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IN THE DISTRICT/SUPERIOR COURT OF THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT IN HOMER
Attention Honorable Judge Margaret Murphy

DAVID HAEG,	)
	)
Applicant,	)
	)
vs.	)
	) POST-CONVICTION RELIEF
STATE OF ALASKA,	) CASE NO. 4MC-09-00005 CI
	)
Respondent.	)
_____	)

Trial Case No. 4MC-04-00024CR

3-9-10 MOTION TO DISQUALIFY JUDGE MURPHY FOR CAUSE

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 moves for Judge Murphy to be disqualified for cause.

Judge Murphy has an obvious and direct conflict of interest in Haeg's case, is a material witness in Haeg's case, and has firsthand knowledge of disputed facts.

I

Haeg has previously filed an official complaint against Judge Murphy with the Alaska Commission on Judicial Conduct – asking that Judge Murphy, who was presiding

over Haeg's trial and sentencing, be sanctioned for seeking and accepting full-time transportation from the State prosecution – the party and witnesses who opposed Haeg. This transportation occurred every morning, noon, and night for both proceedings. Judge Murphy testified to Judicial Conduct investigator Marla Greenstein that these rides never took place. Judge Murphy was never sanctioned because of this testimony. Yet the tape recording of the official record of Haeg's case caught Judge Murphy herself ordering this very transportation. See excerpt of Haeg Trial Record Transcript, page 1262:

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> MR. ROBINSON (Haeg's attorney at the time): Before we get going again I think we're going to need about a 10 minute break.
>
> THE COURT (Judge Murphy): 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.**

If Haeg's PCR is decide in favor of Haeg Judge Murphy will be forced to pay for not only her bias to the State that cost Haeg everything - but also for her perjury and conspiracy to cover this up. (Trooper Gibbens also testified during the investigation he

never gave rides to Judge Murphy during Haeg's case – falsely collaborating Judge Murphy's testimony).

In other words Judge Murphy has a direct financial, personal, and professional interest in making sure Haeg's PCR is decided against Haeg. This is in violation of Haeg's constitutional right to a fair and impartial arbitrator.

These issues are also in direct violation of Alaska Statute and Judicial Code:

Alaska Statute 22.20.020

(a) **A judicial officer may not act in a matter in which**

(3) **the judicial officer is a material witness;**

(4) **the judicial officer… has a direct financial interest in the matter;**

(7) **an attorney for a party has represented** the judicial officer or **a person against the judicial officer, either in the judicial officer's public or private capacity, in a matter within two years preceding the filing of the action;**

(9) The judicial officer feels that, for any reason, a fair and impartial decision cannot be given.

Alaska Code of Judicial Conduct Canon 3:

B. **Adjudicative Responsibilities**.

(5) In the performance of judicial duties,* **a judge shall act without bias or prejudice*…**

Commentary. *A judge must perform judicial duties impartially and fairly.* ***A judge who manifests bias on any basis in a proceeding impairs the fairness of the proceeding and brings the judiciary into disrepute.*** *Facial expression and body language, in addition to oral communication, can give others an appearance of judicial bias.*

E. **Disqualification.**

(1) Unless all grounds for disqualification are waived as permitted by Section 3F, **a judge shall disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned,** including but not limited to instances where:

Commentary. -- ***Under this rule, a judge is disqualified whenever the judge's impartiality might reasonably be questioned, regardless of whether any of the specific rules in Section 3E(1) apply.*** *For example, if a judge were in the process of negotiating for employment with a law firm, the judge would be disqualified from any matters in which that law firm appeared, unless the disqualification was waived by the parties after disclosure by the judge.*

A judge should disclose on the record information that the judge believes the parties or their lawyers might consider relevant to the question of disqualification, even if the judge believes there is no real basis for disqualification.

(a) the judge has a personal bias or prejudice concerning a party or a party's lawyer, or **personal knowledge of disputed evidentiary facts concerning the proceeding;**

(b) the judge served as a lawyer in the matter in controversy, or a lawyer with whom the judge previously practiced law served during their association as a lawyer concerning the matter, **or the judge has been a material witness concerning it;**

(c) the judge knows* that he or she, individually or as a fiduciary,* or the judge's spouse,* parent, or child wherever residing, or any other member of the judge's family* residing in the judge's household:

(i) has an economic interest* in the subject matter in controversy, or

(ii) is employed by or is a partner in a party to the proceeding or a law firm involved in the proceeding, or

(iii) has any other, more than de minimis interest* that could be substantially affected by the proceeding, or

(iv) is likely to be a material witness in the proceeding;

(d) the judge or the judge's spouse, or a person within the third degree of relationship* to either of them, or the spouse* of such a person:

(iii) is known* by the judge to have a more than de minimis interest* that could be substantially affected by the proceeding;

(iv) is to the judge's knowledge* likely to be a material witness in the proceeding.

F. **Waiver of Disqualification.** (1) A judge shall not seek or accept a waiver of disqualification when the judge has a personal bias or prejudice concerning a party or a lawyer, when, for any other reason, the judge believes that he or she cannot be fair and impartial, or when a waiver is not permitted under AS 22.20.020. In other circumstances, a judge who would be disqualified by the terms of Section 3E may disclose on the record the basis or bases of the judge's disqualification and ask the parties to consider whether they wish to waive disqualification. A judge is not bound by the parties' decision to waive a disqualification.

Commentary. -- *A waiver procedure provides the parties an opportunity to proceed without delay if they wish to waive the disqualification. Under AS 22.20.020(b), the following disqualifications may not be waived:*

(2) the judicial officer is a material witness;

(3) the judicial officer or the spouse of the judicial officer, individually or as a fiduciary, or a child of the judicial officer has a direct financial in the matter;

(4) the judicial officer feels that, for any reason, a fair and impartial decision cannot be given.

Any reasonable person would agree that Judge Murphy's impartiality might reasonably be questioned after Haeg filed a complaint to sanction her, which required her to commit perjury and conspiracy to avoid.

II

Judge Murphy has personal knowledge of disputed evidentiary facts concerning the proceeding and is named as a material witness in this proceeding. See Section **I** and the Judicial Canons above and Haeg's PCR application/memorandum.

One of Haeg's main claims is that the official record of his case was tampered with to remove all evidence that State officials personally told and induced Haeg to take wolves outside the Wolf Control Program area but claim they had been taken inside the Wolf Control Program area so the program would be seen as effective and continued – that for Haeg to do so would further a great good. This was a "complete" defense to the charges Haeg faced:

> **U.S. Supreme Court SORRELLS v. U.S., 287 U.S. 435 (1932)**
>
> It is well settled that the fact that officers or employees of the government merely afford opportunities or facilities for the commission of the offense does not defeat the prosecution. Artifice and stratagem may be employed to catch those engaged in criminal enterprises. A different question is presented when the criminal design originates with the officials of the government, and they implant in the mind of an innocent person the disposition to commit the alleged offense and induce its commission in order that they may prosecute.
>
> When the criminal design originates, not with the accused, but is conceived in the mind of the government officers, and the accused is by persuasion, deceitful representation, or inducement lured into the commission of a criminal act, the government is estopped by sound public policy from prosecution therefor.
>
> The protection of its own functions and the preservation of the purity of its own temple belongs only to the court. It is the province of the court and of the court alone to protect itself and the government from such prostitution of the criminal law. The violation of the principles of justice by the entrapment of the unwary into crime should be dealt with by the court no matter by whom or at what stage of the proceedings the facts are brought to its attention.
>
> Proof of entrapment, at any stage of the case, requires the court to stop the prosecution, direct that the indictment be quashed, and the defendant set at liberty.
>
> The applicable principle is that courts must be closed to the trial of a crime instigated by the government's own agents.

The judgment is reversed, and the cause is remanded for further proceedings in conformity with this opinion.

U.S. Supreme Court JACOBSON v. UNITED STATES, 503 U.S. 540 (1992)

Held:
The prosecution failed, as a matter of law, to adduce evidence to support the jury verdict that Jacobson was predisposed, independent of the Government's acts and beyond a reasonable doubt, to violate the law by receiving child pornography through the mails. In their zeal to enforce the law, Government agents may not originate a criminal design, implant in an innocent person's mind the disposition to commit a criminal act, and then induce commission of the crime so that the Government may prosecute.

Because the Government overstepped the line between setting a trap for the "unwary innocent" and the "unwary criminal," Sherman v. United States, 356 U.S. 369, 372 (1958), and, as a matter of law, failed to establish that petitioner was independently predisposed to commit the crime for which he was arrested, we reverse the Court of Appeals' judgment affirming his conviction.

JUSTICE O'CONNOR, with whom THE CHIEF JUSTICE and JUSTICE KENNEDY join, and with whom JUSTICE SCALIA joins except as to Part II, dissenting.
[Keith Jacobson] needed no Government agent to coax, threaten, or persuade him; no one played on his sympathies, friendship, or suggested that his committing the crime would further a greater good. In fact, no Government agent even contacted him face to face.

U.S. Supreme Court. Mathews v. United States, 485 U.S. 58 (1988)

Held: Even if the defendant in a federal criminal case denies one or more elements of the crime, he is entitled to an entrapment instruction whenever there is sufficient evidence from which a reasonable jury could find entrapment -- a defense that has the two related elements of Government inducement of the crime, and a lack of predisposition on the defendant's part to engage in the criminal conduct.

As a general proposition, a defendant is entitled to an instruction as to any recognized defense for which there exists evidence sufficient for a

reasonable jury to find in his favor. *Stevenson v. United States,* 162 U. S. 313 (1896)

This right is so important that the failure to allow a defendant to present a theory of defense which is supported by sufficient evidence is reversible error. United States v. Felsen, 648 F.2d 681, 685-86 (10th Cir.), Reversed and remanded.

Supreme Court of Alaska. Grossman v. State 457 P.2d 226 Alaska 1969.

It is plain enough that the underlying basis of entrapment is found in public policy, as discerned and announced by the courts. As Judge Learned Hand perceptively observed in United States v. Becker, 62 F.2d 1007, 1009 (2d Cir. 1933),

'The whole doctrine derives from a spontaneous moral revulsion against using the powers of government to beguile innocent, though ductile, persons into lapses which they might otherwise resist.'

In Sorrells v United States, 287 U.S. 435, 53 S.Ct. 210, 77 L.Ed. 413 (1932), the majority opinion viewed entrapment as an implied statutory condition that one who has been entrapped shall not be convicted of violating the statute.

It held that the determination in each case should focus on whether the particular defendant was predisposed to commit the crime or was an otherwise innocent person who would not have erred except for the persuasion of the government's agents. This permits a searching inquiry into the conduct and motivations of both the officers and the defendant, including the past conduct of the defendant in committing similar crimes, and the general activities and character of the defendant.

Reversed and remanded.

Supreme Court of Alaska. Batson v. State 568 P.2d 973 Alaska 1977.

In Alaska we have recognized entrapment as a defense in criminal prosecutions.

Under the Federal 'implied exception' theory, an entrapped defendant cannot be convicted and punished because what he did was not a crime; that is, he did not violate any statute because he comes within an implied exception to that statute. From a procedural standpoint, once the defense of

> entrapment is raised, the prosecution must prove non-entrapment because it is only by so doing that the prosecution can prove that the defendant did not come within the implied exception and hence that he has committed a crime. Since application of the statute to the defendant is an essential element which must be proven to establish guilt, it follows in both logic and law that the standard of proof which must be satisfied on the issue of non-entrapment is the same as for any other essential element of the offense; proof beyond a reasonable doubt. Therefore, the 'Federal rule' provides that once the issue of entrapment has been raised, either by the defendant or in any other way, the defendant has met his burden and thereafter the burden is on the prosecution to disprove entrapment beyond a reasonable doubt.

Judge Murphy held and was responsible for the official record of Haeg's case. The court record proves she had direct knowledge that the defense in question, which was devastating to the State prosecution, was placed in the record. When Haeg calls her as a witness to prove this he will also ask to find out if she was the one that removed Haeg's defense out of the record or knows who did– and if she denies knowing anything Haeg will impeach her with the proof she already gave false testimony and conspired with the State prosecution to thwart Haeg's previous allegations.

III

> **Alaska Statute 12.72.030** states: "An application for post-conviction relief shall be filed with the clerk at the court location where the underlying criminal case is filed."

There is no law or rule stating the application can be referred to a specific judge – even one claimed to be the "most knowledgeable". As with jurors, judges must be assigned on a "next in the rotation" basis – to eliminate the possibility of stacking the deck in one party's favor. Only venue may be "selected" to favor the convenience of parties and/or witnesses.

If a party is unhappy with a judge or juror they may seek to disqualify him or her peremptorily or for cause – as Haeg sought to preempt Magistrate Woodmancy – but there is no "selection" of the specific judge to decide the case.

The reason the State is "selecting" Judge Murphy in Homer is that she will decide Haeg's case in favor of the State and against Haeg – as she has already proven with prior perjury and conspiracy with the State against Haeg. If the State wishes to preempt Judge Funk they may do so – but they must accept the judge who is next in line in Fairbanks without "selecting" a judge that is also in venue that will inconvenience both parties and nearly all witnesses.

It is an unacceptable perversion and prostitution of the judicial system for the State to impermissibly "select" the judge they wish. In being able to "select" the judge they will without any doubt whatsoever pick whoever will decide for them and against Haeg – as Judge Murphy has irrefutably proven is the case with her.

Conclusion

Haeg has an absolute right to have the rules followed, an absolute right to a PCR hearing before an unbiased and unconflicted judge, and will take all action necessary to prevent this unfair perversion and prostitution of our judicial system.

I declare under penalty of perjury the forgoing is true and correct. Executed on _____. 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 _____ a copy of the forgoing was served by mail to the following parties: Andrew Peterson, O.S.P.A and the United States Department of Justice.

By:_____