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EMERGENCY

IN THE COURT OF APPEALS FOR THE STATE OF ALASKA

DAVID HAEG	)	
	)	
Appellant,	)	
	)	
vs.	)	
	)	
STATE OF ALASKA,	)	Case No.: A-09455
	)	
Appellee.	)	
	)	

Trial Court Case #4MC-S04-024 Cr.

EMERGENCY MOTION FOR CLARIFICATION

I certify this document and its attachments do not contain the (1) name of victim of a sexual offense listed in AS 12.61.140 or (2) residence or business address or telephone number of a victim of or witness to any offense unless it is an address identifying the place of a crime or an address or telephone number in a transcript of a court proceeding and disclosure of the information was ordered by the court.

COMES NOW Pro Se Appellant, DAVID HAEG, in the above referenced case and in accordance with *Appellate Rule 504*, hereby requests an emergency clarification by 3/23/07 of this Court of Appeals 2/5/07 order remanding jurisdiction to the District Court:

> "for the limited purpose of allowing Haeg to file a motion for the return of his property which the State seized in connection with this case. The District Court has the jurisdiction to conduct any proceedings necessary to decide this motion. We express no opinion on the merits of Haeg's motion. This limited remand does not alter the briefing deadline in this case."

Distribution of this order was made to Homer Judge Margaret Murphy, Aniak Magistrate David Woodmancy, and the **Kenai Court**.

Haeg started writing the motion after completing the opening brief due to this Court of Appeals on 2/20/07. Haeg intended on filing the *Criminal Rule 37(c)* Motion for Return of Property and to Suppress Evidence in the 3rd District Court in Kenai when he was done as this is the same district as where the great majority of his and his wife Jackie's property was seized and used, where he and his family lives, where nearly all witnesses reside (including the prosecutor), and where he had been previously filing motions for return of property.

Criminal Rule 37(c) Motion for Return of Property and to Suppress Evidence states:

> "A person aggrieved by an unlawful search and seizure may move the court **in the judicial district in which the property was seized or the court in which the property may be used** for the return of the property and to suppress for use as evidence anything so obtained on the ground that the property was illegally seized."

Since the great majority of the property seized was in the 3rd district and much of this property was only used in the 3rd district Haeg must file the motion in the 3rd district. On 3/1/07 Magistrate Woodmancy scheduled a status hearing for 3/13/07. During the status hearing, which was about the remand so that Haeg could file a motion for the return of his property, Haeg

indicated his intent to file a motion in the 3rd District Court in Kenai. Woodmancy ruled Haeg must file a motion in the 4th District Court in Aniak.

Haeg explained the remand named the Kenai Court and that there would almost certainly need to be hearings complete with witness testimony, confrontation, cross-examination, and oral argument needed to resolve the issue and that to do it in Aniak would cost approximately $700 each for round-trip airfare and $200 per person per night in a hotel for Haeg and virtually all the witnesses – almost all who also reside in the 3rd district with Haeg. Magistrate Woodmancy responded there would be no hearings, witnesses, confrontation, cross-examination, or oral arguments – only written briefs.

Woodmancy then asked Haeg how long he would need to complete a motion. Haeg stated that at the very most he would need 2 weeks. The State responded it would not oppose a month and Magistrate Woodmancy scheduled Haeg to file a brief by 4/12/07 and the State's response by 4/30/07. Haeg requested the State have to file in a reasonable time after he did because he intended on filing far before 4/12/07 and did not want to wait almost another 2 months for the State's response. Haeg explained he had a right to a timely decision to get his and his wife Jackie's property back that they have been deprived of for very

nearly 3 years already and use as the primary means to make a livelihood. Woodmancy stated that because the State had other cases going he would not change the almost 2 month deadline for the State's response – in effect placing the States interest of "other cases" over both David and Jackie Haeg's overwhelming interest of putting food on the table for their 2 daughters.

This is even more unbelievable because the Alaska Supreme Court in ***F/V American Eagle v. State***, 620 P.2d 657 (Alaska 1980) has ruled "when the seized property is used by its owner in earning a livelihood, notice and 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."

Haeg can only surmise Magistrate Woodmancy must figure since he and Jackie have been deprived of their primary means to provide a livelihood for their daughters Cassie, age 6, and Kayla, age 8, for nearly 3 years without being able to contest it they should not care about "another" 2 months. Nothing can be further from the truth. David and Jackie Haeg needed, wanted, and were entitled to their "unconditioned opportunity" to contest the deprivation in "days, if not hours" and they are not willing to add months to the almost 3 years they have been denied this

right. This is in violation of all caselaw concerning the government depriving someone of the means by which they provide a livelihood. All ruling cases, including the Alaska Supreme Court in ***Etheredge v. Bradley***, 502 P.2d 146 (Alaska 1972) place the defendants interest in immediately protecting the means of putting food in their families mouth as above almost any government interest.

> "The attachment gives the plaintiff great leverage: it pressures the defendant to do whatever is necessary to recover his property. Since this pressure often causes defendants to abandon legal rights, a challenge to the constitutionality of Civil Rule 89 may evade review...We therefore hold that summary property attachment authorized by Civil Rule 89 violates article I, section 7 of the Alaska constitution and the due process clause of the fourteenth amendment of the U.S. Constitution."

(See also ***Waiste v. State***, 10 P.3d 1141 (Alaska 2000), ***Mathews v. Eldridge***, 424 U.S. 319 (1976), ***Mullane v. Central Hanover Tr. Co***., 339 U.S. 306 (1950), ***Sniadach v. Family Finance Corp***. 395 U.S. 337 (1969), ***Goldberg v. Kelly***, 397 U.S. 254 (1970), ***Wiren v. Eide***, 542 F.2d 757 (9th Cir. 1976), ***U.S. v. James Daniel Good Real Property*** 510 U.S. 43 (1993)).

Alaska Civil Rule 89, which gives the standards in Alaska for property deprivations by the government (there is no criminal rule governing criminal property forfeitures and the statutes authorizing criminal forfeitures lack standards – and thus are facially unconstitutional and, in Haeg's case, unconstitutional

as applied), even requires an **emergency** hearing if requested by a defendant who wishes to contest the deprivation.

> In ***Waiste v. State***: "[G]iven 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 a seizure a few days or hours earlier...'As Justice Frankfurter observed,'fairness can rarely be obtained by secret, one-sided determination of facts decisive of rights... No better instrument has been devised for arriving at truth than to give a person in jeopardy of serious loss notice of the case against him and opportunity to meet it.' As the Good Court noted, moreover, **the protection of an adversary hearing 'is of particular importance [in forfeiture cases], where the Government has a direct pecuniary interest in the outcome**.'"
>
> ***Goldberg v. Kelly***: "In the present context these principles require that a recipient have timely and adequate notice detailing the reasons for a [397 U.S. 254, 268] proposed termination, and **an effective opportunity to defend by confronting any adverse witnesses and by presenting his own arguments and evidence orally.** These rights are important in cases such as those before us, where recipients have challenged proposed terminations as **resting on incorrect or misleading factual premises or on misapplication of rules or policies to the facts of particular cases**. In almost every setting where important decisions turn on questions of fact, **due process requires an opportunity to confront and cross-examine adverse witnesses**. E. g., ICC v. Louisville & N. R. Co., 227 U.S. 88, 93 -94 (1913); Willner v. Committee on Character & Fitness, 373 U.S. 96, 103 - 104 (1963). What we said in [397 U.S. 254, 270] *Greene v. McElroy*, 360 U.S. 474, 496 -497 (1959), is particularly pertinent here:
>
> 'Certain principles have remained relatively immutable in our jurisprudence. One of these is that where governmental action seriously injures an individual, and the reasonableness of the action depends on fact-

> findings, the evidence used to prove the Government's case must be disclosed to the individual so that he has an opportunity to show that it is untrue. While this is important in the case of documentary evidence, **it is even more important where the evidence consists of the testimony of individuals whose memory might be faulty or who, in fact, might be perjurers or persons motivated by malice, vindictiveness, intolerance, prejudice, or jealousy. We have formalized these protections in the requirements of confrontation and cross-examination. They have ancient roots. They find expression in the Sixth Amendment ... This Court has been zealous to protect these rights from erosion.** It has spoken out not only in criminal cases, ... but also in all types of cases where administrative ... actions were under scrutiny.'"

Haeg has an irrefutable and constitutional right to an effective and immediate resolution of his claim of a grossly illegal and extremely prejudicial deprivation and forfeiture of his and Jackie's property, used as the primary means provide their only livelihood, in the district in which it was seized and in which David and Jackie Haeg live, including adversary hearing, confrontation, cross-examination, oral argument, evidence presentation, and witness testimony. Because of these facts Haeg hereby requests this Court of Appeals clarify their 2/5/07 order with the following before he files his motion in the 3rd District Court in Kenai on 3/23/07:

1. That Haeg has the right to file a *Criminal Rule 37(c)* Motion for Return of Property and to Suppress Evidence in the 3rd Judicial District in Kenai.
2. That Haeg has a right to a timely adversarial hearing.

3. That Haeg has the right to subpoena witnesses to the hearing.

4. That Haeg has the right to confrontation and cross-examination of witnesses at the hearing.

5. That Haeg has the right to present evidence and witness testimony at the hearing.

6. That the State must respond to the filing of Haeg's motion within the time allowed by rule.

This motion is supported by the accompanying affidavits of David and Jackie Haeg. RESPECTFULLY SUBMITTED this _____ day of _____2007.

_____

David S. Haeg, Pro Se Appellant

CERTIFICATE OF SERVICE

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

Roger B. Rom, Esq., O.S.P.A.
310 K. Street, Suite 403
Anchorage, AK 99501

By: _____

CC: Aniak Magistrate David Woodmancy