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Filed 11/6/06

IN THE COURT OF APPEALS FOR THE STATE OF ALASKA

DAVID HAEG	)	
	)	
Appellant,	)	
	)	
vs.	)	
	)	
STATE OF ALASKA,	)	Case No.: <u>A-09455</u>
	)	
Appellee.	)	
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Trial Court Case #4MC-S04-024 Cr.		

**MOTION TO STAY APPEAL PENDING POST-CONVICTION RELIEF PROCEDURE**

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 hereby files the following motion to stay his appeal pending the outcome of a post-conviction relief procedures in accordance with the Alaska Supreme Court holding in Risher v. State 523 P.2d 421:

"Whether counsel is incompetent usually can be ascertained only after trial ... it may be necessary to remand for an evidentiary hearing on this issue. For example, if on appeal it is contended that trial counsel could have discovered helpful evidence, we might remand for a hearing on that issue. In most such cases, however, the necessity of an appeal & remanded may be avoided by first applying at the trial court level for a new trial or moving for post-conviction relief."

and the Court of Appeals for the State of Alaska in State v. Jones 759 P.2d 558:

"Jones also filed a direct appeal challenging his conviction & sentence & unrelated grounds. The appeal was stayed pending resolution of the post-conviction

procedure", in Barry v. State, 675 P.2d 1292 "we observed that in appeals raising the issue of ineffective assistance of counsel, the trial record will seldom conclusively establish incompetent representation, because it will rarely provide an explanation for the course of conduct that is challenged as deficient. We concluded that, 'henceforth we will not entertain claims of ineffective assistance of counsel on appeal unless the defendant has first moved for a new trial or sought post-conviction relief'" & in Grinols v. State No. A-7349 "But many states - including Alaska - generally forbid a defendant from raising ineffective assistance of counsel claims on direct appeal. Instead, Alaska & these other states require a defendant to pursue post-conviction relief litigation if they want to attack the competence of their trial attorney".

As described in detail in the memorandum accompanying this motion Haeg wishes to claim ineffective assistance of counsel, prosecutorial misconduct, and judicial misconduct as additional points of appeal. As the record is ill-suited & at times totally useless for these issues, Haeg humbly asks this court to allow him the opportunity, allowed by law through a post-conviction relief procedure & this courts prior decisions, to likely settle this matter without it ever again returning to the Court of Appeals while not eliminating that option.

Haeg would like to point out that he tried to file for post-conviction relief with the District Court and was told that if he wished to file post-conviction relief he would have to do so with the Court of Appeals for the State of Alaska. Haeg explained to the District Court that he could not file for post-conviction relief with the Court of Appeals and that this procedure needed to be filed with the clerk at the court

location where the underlying criminal case is filed.<sup>1</sup> Magistrate Woodmancy remained unpersuaded. Thus Haeg requests an order from this court compelling a District Court to accept a post-conviction relief application from Haeg.

In addition Haeg respectfully asks this court to order a change of venue for this post-conviction relief proceeding. The reasons for this are numerous.

1. Magistrate Woodmancy, the judicial officer of the McGrath Court in which the underlying criminal case is filed, has no formal legal training whatsoever.
2. Magistrate Woodmancy expressed open bias against Haeg in Haeg's original trial and in the subsequent remand for a representation hearing.
3. It is extremely expensive for witnesses to travel to and from McGrath and to stay in McGrath. (Round trip airfare alone from Soldotna to McGrath is approximately \$600.00/per person and hotel in McGrath is approximately \$100.00/per night per person)
4. The people who will likely be called as major witnesses (all adverse witnesses have been asked for affidavits and either they have told Haeg that they will not provide one or have simply not responded) for this post-conviction relief proceeding live in the following communities:  
**Soldotna:** David Haeg, Jackie Haeg, Jake Jedlicki, Chuck Robinson, Scot Leaders, Dale Dolifka, Bonnie Burger, Greg

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<sup>1</sup> See AS 12.72.030.

Pearson; **Anchorage:** Brent Cole, Roger Rom, James Fayette, Beth Leibowitz, Steve Van Goor; **Kenai:** Mark Osterman; **Ninilchik:** Drew Hilterbrand; **Eagle River:** Tony Zellers; **McGrath:** Trooper Brett Gibbens; **Dutch Harbor:** Trooper Mitch Doerr; **Cordova:** Wendell Jones; **Pennsylvania:** Tom Stepnosky; **Homer:** Judge Margaret Murphy.

In light of the facts outlined above Haeg respectfully asks this court to order that the venue during post-conviction relief proceedings be made the District Court of **Kenai** since this would save an enormous amount of time, an enormous amount of money, be the most convenient location to conduct a post-conviction relief proceeding of this magnitude, and provide an opportunity for an unbiased and knowledgeable judicial officer to oversee these proceedings.

This motion is supported by the accompanying memorandum, documents, and affidavits from David and Jackie Haeg.

RESPECTFULLY SUBMITTED this \_\_\_\_ day of \_\_\_\_\_, 2006.

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David S. Haeg, Pro Se Appellant

I HEREBY CERTIFY that a copy of the foregoing was served on:

Roger B. Rom, Asst. Attorney General  
310 K. Street, Suite 308  
Anchorage, AK 99501 907-269-6250  
by hand on \_\_\_\_\_.

By: \_\_\_\_\_