

**IN THE SUPERIOR COURT OF THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT IN ANCHORAGE**

Attention Superior Court Judge Stephanie Joannides

DAVID HAEG,)	
)	
Applicant,)	
)	
v.)	
)	POST-CONVICTION RELIEF
STATE OF ALASKA,)	CASE NO. 3HO-10-00064CI
)	
)	
Respondent.)	
)	

Trial Case No. 4MC-04-00024CR

**8-22-10 OPPOSITION TO PETER MAASSEN REPRESENTING ANYONE
IN THIS PROCEEDING OR CASE AND 8-22-10 OPPOSITION TO
MAASSEN’S 8-18-10 MOTION TO QUASH SUBPOENAS OR
ALTERNATELY 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 case and hereby files this opposition to Peter Maassen representing anyone in this proceeding or case and to the motion to quash Judge Murphy’s and Magistrate Woodmancy’s subpoenas or alternately to allow them to testify telephonically.

Prior Proceedings

In 2004 and 2005 David Haeg and Tony Zellers were prosecuted as codefendants with Margaret Murphy presiding first as Magistrate and later as

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.”

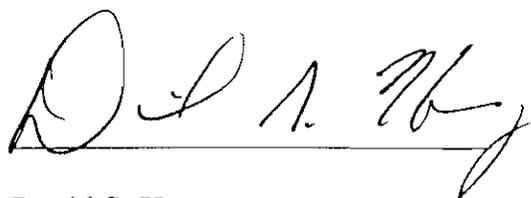
For Haeg this is anything but a “preliminary hearing.” It is the last hearing at which he may prevent Judge Murphy from presiding over his PCR, by proving Judge Murphy lied during an official investigation into her actions and will sabotage Haeg’s PCR proceeding in order to keep this “career ender” covered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

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: 