

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT AT PALMER

DAVID HAEG,

Plaintiff,

vs.

STATE OF ALASKA,

Defendant.

CASE NO. 3KN-10-01295CI

ORDER

***7-10-17 Motion for Reconsideration of Denial of Preempting Judge Morse
Calendaring Order***

On 9 June 2017 the Court issued the following Order:

After being convicted of five acts involving hunting and trapping, David Haeg pursued post-conviction relief. Judge Karl Bauman denied the relief sought. The court of appeals has reversed Judge Bauman's rulings in certain respects and remanded the case to the superior court for further proceedings.¹

Judge Bauman has retired. The case was assigned to his replacement, Judge Jennifer Wells. Judge Wells had been a magistrate judge in Kenai and had worked with Judge Margaret Murphy, the Homer judge who handled the original trial. Several of Haeg's remanded contentions involve the out-of-court conduct of Judge Murphy. Because of her relationship to Judge Murphy, Judge Wells recused herself and asked the presiding judge to reassign the case.

The Court held a hearing in Anchorage on 30 May 2017 to discuss with Haeg and the State the scheduling of the case. Haeg sought to delay any hearings until after his seasonal

¹ *Haeg v. State*, MO&J No. 6416 (Alaska App. December 21, 2016).

employment was likely to end. That would be sometime in December. Thus the earliest likely time for briefing and hearings would be in January 2018 or thereafter.

The parties agreed that the case should be handled out of Kenai. There are two other superior court judges in Kenai. Both are retiring in 2018. Judge Anna Moran will retire in March or April, although the precise date has not been set. Judge Charles Huguelet is retiring at the end of 2018.

Haeg estimated that it would take two weeks for an evidentiary hearing. The State noted that the court of appeals had identified certain showings that Haeg had to make before he was entitled to an evidentiary hearing on those particular arguments. It thought a hearing could be completed in a day.

Regardless of which estimate is more accurate, it does not make sense to assign the case to Judge Moran, given her tentative retirement date. Therefore, the case is assigned to Judge Huguelet. It will be for him to schedule further briefing and hearings.²

On 14 June 2017 Judge Huguelet recused himself because he had discussed Haeg's case with Judge Murphy. I assigned the case to myself on the same day.³ On 5 July 2017 Haeg filed a Civil Rule 42(c) challenge. I denied the challenge as it was untimely and he had previously exercised a challenge to another judge.

² Haeg had hoped the case could be reassigned to retired Judge Stephanie Joannides who had some involvement in the case at some point. She has performed pro tem work, however, she is currently unable to commit to handle this case.

³ Judge Moran has recently indicated that she will be retiring on 1 June 2018.

On 17 July 2017 Haeg (through his spouse) filed a motion for reconsideration. He argued that his prior use of a peremptory challenge against Judge Sharon Illsley on 3 April 2017 should not count against him as Judge Illsley, unbeknownst to Haeg, had recused herself on 31 March 2017. He did not learn of that recusal until after he issued his peremptory challenge. The Court will not treat the attempted challenge of Judge Illsley as the exercise of Haeg's single challenge as of right.

The exercise of a Civil Rule 42 challenge must be done in a timely manner. Rule 42(c)(3) provides, in part: "Notice of change of judge is timely if filed before the commencement of trial and within five days after notice that the case has been assigned to a specific judge." The assignment of the undersigned was distributed on 14 June 2017. Haeg filed his challenge 21 days later. It was untimely.

In his motion for reconsideration Haeg argues that on at the hearing 30 May 2017 he told the Court that he would be working during the summer and thus the Court should not have issued an order that had a time limit attached to it as the Court should have known he would not become aware of the order in time to respond. The Court has listened to the recording of that hearing. It is true that Haeg told the Court of his general unavailability to have an evidentiary hearing in the summer and before mid-December 2017. He explained that he did road construction.

At the conclusion of the hearing the Court indicated that it would send the case to a Kenai judge who would hold a further hearing (perhaps in November 2017) to determine the briefing schedule and the date and duration of the hearing. The State's counsel asked the Court if it would be scheduling the next (possibly November) hearing. The Court clarified that the new judge (as of yet unidentified) would arrange future scheduling. The Court then confirmed with Haeg that he had received the order setting the May 2017 hearing and thus that the address then used was still valid.

At no time did Haeg state that he would not be receiving or checking his mail or having some other person do that for him during the summer. When asked if his address was still valid, he did not say it would be, in essence, inoperable for one or two or three months. He did not provide another way for the Court to send him the scheduling order or any other orders that had been discussed. He did not say that he would be out of touch for some time or request that he be given an extension of any deadline in advance. His assertion, in the motion for reconsideration, that he had "notified every judge (including Judge Morse) and the state that [he] was going to be out of town and without access to email, mail, or my ability to conduct legal proceedings until the end of November due to my employer, Knik Construction/Lynden Transport, sending me out of town until then," is not entirely accurate. There is a difference between being unavailable for a hearing (especially one that Haeg thought would last two weeks)

and being entirely out of communication for many months (and in fact Haeg was getting information forwarded to him from his wife).

Haeg did not express an intent at the hearing to oppose the assignment of the case to me. There was little reason from him to do that. At the outset of the hearing I explained my role as the presiding judge and that I had temporarily assigned the case to myself in order to work out where the next hearings should take place and before which judge. There was a discussion about where the case should be tried. Haeg stated that Kenai was the proper locale. The Court agreed and explained the issues raised by the recusal of Judge Wells, the resignation of Judge Bauman, and the imminent retirements of Judges Moran and Huguelet. He suggested that retired Judge Joannides handle the case. The Court explained that she was only available during certain windows of time, but it would check with her. The possibility of the undersigned permanently handling the case was briefly mentioned (but only in the context of moving the case to Anchorage). It was hardly discussed and for that reason Haeg did not express any intent to peremptorily challenge me.

At the conclusion of the hearing the identity of the judge to be assigned to the case was unresolved. Thus Haeg had to understand that the Court, after exploring the availability of Judge Joannides and the two Kenai judges, would be indicating who the assigned judge would be in the next few days or weeks. He had to realize that the Court would be sending the assignment order to

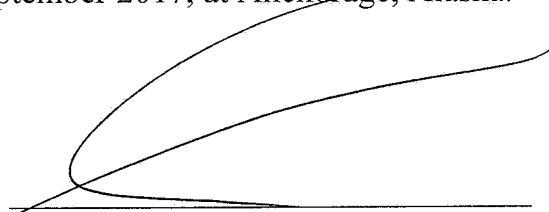
the address that he confirmed was functional. It was unreasonable for him not to have made arrangements for his wife or another adult to monitor any written communications from the Court or the State.

The Court will not expand the period of time within which Haeg had to exercise his Rule 42(c)(3) right. He had five days to exercise his challenge. He did not do so for 21 days. The challenge was untimely.

The Motion for Reconsideration is DENIED.

The Court will hold a calendaring hearing on **18 December 2017 at 12:30 p.m.** Haeg may attend telephonically by calling **1.800.768.2983, access code 264.0425#**. The purpose of the hearing is to set briefing deadlines for the various prima facie showings that the court of appeals held that Haeg would have to make before he was entitled to an evidentiary hearing on his various arguments and assertions. For the convenience of the parties these are discussed at pages, 20-21, 23, 31-32, 44-45, and 48 of the memorandum opinion. The Court will also discuss with the parties the possible dates for any evidentiary hearing should one be held.

DONE this 18th day of September 2017, at Anchorage, Alaska



William F. Morse
Superior Court Judge

CERTIFICATE OF SERVICE

I certify that on 18 September 2017
a copy of the above was emailed/mailed to each of the
following at their addresses of record:

D. Haeg
PO Box 123
Soldotna AK 99669

OSPA: A. Peterson


Ellen Bozzini
Judicial Assistant