

TRANSCRIPT APPENDIX (6)

MR. COLE: ...he was talking about going open sentencing on the first information. (Pause) And you know again I - I had been having these discussions with him for so long I just kept saying, Why do you want to do this? I mean obviously it's ultimately his choice. I understand that. It is David Haeg's choice but I kept saying David you know you're not you know - what arguments are we going to give them that are goanna get you this plane and avoid loosing for 5 years?¹

MR. COLE: I talked about that with him and I said to him why - yes I could do that David but then I'm goanna have to say that I had a discussion with Scot Leaders and he said 'x' and he said 'x' so now if I'm right what's - where are we - where's this goanna get us? He's goanna oppose that and he's goanna say 'I didn't say that'. So now you're goanna have two attorneys fighting each other but even more important even if he says 'ok you can have open sentencing now there - all deals off' and I'm arguing for 5 years. What could I do?²

MR. COLE: Well like we talked about David if you file the motion and request to have open sentencing under the original information at the end the best that gets you is open sentencing at the - under the original information. And that means now you have to go in front of the judge in open sentencing and I told you time and time again in my opinion - in my legal advice you do not want to be in front of a judge in open sentencing because I was very afraid that you would get more then a thousand dollar fine, more then 5 days in jail, and then you would loose your guide license for 5 years - which I felt you could not handle. I told you that time and time again. And you agreed with me.

¹ Tr. Fee Arbitration p. 271.

² Tr. Fee Arbitration p. 275.

MR. HAEG: What do you mean I agreed with you?

MR. COLE: You couldn't handle loosing your license for 5 years. We would - talked about what would happen if you fought this.³

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 loose your license for 5 years. I told you that. You told me 'I don't want to loose 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 goanna loose 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

³ Tr. Fee Arbitration p.299.

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.

MR. HAEG: And you're saying that I told you that I did not want to file the motion?

MR. COLE: You told me that you didn't want to loose your license for 5 years. I concluded from that that if it was - if this was goanna result in your license you didn't want it. I can't remember exactly what was said. I just said, 'These are you options'. I explained them time and time again. But I always told you 'if you do this you have to be willing to accept that you're goanna loose your license for 5 years, if you loose, is that a risk you're willing to take?' I never heard you say that 'yes it is - I want to take that risk'.⁴

MR. COLE: I went back and reviewed the tapes that you made without telling me, of the conversation on the 10th and on the 22nd, which they now have transcripts of it, specifically I asked you in one of those, 'Do you want me to file this?'

MR. HAEG: And what did I - respond...

MR. COLE: You didn't say - you didn't say anything about it.

MR. HAEG: That...

MR. COLE: You did not tell me, 'Brent, I want you to file this. I don't care about anything else.' We specifically talked about this. I specifically told you this. So -uh- every time we talked, you ultimately said, 'You're right, I don't think I want to lose my license for 5 years' and we talked about the fact that we had it down to 1 year.⁵

⁴ Tr. Fee Arbitration p.300-301.

⁵ Tr. Fee Arbitration p.311.

MR. HAEG: I don't know if I ever got a clear answer about why I did not want to file the motion, if indeed I didn't want to file the motion. Can you tell me clearly what my reasons were for not filing a motion?

MR. COLE: The reasons were it was not in your best interest to do it. You were going to put yourself in a worse position by doing it and I could not understand that. Why anybody would do that. And...

MR. HAEG: Ok.

MR. COLE: ...you didn't tell me to do that. And if you had told me to do that I probably would have withdrawn, David, because I never thought it was in your best interest and I couldn't imagine any rational person doing it.

MR. HAEG: Again is that my right - to make that decision?

MR. COLE: If you had told me that - that that was what was goanna happen and that you weren't goanna accept anything less I probably would have withdrawn. It probably is your decision. I think it is your decision actually.

MR. HAEG: Ok. Well I guess that's arguing. And you are while under oath and on record here before the Alaska Bar Association goanna tell me that when I tell you 'that is what I wanted at the time and that is still what I want' that I said, 'no'?

MR. COLE: I'm goanna tell you that if you read this whole thing it doesn't say 'I want you to reject every offer and go in and do whatever we have to do to get this original deal' David that's what I'm goanna tell you. If you read this from front cover to back you will not get that sense.

MR. HAEG: So when I tell you 'well to me they weren't viable options' that - that - that means that there were options that were viable - is that what you're telling me?

MR. COLE: I can't speak for what you were thinking, David. You were not half of the time rational in my mind.

MR. HAEG: So you can look at these...

MR. COLE: Mr. - Mr. Haeg I - I think that you've - you've covered this one...

MR. HAEG: I've hit that one enough?

MR. COLE: I think you have.

MR. HAEG: Ok.⁶

⁶ Tr. Fee Arbitration p.323-324.