IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

AT KENAI, ALASKA

DAVID S. HAEG Appellant, vs. BRENT R. COLE, Appellee.	)	Appeal Case No.: 3KN-06-844 CI Ak Bar Assoc. Case #2006F007

APPELLANT'S OPENING BRIEF

Appeal from a final judgment of the Alaska Bar Association
Fee Arbitration Panel
Third Judicial District at Anchorage
Nancy Shaw, Panel Chair/Attorney
Yale Metzger, Attorney
Robyn Johnson, Public Member

David S. Haeg, Pro Se
P.O. Box 123
Soldotna, Alaska 99669
(907) 262-9249 phone

By: _____
David S. Haeg

Filed in the Alaska Superior Court of Appeals
February _____, 2006

By: _____
Deputy Clerk

TABLE OF CONTENTS

TABLE OF AUTHORITIES..... ii
.....CASES
.....ALASKA STATUTES
.....COURT RULES

AUTHORITIES PRINCIPALLY RELIED UPON..... iii

JURISDICTIONAL STATEMENT..... 1

STATEMENT OF ISSUES PRESENTED FOR REVIEW..... 1

STATEMENT OF THE CASE..... 2
.....FACTS
.....PROCEDURAL HISTORY

STANDARD OF REVIEW..... 3

ARGUMENT..... 3-54

RELIEF SOUGHT..... 54-55

TABLE OF AUTHORITIES

Cases

In re Kenneth H. (2000) 80 Cal.App.4TH 143 6
[95 Cal.Rptr.2d 5]. Court of Appeal, Third District.

People v. Rhoden (1999) 75 Cal.App.4th 1436,..... 7
1355, 89 Cal.Rptr.2d 819

U.S. v. Goldfaden (5th Cir. 1992) 959 F.2d 1324, 1328..... 7

Waiste v. State, 10 P.3d 1141 (Alaska 2000)..... 27-29, 51-52

Smith v. State 717 P.2d 402 Alaska App., 1986..... 19

United States v. Marshank, 777 F. Supp. 1507..... 20
(N.D. Cal. 1991)

F/V American Eagle v. State, 620 P.2d 657 (Ak 1980)... 27-29, 52

Alaska Statutes

AS 09.43.120 Vacating an Award..... 49

AS 22.05.010..... 1

Court Rules

Alaska Appellate Rule 202(a)..... 1

Alaska Appellate Rule 601(a)& (b)..... 1

Alaska Rules of Attorney Fee Dispute Resolution Rule 40(q).... 2

Alaska Rules of Court..... 58

Alaska Rules of Evidence 410..... 9, 24, 34-35, 55

Alaska Rules of Professional Conduct..... 2, 14

Rules of Attorney Fee Dispute Resolution Rule 34(c)..... 58

AUTHORITIES PRINCIPALLY RELIED UPON

U.S. Constitution Amendment V..... 55

Alaska Constitution Article 1.9 55

JURISDICTIONAL STATEMENT

Appellant Haeg appeals from the August 25, 2006 final judgment issued when a Fee Review Committee of the Alaska Bar Association, compromised of attorneys Nancy Shaw & Yale Metzger & public person Robyn Johnson (full time court employee however), entered a Decision & Award in the Fee Arbitration Proceeding of Petitioner David S. Haeg vs. Respondent Attorney Brent R. Cole.

On September 18, 2006, pursuant to *Appellate Rule 601(a)* & 601(b) Haeg filed a timely appeal to this Superior Court at Kenai.

This Court has appellate jurisdiction under *AS 22.05.010* & *Alaska Appellate Rule 202(a).*

STATEMENT OF ISSUES PRESENTED FOR REVIEW

1. The decision & award was procured by fraud.
2. There was corruption in the arbitrators.
3. There was evident partiality by the arbitrators.
4. The arbitrators exceeded their powers, including but not limited to: awarding judgments not submitted, imposing time limits, & excluding evidence.
5. The decision & award did not address the issues presented, including but not limited to: Cole lying to appellant to affirmatively deny rights & protection under rule, statue, & constitution; Cole perjuring himself to the panel; appellant's request for Cole to be prosecuted for such perjury; Cole affirmatively misleading the panel; Cole's collusion &/or conspiracy with other attorneys, including the State Assistant Attorney General prosecuting Haeg; & Cole failing to respond to a subpoena for which he had been served along with an airline ticket & witness expenses.
6. There is no referral to discipline counsel.

7. The decision & award is completely foreign to the evidence presented with the panel ignoring the compelling & irrefutable evidence presented to them.
8. The decision & award are not in compliance of *Alaska Rules of Professional Conduct* or *Alaska Rules of Attorney Fee Dispute Resolution required by Rule 40(q).*
9. A large part of the Official Record of these proceedings is missing.
10. The decision & award are in violation of both the United States & Alaska State constitutions.

STATEMENT OF THE CASE

I. Facts

Haeg was prosecuted by the State of Alaska in connection with his activities during the 2003/2004 McGrath Wolf Control Program. Haeg hired Cole to represent him during this process but fired Cole after nine (9) months due to Cole is irrefutable sellout of Haeg to the prosecution & the lies & misrepresentations told to Haeg & others to cover this up. Because of this fundamental & unbelievable breakdown in justice & the adversarial process Haeg was illegally convicted & sentenced in complete & total violation of numerous rules, laws, & constitutional guarantees.

II. Procedural History

After fully realizing the immense magnitude of the sellout & the resulting prejudice Haeg filed a Petition for Arbitration of Fee Dispute on 1/10/06 – alleging Cole's representation was so defective that Haeg was entitled to a full refund & costs incurred due to this undeniable fraud.

After sworn testimony of eight (8) witnesses on dates of April 12-13 & July 11-12 of 2006 was heard, the 3 member panel returned the impossible Decision & Award Haeg is now appealing.

On 9/18/06, Haeg filed this timely appeal to the Alaska Superior Court in Kenai.

STANDARD OF REVIEW

Fee arbitrations are governed by the preponderance of evidence standard.

ARGUMENT

Cole's absolute lack of advocacy &/or loyalty & outright sabotage of Haeg, to ensure an illegal & harsh conviction of Haeg, manifested itself in innumerable ways:

I. Cole's deceit & perjury regarding the Rule 11 plea agreement. One of the most obvious – & the one which Cole perjured himself to the panel the most to conceal – was Cole's lies to Haeg & five (5) other witnesses about the lack of any way, other then talking to Prosecutor Scot Leaders (Leaders) boss to enforce the rule 11 plea agreement for which Haeg had already given a 5 hour interview to Leaders & Trooper Brett Gibbens (Gibbens), a whole years income from Haeg & his wife, & flown in witnesses from as far away as Illinois & Silver Salmon.

During sworn testimony before the Bar Panel Cole perjured himself over & over again by claiming he had told Haeg & all the witnesses, while he was still Haeg's attorney, that he could enforce the rule 11 plea agreement by filing a motion with the judge. Cole perjured himself further by first claiming Haeg did not want to enforce the deal because filing the motion would cost money, then, after that was proven to be false, because Haeg did not want to risk filing it, & then, after that was proven to be false, that there never was a rule 11 plea agreement. Cole then gets in even deeper by claiming he told Haeg Leaders was going to

change & thus break the rule 11 plea agreement "about a week" after Leaders first agreed to it on 8/27/04. Yet all sworn testimony from the witnesses prove he told this to Haeg on 11/8/04 at 3:00 p.m. – or just 5 business hours before the rule 11 plea agreement was supposed to be completed in McGrath. This "error" of over 2 months during which an enormous amount of "detrimental reliance" occurred, is also absolutely proven by Cole's letter of 7/6/05 in response to Haeg's letter of 6/16/05:

> "Dear Brent: Enclosed is the statement by Leaders in which he states I broke the rule 11 agreement. I would like you to write a letter stating that it was Mr. Leaders who broke the agreement just hours before we were scheduled to fly out to McGrath to present the agreement to Magistrate Murphy. Also that we had made many costly & non-refundable travel arrangements in complying with the same agreement Mr. Leaders broke.
>
> Also enclosed are notes from your conversation with Joe Malatesta Sr., Chuck Robinson's investigator about whether or not there was an agreement. [that were demanded by Cole **before** he would write his response] Thanks for all your help."
>
> "Dear David: I am writing at your request to memorialize my recollection of some of the events which occurred leading up to the failed criminal rule 11 agreement... On Monday, **November 8, 2004**, you, your family & several witnesses came to our office to meet in preparation for the arraignment & change of plea scheduled to occur in McGrath the next day. It was **at that time** I informed you of Mr. Leaders' decision & outlined your legal options."[1]

In the same letter Cole also indicates Haeg asked for an "open sentence" agreement "sometime after" mid October. Yet Cole's own billing statements confirm Haeg asked for the "open sentence" plea agreement on 8/19/04 [2] - in complete agreement

[1] ABA Exhibit #7.

[2] ABA Exhibit #3.

with Haeg & Haeg's witnesses memories & **months** earlier than Cole claims.

Cole under oath then states, "I told Haeg weeks before 11/8/04 that the deal was going to be changed (broke) by Leaders." How can Cole testify under oath he told Haeg "weeks" ahead of 11/8/04 the agreement was going to be broken when sworn testimony from multiple witnesses, **backed up by Cole's own letter**, proves beyond any doubt he told Haeg this on 11/8/04 at 3:00 p.m. or only 5 business hours before it was to be completed & **after** Haeg had placed almost 1 million dollars detrimental reliance on it over the course of nearly 3 months? How can Cole claim there was never an open sentence rule 11 plea agreement on 11/8/04 with a 1-3 year license suspension when every one of his own documents, supported by sworn testimony from multiple witnesses proves beyond any doubt otherwise?

What makes Cole's statements under oath even more astounding is that he agrees the tapes & transcripts, made secretly by Haeg of conversations with Cole while Cole was still Haeg's attorney, are true.[3] These tapes & transcriptions prove beyond any doubt Haeg had a binding rule 11 plea agreement for nearly 3 months, Leaders broke it at the last minute, Haeg asked for it to be enforced at any cost or any risk, & Cole lied to him to deny Haeg this absolute right – & that Cole was committing continuous perjury, while under oath before the Alaska Bar Association (ABA) panel, to cover up those crimes, fraud, ineffectiveness & malpractice.

The stunning significance of all this is that **everyone** is guaranteed the constitutional right of due process. Due process means that **everyone** has the specific right to be treated with fundamental fairness. It has been held by all courts that it is

[3] Tr. Fee Arbitration p. 306.

not fundamentally fair for the prosecution to promise an agreement to obtain a 5-hour statement/confession; to use the same agreement to lure husband, wife, & 2 daughters to give an **entire** years **combined** income; to use the same agreement to lure the same husband & wife to spend untold thousands to get eight (8) witnesses to McGrath from as far away as Illinois; & **then** break the agreement **after** the husband & wife could not recoup any of the above. What is fundamentally fair about the husband & wife's own attorney, paid $200 per hour, telling them this is legal & ethical when every U.S. court has ruled it is not?

> *In re Kenneth H.* (2000) 80 Cal.App.4th 143 [95 Cal.Rptr.2d 5]. Court of Appeal, Third District. Scotland, J., held that defendant relied upon agreement to his detriment by **giving up his Fifth Amendment right against self-incrimination, paying $350** for private polygraph examination, & taking examination. **Prosecutor may withdraw from a plea bargain before a defendant pleads guilty or otherwise detrimentally relies on that bargain**; absent detrimental reliance on the bargain, the defendant has an adequate remedy by being restored to the position he occupied before he entered into the agreement. Fact that the court is not bound by a plea agreement entered into by prosecutor & the accused, & the fact that a plea agreement made by the parties before it is submitted for court approval is akin to an executory contract which does not bind the accused, **do not undermine the principle that the prosecutor should be bound by the agreement if the accused has relied detrimentally upon it**. Under the circumstances of this case, we conclude that the prosecution could not renege on its plea agreement. **The need for public confidence in the integrity of the prosecutor's office requires the prosecution to abide by its promise if the accused has relied upon the agreement**. By paying for, & submitting to, the polygraph examination, the defendant took a substantial step toward fulfilling his obligation under the agreement, & accepted a serious risk that he might suffer an adverse result, i.e., fail the examination, which he would not have been required to take but for the agreement. **Accordingly, we conclude that the prosecution should**

> **be bound by its agreement**. RAYE, J., & HULL, J., concur.
>
> The appellate court relied on *People v. Rhoden* (1999) 75 Cal.App.4th 1436, 1355, 89 Cal.Rptr.2d 819, **which stated that detrimental reliance may be demonstrated where the defendant has performed some part of the bargain**. It concluded that the prosecution should be bound by its agreement. **The failure of a prosecutor to fulfill his or her promise affects the fairness, integrity, & public reputation of judicial proceedings**. *U.S. v. Goldfaden* (5th Cir. 1992) 959 F.2d 1324, 1328. **(See also overwhelming caselaw in Appendix C)**

When **any** helpful information is given to law enforcement **or** any expense, even $350, is incurred is basis for enforcement do you think a 5-hour interview providing the **only** basis for over half the charges **&** Haeg & his wife giving up nearly $1,000,000 would qualify for enforcement of the Rule 11 Agreement? What is fundamentally fair about Haeg being forced to trial **after** his own attorney has given the prosecution **every** weapon, defense, & dollar Haeg had for a rule 11 plea agreement Haeg never received?

What are the liabilities to Cole for having sold his very own client to the prosecution? What are the liabilities to the prosecution? How many people have they done this to in the past? How many people will they do this to in the future? How important is it to every Alaskan & U.S. citizens to be sure their own "defense" attorney will not be working with the government to illegally convict & utterly crush them & their family?

Now that everyone realizes the enormity of the stakes & the gravity of the situation it should be obvious how important it is for Cole & the State to deny Haeg ever had an enforceable rule 11 plea agreement, &/or that if Haeg did have an enforceable rule 11 plea agreement he did not want it enforced.

First it is widely held that some "absent detrimental reliance" plea agreements are not enforceable. But when a defendant relies upon an agreement to his detriment (even $350 worth or any helpful information given to law enforcement) due process concerns **require** the agreement be upheld.

II. TIME PREJUDICE – Established case law also holds once a plea agreement is made that mere passage of time itself produces the detrimental reliance that requires that agreement be upheld. ***(See Caselaw Appendix C)*** Since it is clear that usually only agreements that are "days" or "hours" old are subject to termination by the prosecution Cole's motive for blatantly perjuring himself to falsely claim Haeg had an agreement for only "about a week" when it was in place for nearly 3 months & that he "told" Haeg the deal was going to be broken weeks before 11/8/04 when in reality it was broke on 11/8/04 is transparent. Cole even claims at one point that Haeg had asked for "open sentencing" after the State had filed the first information. ***(See Exhibit #7 Cole's letter of 7/6/05)*** #2. "This occurred sometime during the middle of October of 2004. I believe the first Information was filed by the State right around that time. #3. Sometime after that, you inquired about whether you could simply plead "open sentence."

The evidence is absolute Haeg asked for the plea agreement on August 19, 2004, Leaders agreed to this on August 27, 2004, & Haeg had this agreement for almost 3 months until Cole told him on 11/8/04 that Leaders was going to break it. Coles own billing statements[4] & letter[5] prove this perjury – not even considering all the supporting sworn testimony.

---

[4] ABA Exhibit #3.

[5] ABA Exhibit #8.

III. INFORMATION PREJUDICE - Cole told Haeg Leaders required an interview for the rule 11 plea agreement. Haeg gave Leaders & Trooper Brett Gibbens a 5 hour interview which provided the only probable cause for over half the charges in the information filed against Haeg on November 4 & the amended information filed 11/8/04. All established case law requires that when information that is helpful to the prosecution is given for a plea agreement the agreement must be enforced. **(*See Caselaw Appendix C*)**

More amazing is that Leaders again used Haeg's statements when he filed the amended information on 11/8/04 changing the agreed to charges to far more severe ones never agreed to – directly & inarguably violating *Evidence Rule 410*, the constitutional right against self incrimination, & controlling case law & Cole never did a thing – except to lie to Haeg that this was proper when Haeg asked how & why they could do this.

> *Evidence Rule 410*. Inadmissibility of Plea Discussions in Other Proceedings. (a) Evidence of a plea of guilty or nolo contendere, or of an offer to plead guilty or nolo contendere to the crime charged or any other crime, **or of statements or agreements made in connection with any of the foregoing pleas or offers, is not admissible in any civil or criminal action, case or proceeding against the government or an accused person who made the plea or offer if: (i) A plea discussion does not result in a plea of guilty or nolo contendere...**

The State's Information(s) read as follows, "David S. Haeg was interviewed in Anchorage on 6/11/04, & Tony R. Zellers was interviewed in Anchorage on 6/23/04. During the interviews, the timelines & events given were almost exactly identical, & a summary of the statements of the two men follows..."[6] Zellers testified under oath that he would never have given a statement

[6] ABA Exhibit #5 & #6.

if Haeg had not given his first.[7] This means that the State could not have used Haeg's testimony but they could not have used Zellers testimony either (fruit of the poisonous tree).

Without these statements Leaders would have been able to file less then half of the charges & would have had very little evidence for the rest. The secretly recorded conversations clearly establish Cole's deceit:

> *MR. HAEG*: – Um - anyway I don't know have you seen all the crap hitting the newspapers etc. etc. I assume?
>
> *MR. COLE:* Well yeah.
>
> *MR. HAEG*: Um & is that you know at the time we gave our – our statements & stuff is that – uh - proper for them to do to release all that stuff? I mean is that how it goes or what?
>
> *MR. COLE:* Yep. ... Well um I don't know what we're goanna do, ok.
>
> *MR. HAEG*: I thought we were kind of trying to avoid this when we gave our statements & everything. I thought you know it was with the understanding that they would be somewhat lenient blah - blah – blah, they'd - we'd settle this quickly & not let it turn into a big media frenzy, circus, whatever you know & now it's whatever eight or nine months after the fact & that's - you know - this is what is happening. Is this – uh - what you expected?
>
> *MR. COLE:* Mm hmm. I mean I thought it was goanna be much worse, quite frankly.
>
> *MR. HAEG*: Ok & anything I put out there – I mean – when uh – you know - I don't know – I guess my – where I get lost is why did we tell the State everything then if they're just goanna use it against us? Why did we do that?[8]

---

[7] Tr. Fee Arbitration p. 75.

[8] ABA Exhibit #17.

Cole knew that these statements could not be used against Haeg but let Haeg continue to believe that they could be used against him.

IV. FINANCIAL PREJUDICE – The third prejudice that requires a plea agreement to be upheld is when a defendant relies monetarily to his detriment on it. **(*See Caselaw Appendix B*)**

In reliance on the rule 11 plea agreement, Cole told Haeg & wife to cancel a whole years hunts in reliance on the plea agreement.

> *MR. COLE*: "I told David not to hunt or – & to cancel their hunts -um- in – starting in the summer of 2004."...[9]

To comply with the expected 11/9/04 conclusion of the agreement Haeg & his wife cancelled all of their guided hunts through the fall of 2004 to the fall of 2005. Income lost was approximately $750,000 & represented virtually the entire years income for Haeg, his wife, & their two daughters. Yet, even though they cancelled all these hunts for the State prosecutions plea agreement they had to continue paying all the State leases, permits, bonding, insurance, etc. etc. In addition the plea agreement required a discussion of a 2003 moose hunt, that, if culpability was found, would be used to "enhance" the suspension of Haeg's guide license from the agreed to minimum of 1 year to the agreed maximum of 3 years. To show there was no culpability Haeg paid approximately $6000 to get the multiple moose hunt witnesses to McGrath. These were the very same witnesses to whom Cole stated, "I **just** received very bad news" when they showed up at his office on 11/8/04 at 3:00 p.m. for a "pre sentencing" conference. Remember, the rule 11 plea agreement was scheduled

[9] Tr. Fee Arbitration p. 288 & 289.

to be concluded the very next morning on 11/9/04 10:00 a.m. in McGrath.

> "Dear David: I am writing at your request to memorialize my recollection of some of the events which occurred leading up to the failed criminal rule 11 agreement... On Monday, **11/8/04**, you, your family & several witnesses came to our office to meet in preparation for the arraignment & change of plea scheduled to occur in McGrath the next day. It was **at that time** I informed you of Mr. Leaders' decision & outlined your legal options." [10]

In other words Haeg, in addition to the other harm, was immediately prejudiced by the breaking of the rule 11 plea agreement to the tune of approximately $750,000.00.

> *MR. COLE:* "I don't think he [the judge] gave him [Haeg] credit for the year he got off. So he [Haeg] effectively got 6 years." [11] ***(See Caselaw Appendix B)***

Haeg's rule 11 plea agreement was legally binding hundreds of times over.

After Haeg was forced to trial on the severe charges & lost, because of Cole's sellout, Trooper perjury & his own statements, Haeg's second attorney, because he was covering up for Cole, & the prosecutorial misconduct, allowed Leaders to bring in the moose case to "enhance Haeg's sentence" by claiming that Haeg had broke the rule 11 plea agreement because Haeg refused to plead guilty to the severe charges never agreed to. In other words Haeg was forced to pay everything for the original plea agreement yet was refused anything promised.

Because Haeg's judge unbelievably agreed with this Leaders was able to **again** require Haeg to talk about the 2003 moose hunt since this "was part of the original rule 11 plea agreement". Haeg had to **again** pay many thousands of dollars for multiple

---

[10] ABA Exhibit #7.

[11] Tr. Fee Arbitration p. 289.

witnesses to fly to McGrath for the same exact reason as on 11/8/04.

After the moose "mini trial" went from 11:00 A.M. to 8:00 P.M. (without the jury Haeg had requested but was denied) the judge stated there was no evidence of anything wrong. When Haeg was finally sentenced for the severe charges at nearly 1:00 A.M. in the morning on 9/30/05 he received a 5-year license suspension. The judge was never told of the whole year Haeg & his wife had already given up for the rule 11 plea agreement or that most the evidence the State had came from Haeg himself in return for a plea agreement Haeg never received.

Arthur "Chuck" Robinson (Robinson), Haeg's attorney during trial & sentencing had told Haeg he must never bring up the fact he had a rule 11 plea agreement while Cole was his attorney because if he did so it would ruin any chance for a successful outcome of his case. So when the fact that Haeg & his wife had not guided for a whole year came up at a pre-sentencing status hearing the prosecution was able to state, on the record, "We have no idea why Haeg didn't guide" & no one told the judge this was a lie to cover up they had **required** this for the rule 11 plea agreement they broke after Haeg had paid for it. It was long after before Haeg realized that if bringing up the rule 11 plea agreement would ruin any chance of a successful outcome of his case there was nothing to stop the **prosecution** from bringing up the rule 11 plea agreement & in fact had **already** done so to use the moose issue in an attempt to enhance Haeg's sentence.

The point to all of this is that since it was **proven** there was nothing wrong with the moose hunt Haeg would have received a 1-year license suspension if the rule 11 plea agreement had been enforced & that Haeg had paid everything required for a rule 11 plea agreement he never received.

> *MR. COLE*: "I then began a dialog with Scot Leaders - um- it was clear to me & David I discussed this that the State was hoping that if they could prove that he committed this violation in 2003 – the moose hunting – that that was goanna be their anchor or their cru – or their hook to get longer then a 1 year license revocation." [12]

So the direct effect of just Cole's failure to enforce Haeg's rule 11 plea agreement cost Haeg 5 additional years of license suspension at $750,000 per year - not including the resulting loss of Haeg's lodge, hunting camps, leases, & permits.

> *MR. COLE*: "...they [guides] could be out of business & they know you know being out of business means you know & for 5 years it is almost impossible to come back." [13]

In other words Cole's knowing, intelligent, intentional, & malicious actions, in direct violation of his duty according to most of the *Alaska Rules of Professional Conduct - Rules of Court*, makes him unarguably responsible for actual damages in the millions – not even including the money paid to Haeg's additional attorneys in an attempt to salvage Haeg's life. These actual damages would be but a fraction of the punitive damages awarded to make sure these intentional crimes & violations by a professional acting in a fiduciary (position of trust) capacity never happen again.

It is a fact Cole is looking at damages in the tens of millions of dollars. In addition to this what will happen to Cole's sterling reputation as a pillar of the legal community – on the ABA Ethics Committee; State prosecutor of Joseph Hazelwood, former Captain of the Exxon Valdez; & nephew of former Attorney General of Alaska Charlie Cole? What will happen to

---

[12] Tr. Fee Arbitration p. 297.

[13] Tr. Fee Arbitration p. 275-276.

Cole's law firm if he has a reputation for selling his own clients to the prosecution?

Thirdly, although the ABA claims they have never successfully prosecuted an attorney for lying to a client all other States have disbarred attorneys for having done so.

Now that a proper perspective is in place to show just how great Cole's motivation would be to avoid these liabilities we need to again very carefully examine what happened at the ABA proceedings where Haeg tried to prove these liabilities. It is very, very important to remember Cole is a highly successful & experienced criminal defense attorney & Haeg has no legal experience whatsoever. This means Haeg, at least when Cole was representing him, did not know what a motion was or what it could do; did not know what, or even if, anything could be done about perjury on search warrant affidavits; did not know anything of what his constitutional rights actually did to protect him – the list goes on & on. In short Haeg, because of his ignorance, placed his entire trust in the very best attorney available. It also means Haeg is at an extreme disadvantage when confronting Cole at the Alaska Bar Association proceedings.

Cole, over & over & while under oath, testified that while he was Haeg's attorney he told Haeg & all Haeg's witnesses that he could enforce the rule 11 plea agreement by "filing a motion" -***(See Transcript 1)***. Cole is trying to establish that he told Haeg & the witnesses that he could file a motion but this is irrefutably proven because nowhere in any of the secretly recorded conversations is there a point where Cole says he could file this let alone the words "file a motion" or even the word "motion" - ***(See Transcript 2)***. Yet there is even more absolutely overwhelming evidence this is blatant perjury. Consider the sworn testimony from the witnesses - ***(See Transcript 3)***. Now

compare this sworn testimony to the secretly taped conversations with Haeg while Cole was still Haeg's attorney & just days after the deal was broken - ***(See Transcript 4).***

Since a motion to enforce the rule 11 plea agreement was never filed there must have been a reason. Cole comes up with this reason by first saying Haeg didn't want to file this motion because it would cost money - ***(See Transcript 5).*** It is undeniable Haeg wanted to enforce the rule 11 plea agreement at the cost of $1000 to $1200. This proves, beyond any shadow of a doubt, Cole's perjury when he stated Haeg did not want to enforce the agreement because it would cost $1000 to $1200.

Then on 7/11/06 & 7/12/06, or very nearly 3 months later, Cole changes his story & claims the reason a motion wasn't filed was because Haeg "did not want to risk losing his guide license for 5 years." This change is because Haeg had clearly shown how ridiculous it would have been, with literally hundreds & hundreds of thousands of dollars in the balance, for the simple cost of filing a $1000.00 motion to be the reason for Cole not filing it - ***(See Transcript 6).***

Now compare this sworn testimony to secretly **taped** conversations with Haeg while Cole was still Haeg's attorney & just days after the deal was broken. This proves Haeg wanted the plea agreement enforced at any risk to his guide license - ***(See Transcript 7).***

It is undeniable Haeg, at every turn, wanted to enforce the rule 11 plea agreement at the risk of losing his guide license for 5 years. This proves, beyond any shadow of a double, Cole's perjury when he stated that Haeg did not want to risk this to enforce the agreement.

It is undeniable that Cole, while he was Haeg's attorney, never ever told Haeg he could enforce the rule 11 plea agreement

by filing a motion or any other means. This proves, beyond any shadow of a doubt, Cole's perjury when he testified he had done so many times. It is absolute that Cole never ever mentioned the word "motion" to Haeg while acting as Haeg's attorney. The sworn witness testimony, backed up by the **complete** absence of this word in the taped transcriptions Haeg secretly made of Cole proves this absolutely. It is further proven by the sworn witness testimony that the **only** thing Cole said he could do was "complain to Leaders's boss". The secret recordings still further back this on 11/11/04 where Haeg says,

> *MR. HAEG*: I know you said that the only person we could bitch to is Leaders – or Leaders's boss person. I mean I bit my tongue when the judge – when we were talking – I mean I was scared to death of course I wasn't thinking real straight but could it – is it – it doesn't do any good to bitch to the judge say, "hey we did all this on good faith with the State & then they just pulled the rug out from under us after we you know essentially spent another $2000 dollars or $3000 dollars just to have people come from Illinois & everything else & they just roop right out from under us. Um – if – if I wanted to – uh – to complain – or you complain I mean - did you ever contact Leaders boss or ever get in touch with her?"
>
> *MR. COLE*: I left a message. I haven't been in touch.[14]

It is obvious here Cole never told Haeg that Haeg could file a motion or complain to the judge & that the only person Haeg could complain to was Leaders's boss. Remember Haeg was totally ignorant of the law & Cole was the professional.

Absolutely cementing the fact Haeg wished to have the rule 11 plea agreement enforced is his asking Cole on 11/11/04 or just 2 days after the deal was broken:

---

[14] ABA Exhibit #17.

> *MR. HAEG*: Um - like I said when Magistrate Murphy was on the phone would it have been appropriate or could I have – could I have said, 'hey judge before you leave could I put in my 2 cents worth that I came with the understanding this was the deal & then they pulled that rug out from underneath my feet'. Could I have done that at that time?
>
> *MR. COLE*: Um - she would have – if it would be – she would have cautioned you & told you before you say anything you're represented by an attorney anything you say can, will be used against you, you should speak with your attorneys advice. If you continued to insist she probably would have listened & that would have been the end of it. [15]

All courts have ruled that the judge would have had to conduct an evidentiary hearing to determine if the rule 11 plea agreement was required to be upheld – it would not have been "the end of it".

IV. TIMING OF RULE 11 PLEA AGREEMENT BREACH - Cole, in sworn testimony, states over & over that the period of time between Leaders agreeing to the "open sentence A8 charge" & when Leaders calls back to terminate that agreement is "about a week". In addition, Cole states that he told Haeg the agreement was going to be broken by Leaders filing far more severe charges weeks **before** 11/8/04**.** ***(See Transcript 8)***

Cole then says, "I **mentioned** it" "I had it in my notes" "I had it in my notes & I'm sure I told you this before." [16]

Cole is not sure now he told Haeg he could file a motion to enforce the argument at this point.

---

[15] ABA Exhibit #17.

[16] Tr. Fee Arbitration p. 320.

Cole goes back to claiming he told Haeg far in advance of 11/8/04 the deal was going to be broke on 7/12/06. ***(See Transcript 9)***

If you look at Cole's own billing records they are very detailed & very complete. They show exactly the progression of the rule 11 plea agreement. ***(See Cole's Billing Records Appendix)*** How is it possible these billings – which document every step in the plea agreement process – would not document something as significant as Leaders breaking the agreement prior to 11/8/04? How can these billing statements, which agree precisely with the testimony from Haeg & his witnesses, be almost 3 months different from what Cole now "remembers"?

How can Cole's letter to Haeg of 7/6/05 after a request from Haeg to explain exactly when & what happened to the plea agreement, agree precisely with the testimony from Haeg & his witnesses that Cole first told all of them the agreement was going to be broken on 11/8/04, when Cole now "remembers" a far earlier & totally uncertain date for doing so?

Again it is indisputable Cole is committing perjury to escape the incalculable liability the truth that Haeg relied upon the plea agreement for months would expose him to. It now becomes very clear to Haeg why Cole demanded to have Malatesta's notes of this conversation before he would write the 7/6/05 letter to Haeg detailing what happened to Haeg's rule 11 plea agreement – he had to keep his lies straight so he didn't get trapped. ***(See Transcript 10 & 11)***

> *Smith v. State* 717 P.2d 402 Alaska App., 1986 it states, "Defendant received IAC from attorney who neither withdrew nor made disclosure to the court when defendant wished to persist in a plea of not guilty even though defense counsel & prosecutor had entered into agreement..." - "In his subsequent motion to withdraw his plea, Smith asserted that his counsel was ineffective in failing to inform Smith that he could

have persisted in his not guilty plea." The Alaska Court of Appeals states, **"The fact that Smith was legally entitled to persist in his plea of innocence is, in our view, determinative of his claim of IAC. Prior to his change of plea, Smith specifically asked his counsel if he was obligated to change his plea. Smith's question obviously related to his legal rights, not to his ethical duties. Smith's attorney replied that he considered Smith to be bound by the agreement." The Alaska Court of Appeals in Smith's case says,** "We are particularly troubled by the apparent failure of both Smith's counsel & counsel for the State to disclose the substance of the negotiated plea agreement to the trial court during Smith's change of plea hearing. **Similarly disturbing is the failure of Smith's counsel to disclose to the court the fact that Smith had expressed qualms about following through with this agreement.**

United States v. Marshank, 777 F. Supp. 1507 (N.D. Cal. 1991). Government's collaboration with defendant's attorney during investigation & prosecution of drug case violated defendant's Fifth & Sixth Amendment rights & required dismissal of the indictment. Counsel advised him to provide some incriminating information as a showing of good faith when the government had not even been aware of the information. [There's more to the horror story, but you get the picture]. The court held that the government's conduct created a conflict of interest between defendant & counsel & the government took advantage of it without alerting the defendant, the court, or even the "oblivious" counsel to the conflicts. **"While the government may have no obligation to caution defense counsel against straying from the ethical path, it is not entitled to take advantage of conflicts of interest of which the defendant & the court are unaware."** Id. at 1519. Moreover, the government here assisted in efforts to hide the conflicts from defendant. "In light of the astonishing facts of this case, it is beyond question that [counsel's] representation of [defendant] was rendered completely ineffectual & that the government was a knowing participant in the circumstances that made the representation ineffectual." Id. at 1520.

Cole testifies over & over under oath before the ABA panel that he obtained & enforced an immunity agreement for Haeg before Haeg's statement to Leaders & Trooper Gibbens. Yet the overwhelming facts prove indisputably & many times over this is blatant, intentional, knowing, & intelligent perjury. ***(See Transcript 12)***

Now look at the irrefutable evidence against this. First Cole has Haeg give Leaders, on April 23, 2004, a map showing all sites where wolves were taken. This was done because Leaders "demanded" this.

> *MR. COLE*: "I don't know how that was & that's – the reason I know that is because when Leaders & I talked **he [Leaders] demanded to David to –uh- circle with you know on a map where the others were**. He didn't know how many or what had happened but that's part of why we did what did. I just remember going (tapping sound) I mean I – I took these notes. I – I talked to Leaders on the 21st of April & – & quite frankly I was kind of shocked because I thought -um- I thought it was goanna be worse then it was. I told him that we wanted to resolve this matter if possible. **He [Leaders] told me that the feds were interested in filing lacey act charges**."[17]

> *MR. COLE*: "...**they [State] wanted David to have an interview quickly, they wanted to go to these places & part of it was because they wanted to know where these other wolves had been shot – I suspect before -um- the evidence went away**."[18]

Cole testified the State wanted the map so they could obtain **additional** evidence before it went away. The whole purpose of an immunity agreement or "king for a day" is so that the prosecution can't use what you give them in **any** way to file more charges, to obtain **additional** evidence, obtain an advantage, or file more charges. Even Cole's 4/23/04 fax cover

[17] Tr. Fee Arbitration p. 244.

[18] Tr. Fee Arbitration p. 247.

sheet accompanying the maps states, "Scott: As requested, I am enclosing two pages of maps showing the information you have requested. I **still** want to speak with you about the parameters of a resolution of my client's good faith efforts to resolve this matter amicably."

On 7/6/04 Cole has Haeg give a 5-hour complete & truthful interview to Leaders & Trooper Gibbens which they used as the **only** probably cause for most of the 11 charges in the offer of 8/18/04,[19] which, as Cole testified "was kind of overwhelming". Before having Haeg make this statement Cole never indicates to Haeg that there was an immunity agreement or that "it's very - very difficult to go back"[20] after making it as Cole has recently testified.

Cole never makes **any** attempt to make Leaders 8/18/04 "offer" comply with the immunity agreement – **because there never was one**. *MR. COLE*: "I called up Scot Leaders -um- & I said 'hey Scot -um- look you guys are goanna file this complaint as it is with the 11 counts'."[21] If Haeg had an immunity agreement there would only have been 4 charges – not 11.

On 11/4/04 Leaders files a 16 page information utilizing **all** of Haeg's statements as the only probable cause for most of the charges & as primary probable cause for the rest – quoting Haeg through most of the information – starting with: "Haeg was interviewed in Anchorage on 6/11/04".[22] Again Cole never makes an attempt to enforce to immunity agreement – because there was no immunity agreement. On 11/8/04 Leaders files a 16 page amended information in violation of the plea agreement again

---

[19] ABA Exhibit #2.

[20] Tr. Fee Arbitration p.249.

[21] Tr. Fee Arbitration p. 261.

[22] ABA Exhibit #5.

utilizing **all** of Haeg's statements as the only probable cause for most of the charges & as primary probable cause for the rest – quoting Haeg through most of the information – again starting with: "Haeg was interviewed in Anchorage on 6/11/04".[23]

On 11/10/04 the Anchorage Daily News & subsequently papers around the world publish front-page articles quoting Haeg's statements. The articles go on to say, "Haeg lied to the State about where the wolves were killed 'because he wanted to be known as a successful participant in the aerial wolf hunt' the **court** documents say." This is very interesting because Haeg **never** said this & the tapes of his "interview" are now blank:

> *MR. COLE*: "November. ... Still trying to get that airplane back for him. Copy of his statement. Because when we had gone in to do the –uh- interview with the troopers, back in June, somehow the tape had gotten screwed up & we had been asking for this tape so we could have a copy of the statement & they kept giving us this tape that didn't work & David would say "hey Brent the tape doesn't work" & I think they finally admitted that something happened & they didn't record it or we never – I never got a copy of it."[24]

(Prosecution cannot use evidence that has been destroyed – except in Haeg's case because Cole apparently didn't know this.)

Again Cole makes no attempt to enforce the immunity agreement because there is no immunity agreement.

On **December 23, 2004** Cole writes a letter stating,

> "I spoke to Mr. Fitzgerald on April 28, 2004, & he inquired of me about whether or not our clients statements could be used against them if we failed to reach a resolution on this case. I indicated to him that **I didn't know**, but **assumed** that this voluntary statement by my client was being done pursuant to our settlement discussions."[25]

---

[23] ABA Exhibit #6 & Trooper Gibbens report ABA Exhibit #15.

[24] Tr. Fee Arbitration p. 272.

[25] ABA Exhibit #1.

It is obvious there was no immunity agreement & that is **why** Leaders could use Haeg's statements for **all** the charges & informations filed in his case – & Cole could do nothing about it. Even more stunningly irrefutable evidence then that above is Cole's statement to Haeg on 11/11/04,[26] while he was still Haeg's attorney. ***(See Transcript 13)***

Even if Cole didn't get an immunity agreement as he swears under oath he did – Leaders could not use anything Haeg gave him in conjunction with a plea agreement if a plea does not result in a plea of guilty or nolo contender according to Evidence Rule 410:

> *Rule 410. Inadmissibility of Plea Discussions in Other Proceedings*. (a) Evidence of a plea of guilty or nolo contendere, or of an offer to plead guilty or nolo contendere to the crime charged or any other crime, or of statements or agreements made in connection with any of the foregoing pleas or offers, is not admissible in any civil or criminal action, case or proceeding against the government or an accused person who made the plea or offer if: (i) A plea discussion does not result in a plea of guilty or nolo contendere.

Yet no one, including Cole, ever did anything to enforce these rights or even tell Haeg of these rights – Haeg went to trial with **all** of his statements, made during plea discussions, used against him. Cole didn't tell Haeg that Leaders could be forced to honor the rule 11 plea agreement, didn't get an immunity agreement, etc., etc., etc...

Again it is indisputable, many times over, that Cole again committed blatant all knowing perjury when he claimed Haeg had an immunity agreement.

---

[26] ABA Exhibit #17.

The sworn testimony of Cole's only witness at the ABA proceedings, Kevin Fitzgerald (attorney who Cole has a close working relationship with) is also unbelievably stunning. ***(See Transcript 14)***

Cole's statements in regard to the perjured search warrant affidavits are equally fantastic. ***(See Transcript 15)***

In other words Cole made no attempt to neither discuss Haeg's rights with Haeg nor even rudimentarily investigate the perjury on the search warrant affidavits – even after Haeg had pointed this out. The perjury was obviously intentional or unbelievably reckless & unarguably prejudicial to Haeg.[27] The suppression of the evidence obtained by these search warrant affidavits would have left the prosecution with virtually nothing upon which to base a case – let alone a big game guiding case.

How can Cole claim perjury, used to claim evidence was found in the Game Management Unit where Haeg guides instead of the Game Management Unit in which the Wolf Control Program was taking place, "doesn't matter"? This perjury provided the justification for Haeg to be charged with a Big Game Guiding offense instead of Wolf Control Program offense – resulting in an almost incomprehensible difference in punishments. [Wolf Control Program violation had a maximum $5000 fine & 5 days in jail & specifically stated violations were intentionally separate from all fish & game violations – Haeg was sentenced to 2 years in jail, 19,500 fine, forfeiture of $100,000 in equipment, loss of guide license for 6 years – all of which will result in the loss of Haeg & his wife's business & the lodge worth millions. This doesn't even include the nearly $100,000 Haeg had to pay to attorneys to defend against a big game

[27] See Wendell Jone's ABA testimony.

guiding violation rather then a Wolf Control Program violation.] It is possible this collusion/conspiracy between Cole & the prosecution was motivated by money?

How can Cole possibly claim this in just "one small portion of the affidavit may have been wrong"? How can Cole say, "I know that you know minor mistakes don't invalidate a search warrant"? How can Cole possibly say it's not intentional when it is so obvious the trooper falsely claimed the sites were 20 miles from where they really were in the direction of Haeg's guide area – just so he could claim the sites **were in** the Game Management Unit in which Haeg was licensed to guide? This perjury has caused Haeg millions of dollars in damage **already**.

How could Cole testify, "did we discuss[ed] motion to suppress – **no I really didn't think we did because I never felt that was a good option**." How could Cole not discuss Haeg's legal rights with him? If the motion to suppress would have been granted Haeg would even have got his plane & all business property back permanently. Could Cole put this another way "did we discuss motion **to enforce the rule 11 plea agreement** – no I really didn't think we did because I never felt that was a good option"? ***(See Caselaw Appendix D)***

V. SEIZED PROPERTY DUE PROCESS REQUIREMENTS - Cole never informed Haeg of the mandatory procedures the prosecution had to follow to comply with constitutional due process concerns when seizing property used to provide a livelihood. If Cole had enforced these constitutional rights the prosecution would have been **required** to permanently return **all** Haeg's property, including his plane, all which was used to provide a livelihood, along with suppressing all of it as evidence – again eliminating virtually all evidence. The prosecution failed to follow **any** of the **entire** "ensemble" of procedures guaranteed by the Alaska

Supreme Court & United States Supreme Court that make sure families are not mistakenly or unreasonably deprived of their livelihoods & that if they are deprived the States interest in depriving them outweighs the families interest in being able to provide a livelihood.

> *F/V American Eagle v. State,* 620 P.2d 657 (Alaska 1980) "[W]hen the seized property is used by its owner in earning a livelihood, notice & an unconditioned opportunity to contest the state's reasons for seizing the property **must** follow the seizure within days, if not hours, to satisfy due process guarantees even where the government interest in the seizure is urgent."
>
> *Waiste v. State*, 10 P.3d 1141 (Alaska 2000) "Waiste & the State agree that the Due Process Clause of the Alaska Constitution **requires a prompt postseizure hearing** upon seizure of a fishing boat potentially subject to forfeiture." "The State argues that **a prompt postseizure hearing is the only process due**, **both under general constitutional principles & under this court's precedents on fishing-boat seizures**". "This courts dicta, & the persuasive weight of federal law, **both suggest that the Due Process Clause of the Alaska Constitution should require no more than a prompt postseizure hearing." "Given the conceded requirement of a prompt postseizure hearing** on the same issues, in the same forum, "within days, if not hours," the only burden that the State avoids by proceeding ex parte is the burden of having to show its justification for seizure a few days or hours earlier. The interest in avoiding that slight burden is not significant." "The State does not discuss the private interest at stake, & Waiste is plainly right that it is significant: even a few days' lost fishing during a three-week salmon run is serious, & due process mandates heightened solicitude when someone is deprived of her or his primary source of income." "An ensemble of procedural rules bounds the State's discretion to seize vessels & limits the risk & duration of harmful errors. The rules include the need to show probable cause to think a vessel forfeitable in an ex parte hearing before a neutral magistrate, **to**

allow release of the vessel on bond, & to afford a prompt postseizure hearing."

How can Cole, after he admitted Haeg expressed a great & continuing interest in getting his plane back state he didn't because Haeg, who had no idea about the right to bond, didn't specifically **ask** him to "bond" the plane out? ***(See Transcript 16)***

How can Cole now testify to the ABA panel, "the time to make that decision was in April" when he never informed Haeg there was a decision to make at the time? How can you make an informed decision to ask for your property back, used to provide your livelihood if your attorney hides all the ways at your disposal from you & points out every weapon & defense of the prosecution – even ones they can't use? (Feds getting involved, felony charges, etc...) What exactly is Cole's motive for doing this?

Cole's testimony that you can't get property back when it is evidence of a crime obtained via a search warrant is absolutely false. All the property seized in *Waiste & F/V American Eagle* were by way of search warrants issued to obtain evidence of a crime.

It is also unbelievable Cole did not know & had to have Haeg show him the case law that requires the State to provide a hearing when depriving someone of their property. See again the seminal Alaska Supreme Court rulings in *Waiste v. State*, 10 P.3d 1141 (Alaska 2000) & *F/V American Eagle v. State*, 620 P.2d 657 (Alaska 1980).

These seminal Alaska Supreme Court rulings also proves Cole's sworn testimony that this "ensemble" is reserved for civil forfeitures, & that they do not apply to criminal

forfeitures, is obviously more perjury to again escape the enormous liability his actions exposed him to.

VI. COLE REFUSING TO OBEY SUBPOENA - The Decision & Award made no mention of Cole's crime & overwhelming likelihood of conspiracy with Chuck Robinson in his failing to appear at Haeg's sentencing in response to a subpoena, witness fees, plane ticket, & hotel reservation. ***(See Transcript 17)***

First Cole testifies just how important & effective it would be to inform the judge all that Haeg had done for the prosecution – giving them maps & statements which let them file over double the number of charges, he & his wife giving up a whole years combined income for the plea agreement, agreeing to let an uncharged moose hunt "enhance" Haeg's sentence, apparently even foregoing filing motions to suppress or getting immunity agreement.[28] The "judge will see what a good effort you've done, how you've voluntarily surrendered when we go in" - "We were falling on our sword."[29]

Then Cole testifies that "my testimony would not have been helpful to Haeg at his sentencing" when his entire testimony was to be all about everything Haeg did for the State & then receiving **nothing** for his bargain.[30] In other words Cole, to hide his sellout of his own client, illegally disobeyed a subpoena that Haeg served on him so he could avoid showing just how unbelievably fundamentally unfair Haeg had been treated by Cole, the prosecution, & the justice system so far.

First Cole "can't make it" & then he testifies that Robinson, Haeg's second attorney, told him [Cole] he didn't have to go. Then Cole says he asked Robinson "How about this? What if

---

[28] See Cole's cross examination of Wendell Jones at ABA proceedings.
[29] Tr. Fee Arbitration p. 252.
[30] ABA Exhibit #9 – Sentencing Questions for Cole.

I just sit at my office – at the sentencing – if you want to call me as a witness call me telephonically & he said 'that's fine'. I sat in my office all day that day – I never received a call to testify, telephonically, at David's case. I told Mr. Robinson I would be available."[31] Yet if you look at **all** of Cole's letters to Robinson Cole states he "will not be available to testify."[32]

The interesting thing to Haeg about this is the panel never objected to Cole's **unsubstantiated** conversations with Robinson. Yet when Haeg offers a **tape** & transcription of his own **substantiated** conversations with Robinson the panel objects.

> *MR. HAEG*: "Well why Chuck then did I pay you for a subpoena for Brent Cole & Brent Cole never showed up? Now that's one that I can't get over."
>
> *MR. ROBINSON*: "Because Brent Cole's testimony was not relevant to the question..."
>
> *MR. HAEG*: "I demanded him testify, Chuck, & everybody heard it & Brent Cole never showed up & we got on your billing records that he called you right after he got Jackie's ticket that she bought for him so I could look him in the eye. He called you & then he never showed up Chuck!"
>
> *MR. ROBINSON*: "Because – because we talked about it & I told you there was no need to call him because what he had to say is not relevant to your guilt."
>
> *MR. HAEG*: "It would have been relevant to my sentence & you know it."
>
> *MR. ROBINSON*: "Why would it have been relevant to your sentence David?"
>
> *MR. HAEG*: "Because we had a deal that I'd given up a year of my freaking guide license for a bunch of other shit & I wanted that Judge to know that I in good

[31] Tr. Fee Arbitration p. 287.

[32] ABA Exhibit #37.

> faith just like she told Tony Zellers "you going in & given statements & everything is rehabilitation" & none of that ever came out that I went in & gave them a five hour interview & I wanted that man to be asked that & I wanted him to be asked why he never stood up for my deal & I wanted that judge to know that I'd been sold down the river. And it never happened & I paid for it."[33]
>
> Then Haeg asks former Alaska State Trooper Wendell Jones:
>
> *MR. HAEG*: "...did I ever tell you that I requested my attorney Chuck Robinson many times to try to enforce the rule 11 agreement?"
>
> *MR. JONES*: "Yes."
>
> *MR. HAEG*: "Was I more then slightly upset that Mr. Robinson said he could not do so?"
>
> *MR. JONES*: "Yes." [34]

VII. HAEG DIDN'T WANT TRIAL - On 7/11/06 Cole testifies under oath "I never had any idea that David would want a trial."[35] This is more blatant perjury. While Cole was Haeg's attorney Haeg told Cole over & over he was thinking of going to trial because of Leaders breaking the rule 11 plea agreement. ***(See Transcript 18)***

VIII. Haeg never had a deal - On 7/12/06 Cole testifies under oath "you [Haeg] never had a deal." [36] This again is blatant perjury. The evidence Haeg had a deal is absolutely overwhelming. See the following conversations Haeg secretly recorded while Cole was his attorney. ***(See Transcript 19)*** – also

---

[33] Tr. Robinson/Haeg 2/1/06.
[34] Tr. Fee Arbitration p. 170.
[35] Tr. Fee Arbitration p. 283.
[36] Tr. Fee Arbitration p. 322.

see ***(See Transcript 20)*** Malatesta interview with Cole on 1/3/05.[37]

It is indisputable there was a rule 11 plea agreement, Cole intentionally lied to Haeg about his right to enforce it, &, now that he is caught, Cole is now making any excuse possible for not enforcing it – including perjuring himself to claim there never was a deal.

If there never was a deal why did Cole schedule an arraignment/plea/sentencing hearing for which Haeg had to spend large sums of money? This is fantastic. So Cole could help Leaders break Haeg financially & mentally? For that is the exact result of having Haeg sacrifice his right to not give Leaders an "interview", a whole years income from both Haeg & his wife, & fly in multiple witnesses from around the U.S. for absolutely nothing in return & no deal. The pressure brought to bear upon Haeg at the last instant because he was told there really was no deal after doing so much for one would break virtually anyone – forcing them to agree to almost **anything** the prosecution wanted.

Is this fundamentally fair? Is it fundamentally fair to have a defendant's own attorney involved in this unbelievably malicious deception?

VIV. Incredible Inconsistency's - All of the overwhelming physical evidence, including Cole's "new" notes that he refuses to admit into evidence, backed up by a multitude of witnesses sworn under oath, prove beyond any doubt that Haeg could have suppressed virtually all evidence because of the perjured search warrant affidavits; that Haeg could have had all property & evidence returned because of due process violations in seizing & holding it; an enforceable, binding, & legitimate rule 11 plea

[37] ABA Exhibit #19.

agreement with Leaders on 8/27/04, that consisted of "open sentence", talk about the 2003 moose hunt, & range of 1-3 years guide license suspension, that Haeg relied upon it to his immense detriment for almost 3 months, that Haeg was told it would be broken only **5 business hours** before he was to get his part of the agreement; that Haeg only **ever** accepted this one single argument; that there **never** was immunity agreement; & that Cole lied to & deceived Haeg to deny him numerous rights he wished to exercise. There are no inconsistencies between the physical evidence, these truths, & sworn testimony from numerous witnesses.

The inconsistencies between Cole's sworn testimony at the Fee Arbitration & the physical evidence are numerous, gross, & extremely chilling. These unexplainable inconsistencies, coupled with the Fee Arbitration Panel's willing acceptance & justification of them expose their obvious corruption to help cover up Cole's incomprehensible sell out of Haeg. Step by step Haeg will again expose the inconsistencies that graphically illustrate the magnitude of the sellout excluding the sworn testimony of Haeg & his witnesses:

1. Cole **never** told Haeg of his constitutional right to a hearing where the State had to justify depriving Haeg of his means to put food in his families mouth – testifying that oblivious & ignorant **Haeg** would have had to **specifically** ask about the hearing &/or opportunity to bond.

2. Cole **never** told Haeg about his constitutional right to suppress evidence seized pursuant to a search warrant obtained through the use of intentional & unbelievable prejudicial perjury – stating, "**did we discuss [a] motion to suppress – no I really didn't think we did because I never felt that was a good option**"

& "I never was told anything that was a major mistake."[38] ... "I don't actually remember **him** [Haeg] pointing out **this is false**" & that this was "one small portion of the affidavit" yet this perjured "small portion" changed the entire focus of the case from an inconsequential Wolf Control Program violation to one that would end life as Haeg knew it forever.

3. Cole had Haeg give Leaders a map & 5 hour statement without a **single** thing that had to be given in return, with **no** protection whatsoever, & even hid the protections already in place under *Evidence Rule 410* & the constitutional right against self incrimination from Haeg so the prosecution could rape Haeg at will with his own statements. Cole's sworn testimony he had an "immunity agreement" in place before having Haeg give the prosecution the map & statement is so incredible it defies comprehension.

First, Cole testifies that the prosecution wanted the map & statement "quickly" because "they wanted to go to these places & part of it was because they wanted to know where these **other** wolves had been shot – I suspect before -um- the **evidence** went away."

> This is **exactly** what the prosecution did & this is exactly what an "immunity agreement" is supposed to prevent. Without Haeg's **own** statements they would have been able to file less then half of the **11** charges they filed – with the rest of the charges severely compromised.[39] (See *Evidence Rule 410).*

Cole's own letters of 12/3/04 to Leaders, trying to document, after the fact, there was an immunity agreement, even establishes there was no immunity agreement before Cole had Haeg give the prosecution everything they needed to convict Haeg of

---

[38] Tr. Fee Arbitration p. 274.

[39] ABA exhibit(s) #5 & #6.

additional crimes. Cole admits that on 4/28/04 Fitzgerald inquired of Cole if the statements & information could be used against Haeg. Cole responds, "**I don't know**". This conversation, stating that Cole **didn't** know is **after** Cole had already had Haeg give Leaders map on 4/23/04. The fax cover letter included with these maps states,

> "Scot: As requested I am enclosing two pages of maps showing the information you have requested. I **still** want to speak with you about the parameters of a resolution of this case, but believe this should demonstrate my client's **good faith** efforts to resolve this matter amicably."

The prosecution's **uncontested** actions **also** prove there was no immunity agreement. First the prosecution uses Haeg's own statements as the only probable cause for over half the 11 charges & as primary probable cause for the rest in the first information. Second he uses all this **again** for the amended information that broke the rule 11 plea agreement & included charges never agreed to.[40] Third the prosecution makes public Haeg's statements in Gibbens DPS dispatch of 11/10/04. Fourth the Anchorage Daily News makes public all Haeg's statements on 11/10/04 – including false versions of them.[41] Fifth, the prosecution continued to use Haeg's statements throughout his entire trial & sentencing – exposing Cole's letter of 12/23/04 for what it really was – another obvious attempt to escape the liability of selling his own client to the prosecution.

Another glaring inconsistency that there never was an immunity agreement is Cole's witness, Fitzgerald, while under oath, & Cole's own conversations with Haeg while he was still representing Haeg. ***(See Fitzgerald's Fee Arb. Transcription)***

---

[40] ABA Exhibit #5 & #6.

[41] ABA Exhibit #28.

The 4/13/06 questioning of Fitzgerald under oath by Cole is chilling:

> *MR. COLE*: "As a defense attorney is it always best if you can - to get some type of immunity agreement before you let your client talk?"
>
> *MR. FITZGERALD*: "Yes."
>
> *MR. COLE*: "Ok. **Is that always possible**?"
>
> *MR. FITZGERALD*: "**No** it's really a – it's – it – it really has to do with negotiation & whose got leverage -um- if – if you've got the cards on your side you're in a lot better position to dictate the terms with regard to what – how your client may speak, what they may speak about, etcetera. If you're in the opposite side & you don't have very many cards then your whole leverage position is different." [42]

An even more compelling & chilling inconsistency to the sworn testimony of Cole that there was an immunity agreement is the conversations secretly recorded by Haeg of Cole while Cole was still representing Haeg. ***(See Transcript 21)***

There is absolutely no possible way for Cole to have had these conversations if Haeg had an immunity agreement. Cole would have been obligated to correct ignorant Haeg's obvious assumption that his statements could & would be used against him – as in fact they were through his entire trial & sentencing. There is no reconciling the existence of an immunity agreement & these secretly recorded conversations **at the time in question**.

But the most obvious, chilling, absolute & irrefutable proof of Cole's & Fitzgerald's perjury & conspiracy to cover up Cole's selling out of Haeg to the prosecution is Fitzgerald's testimony on the record during Tony Zellers (Zellers) change of plea hearing on 1/13/05:

---

[42] Tr. Fee Arbitration p. 181.

MR. FITZGERALD: "...the case & –uh- **had it not been for the cooperation, frankly of both Mr. Zellers & Mr. Haeg, –uh- there would have been additional holes in the case & my understanding is that their cooperation provided information to the State concerning at least 5 of the 9 wolves at issue. Um so I – I think that certainly with regard the Chaney Criteria rehabilitation –um- as we frequently say in this line of business "actions speak louder than words" & a lot of people can "talk the talk but the walk the walk is something different" & from the very get go Mr. Zellers has walked the walk here, he's provided information, frankly information at that point that was –uh- provided in the context of hopeful plea negotiations but –uh- the fact of the matter is he provided the information & frankly the government was free to do whatever it was goanna do with that - that information & as is demonstrated they used it to –uh- charge additional charges against both Mr. Zellers & Mr. Haeg**..." [43]

This proves beyond any shadow of a doubt, that neither Haeg nor Zellers ever had an immunity agreement of any sort. Cole & Fitzgerald's **sworn** testimony's during the ABA proceedings that they had an immunity agreement was intentional, knowing, intelligent, & malicious perjury – to cover up Cole's sellout of Haeg.

The statement "the government was **free** to do **whatever** it was goanna do with that – that information & as is demonstrated they used it to –uh- charge additional charges against both Mr. Zellers & Mr. Haeg"[44] means there was no possibility of any agreement that precluded the prosecutions use of Haeg's or Zellers statements against themselves. Cole's & Fitzgerald's subsequent sworn testimony there was an agreement preventing this is blatant, obvious, & proven perjury – done to hide Cole's sellout of Haeg's rights to Leaders.

---

[43] ABA Exhibit #33.

[44] ABA Exhibit #33 - Zellers Change of Plea/Sentencing Hearing.

4. Cole's much after-the-fact letter to Haeg at Haeg's request to know exactly what happened to the rule 11 plea agreement is also totally inconsistent with both Cole's itemized billing statements (at the exact time in question) & to his own recent sworn testimony at the ABA. – *MR. COLE*: "I won't say all but most of the entries in the billing are done pretty contemporaneously. -Um- those were given to Mr. Haeg." [45]

Cole's billing statement, **made at the very time in question**, is in **exact** accordance with Haeg & Haeg's sworn witness testimony at the Alaska Bar Association proceedings. Yet Cole's sworn testimony, **after** he has realized the incomprehensible liability his actions have exposed him to, is **now** totally & completely inconsistent with the overwhelming evidence.

Cole's own itemized billing statement, **made at the time**, states Haeg asked for "open sentencing" on 8/27/04. Yet in Cole's letter of 7/6/05, that Haeg demanded to explain it was Leaders that broke the rule 11 plea agreement after he had placed enormous detrimental reliance on it, Cole now states:

> "On August 18, 2004, the State sent over a written offer to resolve your case. This began a series of negotiations between the parties in which we discussed the charges that would be brought & the sentence you would receive. We ultimately reached an agreement about virtually all the terms of the proposed resolution except for the length of your big game guide license suspension, which we agreed to argue about at an arraignment/sentencing hearing with an understanding that there would be a minimum one year to a maximum three year suspension. **This occurred sometime during the middle of October of 2004. I believe the first Information was filed by the State right around that time. Sometime after that, you inquired about whether you could simply plead "open sentence" to the filed charges so that you could argue**

[45] Tr. Fee Arbitration p.232.

> **against the forfeiture of your aircraft**. I indicated that I would make that inquiry of Mr. Leaders which I did. He initially did not have a problem with this. **About a week later, however, I received telephone call from him which indicated that he was amenable to allowing you to plead "open" sentencing but he was going to change the information to require the minimum three-year license revocation. I believe this happened on or about November 5, 2004**. I traveled with Mr. Leaders to Dillingham on November 6, 2004, for two fish & game sentencing hearings involving guides & I was given the amended information at that time. On **Monday, November 8, 2004, you, your family & several witnesses came to our office to meet in preparation for the arraignment & change of plea scheduled to occur in McGrath the next day. It was at that time I informed you of Mr. Leaders' decision & outlined your legal options**."[46]

Cole, now that he is exposed to utter ruin from his actions, is trying to claim the first information was filed in "the middle of October of 2004" & that Haeg asked for open sentencing "sometime after the middle of October".[47]

Cole's tactic for avoiding utter ruin is clear – if Haeg asked for "open sentencing" **after** the information was filed it accounts for why Leaders had to file the amended information. If Leaders filed the original information **after** Haeg had asked for "open sentencing" it means **Leaders** changed his mind & broke the agreement while Haeg was still in compliance with the agreement, giving Haeg a **constitutional** right to have it enforced especially if there was detrimental reliance – which abounded. Also, if Haeg had an agreement for only a week or so there would be the chance the deal would not be enforceable.

The irreconcilable error in Cole's story starts with the original information being filed on 11/4/04 & not in mid October

---

[46] ABA Exhibit #7.

[47] Fee Arbitration Tr. p. 340.

as Cole claims.[48] Worse is if Haeg asked for "open sentencing" **after** the information was filed on October 4, 2004 how come Cole's own billing statement record Cole, at Haeg's request, asking **Leaders** about "open sentencing" on 8/27/04 – which means Haeg asked Cole about it in the 8/19/04 teleconference concerning the "plea offer"?[49] This means Cole is proved, beyond any doubt to be deliberately lying to change the date of the open sentencing request by **3 months**. The reason for this glaring inconsistency, as pointed out earlier, is obvious – if there was any detrimental reliance (time, money, information, or any other prejudice) placed upon the agreement Haeg was entitled to have it constitutionally enforced. Cole is desperately trying to cover his tracks of intentionally having Haeg sacrifice virtually his entire life for 3 months for an agreement & then lying to Haeg when Leaders broke it **only hours** before Haeg was to get his end of the bargain. Cole's own letters & itemized billing statements prove it is indisputable Cole sold Haeg out to the prosecution &, now that he is found out, trying to escape liability for his incomprehensible actions while acting in a position of complete trust by Haeg.

5. Cole testifies time & time under oath that it was of the utmost importance to Haeg that the judge hear that Haeg had cooperated from the beginning & had already gave a 5 hour confession, map, a whole years income from both he & his wife, & agreed to talk about a moose hunt with "no legs" to stand upon to "enhance" sentence. Yet after Haeg subpoenas Cole, including paying witness fees, plane ticket, & hotel, to testify in McGrath about all that Cole had Haeg do for the prosecution already – Cole states, "I would not be available to testify

[48] ABA Exhibit #5.
[49] ABA Exhibit #3.

because I will be hunting – I go hunting every year." Adding even more intrigue to this complete reversal of position is that just before he was scheduled to fly to McGrath & testify he has a 20-minute "confer" with Robinson, Haeg's second attorney. The 56 questions Haeg had demanded Cole answer under oath in front of his judge would have proven Cole & Leaders were working together to convict & sentence Haeg for crimes he did not commit & to a sentence he did not deserve.[50] To Haeg it seems more then a little suspicious that Robinson (who denies this) told Cole "you don't have to go to McGrath to testify" (in direct violation to Haeg's absolute demand & constitutional right to a "compulsory process for witnesses in his favor").

6. Cole, during the official ABA Fee Arbitration proceedings first claims that Haeg didn't want the rule 11 plea agreement enforced because it would cost money.[51] Then Cole testifies under oath, after Haeg shows how ludicrous this was, it wasn't an issue of money it was because Haeg didn't want to risk a 5-year license suspension. Third, when this was shown to be false by the secret tape recordings Cole just claims Haeg never asked for the rule 11 plea agreement to be enforced. Finally, after that was also shown to be false by the secret recordings, Cole finally settles on the excuse that there **never** was a rule 11 plea agreement to enforce in the first place. How can Cole claim the first 3 excuses, which all require that there be a rule 11 plea agreement, & **afterward** claim there **never was a rule 11 plea agreement**? *MR. COLE:* "Dave there was no Rule 11

[50] ABA Exhibit #9.

[51] Tr. Fee Arbitration p. 105.

Agreement, David."[52] This is again absolutely refuted by investigator Malatesta's taped conversation with Cole.[53]

How can Cole's perjuries to escape the unimaginable liability of his actions become anymore obvious than with this blatant series of contradictions?

7. Cole testifies under oath on 7/12/06 that in the secret recordings,

> *MR. COLE*: "...specifically I asked you [Haeg] in one of those, "Do you want me to file this? ... You didn't say - you didn't say anything about it...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'"[54]

The truly scary thing is that there is nothing like this in **any** of the transcripts – not one word of a motion of filing anything – let alone any mention of the word "filing" or "motion". Even more unbelievably chilling is that over & over Haeg states the possibility of losing his license for 5 years (even though the deal to be enforced was a maximum of 3 years) is of absolutely **no** concern in enforcing the rule 11 plea agreement.

Cole is using his powerful & well developed powers of persuasion, honed through years of twisting & distorting the truth, to try to convince Haeg & the panel (of which 2 of the 3 are also attorneys & the third is a full-time court employee) of something that never happened – even though the absolute proof is in the very recordings & transcripts Cole made while representing Haeg.

---

[52] Tr. Fee Arbitration p. 327.

[53] ABA Exhibit #19.

[54] Tr. Fee Arbitration p. 311.

8. Cole testifies over & over that he told Haeg **weeks or months before** 11/8/04 that Leaders was going to break the rule 11 plea agreement by filing far more severe charges than the ones agreed to.[55] Yet Cole's very own letter to Haeg, on July 6, 2005,

> "On Monday, **November 8, 2004**, you, your family & several witnesses came to our office to meet in preparation for the arraignment & change of plea scheduled to occur in McGrath the next day. It was **at that time** I informed you of Mr. Leaders' decision & outlined your legal options."[56]

This is backed up by sworn testimony from numerous witnesses that prove he told Haeg for the first time on 11/8/04 & just 5 business hours before completion that the agreement was going to be broken.

An extremely interesting inconsistency to Cole's sworn testimony is that Leaders, who filed the original information on 11/4/04, called Cole on 11/5/04 to tell him he was going to file an amended information that included far more severe charges.

Exactly why would Leaders file the original information on 11/4/04 & then, before any other conversation with Cole or Haeg, change his mind about the charges on 11/5/04 – just 1 day later?

The only two possible answers are that either Cole waited until 11/5/04 to tell Leaders that Haeg was going open sentencing (which means Cole lied to Haeg so Haeg would be relying on the agreement from **8/27/04**) or that Leaders, knowing that Haeg had relied on the open sentencing agreement from 8/27/04, indeed changed his mind 1 day after filing the original information on 11/4/04. Haeg & his wife investigated what could have influenced Leaders on November 4th or November 5th & found this startling fact – it was 11/3/04 that Cole's office prepared

---

[55] Fee Arbitration Transcriptions.

[56] ABA Exhibit #7.

copies of the moose hunt transcripts – likely sending them out to Leaders on 11/4/04. These transcripts proved the moose hunt allegations were completely fabricated – & leading to felony complaints of perjury & tampering with witnesses against the troopers involved. After Leaders read these it is entirely possible he realized he would almost assuredly have no case – so he needed more leverage to get a big sentence for Haeg.

There is **no** possible way Leaders would have filed the **wrong** information on 11/4/04. In other words it was the **right** one – & in agreement with what Haeg thought was going to happen. Since Cole's **very** complete billing statements record **no** conversations with Leaders on 11/4/04 how could Leaders possibly **know** if Haeg "changed his mind about the deal" between 11/4/04 & 11/5/04, which is when Cole's letter of 7/6/05 says **Leaders called** Cole to tell him he was going to file an amended information.[57] In other words something had to happen between 11/4/04 & 11/5/04 **without** any input from Cole or Haeg that **caused** Leaders to "change his mind" or, as Cole has also stated on tape many times – caused Leaders to "change the deal". On 11/4/04 Leaders received the transcriptions of the 2003 moose interviews. See transcript of Cole & Malatesta on 1/3/05 where Cole agrees with Malatesta that Leaders had "reneged" & "backed out of that agreement." [58]

9. Cole testifies under oath over & over Haeg never had an "open sentencing" agreement & that the only agreement he had, including the one that the were supposed to go to McGrath with all the witnesses for, included giving up the airplane & did **not** include "open sentencing". Yet **everything** written (most of all Cole's itemized & detailed billing statements) at the time show

[57] ABA Exhibit #7.
[58] ABA Exhibit #19.

that the **only** deal was the "open sentencing" one. Absolutely reinforcing this is that all secretly recorded conversations, including those from investigator Joe Malatesta, show there was **only** an "open sentencing" agreement. This does not even include all the **sworn** testimony from all Haeg's witnesses to the same effect.

10. Cole testifies the reason he, Haeg, & Haeg's witnesses didn't fly to McGrath on 11/9/04 to finalize the "new" agreement Haeg supposedly accepted the night of 11/8/04 after the "open sentencing" agreement was broken by Leaders is that "we had to get approval from Occupational Licensing". ***(See Transcript 22)***

Yet Occupational Licensing had **already** been contacted by Leaders for the "open sentencing" agreement & would accept any agreement made on 11/9/04 in McGrath. So Cole's sworn testimony they needed to be contacted is more perjury to cover up the fact **Haeg never agreed to anything but the open sentence, 1-3 year license suspension agreement.** [59]

X - EVIDENCE OF CORRUPTION OF FEE ARBITRATION PANEL –

1. Panel awards Cole money he never asked for - violating the rule money cannot be awarded that was never asked for & that was in fact "written off" (Cole's words) many times over by Cole. [See *Alaska Statue AS 09.43.120 Vacating an Award*.]

In addition the money "written off" was $2059.19 less $370.00 (an airline ticket Haeg was charged for, by Cole, but never used) = $1689.19, a difference of $1000.00 from what was awarded ($2689.19). In other words the panel not only awarded money to Cole that he had already "written off" but awarded him $1000.00 **more** than even if the money had not been "written off". Proof that Cole wrote this money off is everywhere. First on

[59] ABA Exhibit #33 - Zellers COP/Sentencing/Plea Agreement Hearing.

12/14/05 he told Haeg he wouldn't send any more bills asking for the money because he had "wrote it off".[60] Then at the ABA hearing in front of the panel he states the same thing many times –while under oath.

The first time he states this to the ABA panel is on 4/12/06 "I wrote off over $3,000.00 of it - about 25%".[61] Next, on 7/11/06, this time under oath before the panel he states: "But quite frankly I don't want anymore money from David Haeg -um- **so it's not a question about the end of this am I goanna ask for David Haeg to pay me the money he owes me. No I've written it off. I don't care about it**."[62] Then, still under oath on 7/11/06 Cole states: "**I then wrote off all the time that I spent with him for the next month** but I went over to Jim McCommas's office"[63] & later, "I charged him $10,000.00 dollars – about 13 but he ended up paying me 10. Mr. Robinson, who handled his case for a couple months (in reality Haeg had Cole for 8 months & Robinson for 13 months), & went to trial, charged him 2 & a half times that much."[64]

How can the panel, unless they are bias & corrupt, award money never asked for in the fee arbitration, testified to under oath by Cole it was "written off" & is even $1000 **more** than what was "written off" – especially when the rules say that money **not** asked for cannot be awarded?

It is also very apparent the panel (made up of 2 attorneys & 1 "public" person - who is actually a full time court employee) helped attorney Cole with his lies & misrepresentations to cover up what he had done. This is most apparent when Haeg traps Cole

---

[60] See Fee Arbitration Filing - 6/2/06 email from Cole.
[61] Tr. Fee Arbitration p. 13.
[62] Tr. Fee Arbitration p. 233.
[63] Tr. Fee Arbitration p. 273.
[64] Tr. Fee Arbitration p. 280.

time & again into obvious perjury & the panel then asks Haeg to "move on" &/or helps Cole with his story. ***(See ABA Transcriptions)***

The most compelling evidence of the panel's bias & corruption, however, is their other statements, & lack there of, in the Decision & Award. The Decision & Award fails to mention **any** of the numerous times Haeg proves Cole is committing blatant perjury – even going so far as to state NO REFERRAL TO DISCIPLINE COUNSEL.

This is absolutely unbelievable considering the evidence presented – including the stunning sworn statements by Cole & Fitzgerald there was an "immunity agreement" when Fitzgerald, during Zellers change of plea/sentencing hearing, specifically stated Haeg **nor** Zellers **ever** had one & the "prosecution was free to do whatever they wanted with their statements." Cole & Fitzgerald's **sworn** statements that neither Haeg nor Zellers statements could be used against them – when compared to all the informations filed, is also absolutely fantastic. How can the panel "overlook" all this obvious perjury?

It was irrefutably shown to the panel over & over Cole did nothing to help Haeg & lied to Haeg while he was representing Haeg so Haeg could not help himself.

There are so many instances of this it is overwhelming. The lies to cover up the fact all the evidence could have been suppressed - *MR. COLE*: "...& did we discuss motion to suppress – no I really didn't think we did because I never felt that was a good option." --- "I never was told anything that was a major mistake" – when the perjury was devastating to Haeg.[65]

The lies so Haeg wouldn't get his property back – *MR. COLE*: "I don't ever remember you asking me to do that." - "You always

[65] Tr. Fee Arbitration p. 274.

had an interest in getting your plane back." - "I don't think you can get it back when it was subject to a search warrant."[66] (when **all** case law says different) *MR. COLE*: "Show me where the State's required to give you a hearing."[67] (When all case law – especially *Waiste v. State*, 10 P.3d 1141 (Alaska 2000) state they must); "David the time to make that decision [to get the property back] was in April"[68] (when moments earlier Cole states, " I – I may have told you that you could do this. I – I – but my recollection is as we speak to this day [exhales] that when the State has statutes involving when you can get stuff back that's taken pursuant to a search warrant & I do[n't] - & I'm not sure that that can happen."[69]

Further evidence of the panel's bias, partiality & corruption is manifested through out their Decision & Award. First, they state Haeg only identified 3 specific failures of Cole that required Haeg to be excused from paying a fee.

These "three specific failures" make not a single mention of Cole's failure to protest the seizure & deprivation Haeg's property, used to provide a livelihood, in complete & total violation of due process – as held by the Alaska Supreme Court in *Waiste v. State*, 10 P.3d 1141 (Alaska 2000) & *F/V American Eagle v. State*, 620 P.2d 657 (Alaska 1980).

The very worst thing Haeg claimed & proved Cole did, however, & which the panel makes absolutely no mention of, is the numerous, continuing, & intentional lies Cole told Haeg & others while Cole was representing Haeg – all so Haeg could not raise is procedural, statutory, & constitutional defenses. These gross,

---

[66] Tr. Fee Arbitration p. 346.
[67] Tr. Fee Arbitration p. 348.
[68] Tr. Fee Arbitration p. 351.
[69] Tr. Fee Arbitration p. 346-347.

malicious, & undeniable acts had an absolutely devastating effect on Haeg. The lies & perjury proved to the panel were numerous – that Cole never had & thus never enforced an immunity agreement; that Cole lied to Haeg & thus perjured himself that he told Haeg & Haeg's witnesses that he could "file a motion" to enforce the rule 11 plea agreement; that Haeg had asked for "open sentencing" **after** the information was filed; & that Cole had told Haeg prior to 11/8/04 that Leaders was going to break the rule 11 plea agreement.

Possibly the worst of all is that the panel failed to discuss Cole failed to appear in response to a subpoena to answer very detailed questions about all this & in fact wrote letters stating he would not do so.[70]

Next the panel states "Haeg did not offer evidence of the points on which the search warrant application was defective." This is a false statement by the panel. Haeg testified under oath what was false; former Alaska State Trooper Wendell Jones testified under oath what was false. In addition the panel was given evidence, in the form of a map Jones obtained from Cordova Alaska Department of Fish & Game (ADF&G) proving Trooper Gibbens GPS coordinates placed the States evidence in the Game Management Unit (GMU) where the Wolf Control Program was being conducted & **not** in the GMU where Haeg was licensed to guide & where his lodge was located.

The panel also states they were unable to conclude that the misstatement was material. Yet all the sworn testimony before them was that the false information changed the violations from a Wolf Control Program violation (maximum $5000 fine, 5 days in jail, & specifically without being able to affect Haeg's guide license) to a Big Game Guiding violation (of which Haeg was

[70] ABA Exhibit #37.

convicted & sentenced to 2 years in jail, $19,500 fine, & loss of guide license of 6 years which is the only income for Haeg or his wife). For the ABA Panel to state they were unable to reach a conclusion the misstatement was material is fantastic. The difference to Haeg because of the "misstatement" is more then material – it is devastating. There is no doubt whatsoever a motion to suppress should have been filed.

The panel then states that Cole's testimony before them was the real truth of what happened during his representation of Haeg. This is in complete conflict with all physical evidence such as Cole's own billing statements, letters, emails, etc., etc., etc., **&** Haeg & **all** Haeg's witness testimony. That the panel could use only this fraudulent testimony by Cole for their Decision & Award is positive proof of their bias, partiality, & corruption.

The panel ignored the overwhelming evidence that Cole never told Haeg he had a constitutionally guaranteed right to seek specific enforcement of the rule 11 plea agreement & in fact lied to Haeg so Haeg would not fine this out. **(See Caselaw Appendix C)** This is an unbelievable breach of duty by Cole. [See *Smith v. State,* 717 P.2d 402 Alaska App., 1986 – in which it was held a defense attorney whose **ignorance** & **mistake** in giving the defendant incorrect advice in regards to a plea negotiation was ineffective assistance of counsel (IAOC) & required a reversal of conviction. **In addition the court held the most disturbing thing was the failure of the defense attorney &/or the State prosecution to inform the court of the existence of a plea agreement & the question of the defendant enforcing it.]**

Haeg proved to the panel over & over & over he was doing everything humanly possible to protest what happened to him during plea negotiations to the court – including subpoenaing

Cole, buying Cole a plane ticket, paying witness fees, paying for subpoena service, paying for Cole's hotel room – & all Haeg's defense attorney's & the State prosecution collaborated/conspired to keep this from the court. This is a gross & absolute perversion of justice.

The panel does admit Cole told Haeg on 11/8/04 that the prosecutor was going to change the charges. The panel even admits "that the prosecutor had threatened to amend the charges to include one that required a maximum three – year license suspension *unless* Mr. Haeg agreed to forfeiture of the PA-12 aircraft."

Not only was it IAOC/malpractice for Cole not to notify Haeg the plea agreement was going to be broke before Haeg spent enormous sums complying with it (Cole testified he knew for 5 days it was going to be broken but informed Haeg only **5 hours** before it was to be finalized – & **after** Haeg had flown in his party of 8 witnesses from as far away as Illinois.) but it was the definition of vindictive prosecution for Leaders in all intents & purposes hold Haeg hostage to extort more from him (the PA-12 airplane) for the same plea agreement Haeg had already paid for. Yet Cole did nothing & the panel apparently decided it wasn't his duty to protect Haeg from this & that there was indeed nothing wrong with Cole lying to Haeg to help the State prosecution succeed with this extortion. ***(See Caselaw Appendix D)***

The panel also mysteriously fails to address the enormous amount of detrimental reliance Haeg had placed on the plea agreement – including he & his wife giving up a **whole** years income by canceling guided hunts for a year.

The panel also mysteriously fails to mention that Leaders used **all** Haeg's statements made in plea negotiations as the only probable cause to file **most** of the charges that were **never** agreed

to during plea negotiations & that Cole didn't lift a finger to stop him – & again lied to Haeg when Haeg asked how the State could do this.[71]

The panel then states, "Mr. Cole, Mr. Haeg, & Mr. Haeg's witnesses went out to dinner together after the re-negotiated deal was made with the prosecutor to **celebrate** the disposition of the case." Yet **everyone** testified, Cole included, that everyone was shocked, unhappy, & that **no** deal was struck – just more offers from the State to take Haeg's plane. Cole even stated on November 8 Haeg "was unhappy about the position he was being put in"[72] & "I was unhappy with what Leaders had done."[73]

Finally the panel states "The plea agreement that Mr. Cole presented to Mr. Haeg on November 8 was plainly more favorable to Mr. Haeg than "open sentencing" turned out to be, so it appears, with the benefit of hindsight, that Mr. Cole's advice that Mr. Haeg should accept a plea agreement was sound." It is incomprehensible that this panel can rationalize that since Haeg received a harsher sentence after trial when his whole case had been sabotaged by Cole allowing the prosecution to use perjury to change a Wolf Control Case to a Big Game Guiding case, by allowing them to use all Haeg's statements made during plea negotiations against him, by allowing the prosecution to seize & use all Haeg's property against him in direct violation of due process, & after he had nearly bankrupt his family for a plea agreement the State broke that Cole did a good job because this outcome was worse then what Cole offered on 11/8/04. The panel makes no mention that if Cole had done even **part** of his job there would have been **no** case whatsoever & if by some miracle there was

---

[71] U.S. Amendment V, Alaska Article 1.9, & Alaska Rule of Evidence 410.
[72] Tr. Fee Arbitration p. 266.
[73] Tr. Fee Arbitration p. 268.

it could only have been a wolf control case – with **no** possible threat to Haeg's guide license. This would have been immeasurably better then what Cole offered Haeg on 11/8/04 after the State illegally broke the plea agreement.

The panel then states, "No evidence was presented that Mr. Haeg's second lawyer filed such motions." Yet Haeg testified Robinson stated they could never bring up Haeg had a plea agreement or that the State broke it.[74] Cole then testified, "He [Haeg] had every opportunity with Mr. Robinson to file a motion to enforce a plea agreement. I mean he could have done that."[75] Then over & over the panel **refused** to allow such evidence & made no mention of Cole's failure to respond to a subpoena to Haeg's sentencing to answer all Haeg's questions[76] about why no motions were filed after a 20 minute "confer" with Haeg's second attorney Chuck Robinson.[77]

The panel states, "In the evening hours of November 8, they eventually **reached a new agreement**." Yet Cole's own sworn testimony states that in the evening of November 8 "we reached a **contemplated** resolution."[78] - that Cole admits Haeg never accepted.

Also the panel ignores the fact that Haeg's "open sentencing" deal still had the parameters of between 1 & 3 years on his license – so there is no way the outcome of the plea agreement could have been the 6 years Haeg received after trial. Also, it was agreed that it would be Haeg's culpability in the moose hunt that would determine if he should receive more than a 1-year license suspension. Absolutely **no** culpability was found

---

[74] Tr. Fee Arbitration p. 67-73.
[75] Tr. Fee Arbitration p. 281.
[76] ABA Exhibit #9.
[77] Tr. Fee Arbitration p. 34.
[78] Tr. Fee Arbitration p. 268.

in Haeg's 8-hour "moose mini-trial" at Haeg's sentencing – meaning Haeg would have no doubt received only the 1 year minimum license suspension.

PRECICE DESCRIPTION OF RELIEF SOUGHT

1. Haeg respectfully requests this court to refer Cole to disciplinary counsel for the following crimes before the ABA panel; perjury; fraud; collusion/conspiracy with Leaders to illegally convict Haeg; collusion/conspiracy with Robinson to avoid a subpoena & subsequent sworn testimony about his actions in representing Haeg; lying to deprive Haeg of his rights under constitution, statute, & rule; misrepresenting the constitution, statutes, & rule to Haeg to deprive Haeg of these rights; lying to others to deprive Haeg of his rights; making misrepresentations to others to deprive Haeg of his rights.

2. Haeg respectfully requests this court to refer the 2 attorneys on the ABA panel (Nancy Shaw & Yale Metzger) to discipline counsel for corruption, bias, partiality, collusion, & conspiracy.

3. Haeg respectfully requests this court to vacate the award because it was procured by corruption, fraud, conspiracy/collusion, bias, partiality, the panel exceeding it's powers, it was in violation of the U.S. & Alaska Constitutions, Alaska Rules of Professional Conduct & Alaska Rules of Attorney Fee Dispute Resolution.

4. Haeg respectfully requests this court to award him the money Cole billed him ($10,552.86), the money Cole caused Haeg to waste on the rule 11 plea agreement Cole had lied about

(approximately $6000.00), & the money Haeg spent on subsequent attorneys to fix the damage caused by Cole ($60,107.50).[79]

5. Haeg respectfully requests this court to vacate the award granted to Cole by fraud; the panels corruption, bias, & partiality; the panel exceeding their powers; & the panel awarding upon a matter not submitted to them & even in excess if it had been submitted to them.

6. Haeg respectfully asks that oral arguments be scheduled, that Haeg be allowed to videotape them, & that the public be allowed to attend.

This motion is supported by the accompanying affidavit.

RESPECTFULLY SUBMITTED on this 12th day of February 2007.

_____

David S. Haeg, Pro Se Appellant

CERTIFICATE OF SERVICE
I certify that on the ____ day of February 2007, a copy of the forgoing document by ___ mail, ___ fax, or ___ hand-delivered, to the following party:

Brent Cole
745 W. 4th Ave., Suite 502
Anchorage, AK 99501
By: _____

[79] Alaska Rules of Court, Part III Rules of Attorney Fee Dispute Resolution Rule #34(c).