

Chapter #8: Think the Alaska Department of Law and Bar Association are Honest? Think Again!

by David Haeg and Eric Twelker 2/11/26

Hello David

I am an attorney formerly of Juneau and now residing out of state. This year I found that I was short of Continuing Legal Education credits, so I asked the Bar Association for a break—I am old and basically retired. Danielle Baily gave me an extension and suggested in lieu of watching useless videos, I could write an article for the Bar Rag. I did, but she thought it was too hot for publication. I am attaching it here as I thought you might find it interesting. If you publish it, I will suggest to Danielle that this might be credit for CLE. (Ha! Not likely, but it would be fun to gig the Bar Association.)

Thanks!

Eric Twelker

We're from the Department of Law and We're Here to Help . . .

This is a peek into State bureaucracy sausage factory—something no one wants to see, but once you see it, it can't be unseen. I finished up a case a couple of years ago where I represented a landowner in Juneau. Finishing was a relief—after 13 years the state dropped its claim to my client's land – and along the way dropped well over a million dollars of state money for attorneys, expert witnesses and other frou-frou—including our attorney fees. But this article is about the beginning of the dispute.

My client had applied to bail some gravel from their old pit on Lemon Creek in Juneau. They were shocked to get a letter back from the local DNR office saying that the land they thought was theirs belonged to the state—bailing would be trespass. Yikes! DNR said it was a navigable river in 1959 and the tide covered it, thus the state owned it. But land had been surveyed and patented a hundred years ago, and the mean high tide was a quarter mile away. What was up?

We asked for a meeting with the DNR staff and their lawyers where we pointed out that a grandfather clause in the Submerged Lands Act said they couldn't take away land that was granted to our predecessor 98 years ago and, anyway, the creek was just a little creek, not some highway of commerce like a navigable river would be. Would they listen? Maybe. Maybe not.

The problem was that the lawyers were there—the assistant AGs so ever-present in bureaucratic stuff—in fact the AGs had put DNR up to the claim. The wagons had been circled and the AGs argued that the Submerged Lands Act was meaningless. Fortunately— or not—the technical people were at the meeting, too. They said they would do a formal “Navigability Determination” on the little creek to see if it really was a highway of commerce. They did. Supposedly it was finished, yes, they said, it was finished and would come out—soon. Months passed. Nothing happened. We sued.

What happened next in the bowels of DNR was interesting, to say the least—we know this from discovery. A few days after we filed suit, the DNR technical people and the state lawyers got together. They were in a bind. We had sued. Another landowner on the creek was impacted—financing for his condo expansion was held up—and that landowner (lawyer Jan Van Dort) had made a very real threat to sue for big dollars. Here is what discovery suggested happened. The lawyers and technical people were all in a room (maybe a virtual room) with the completed navigability determination— maps, papers, research, etc.—to figure out what to do. But as all state bureaucrats know, when the Department of Law shows up, they’re the boss.

Accordingly, the lawyers—in particular one lawyer, Jessie Alloway, jumped in the driver’s seat. The navigability determination was quickly edited by someone with the initials JMA and, as the tech people admitted, the maps were edited “per legal advice.” Result: voila!: Mr. Van Dort’s creek bed was “not navigable” and the determination of my client’s land was “undetermined.” The original? All we saw was blacked-out pages with a title that indicated that our creek had been evaluated, and they weren’t saying what the result was.

Fast forward to the finale. Our case, which began in federal court was dismissed on jurisdictional grounds. We refiled in state court where it was assigned to Judge Pate who eventually ruled that the Submerged Lands Act section that grandfathered prior patents was a nullity and that his court would redo the 1908 determinations of the General Land Office surveyor that were the basis of our patent—by a preponderance standard, no less. Needless to say, we didn’t agree.

But a trial was imminent and something had to be done. We agreed with the state that the navigability and tide questions would be settled in binding arbitration. Not surprisingly, 10 years after DNR did its evaluation, retired Judge Patrica Collins ruled that the creek was not navigable and the tide did not cover it. Whew!

Okay, but I still wonder what DNR’s “Determination” was before Jessie Alloway edited it? Had DNR attempted to protect itself and been thwarted by its own legal counsel? I spent a considerable effort trying to get the redactions removed. I alleged that Alloway’s edits were spoliation and asked Judge Pate to look in camera. He refused and ruled that it would remain covered. (Shortly thereafter, he successfully applied to be on the supreme court. By that time, Jessie Alloway was the Civil Solicitor General—the Attorney General’s and thus likely the governor’s top advisor on supreme court matters. Hmm.)

Does anyone care? Me, perhaps. But not the Alaska Commission on Judicial Conduct—Marla Greenstein found that the Commission doesn’t have jurisdiction for that kind of conflict. The Alaska Bar Association doesn’t care. They were offered the chance to look at the Determination but said no. Ms. Alloway had alleged that she did nothing wrong and besides DOL does that sort of thing all the time. That was good enough for them.

I went away happy—the case was lots of fun and lasted many years. And I got paid.

But I am left with the bad taste that maybe, just maybe, there's something wrong here— which didn't surprise this old cynic. Apart from that, it's a fair guess that pretty much no one else cares. State bureaucrats won't view DOL with the trepidation expressed in Ronald Reagan's quip about "we're from the government . . ." Afterall, who's hurt? It's not real money, is it? No harm, no foul, I guess.

Eric Twelker is a sole practitioner formerly of Juneau, now based in Port Townsend, Washington.

Alaska Statutes Title 11. Criminal Law § 11.56.610. Tampering with physical evidence

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(a) A person commits the crime of tampering with physical evidence if the person

(1) destroys, mutilates, alters, suppresses, conceals, or removes physical evidence with intent to impair its verity or availability in an official proceeding or a criminal investigation;

(2) makes, presents, or uses physical evidence, knowing it to be false, with intent to mislead a juror who is engaged in an official proceeding or a public servant who is engaged in an official proceeding or a criminal investigation;

(3) prevents the production of physical evidence in an official proceeding or a criminal investigation by the use of force, threat, or deception against anyone; or

(4) does any act described by (1), (2), or (3) of this subsection with intent to prevent the institution of an official proceeding.

(b) Tampering with physical evidence is a class C felony.

Conclusion

Those wishing to join the effort to push back on corruption like this, please send your name and email address to: haeg@alaska.net or **(907) 398-6403 (text)**

Most Sincerely,

David Haeg

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