.

Recently, on December 16 and 17, 2010 the Alaska Commission on Judicial Conduct claims Jackie Haeg's statement in writing, documenting that she personally observed Trooper Gibbens chauffeuring Judge Murphy during David Haeg's trial, is not in their possession and is not a part of the record of David Haeg's complaint against Judge Murphy. Yet Marla Greenstein acknowledges receiving Jackie Haeg's statement in writing. Please read very carefully the paragraph above and the certified transcriptions by Judge Joannides.

In other words, all evidence there were additional witnesses that Trooper Gibbens chauffeured Judge Murphy during David Haeg's trial and sentencing (other than David Haeg) is gone from all record of Marla Greenstein's investigation of Judge Murphy.

Attorney Greenstein even claims, "It's not that serious a thing anyway – even if it did happen. Which we don't have any evidence that it did."

How many Americans or anyone else for that matter, on trial for everything they had in life, would agree they were getting a fair trial if the main witness against them got to chauffeur the judge during the proceedings? NO ONE.

This breathtaking statement indicates attorney Greenstein knew she was falsifying and eliminating evidence to exonerate Judge Murphy and Trooper Gibbens and was attempting to justify it by claiming even if it did happen it was not serious. It

cannot get more serious than having judges and Troopers conspiring to provide an illegal and unconstitutional trial/sentencing and later conspiring to cover this up by agreeing to both falsely claim it never happened.

Attorney Greenstein agreeing to jump in and falsify her investigation to back up Judge Murphy and Trooper Gibbens' false claims expanded the conspiracy and seriousness of this situation by at least an order of magnitude.

Another amazing fact is the official record proves the witnesses, that David Haeg gave attorney Greenstein, were present when Judge Murphy and Trooper Gibbens admitted the chauffeuring was taking place during the proceedings against David Haeg. If the witnesses testified as attorney Greenstein claims (that they did not know if Trooper Gibbens was chauffeuring Judge Murphy during the proceedings against David Haeg) they could successfully be prosecuted for perjury – because the official record proves they had to know Trooper Gibbens was chauffeuring Judge Murphy during her proceedings against David Haeg.

Judge Joannides even issued an order for production of attorney Greenstein's documentation of the Judge Murphy investigation and attorney Greenstein, claiming "confidentiality", failed to produce the documentation.

Attorney Greenstein may accomplish even greater levels of cover up by utilizing the positions and influence of all past judges and Alaska State Troopers she has covered up for.

During Judge Joannides investigation Judge Murphy was subpoenaed to testify under oath about whether or not she was chauffeured by Trooper Gibbens during the proceedings against David Haeg and then afterward gave false testimony during attorney Greenstein's investigation into this. Rather than obeying the subpoena Judge Murphy hired one of Alaska's best private criminal defense law firms, Ingaldson, Maassen, and Fitzgerald; they filed a motion to quash the subpoena so Murphy did not have to testify; and Judge Murphy was then never required to testify.

12. Alaska Rules of Professional Conduct violated by attorney Greenstein, who is the Executive Director and only investigator of the Alaska Commission on Judicial Conduct (others may also apply):

### **Rule 8.3. Reporting Professional Misconduct.**

(a) A lawyer who knows that another lawyer has committed a violation of the Rules of Professional Conduct that raises a substantial question as to that

lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects shall inform the appropriate disciplinary authority unless the lawyer reasonably believes that the misconduct has been or will otherwise be reported.

### COMMENT

[1] Self-regulation of the legal profession requires that members of the profession initiate disciplinary investigation when they know of a violation of the Rules of Professional Conduct. **Lawyers have a similar obligation with respect to judicial misconduct. An apparently isolated violation may indicate a pattern of misconduct that only a disciplinary investigation can uncover. Reporting a violation is especially important where the victim is unlikely to discover the offense.**

#### Rule 8.4. Misconduct.

It is professional misconduct for a lawyer to:

(a) violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another;

(b) commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects;

**(c) engage in conduct involving dishonesty, fraud, deceit, or misrepresentation;**

(d) state or imply an ability either to influence a government agency or official or to achieve results by means that violate the Rules of Professional Conduct or other law; or

**(e) knowingly assist a judge or judicial officer in conduct that is a violation of applicable rules of judicial conduct or other law.**

### COMMENT

[1] Lawyers are subject to discipline when they violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so or do so through the acts of another, as when they request or instruct an agent to do so on the lawyer's behalf. Paragraph (a), however, does not prohibit a lawyer from advising a client concerning action the client is legally entitled to take.

[2] A lawyer may refuse to comply with an obligation imposed by law upon a good faith belief that no valid obligation exists. The provisions of Rule 1.2(d) concerning a good faith challenge to the validity, scope, meaning, or application of the law apply to challenges of legal regulation of the practice of law.

**[3] Lawyers holding public office assume legal responsibilities going beyond those of other citizens. A lawyer's abuse of public office can suggest an inability to fulfill the professional role of lawyers. The same is true of abuse of positions of private trust such as trustee, executor, administrator, guardian, agent and officer, director, or manager of a corporation or other organization.**

Attorney Greenstein's near limitless authority and ability to claim "confidentiality", as Executive Director and only investigator of the Alaska Commission on Judicial Conduct, means the odds of proving her corruption are near non-existent. Only David Haeg's tape recordings of her conversations, combined with Judge Joannides 4-month investigation and witness affidavits, have allowed her stunning actions covering up for corrupt judges to be proved.

Because this devastating corruption will "evade review" for untold years more if not addressed now, I flat demand attorney Greenstein be permanently disbarred and that this Bar file a complaint with the United States Department of Justice that she be prosecuted criminally for conspiracy and corruption to deprive U.S. citizens of rights guaranteed under U.S. and Alaska Constitutions. Applicable federal law (others may also apply):

- 18 U.S.C. 241 (Conspiracy against rights)
- 18 U.S.C. 242 (Deprivation of rights under color of law)
- 18 U.S.C. 1510 (Obstruction of criminal investigation)
- 18 U.S.C. 1512 (Tampering with a witness)
- 18 U.S.C. 1962 (Racketeering Influenced Corrupt Organization - RICO)

I ask the record of Greenstein's Judge Murphy investigation be made public, so all may know the extent of the corruption. The rule that this investigation cannot be made public, because it may unjustly damage Judge Murphy's reputation, is no longer valid. Judge Murphy is proven to have lied to thwart the investigation against her - when she testified no chauffeuring took place during David Haeg's trial or sentencing when the official court record captures her admitting otherwise. Thus Judge Murphy is no longer entitled to the confidentiality established by rule.

Because there is evidence this Bar's pattern and practice is to protect attorneys instead of prosecuting them, I ask all actions taken to investigate attorney Greenstein be painstakingly documented. For this will be the most scrutinized investigation the Alaska Bar Association has ever conducted, as we fully expect attorney Greenstein will be exonerated and not be disbarred.

The official court record of David Haeg's case proves that nearly 7 years ago Judge Murphy and Trooper Gibbens conspired to deprive David Haeg of a fair

trial and sentencing – destroying his livelihood. Judge Murphy and Trooper Gibbens have since conspired to thwart the investigation into the corruption during David Haeg's trial and sentencing.

Attorney Greenstein, as the Executive Director and sole investigator for the Alaska Commission on Judicial Conduct, has now irrefutably joined this conspiracy to continue the cover up of David Haeg's illegal and unconstitutional trial and sentencing.

This is unacceptable.

13. PLEASE RETURN THIS ATTORNEY GRIEVANCE FORM AND ATTACHMENTS TO:

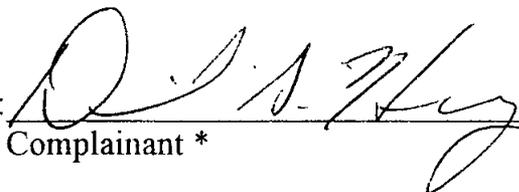
Bar Counsel  
Alaska Bar Association  
P.O. Box 100279  
Anchorage, AK 99510

14. PLEASE DATE AND SIGN THIS ATTORNEY GRIEVANCE FORM BELOW. GRIEVANCES WHICH ARE NOT SIGNED OR ARE UNCLEAR OR INCOMPLETE WILL BE RETURNED FOR APPROPRIATE COMPLETION. VERIFICATION: I have reviewed this Attorney Grievance Form and the information I have provided is true and correct to the best of my knowledge and belief.

**I also certify that a copy of this grievance was sent to:**

**United States Department of Justice  
950 Pennsylvania Ave., NW  
Washington, DC 20530**

DATE: 12-22-10 SIGNED:

  
Complainant \*

\*PLEASE SUBMIT YOUR ORIGINAL ATTORNEY GRIEVANCE FORM WITH YOUR ORIGINAL SIGNATURE. THE ALASKA BAR ASSOCIATION CANNOT ACCEPT A COPY OR FAX OF YOUR ATTORNEY GRIEVANCE FORM. PLEASE KEEP A COPY OF EVERYTHING YOU SUBMIT TO OUR OFFICE FOR YOURSELF.



# 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 21, 2011

Louise R. Driscoll  
Assistant Bar Counsel  
Alaska Bar Association  
P.O. Box 10029  
Anchorage, AK 99510-0279



**RE: ABA File No. 2010D243**

Dear Ms. Driscoll:

Thank you for allowing me time to provide information in this matter. I was on vacation from January 6<sup>th</sup> thru January 14<sup>th</sup> and so did not see your letter of January 5<sup>th</sup> until I returned to the office this week. Mr. Haeg filed a complaint against a state court judge with our office in 2006. That complaint was fully investigated by staff and reviewed and overseen by the full Commission. We also sought and received a response from the judge in the matter. As a result of the investigation, the complaint was dismissed without any disciplinary action at the Commission's January 22, 2007 meeting.

Mr. Haeg has subsequently sought to re-open the matter and the Commission has declined to do so. He also has raised the same issues relating to his initial complaint with us as part of his post-conviction relief petition in 3HO-10-00064CI. I have enclosed the relevant court documents concerning that matter. I have also enclosed our Formal Ethics Opinion #025 that addresses whether the conduct that Mr. Haeg complains of would constitute a violation of the Alaska Code of Judicial Conduct. Whether that opinion was the result of Mr. Haeg's specific complaint is confidential.

As Executive Director for the Commission, I am the investigator for all complaints. It is within my discretion, as guided by the Commission, how extensive an investigation to undertake. While I often conduct interviews as part of an investigation, I do not always interview every individual that is suggested by the complainant. In Mr. Haeg's matter, I interviewed: Mr. Haeg's attorney, Arthur Robinson; Mr. Tony Zellers, a witness and co-defendant who had settled earlier; Tom Stepnosky; Trooper Gibbens; and the subject judge (who also provided a written statement to the Commission). The Commission did not direct any further investigation.

01494

To the extent that Mr. Haeg states that I claimed that I contacted all witnesses, that is not correct. I did contact the witnesses above, and believe that I communicated that to Mr. Haeg in various phone conversations with him. The witnesses did state that they observed transportation provided by Trooper Gibbons and that was documented in my investigative memo to the Commission. The Commission did not find that those facts constituted a violation of the Code of Judicial Conduct. My investigative memos are confidential, so I cannot provide them here, but the fact of at least one transport occurring is not disputed.

Mr. Haeg asserts that Judge Joannides referred affidavits to our office on August 27, 2010. I have enclosed copies of the filings and orders between Judge Joannides and our office. We did not receive anything dated after August 25, 2010. I also searched CourtView to see if any August 27<sup>th</sup> document issued (printout enclosed) and have not found any reference to an August 27<sup>th</sup> document or to affidavits affecting our office. The court documents also reflect that we filed appropriate requests with the court to reconsider the request for our confidential documents. That reconsideration was granted.

Mr. Haeg's request to speak at the October 10, 2010 meeting was not approved by the Chair, as is the procedure under Commission Rule 1(h). Mr. Haeg stated that he would appear and speak despite the Chair's ruling and would bring friends with him. To ensure an orderly public session, staff arranged with Court System Judicial Services for a representative to be accessible to the meeting room. No law enforcement officer entered the meeting room during the public session, as there was no need.

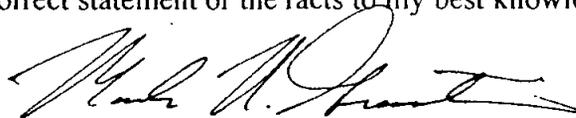
I hope that this information and the attached documents address any concerns.

Sincerely,



Marla N. Greenstein  
Executive Director

This letter constitutes a true and correct statement of the facts to my best knowledge and belief.



Marla N. Greenstein  
Alaska Bar No. 970848

Dated 1-21-2011

**ALASKA BAR**  
**A S S O C I A T I O N**

January 25, 2011

**CONFIDENTIAL**

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

RE: ABA File No. 2010D243  
Grievance against Marla N. Greenstein

Dear Mr. Haeg:

Enclosed is a copy of a response received from attorney Marla N. Greenstein concerning your grievance.

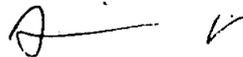
I would appreciate your written comments on the statements made by the respondent attorney in this response within fifteen (15) days of the date of this letter. Your further comments will enable this office to make an appropriate decision concerning this matter.

Your comments must include the statement "*The information I have provided is true and correct to the best of my knowledge and belief*" above your signature.

If you feel that no further comments are necessary, please advise us in writing. Your continuing cooperation in this matter is sincerely appreciated.

Sincerely,

ALASKA BAR ASSOCIATION



Louise R. Driscoll  
Assistant Bar Counsel

LRD/aib

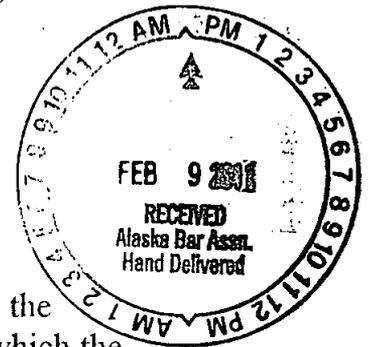
Enclosure

cc: Marla N. Greenstein

2010D243-601 - GADsDCASE2010\2010D243M.r for Comp. Comment

Alaska Bar Association  
Re: ABA File No. 2010D243  
Grievance against attorney Marla Greenstein

February 4, 2011



### Preface

Did the Bar include, in the grievance presented to attorney Greenstein, the documents and recordings Haeg requested be part of the record upon which the grievance is decided? (List of witnesses date stamped April 24, 2006 by the Alaska Commission on Judicial Conduct (ACJC); December 21, 2010 letter to David Haeg from the ACJC; the record of Judge Joannides August 25, 2010 hearing; the record of the ACJC October 10, 2010 public meeting; and the Bar recording of the Bar's December 1, 2010 public meeting concerning attorney Greenstein's actions.) See Haeg's grievance/complaint and supplement.

If all this was not presented to attorney Greenstein Haeg requests the Bar do so immediately, ask for attorney Greenstein's response, and give Haeg a chance to comment on this second response.

### Overview

The main issue in Haeg's complaint against Judge Margaret Murphy, which attorney Greenstein investigated, was that *while* Judge Murphy presided over Haeg's prosecution she was chauffeured by the main *witness against Haeg*.

- (1) That Judge Murphy was chauffeured by a Trooper or law enforcement is immaterial. Judge Murphy being chauffeured by the prosecution's main witness (Trooper Gibbens) in the same case Judge Murphy was presiding over is incredibly material.
- (2) Prejudice to Haeg is greatly diminished if the prosecution's main witness chauffeured Judge Murphy after she had sentenced Haeg. Prejudice to Haeg is overwhelming if the prosecution's main witness chauffeured Judge Murphy *while* she was deciding Haeg's case. No one would believe it fair if the main witness against him or her got to chauffeur the judge while the judge decided his or her case. The prosecution would never agree it was fair if Haeg got to chauffeur the judge deciding Haeg's case. In other words this kind of prosecution would violate due process, be unconstitutional, and render the resulting conviction null and void.
- (3) Actual prejudice is proven: The State's case to convict Haeg of severe guide crimes was Haeg killed wolves where he guided to benefit his guide

business. During his trial testimony Gibbens falsified the wolf kill locations to Haeg's guiding area. Upon confrontation Gibbens admitted no evidence was found in Haeg's guide area. Yet Judge Murphy did nothing to Gibbens for this admitted perjury - or to cure the perjury's taint from Haeg's trial. Afterward, at Haeg's sentencing, Judge Murphy used Gibbens admitted perjury as the specific reason to justify Haeg's severe sentence. If Judge Murphy used Gibbens perjury to justify Haeg's sentence it's likely the jury used the same perjury to justify his conviction.

Chauffeur/witness Gibbens first gave Judge Murphy an affidavit falsifying evidence locations in March of 2004 - in order to seize Haeg's property. Chauffeur Gibbens continued to be the main witness against Haeg until Haeg was sentenced at the end of September 2005 - a span of 18 months. There is no telling how much poison chauffeur Gibbens may have passed onto Judge Murphy in this time.

#### Attorney Marla Greenstein's investigation

On March 28, 2006 the ACJC date stamped receiving Haeg's complaint against Judge Murphy:

*"Everyone who was present at my trial and sentencing cannot believe the continuous unethical and unfair conduct displayed by Judge Murphy. Judge Murphy accompanied the State Prosecutions main witness Trooper Gibbens around town 100% of the time everywhere when court was in recess and it was an everyday occurrence to see them talking, joking, and laughing as they traveled around town together reinforced the pattern of bias and prejudice the Judge openly displayed. Every single time anyone saw Judge Murphy out of court she was with Trooper Gibbens."*

On March 31, 2006 attorney Greenstein asked Haeg to provide names of witnesses to the chauffeuring.

On April 30, 2006 the ACJC date stamped receiving Haeg's list of 4 witnesses (Tony Zellers, Tom Stepnosky, Drew Hilterbrand, and Wendell Jones), which included their phone numbers. This list included the statement:

*"Every time we ever saw Judge Murphy away from Court she was always with Trooper Gibbens being driven to (the store, hotel, airport). She even had meals with Trooper Gibbens at the Hotel McGrath B&B. Everyone thought it was very unusual that this type of activity was happening with the Judge and Trooper Gibbens considering Trooper Gibbens was the State's main witness." See Haeg's grievance supplement.*

On or about January 12, 2007 and on or about September 23, 2009 the following occurred during a tape-record phone conversations:

(1) Attorney Greenstein stated that she had interviewed both Judge Murphy and Trooper Gibbens and both claimed the only time Trooper Gibbens chauffeured Judge Murphy was after Haeg had been sentenced. See Judge Joannides referral.

(2) When asked by Haeg what witnesses had been contacted and what they testified attorney Greenstein stated: *"I'm the staff investigator"; "I talked to everybody... including the names you gave me"; that "everyone I interview said ... the rides were provided by somebody else - not Trooper Gibbens"; that she "got no indication from anybody that the judge ever took a ride with the Trooper" during Haeg's "trial or sentencing"; that Haeg told her the rides took place before sentencing "but nobody else" stated they had seen this; that "I'm telling you it even if everything you say is true it wouldn't be that significant a thing"; and that "I do the documentation".* See Judge Joannides referral.

(3) Jackie Haeg verbally testified to attorney Greenstein that during Haeg's trial Jackie had seen Gibbens chauffeuring Judge Murphy "everywhere", "to the store", "back and forth from the hotel", and "to eat". See Judge Joannides referral.

(4) As Jackie Haeg testified verbally to the chauffeuring attorney Greenstein stated four times that Jackie did not have to testify verbally because attorney Greenstein already had Jackie's statement in writing. In addition, when Jackie suggested attorney Greenstein needed to talk to other people besides witness Gibbens and Judge Murphy, attorney Greenstein replied, *"No, I talked to the people that your husband gave me the list of. I've spoke to them as well."* See Judge Joannides referral.

#### Superior Court Judge Stephanie Joannides' investigation

On November 21, 2009 Haeg applied for PCR, on March 3, 2010 Judge Murphy was assigned to decide Haeg's PCR application (over Haeg's objections Judge Murphy could not decide a case in which she was incriminated and a named witness/defendant), and on April 30, 2010 Judge Joannides was assigned to review Judge Murphy's denial of Haeg's motion Judge Murphy be disqualified for cause.

On July 9, 2010 Judge Joannides ordered that Haeg could supplement the record of why Judge Murphy must be disqualified and on July 25, 2010 Haeg did so. In addition to the tape recordings/transcriptions of attorney Greenstein's phone conversations Haeg provided affidavits from Jackie Haeg and from the same 4 witnesses (Tony Zellers, Tom Stepnosky, Drew Hilterbrand, and Wendell Jones)