

TRANSCRIPT APPENDIX (5)

MR. COLE: Do you [Mr. Stepnosky] remember me telling that it was goanna cost money to file that Motion?

MR. STEPNOSKY: No.<sup>1</sup>

MR. HAEG: Is there any way to - if - if you - if you don't get things in writing and get a verbal agreement is there any recourse?

MR. COLE: Yeah.

MR. HAEG: And what is the recourse?

MR. COLE: You could file - if you thought that you had an agreement in place, and we discussed this, you could file a motion to enforce the agreement that was in place and submit an affidavit and I told you that you could do that in your case - that I would do in this case, if you wanted. **It was goanna cost you a lot more money** and where was it goanna get us? And we explained and we went through it time and time again.<sup>2</sup>

MR. COLE: And so I never understood what the benefit was to you to do this. **It was goanna cost you money** and all I thought [it] was goanna happen was you were goanna be in a worse position and I could not for the life of me figure out how I would be helping you by doing that.

MR. HAEG: Ok. And you stated that because -uh- it was goanna cost a lot of money - I didn't want to file this motion?

MR. COLE: You didn't listen to me. **I told you I didn't want to file the motion because I knew what would happen if you did file the motion.** And that was you were goanna lose your license for 5 years. I told you that. You told me 'I don't want to lose my license for 5 years. I can't afford it. I've worked all my life for this.' I said 'If you file the motion you're

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<sup>1</sup> Tr. Fee Arbitration p. 105.

<sup>2</sup> Tr. Fee Arbitration p. 298.

goanna lose your license for 5 years. Do you want that to happen? No

MR. HAEG: So is it that reason or the money...

MR. COLE: It wasn't about money, you paid me. I thought it was a waste of money.

MR. HAEG: So I paid you to file the motion?

MR. COLE: No you didn't pay me. You had me paid me up to that point. I thought it was goanna be a waste of your money.

MR. HAEG: -Um- I guess I have to ans - I'm trying to concentrate - I guess I shouldn't even explain that but... Are you telling me that I didn't want the motion because I was going to get 5 years on my license or I didn't want the motion because it was goanna cost a thousand or 1200 dollars?

MR. COLE: **I don't really remember there being an issue about the money.** I told you that it was goanna be expensive. You know I don't remember what I told it was goanna be. That wasn't my concern David it was the risk that you were placing yourself in by filing the motion. All cases go through the district attorney office - open sentencing is not good for a guide. Why would you do that? I have still have yet to have somebody tell me why any guide would do that. Given what we know. I saw it as a no win proposition for you and I explained that to you several times.<sup>3</sup>

MR. HAEG: Did you ask Mr. Stepnosky, when he was testifying here before the Alaska Bar Association, that the reason I didn't want to fine - file a motion is because it would - I think it was quote cost money - not cost a lot of money just cost money? Did you ask Mr. Stepnosky that?

MR. COLE: I don't remember.

MR. HAEG: -Uh- may we admit the transcription of this

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<sup>3</sup> Tr. Fee Arbitration p.300.

meeting of Mr. Stepnosky?

MR. METZGER: We were here when Mr. Stepnosky testified.

MR. HAEG: Ok well I don't have a good memory of everything that happened so I have a pretty good memory but I have it transcribed if somebody wants to get a...

MR. METZGER: If - if we...

MS. SHAW: What you can do - what you can do now is show Mr. Cole that portion of the transcript and say isn't it true that you asked that question?...

MR. HAEG: Ok.

MS. SHAW: ...and he can look at the transcript...

MR. HAEG: ...I didn't know it was admitted.

MS. SHAW: ...which doesn't mean. Which - no it's not but it doesn't mean that you have to admit it. You can just - just show it to him.

MR. HAEG: Ok can you find that Jackie?

MS. SHAW: And ask him if - if -uh- if he didn't in fact ask that question.

MR. HAEG: Ok line -uh-

JACKIE HAEG: Page 7.

MR. HAEG: Page 7 line 217 down to 227. Do you - do you remember asking Mr. Stepnosky this exact quote Do you remember me telling it was goanna cost money to file that Motion? Is that - do you remember that or is that correct - I don't know how to ask it.

MR. COLE: I - I - I can read it. I - I - it looks like I did say that.

MR. HAEG: Ok and can you tell me what Mr. Stepnosky answered?

MS. SHAW: It's fair enough for him to ask you to - to read out what's in the transcript so that he can follow with his

question.

MR. METZGER: Where - where are we reading - starting line 217?

MR. HAEG: Yeah and now we're...

MR. METZGER: page 7.

MR. HAEG: ...now we're at 2 - line 227.

MR. COLE: Do you remember me telling what I didn't think that it would accomplish that you wanted to accomplish? Or Mr. Haeg I should say - I was - remember me telling Mr. Haeg that filing this Motion would not accomplish what he wanted to accomplish? No - I don't think so to my recollection ...and have open sentencing ... so that could ac... telling him that the motion could be filed No Do you remember me telling that it was goanna cost motion? No.

MS. SHAW: I think the question that's on the table is what Mr. Stepnosky's answer to your question was.

MR. COLE: It's was no - I - I - apparently 'no I do not'.

MS. SHAW: Ok. Go on Mr. Haeg.

MR. HAEG: Ok -um- can you go to -uh- line 202 and is that what you asked Mr. Stepnosky?

MR. METZGER: Of what page?

MR. HAEG: Oh it's line 202 page 6.

MR. COLE: I - I remember saying or it well I - I don't have a specific recollection - I'm not denying that I didn't say and that was done in the context of discussing what it takes to enforce a Rule 11. Do you remember us taking about that? I said that - I guess.

MR. HAEG: Ok and what was - do you remember making the statement about -uh- you talked about the statement that I - you say I made about not wanting to rock the boat with Mr. Leaders and you said, 'do you remember that?' What - what did Mr.

Stepnosky answer.

MR. COLE: Yes.

MR. HAEG: Ok.

MR. COLE: And that was done in the context of discussing what it would take to enforce a Rule 11. 'Do remember talking about that?' 'Yes I believe that's true' - that's what he said.

MR. HAEG: Ok -um-

MR. COLE: 'do you remember me telling Mr. Haeg that in order to enforce it ... do you remember me telling you what it would take to enforce agreement?' 'No I don't recall that'. So he doesn't recall it. Cross-examining...

MR. HAEG: Yep.

MR. COLE: ...and calling him as a witness. I recall telling you guys that - it would take - make - filing a motion.