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Submitted 11/9/06

IN THE DISTRICT/SUPERIOR COURT FOR THE STATE OF ALASKA
AT KENAI, ALASKA

DAVID HAEG	)	
	)	
	)	
	)	
vs.	)	
	)	
STATE OF ALASKA,	)	Search Warrants: 4MC-04-001SW,
	)	4MC-04-002SW, & 4MC-04-003SW
	)	
_____	)	

MOTION FOR RETURN OF PROPERTY & TO SUPPRESS EVIDENCE

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, DAVID HAEG, in the above referenced search warrants and hereby files the following motion for return of property & to suppress evidence in accordance with *Alaska Rules of Criminal Procedure Rule No. 37(c):*

> *Alaska Rules of Criminal Procedure Rule No. 37(c)*:
> "A 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** and to suppress for use as evidence anything so obtained on the ground that the property was illegally seized."
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> See also *Waiste v. State*: "...Criminal Rule 37(c) hearing, in which a property owner can contest the basis for a seizure."[1];

Haeg and his wife have had property, which they use as the primary means to provide a livelihood, seized and held in direct violation of the due process clauses of the Alaska and the U.S.

[1] See *Waiste v. State*, 10 P.3d 1141 (Alaska 2000).

constitutions. This property was seized in March and April of 2004 and neither David or Jackie Haeg have ever been given their due process rights in the years since, even though the Alaska Supreme Court ruled they had to be provided "notice and an unconditioned opportunity to contest the state's reasons for seizing the property ... within days, if not hours"[2]. David and Jackie Haeg need a decision in hand by November 16, 2006 or a decision delivered to the Evidence Custodian of the Alaska State Troopers at 5700 E. Tudor Road, Anchorage, AK 99507-1225, phone number (907)269-5761 by 1:00 p.m. November 17, 2006. On November 17, 2006 David and Jackie Haeg will be driving from their home in Soldotna to Anchorage to effect possession of their property, which has been seized and held in clear violation of law, rule, and constitution. Every day that David and Jackie Haeg are illegally deprived of this property causes them irreparable harm by directly affecting their ability to provide a livelihood for their two daughters.

Haeg has filed motions previously that have not been ruled upon. The rule and law is very clear. There does not need to be any case number, there does not need to be a criminal case, and there does not need to be a civil case, because *Criminal Rule 37* is entirely about affording someone the right to be heard when their property, especially property they use for providing for their livelihood, is seized and held. Haeg is not trying to

[2] See F/V American Eagle v. State, 10 P.3d 1141 (Alaska 1980)

challenge evidence at this point. The point (by law, Rule and constitution) is that when **property** (even though the State may claim it is "evidence") is seized, especially when the **property** seized is used to provide a livelihood, an "ensemble of procedural rules bounds the State's discretion...and limits the risks and duration of harmful errors" (Alaska Supreme Court).[3] The Alaska Supreme Court has held this ensemble includes that

> "[T]he standards of due process under the Alaska and federal constitutions require that a deprivation of property be accompanied by notice and opportunity for hearing at a meaningful time to minimize possible injury. When the seized property is used by its owner in earning a livelihood, notice and an unconditioned opportunity to contest the state's reasons for seizing the property **must** follow the seizure within days, if not hours, to satisfy due process guarantees even where the government interest is urgent."[4]

Neither Haeg nor his wife Jackie, who both own the seized property and both used it as the primary means to earn a livelihood, were **ever** given any of these procedures. In not being given these procedures both Haeg and his wife were harmed immeasurably.

There are no debatable issues of fact, Rule or Law.

Haeg also points out a further Alaska Supreme Court holding in *F/V American Eagle v. State*, "As a general rule, forfeitures are disfavored by law, and thus forfeiture statutes should be strictly construed against the government". The State failed to follow **any** of the "ensemble of procedural rules" specifically required. They never gave Haeg or his wife any of the

[3] See *Waiste v. State* 10 P.3d 1141 (Alaska 2000).
[4] See *F/V American Eagle v. State*, 10 P.3d 1141 (Alaska 1980).

constitutional guarantees specifically mandated by both the Alaska Supreme Court and the U.S. Supreme Court.

The specific written requirements in Alaska to comply with these rulings are found in the *Alaska Rules of Civil Procedure* – as property seizures and forfeitures, although of "quasi-criminal nature"[5], are "civil in form". In fact there is no mention at all of the due process requirements for seizing and forfeiting property in the *Alaska Rules of Criminal Procedure* although Alaska Statutes **authorize** property seizures and forfeitures in Fish and Game criminal prosecutions under:

> *AS 16.05.190*: "[Property] seized under the provisions of this chapter or a regulation of the department, unless forfeited by order of the court, shall be returned, after completion of the case and payment of the fine, if any."
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> *AS 16.05.195*: "[Property] used in or in aid of a violation of this title or AS 08.54, or regulation adopted under this title or AS 08.54, may be forfeited to the state. (1) upon conviction of the offender in a criminal proceeding of a violation of this title or AS 08.54 in a court of competent jurisdiction; or (2) upon judgment of a court of competent jurisdiction in a proceeding in rem that an item specified above was used in or in aid of a violation of this title or AS 08.54 or a regulation adopted under this title or AS 08.54".

Thus, although authorized as an additional punishment for a criminal conviction, a property seizure and forfeiture [attachment], even when ancillary [secondary] to a criminal proceeding, must follow civil rules. In Alaska forfeiture of seized property is obtained through the remedy of **attachment**. This is the only method published in Alaska:

[5] See *Graybill v. State*, 545 P.2d 629 (Alaska 1976).

Alaska Rules of Criminal Procedure Rule 54: Process – "Process issued in all criminal actions in the superior court shall be issued, and return thereon made, in the manner prescribed by **Rule 4, Rules of Civil Procedure**."

Alaska Rules of Civil Procedure Rule 4: "(c) *Methods of Service - Appointments to Serve Process* - (3) **Special appointments for the service of all process relating to remedies for the seizure of** persons or **property pursuant to Rule 64** or for the service of process to enforce a judgment by writ of execution shall only be made by the Commissioner of Public Safety after a thorough investigation of each applicant, and such appointment may be made subject to such conditions as appear proper in the discretion of the Commissioner for the protection of the public. A person so appointed must secure the assistance of a peace officer for the completion of process in each case in which the person may encounter physical resistance or obstruction to the service of process."

Alaska Rules of Civil Procedure Rule 64: "At the commencement of and during the course of an action, all remedies providing for seizure of person or property for the purpose of securing satisfaction of the judgment ultimately to be entered in the action are available under the circumstances and in the manner provided by law existing at the time the remedy is sought. **The remedies thus available include** arrest, **attachment**, garnishment, replevin, sequestration, and other corresponding or equivalent remedies, **however designated and regardless of whether by law the remedy is ancillary to an action** or must be obtained by an independent action."

Alaska Rules of Civil Procedure Rule 89: *Attachment* "(b) *Motion and Affidavit for Attachment.* The plaintiff **shall file a motion with the court requesting the writ of attachment**, together with an affidavit showing... (m) *Ex Parte Attachments.* The court may issue a writ of attachment in an ex parte proceeding based upon the plaintiff's motion, affidavit, and undertaking only in the following extraordinary situations: (1) *When Defendant Non-Resident.* In an action upon an express or implied contract against a defendant not residing in the state, the court may issue an ex parte writ of attachment only when necessary to establish jurisdiction in the court. To establish necessity, the plaintiff must demonstrate that personal jurisdiction

over the defendant is not readily obtainable under AS 09.05.015. (2) *Imminence of Defendant Avoiding Legal Obligations.* The court may issue an ex parte writ of attachment if the plaintiff establishes the probable validity of the plaintiff's claim for relief in the main action, and if the plaintiff states in the affidavit specific facts sufficient to support a judicial finding of one of the following circumstances: (i) The defendant is fleeing, or about to flee, the jurisdiction of the court; or (ii) The defendant is concealing the defendant's whereabouts; or (iii) The defendant is causing, or about to cause, the defendant's property to be removed beyond the limits of the state; or (iv) The defendant is concealing, or about to conceal, convey or encumber property in order to escape the defendant's legal obligations; or (v) The defendant is otherwise disposing, or about to dispose, of property in a manner so as to defraud the defendant's creditors, including the plaintiff. (3) *Defendant's Waiver of Right to Pre-Attachment Hearing.* The court may issue an ex parte writ of attachment if the plaintiff establishes the probable validity of the plaintiff's claim for relief in the main action, **and if the plaintiff accompanies the affidavit and motion with a document signed by the defendant voluntarily, knowingly and intelligently waiving the constitutional right to a hearing before prejudgment attachment of the property**. (4) *The Government as Plaintiff.* **The court may issue an ex parte writ of attachment when the motion for such writ is made by a government agency (state or federal), provided the government-plaintiff demonstrates that such ex parte writ is necessary to protect an important governmental or general public interest.**

(n) *Execution, Duration, and Vacation of Ex Parte Writs of Attachment.* When the peace officer executes an ex parte writ of attachment, the peace officer shall at the same time serve on the defendant copies of the plaintiff's affidavit, motion and undertaking, and the order**. No ex parte attachment shall be valid for more than seven (7) business days (exclusive of Saturdays, Sundays, and legal holidays), unless the defendant waives the right to a pre-attachment hearing in accordance with subsection (m) (3) of this rule, or unless the defendant consents in writing to an additional extension of time for the duration of the ex parte attachment, or the attachment is extended, after hearing, pursuant to section (e) of this rule. The defendant may at any time after service of the**

> **writ request an emergency hearing at which the defendant may refute the special need for the attachment and validity of the plaintiff's claim for relief in the main action...**
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> (p) *Duration and Vacation of Writs of Attachment Issued Pursuant to Hearing.* A writ of attachment issued pursuant to a hearing provided for in section (c) of this rule shall unless sooner released or discharged, cease to be of any force or effect and the property attached **shall be released from the operation of the writ at the expiration of six (6) months from the date of the issuance of the writ unless a notice of readiness for trial is filed or a judgment is entered against the defendant in the action in which the writ was issued**, in which case the writ shall continue in effect until released or vacated after judgment as provided in these rules. However, upon motion of the plaintiff, made not less than ten (10) nor more than sixty (60) days before the expiration of such period of six (6) months, and upon notice of not less than five (5) days to the defendant, the court in which the action is pending may, by order filed prior to the expiration of the period, extend the duration of the writ for an additional period or periods as the court may direct, if the court is satisfied that the failure to file the notice of readiness is due to the dilatoriness of the defendant and was not caused by any action of the plaintiff. The order may be extended from time to time in the manner herein prescribed."

The state never obtained a writ of attachment [forfeiture] as required by rule, never served such writ upon Haeg as required by rule, never gave Haeg his "constitutionally guaranteed" notice, never gave Haeg his "constitutionally guaranteed" hearing "within in days if not hours" in 930 days let alone within the constitutinally mandated seven (7) business days, never applied for an extension within two and one half (2½) years let alone the mandated six (6) months as required by rule from time of seizure to time of notice of readyness of trial or to time of judgement, and never gave him his right to an "emergency hearing", even

after he asked for it, as required by rule. Jackie Haeg was denied these same constitutionally guaranteed procedures.

The above rules desribe the procedure Alaska has to seize and forfeit someones property while guaranteeing them their constitutional rights. It is in addition to the process for seizing evidence.[6]

> "[A] judgment entered without notice or service is constitutionally infirm... Where a person has been deprived of property in a manner contrary to the most basic tenets of due process, 'it is no answer to say that in his particular case due process of law would have led to the same result because he had no adequate defense upon the merits'."[7]

Thus, Haeg does not even need to show he would have prevailed if he would have been afforded his constitutionally guaranteed due process. The point is that everyone who is deprived of property, no matter if it is a criminal or civil proceeding, is constitutionally guaranteed notice and a hearing and the only way the state can not provide a hearing is if the person deprived waives the hearing in writing. The notice cannot be waived by anyone. Without notice the state and court loses jurisdiction and the property must be returned. If the hearing is not held and the person whose property is seized did not waive it in writing the state and court loses jurisdiction to hold or forfeit the property and it must be returned. It is very, very simple. The rationale is that this is the only way to force the state to provide due process to the people whose

[6] See *Waiste v. State* 10 P.3d 1141 (Alaska 2000).
[7] See *Peralta v Heights Medical Center, Inc*., 485 U.S. 80,87 (1988) & *Coe v Armour Fertilizer Works*, 237 U.S. 413, 424 (1915).

property they seize. If they did not have to give the property back when they violated due process they would have absolutely no incentive or reason to ever provide anyone with due process.

Even though Haeg does not have to explain to this court why, the obvious reason the State did not afford Haeg his constitutional right to a hearing in the first place is he would have no doubt prevailed upon the merits and ended any further prosecution. **All** the search warrants were based upon intentionally misleading and unbelievably prejudicial perjury, this would have been exposed during a hearing, and this would have ended any criminal prosecution.

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

procedure violates the fundamental principles of due process."

Haeg's property, used to put food in the mouths of his wife (Jackie) and two daughters (Kayla, age eight (8) and Cassie, age five (5)), was seized, held, and forfeited without any regard whatsoever for the constitutional safties protecting the right of every U.S. and Alaskan citizen to provide a livelihood for their family. Again Haeg would like to ask where is the "ensemble of procedural rules" that "bounds the State's discretion to seize vessels and limits the risk and duration of harmful errors" that the Alaska Supreme Court has ruled protects citizens against unecessary or illegal seizures and/or forfeitures.[8]

Haeg would like to point out that *Criminal Rule 37(c)* provides the right, **in the court in the judicial district which the property was seized or which the property may be used, to contest the seizure of property**, **anytime** after the seizure, no matter why it was seized, and that it is a right **independent** of any criminal proceeding. The district court seems to think this right was waived or not needed to be complied with because of something to do with Haeg's criminal case. This is obviously wrong. The whole point of this "ensemble of procedural rules" is to protect the use of your **property**, **especially** when it is seized under the "ruse" that it is "only" evidence and **especially** when it is seized via ex parte affidavits of a single individual Trooper who may be overzealous in his request that will deprive

[8] See *Waiste v. State*, 10 P.3d 1141 (Alaska 2000).

someone of property used to provide a livelihood. He may be so overzealous he is even willing to commit perjury. Haeg would like to point out property owned by his wife was also seized and forfeited without anyone asking her if she had an objection or providing an opportunity to object. Haeg would like to point out the state seized and deprived him of his property for eight (8) months before ever charging him. The state prosecution no doubt relished the fact that Haeg was being financially devasted during this entire time. It would put them in a far superior position if Haeg was already bankrupt **before** even being charged. Even if they **never** filed charges they could count it as a sweet victory.

Maybe with this new-found law enforcement tactic the Troopers will be able to bypass trials entirely – if they think someone is doing something wrong (or maybe someone they just don't like) they can just seize all of the persons property that they use to make a livelihood, bankrupt them, destroy their dreams, and they will just go out and commit suicide.

Since state and the court lost jurisdiction to seize, hold or forfeit David and/or Jackie Haeg's property or to use it as evidence, for the following reasons: the state did not obtain a writ for the seizure and subsequent forfeiture; the state did not give timely notice it intended to forfeit David and/or Jackie Haeg's property; the state didn't provide David and/or Jackie Haeg with a hearing within 7 days of seizing their property; the state did not get anything waiving this hearing, in writing or otherwise; David and/or Jackie Haeg did not consent in writing to

an additional extension of time to the ex parte seizure and deprivation; because there was no notice of readiness for trial or judgment entered within six (6) months of seizure and because there was no motion filed before the expiration of six (6) months extending this time period; David and Jackie Haeg respectfully request this court to grant this motion and order the State of Alaska to release their property and suppress evidence. Haeg respectfully asks for an order in his hand before November 16, 2006 or delivered to the Evidence Custodian of the Alaska State Troopers at 5700 E. Tudor Road, Anchorage, AK 99507-1225, phone (907) 269-5761, returning his and his wifes property and suppress evidence.

This motion is supported by the accompaning affidavits from David and Jackie Haeg.

RESPECTFULLY SUBMITTED this _____ day of _____, 2006.

_____

David S. Haeg

I HEREBY CERTIFY that a copy of the foregoing was served on:

District Attorney Office
Kenai, Alaska.
by hand on _____.

By: _____