

TRANSCRIPT APPENDIX 3

MR. HAEG: Ok what - did I keep -uh- did I keep demanding Brent Cole to enforce the rule 11 agreement?

JACKIE HAEG: Yeah.

MR. HAEG: And what did he tell all of us?

JACKIE HAEG: He told us that the only thing that he could do would be to talk to -uh- Mr. Leaders boss.

MR. HAEG: Ok and did he tell us that there was anything else he could do? Anything whatsoever?

JACKIE HAEG: No. ¹ ...

MR. COLE: Did you sit around have beers with David and I - that evening?

JACKIE HAEG: I did not - no I was with - I believe I was with my girls - or - yeah my girls - we were at the hotel.

MR. COLE: Ok. Did David express to you - I - I mean you then - you went to the hearing the next day - it was the arraignment.

JACKIE HAEG: I wasn't at the arraignment.

MR. COLE: You weren't in my office that morning?

JACKIE HAEG: No I took my girls to the Imaginarium.

MR. COLE: Did you - did you drive home to Soldotna then that day?

JACKIE HAEG: That day - yes.

MR. COLE: Did -uh- Mr. Haeg express to you that he was dissatisfied with my services when you drove home?

JACKIE HAEG: He was upset with everything that had happened - yes - he wasn't happy.

MR. COLE: I guess my question was - was - did he express to you that he was dissatisfied with my services at that point?

JACKIE HAEG: Yes he - he didn't understand why you know something wasn't done to make the deal happen and you know it - so yes I - I believe that he was - he did tell me that yes.

MR. COLE: Did you encourage him to get another attorney to

¹ Tr. Fee Arbitration p. 117.

represent him - in his court case?

JACKIE HAEG: We discussed it - he was extremely upset with what had happened - he didn't feel like you had done your job and he started you know he wanted to get another opinion and then - and I agreed with him that it would be good to do so.

MR. COLE: That's -uh- that's all the questions I have. ²

...

MR. HAEG: Ok you had said I was dissatisfied when we had come up here but did I continue to get more and more dissatisfied as I researched what had happened?

JACKIE HAEG: Yes you did. You weren't...

MR. HAEG: Did I actually even -um- try to arrange with - a meeting - did I arrange a meeting with Jim McCommas?

JACKIE HAEG: Yes you did.

MR. HAEG: -Um- and why did I arrange that meeting?

JACKIE HAEG: You wanted...

MR. COLE: Objection. It calls for she's at - she's testifying about what his state of mind was.

MS. SHAW: She testified she discussed it with him.

MR. HAEG: -Um- I don't even...

MS. SHAW: You can answer the question.

JACKIE HAEG: -Um- you wanted to meet with Jim McCommas so that you could get a second opinion on how Mr. Cole dealt with the rule 11 agreement being broken and you went up to Anchorage and you met with Mr. McCommas and Mr. Cole and Tom Stepnosky was with you also that day.

MR. HAEG: Ok and is that when I fired Brent Cole?

JACKIE HAEG: Yes it is. ³ ...

MR. METZGER: Ok. Do you know why Mr. McCommas didn't?

JACKIE HAEG: I believe in - I don't - I don't even know if - why he didn't - no I think that -um- from what I recall he didn't want anything to do with it...

MR. METZGER: Ok.

² Tr. Fee Arbitration p. 125.

³ Tr. Fee Arbitration p. 127.

JACKIE HAEG: I don't believe Dave was going there to ask him for - for him to do the job - I think that he went there just for an opinion on what had happened and if he felt that what Mr. Cole did was right.

MR. METZGER: Do you believe that you are privy to all the deals that were ever on the table from the State?

JACKIE HAEG: I only knew of the one. I mean I think they talked about different things but this was the only deal that David or that we were goanna go out to McGrath for was this one deal and that's the only one that I know of that meant anything. I didn't know of any other deals - no.

MR. METZGER: So Mr. Leader had may offered a deal on that - during that November 8th meeting at Mr. Cole's office you don't know what - any of that deal would have been?

JACKIE HAEG: -Um- I - I don't remember what that deal would have been. I - I was there for part of the meeting and then you know some of the stuff that they did was later on that evening when I wasn't around -um- I know that he said that you know he - well actually he said that he would be willing to do the same thing but Dave had to give up his airplane and Dave wanted that open sentencing that was agreed upon. ⁴

MR. HAEG: -Um- during the arraignment that happened the next day instead of the rule 11 agreement did Brent Cole at ever - any time even try to enforce the rule - the - the rule 11 agreement?

MR. HILTERBRAND: -Um- no. He stated when the - Leaders - uh- mentioned the new charges -uh- he stated that they weren't the charges agreed to but other then that -um- I don't recall him making any objections.

MR. HAEG: Ok -um- when I kept - what did Brent Cole say to all of us when I kept in - insisting that the rule 11 agreement be enforced?

MR. HILTERBRAND: -Um- said that about all he could do was

⁴ Tr. Fee Arbitration p. 128-129.

go talk to Leaders boss.⁵ ...

MR. HAEG: Ok. Did he ever tell me that there was any other way than what you'd said about calling her [his] boss - any other way that we could enforce that rule 11 agreement?

MR. HILTERBRAND: -Um- I don't believe so.⁶

MR. HAEG: Ok. At that time [11/9/04] did Brent Cole ever even try to inform the judge about the Rule 11 Agreement that we - that you had come to Anchorage from Illinois for?

MR. ZELLERS: No.⁷

MR. HAEG: Because I have nothing in writing from Mr. Cole. Never got anything from Mr. Cole in writing. Mr. Cole's statements that he told me that we could file a motion to enforce the Rule 11 Agreement is absolutely fantastic. The evidence against him is stunning. Himself on tape, himself in signed letters, and multiple witnesses who have testified before you under oath, he has not one single leg to stand upon.⁸ ...

MR. HAEG: Ok Mr. Cole did not do one thing that prosecutor Leaders would not wished to have Mr. Cole do. Mr. Cole acted exactly like a prosecutor in disguise, exactly. Never did he tell me of the many, many rights, which have protected my interests on the contrary, he lied to me to keep me from exercising them.⁹

MR. HAEG: Ok. When I kept asking Brent Cole that I wanted the Rule 11 Agreement enforced did Brent Cole tell me in front of you quote 'I can't do anything because I have to work with these people in the future'?

MR. STEP NOSKY: Yes I've heard - I've heard that more than once.

MR. HAEG: Ok. What did Mr. Cole what was the only thing Brent Cole said he could do?

MR. STEP NOSKY: -Uh- he said the only thing he could do was

⁵ Tr. Fee Arbitration p. 110.

⁶ Tr. Fee Arbitration p. 111.

⁷ Tr. Fee Arbitration p. 75.

⁸ Tr. Fee Arbitration p. 353.

⁹ Tr. Fee Arbitration p. 354.

to -uh- call Mr. Leaders boss and I believe she was a woman and have a discussion with her.

MR. HAEG: Ok -uh- did I - did - as far as you know did Brent Cole ever do that?

MR. STEP NOSKY: -Um- I remember you questioning him at a - as to whether he had spoken to her and the only thing I have a recollection him saying was that he had called and left a message and that was the extent of it.

MR. HAEG: Ok.

MR. STEP NOSKY: Hadn't - hadn't - hadn't heard back from her.

MR. HAEG: Did you just hear that - that me asking that once or was it multiple times?

MR. STEP NOSKY: -Um- more then once, yes. ¹⁰ ...

MR. HAEG: Ok I - I'm just trying to see if I can wiggle around stuff because from what I've seen lawyers are good at it. -Um- what did Brent Cole say to - or did Brent Cole ever try to enforce the Rule 11 Agreement that was supposed to happen on - there it was - November 9th 2004?

MR. STEP NOSKY: Not to my knowledge, no.

MR. HAEG: Were you present at the arraignment that happened instead of that?

MR. STEP NOSKY: Yes I was.

MR. HAEG: Ok. -Um- -um- did Mr. Cole - why did Brent Cole - or what reason did Brent Cole tell us for not trying to uphold the Rule 11 Agreement?

MR. STEP NOSKY: -Uh- he at that time and other times I heard him say that he had to - after you were gone - after your case was gone he still had to deal with - with the State. So he couldn't more or less rock the boat - rattle their cage too much.

MR. HAEG: Did Brent Cole ever state quote 'I can't piss Leaders off because I still have to deal with him after your

¹⁰ Tr. Fee Arbitration p. 87-88.

case is done'?

MR. STEP NOSKY: Yeah basically just about what I just said.

MR. HAEG: Ok. -Um- did you ask after the Rule 11 Agreement was not enforced did you ask Brent Cole what is to stop Prosecutor Leaders from asking for more if I give them my airplane just to get the same deal I'd already paid for?

MR. STEP NOSKY: Yes I asked that question at one time. ¹¹

...

MR. COLE: Do you remember going through and talking about filing a Motion, what it would entail to file a Motion to require the State to - to go back and charge David under it's original information?

MR. STEP NOSKY: No I don't recall that.

MR. COLE: Do you remember going through -um- the different deals that were on the table that David had to choose from at that time?

MR. STEP NOSKY: I wasn't aware of any deals that were on the table except the - you know -us coming up there to go out to this open sentencing hearing and testify. I'd - I'd never seen anything -uh- throughout the course of all the meetings where anything was -uh- given to us that I know of letting us know where we stood from Mr. Leaders. ¹² ...

MR. COLE: Ok. Do you remember -uh- that you talked about this statement that I - that I - that you say I made about not wanting to rock the boat with Mr. Leaders. Do you remember that?

MR. STEP NOSKY: Yes.

MR. COLE: And that was done in the context of discussing what it would take to enforce a Rule 11. Do you remember us taking about that?

MR. STEP NOSKY: Yes I believe that's true.

MR. COLE: And do you remember me telling Mr. Haeg that in order to enforce a - first of all do you remember me saying I

¹¹ Tr. Fee Arbitration p. 95.

¹² Tr. Fee Arbitration p. 102.

wasn't sure - or no I guess it's your testimony that I said it was a ruling. Do you remember me telling you what it would take to enforce a Rule 11 Agreement?

MR. STEP NOSKY: No I don't recall that.

MR. COLE: Do you remember me saying that it would take cross-examining Mr. Leaders, and calling him as a witness?

MR. STEP NOSKY: No I do not recall that.

MR. COLE: Do you remember me telling you that I didn't think that it would accomplish what you wanted to accomplish? Or Mr. Haeg I should say - that Mr. Haeg - I was - remember me telling Mr. Haeg that filing this Motion would not accomplish what he wanted to accomplish?

MR. STEP NOSKY: -Uh- no I - I - I don't think so - to my recollection his idea was to go out and have the open sentencing I mean that - that was it. So if that could be accomplished, and that's what he wanted, if that would do it, then that would work for him.

MR. COLE: Do you remember me telling him that - that could be filed, that Motion? MR. STEP NOSKY: No. MR. COLE: Do you remember me telling that it was goanna cost money to file that Motion?

MR. STEP NOSKY: No I do not.

MR. COLE: Do you remember me telling you that we would still have to deal with Mr. Leaders at an open sentencing and he would still be doing the recommending of the sentence if we were successful and were able to enforce a Rule 11 Agreement?

MR. STEP NOSKY: Do not recall that, no. ¹³ ...

MR. HAEG: Try not to -um- I asked Mr. Cole if there was anyway we could enforce the Rule 11 Agreement, correct?

MR. STEP NOSKY: Yes.

MR. HAEG: And what was the only thing that Mr. Cole told us we could do, the only thing?

MR. STEP NOSKY: To my recollection the only thing I heard was

¹³ Tr. Fee Arbitration p. 104-105.

for him to call Mr. Leaders boss.

MR. HAEG: Ok and how many times did I ask if he had done so?

MR. STEP NOSKY: Numerous times. ¹⁴

¹⁴ Tr. Fee Arbitration p. 106.