

in Closed Season⁴, and one count of Failure to Salvage Game⁵. In July 2005, a jury found him guilty of nine of the counts. (He was found not guilty of one count of Trapping in a Closed Season and the count of Failure to Salvage Game.) Mr. Haeg was sentenced in September 2005 and immediately appealed his conviction and sentence. In September 2008, the Court of Appeals affirmed Mr. Haeg's convictions.⁶ Mr. Haeg requested the Alaska Supreme Court review his case. His request was denied in December 2008. In November 2009, Mr. Haeg filed this Post-Conviction Relief (PCR) Application.

The PCR was originally assigned to Judge Funk in Fairbanks. Mr. Haeg moved for a change of venue to Kenai alleging that most of the witnesses were in the Kenai area. The State opposed the change of venue and requested the PCR be assigned to me since I was the trial judge. Judge Funk reassigned the case to me and changed the venue to Homer. Mr. Haeg then filed this motion to disqualify me for cause.

III. Discussion

According to his motion, Mr. Haeg filed a complaint with the Judicial Conduct Commission concerning my conduct during the trial. He acknowledges that no action was taken on his complaint.

⁴ 5 AAC 84.270(14).

⁵ 5 AAC 92.220(a)(1).

⁶ MOJ No.A-9455/10015, 2008 WL 4181532. The Court of Appeals also held that the district court should have suspended Mr. Haeg's guide license rather than revoke it and ordered the district court to modify the sentence.

In fact, Mr. Haeg included as exhibit 32 a copy of the letter from the Judicial Conduct Commission informing him of their decision to dismiss the complaint for lack of probable cause. Mr. Haeg had the right to file a complaint with the Judicial Conduct Commission. I expect that litigants will file complaints with the Judicial Conduct Commission when they believe I have acted improperly. The filing of a complaint or grievance does not affect my ability to remain fair and impartial in a case. This is true in this case.

In the performance of my judicial duties; appeals, grievances, and complaints will be filed. I believe that the public expects me to be able to continue to hear a case even though an appeal or complaint is filed. If the filing of an appeal or a grievance required the recusal of a judge, then an unhappy litigant would be able to remove any judge at any time in a proceeding simply by filing a grievance or complaint.⁷

The complaint filed by Mr. Haeg has been dismissed and does not affect my ability to remain fair and impartial. Mr. Haeg's allegations seem to indicate that he believes that if his application is granted, it will have a financial affect on me. On page three of his motion, Mr. Haeg alleges that I have "a direct financial, personal, and professional interest in making sure Haeg's PCR is decided against Haeg." Mr. Haeg's assertion that I have any interest in the outcome of the PCR is mistaken.

⁷ See Mortiboy v. Municipality of Anchorage, 1996 WL 727363 (Ak. App. 1996)

Mr. Haeg also alleges that I have "personal knowledge of disputed evidentiary facts concerning the proceeding and is named as a material witness in this proceeding." I handled Mr. Haeg's case from the initial filing and arraignment to trial and sentencing. I heard evidence that was presented at hearings and at the trial. I have no other personal knowledge about the facts alleged in the PCR. The PCR alleges ineffective assistance of counsel by two attorneys retained by Mr. Haeg. Most of the allegations concern actions that occurred outside of the court. I have no knowledge of these matters and have not heard any evidence regarding the claims. Therefore, I can be fair and impartial in this case.

Mr. Haeg's allegation that I am a material witness in this case is mistaken. I am not a witness to the claim of ineffective assistance of counsel. Mr. Haeg believes that he filed a letter with the court claiming a defense of entrapment. No such defense was ever raised at any hearing or at the trial. Mr. Haeg's belief that I have some knowledge about this letter does not explain how that would make me a material witness in this case. I do not believe that I am or would be a witness in this matter. I can remain fair and impartial and render a decision based on the facts and the law in this case.

The final allegation is that the State "selected" me to hear this case because I will decide the case in favor of the State.

and Palmer v. State, 1986 WL 1165510 (Ak. App. 1986).

Although the State did ask that the case be assigned to me, it was because I was the trial judge. Usually, Post-Conviction Relief applications are assigned to the judge who presided over the trial. Normally, this PCR would have been assigned to me initially.

The underlying criminal trial in this case began in May 2005.

The trial was stopped after one day of jury selection because of the health of Mr. Haeg's attorney. The trial continued in July and sentencing was held in September. In June 2005, I became the district court judge in Homer. Since I am no longer in the Fourth Judicial District, the case was initially assigned to a judge in the Fourth Judicial District. The State in their motion pointed out that I am still available and that it would be best to assign the PCR to me because I had been the trial judge. The State points to the Flyler case⁸ as the basis for assigning me to the PCR. In Flyler, the Court of Appeals recognizes that the trial judge has an advantage in evaluating issues that arise in a PCR, especially allegations of ineffective assistance of counsel. The trial judge saw the witnesses testify and saw the conduct of counsel and is in a better position to make an accurate decision than a judge who must make a determination without having presided over the trial. The fact that the State asked that this PCR be assigned to me does not affect my ability to be fair and impartial in this case. The State's reason for requesting that I be

⁸ Flyler v. State, 10 P.3d 1173 (Ak. App. 2000).

assigned is because I was the trial judge, not because they believe I will render a decision in their favor. I will base any decisions in this case, as in all others, on the facts and the law. Even though the State asked for the case to be assigned to me, it does not affect my ability to be fair and impartial. I find no reason to recuse myself from this case.

I have an ethical obligation to hear all cases assigned to me. I did not request this case be assigned to me, but if I withdrew from this case because of Mr. Haeg's mistaken beliefs or the State's request to assign it to me, I believe I would be violating my ethical obligation to hear all matters assigned to me unless my disqualification is required.⁹ The Court of Appeals held in Feichtinger v. State,¹⁰ "[w]hile we agree that judges must avoid the appearance of bias, it is equally important to avoid the appearance of shirking responsibility." If I granted this motion to recuse, I would be shirking my responsibility to hear and decide all matters assigned to me.

IV. Conclusion

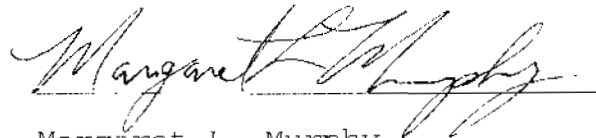
In my review of the statutes, canons, and case law regarding judicial disqualification, I have found no basis for a disqualification in this case. In accordance with AS 22.20.020(c), this decision will be forwarded for review by another judge. The court will schedule the requested

⁹ See Code of Judicial Conduct, Canon 3B(1).

representation hearing after the decision from the reviewing judge.

IT IS SO ORDERED.

Dated at Homer, Alaska on this 23d day of April, 2010.



Margaret L. Murphy
District Court Judge

¹⁰ 779 P.2d 344, 348 (Ak. App. 1989).