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Faxed 8/30/06 to Aniak

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

STATE OF ALASKA,)
)
Plaintiff,)
)
vs.)
)
David HAEG,) Case No.: 4MC-S04-024 Cr.
)
Defendant.)
)

Appellate Court Case #A-09455.

**OPPOSITION TO MOTION TO STRIKE PLEADINGS IMPROPERLY
FILED BY A REPRESENTED PARTY AND MOTION TO SUPPLEMENT THE RECORD
WITH OFFICIAL ALASKA BAR ASSOCIATION PROCEEDINGS CONCERNING
DAVID HAEG INCLUDING ALL RECORDS, DOCUMENTS, FILES, HEARINGS,
EVIDENCE AND TESTIMONY PRESENTED THEREIN**

COMES NOW Defendant, DAVID HAEG, in the above referenced case, and hereby moves this court to deny the prosecution's motion to strike pleadings improperly filed by a represented party and to supplement the record with official Alaska Bar Association proceedings concerning Haeg including all records, documents, files, hearings, evidence and testimony presented therein.

The current motions the prosecution would like to strike include: Motion for Reconsideration of Recalling Witness (Mark Osterman, counsel for Haeg), Motion for Reconsideration of Ruling Denying Post-Conviction Relief, Motion for Reconsideration of Ruling Denying Motion for Return of Property and to Suppress Evidence. The prosecution would also like to deny all future motions by Haeg.

Haeg would like to point out that in some instances a defendant must be allowed to make motions while he is still represented. One of these is when a defendant's counsel has a conflict of interest and wishes to keep a client from proceeding

pro se. If a defendant is not allowed to make motions an attorney who has a conflict of interest can easily thwart his own clients attempts to expose this conflict of interest. When the State prosecution is benefiting from this conflict of interest they also will attempt to thwart the defendant's ability to proceed pro se and expose the injustice. Haeg would like to point out that his motion, to the Alaska Court of Appeals, filed by himself without counsel, was acted upon by the Alaska Court of Appeals - **because in some instances substance must come before form**. If the Court of Appeals observed and interpreted *Civil Rule 81* as Magistrate Woodmancy has a defendant would never be able to fire an attorney and proceed on his own or even fire his attorney and hire a new attorney if the first attorney did not wish it. This is because if the only person allowed to make motions was the attorney and he did not wish to withdraw all he would have to do is refuse to file any motion that indicated this was the desire of his client. Haeg did not state if the Court of Appeals strictly interpreted *Civil Rule 81* they could do this because a close reading of *Civil Rule 81(e)(1)(C)* specifically states that where the party expressly consents in open court or in writing to the withdrawal of the party's attorney and the party has provided in writing or on the record a current service address and telephone number - the court may permit an attorney who has appeared for a party in an action or proceeding to withdraw as counsel for such party - without mentioning any other actions that must be taken before counsel is allowed to withdraw. In a motion to the Alsaka Court of Appeals Haeg has consented in writing to the withdrawl of Osterman and Haeg has provided in writing a current service address and telephone number. In other words Haeg has complied with *Civil Rule 81(e)(1)(C)* and should be able to file motions, question witnesses, and argue before this court.

Haeg has talked to the Alaska Court of Appeals Chief Deputy Clerk Lori Wade at length about this and she agrees that in situations such as this a defendant who is represented by counsel must be allowed to act on his own behalf. To hold otherwise is to effectively hold the defendant hostage by not allowing him to speak when his own counsel is representing opposing interests.

Haeg points to these specific examples of how he is being held hostage by the court, the prosecution, and his own attorney:

1. Haeg asked to question his current counsel (Osterman) under oath so Haeg could establish to the court why it was an intelligent decision for him to proceed pro se - which is one of the exact questions the Court of Appeals asked this court to determine. Because of Osterman's prior commitments the court allowed Osterman to be excused before Haeg had finished questioning him - stating on the record that Haeg reserved the right to recall Osterman so Haeg could finish questioning him. Haeg filed a motion to exercise this very right Magistrate Woodmancy stated he had reserved on the record. Magistrate Woodmancy denied Haeg's motion and, when Haeg filed a motion to reconsider, ordered that Haeg may not file motions because counsel represents him - the same counsel Haeg wishes to prove has a huge conflict of interest. State prosecutor Rom filed a motion to strike these motions because Haeg is represented by counsel. Osterman, Haeg's counsel, stated he does not want to be questioned under oath by Haeg and refuses to file motions on Haeg's behalf - even though he is still legally obligated to represent Haeg. Due process, according to the U.S. Supreme Court definition of the U.S. Constitution, means fundamentally fair procedures. Exactly what is fundamentally fair for this court to deny a defendant his ability to speak, file motions or question witnesses about the conflict of interest of his own attorney advocating against him - stating that the defendant cannot be allowed to speak, file motions or question witnesses because he

is represented by the very same attorney who the defendant wants to question and believes is trying to sabotage his case - especially when the attorney the court states is representing the defendant refuses to advocate for the defendant?

See *Alaska Rule of Criminal Procedure Rule 53. Relaxation of Rules*: "These rules are designed to facilitate business and advance justice. They may be relaxed or dispensed with by the court in any case where it shall be manifest to the court that a strict adherence to them will work injustice." and *Alaska Rule of Criminal Procedure Rule 35.1 - Post-Conviction Procedure*. (f) Pleadings and Judgment on Pleadings. (1) "... In considering a pro se application the court shall consider substance and disregard defects of form..." It has also been held by all courts, from the U.S. Supreme Court on down, that it is intolerable to place form over substance if injustice is the result.

It is manifestly apparent it will work injustice if Haeg is not allowed to be heard by the court through testimony, questioning of witnesses, and by motion when Haeg is claiming his counsel and supposed advocate is actively advocating against him and is thus as much in opposition to him as the State prosecution. If there is any possibility of this how can Osterman be left to be the only one to file motions, make decisions, and speak on behalf of Haeg when he refuses to do so?

2. Haeg stated on the record he wished to institute a proceeding for post-conviction relief in this district court where his underlying conviction is filed. Magistrate Woodmancy ruled he would not accept a filing in this court and that post-conviction relief would have to be instituted with the Court of Appeals. Both at the time and later in a motion to reconsider Haeg pointed out there was no procedure for instituting a proceeding for post-conviction relief in the Court of Appeals. *Rule 35.1* states it must be commenced by filing an application at the court location where the underlying conviction was filed. Magistrate Woodmancy remained unpersuaded and thus denied Haeg to his constitutional right for a post-conviction proceeding.

Osterman has refused to file motions or advocate for Haeg in any way and hangs up the phone when Haeg calls to ask for him to do so. Haeg interprets *Criminal Rule 35.1* to be a different action or proceeding than the criminal appeal for which he hired Osterman (see *Civil Rule 81 (e)(1)*). In other words Haeg has never been represented by counsel in a proceeding for post-conviction relief. This means Haeg asked this court to consider a pro se application, as is his right under *Criminal Rule 35.1*, and the court denied him. This is a violation of due process and equal protection under law - both of which are guaranteed by two constitutions. *Criminal Rule 35.1(f)(1)* specifically states, in part: **"In considering a pro se application the court shall consider substance and disregard defects of form."**

It is unclear to Haeg why Magistrate Woodmancy refused to accept an application for post-conviction relief with the trial court and stated it must be applied for in the Court of Appeals, with whom it cannot by law be filed. Because it is a pro se application, and thus *Rule 35.1(f)(1)* applies, it should not matter whether Haeg is still represented by counsel or whether his application has other such defects in form. **Substance is to be considered and defects of form are to be disregarded.**

3. Haeg filed a motion for Reconsideration of Ruling Denying Motion for Return of Property and to Suppress Evidence. The motion denied contained irrefutable evidence, was in accordance with *Criminal Rule 37 (c)* and, as it is a separate action or proceeding from his appeal and Haeg has not had counsel in this action or proceeding, may not be precluded from being filed pro se. That this is a separate action or proceeding is borne out in that the motion is filed by the "person aggrieved" in "the judicial district in which the property was seized or the court in which the property may be used". Again, Haeg would like to point out counsel for his appeal, Osterman, refuses to even talk to Haeg about advocating or filing motions for him, to the extent

of hanging up the phone when asked to do so. If this court refuses to let Haeg file this motion, stating Osterman must do so, it is refusing Haeg his right to due process and equal protection under law and is thus violating two constitutions.

4. Since this court has refused to consider any motions filed by Haeg in the action/proceeding of his appeal, Haeg asked Osterman, in order for this court to make an informed decision if Haeg is intelligently waiving his constitutional right to counsel as charged by the Alaska Court of Appeals, to file a motion asking this court to make public and part of the record of Haeg's case the official Alaska Bar Association proceedings that Haeg and many others involved in his case have testified under oath in. Osterman flatly refused to do so - even though the *Alaska Rules of Court/Rules of Professional Conduct/Alaska Bar Rule 40* explicitly authorize any court to do this upon good cause shown. The evidence, records, documents, and sworn testimony presented during these proceedings is stunning - proving most of Haeg's claims of gross constitutional violations during his prosecution and sentencing. What is the reason for Osterman to hide the unbelievable conduct exposed by these official Alaska Bar Association proceedings - which took four (4) times longer than what was scheduled? Conduct exposed included defense counsels felony collaboration and/or conspiracy with the prosecution to violate numerous constitutional guarantees so that Haeg could be convicted and punished far beyond what law allowed - in fact obtaining his very conviction and sentence by violating many basic constitutional rights. Could Osterman's conduct be in line with his taped statements after Haeg asks him to expose his former attorneys conduct -

"Taking away and depriving people (Haeg's first two attorneys) of their livelihoods is that what you enjoy? That's what you're asking in essence to do is you're asking me to go on and interfere with another mans (Haeg's first two attorneys) livelihood so I hesitate..."

This is after Osterman had stated on tape:

"I look at this and it was a disaster in it and what Chuck (Haeg's second attorney) did was wrong - what Cole (Haeg's first attorney) did was wrong. There's no two ways about it."..."Chuck's wrong, ok. He obviously was the malpractice of one attorney that put you in this bind. Cole has a malpractice problem a big malpractice problem." ... "You did not realize he (Cole) was goanna set it up so that their (prosecution) dang dice was always loaded. ... They were always goanna win." ... "He (Cole) committed the malpractice act which was selling the farm..." ... "They've (Cole & Robinson) already screwed up your case bad enough." ... "Are we likely to get a reversal by the Court of Appeals? And I think the likelihood is yes. I think when the Court of Appeals sees the sell out that happened here. That your attorney told you to talk and you talked to a huge detriment." ... "And what Scot Leaders (Prosecutor) did was stomped on your head with boots. He went way, way, way to far ok and he violated all the rules that would normally apply in these kinds of cases and your attorney (Cole) allowed him, at that time, to commit these violations." ... "The attorney (Cole) didn't just open the door - ok - he (Cole) blew the side of the house off, with his conduct." ... "I can't figure out why Chuck's (Robinson) protecting him (Cole). He (Cole) screwed up - he screwed up that's the bottom line." ... "You have a 4th and a 5th amendment right those rights are substantial rights and he (Cole) violated those particular rights on your behalf in judicial matters. In matters before the Court. In the matters before the Court were plea agreements - because plea agreements are judicial matter." ... "I'm telling you right now ... these sons of bitches (Cole & Robinson) have been in this particular area of practice for so long they've been schmoozing so many people that when they hit Scot Leaders (Prosecutor) the new kid on the block they had no idea what was goanna happen. And it happened to them." Haeg states, "Well wasn't it their duty to say 'hey Scot Leaders broke the law?'" Osterman replies, "Well damn straight they should have..." ... "He (Robinson) screwed up; yes he should have shoved that damn plea agreement down Scot Leader's throat." ... "I just don't feel like I - that's it's my responsibility to run around and destroy people's livelihoods. And I don't give a damn if they're fishermen, or bankers, or whoever they are."

If I've got clear-cut evidence that somebody screwed up they are goanna hang. Mr. Cole I've got clear-cut evidence of, Chuck Robinson I - it's not so clear. Not so obvious." ... "Brent Cole obviously failed to appraise you, that statements made in a plea agreement could possibly come back on you in some fashion. And the fact of the matter is - is that he (Cole) failed to secure the plea agreement. That is the - the - the - the qualifier. He ***** up. He ***** up royally. He ***** up cause ... he hung you out to dry. His bad judgment should not be affecting your life." ... "By some act of negligence or carelessness they've caused you harm. And granted they (Cole & Robinson) should pay for the act of carelessness or negligence but those people are not out there with a gun trying to shoot you like you're trying to shoot them." ... "Your attorneys committed - I did not say they were out to get you - I said they screwed you. There's a difference. You think these people are hiding in dark corners." "I'm goanna tell you (Haeg) that the Court of Appeals is goanna say 'he's (Osterman's) in the case - he's in the case' because they're not goanna give you anymore time to file a brief"

Osterman's direct refusal to file a motion requesting these official Alaska Bar Association proceedings be made public, combined with this courts ruling prohibiting Haeg from doing so, has once again held Haeg hostage by preventing him from exercising his constitutional right to present extremely vital and pertinent evidence in his favor - which would prove it is an intelligent decision by Haeg to proceed on his own and without Osterman being in control.

5. Haeg would like to point out that in the order Assistant Attorney General Roger Rom filed he states, "This matter having come before this court and the court having considered the State's MOTION TO STRIKE PLEADINGS IMPROPERLY FILED BY A REPRESENTED PARTY **and the defendant's response thereto**". If Haeg cannot respond to the State's motion and Haeg's attorney Osterman refuses to do so even at Haeg's request does this mean that all motions by the State will be granted because they are all unopposed? How long will it take for the State to figure out

that they can just ask the court to grant an **unopposed** motion that Haeg's appeal be denied and that his conviction and sentence stand? In Haeg's research it is abundantly clear that unopposed motions are very likely to succeed. Is this the fundamentally fair proceeding that the United States and Alaska State constitutions guarantee?

It is clear to Haeg that he is being intentionally and systematically deprived of any opportunity to prove that his own attorneys have conspired/collaborated with the State prosecution to his immense detriment. When it is in the best interest of both the prosecution and the defendant's attorneys to keep something covered up it is pretty easy for them to do so when they are dealing with a criminal defendant who has no formal legal training and a magistrate who has the same exact lack of any formal legal training. It is understandable that the magistrate would side with the two professional attorneys - one who is supposedly on the defendants side and one who works for the State - and would feel more than hesitant to side with an uneducated defendant who has nothing but the constitution, law and hundreds of decisions, many from the U.S. Supreme Court, to support him - if only he could present them.

In light of the above situation the court should deny the State's Motion to Strike Pleadings Improperly Filed by a Represented Party and should grant Haeg's Motion to Supplement the Record with Official Alaska Bar Association Proceedings concerning David Haeg including all records, documents, files, hearings, evidence and testimony presented therein.

This motion is supported by the attached Affidavits of Defendant and Jackie Haeg.

RESPECTFULLY SUBMITTED this ____ day of _____, 2006.

I HEREBY CERTIFY that a copy of the foregoing was served on Roger Rom, by fax on _____, 2006.

Defendant,

David S. Haeg

By: _____