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IN THE SUPERIOR COURT FOR THE STATE OF ALASKA  
AT KENAI, ALASKA

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

**OPPOSITION TO MOTION TO FILE APPELLEE'S  
BRIEF ONE DAY LATE**

COMES NOW Pro Se Appellant, DAVID HAEG, in the above referenced case, in accordance with *Appellate Rule #503(d)*, and hereby opposes Appellee's Motion to Accept Filing Appellee's Brief One Day Late.

This **non-routine** motion was not filed before the expiration of the time prescribed for filing the brief - **as it must**.

See Alaska Rules of Appellate Procedure 612(a): Applicability of Rule 503. Motions to the superior court are governed by Rule 503, except as provided below.

*Rule 503.5. Extensions of Time for Filing Briefs.* (c) Non-Routine Motions. (1) A non-routine motion for an extension of time will be granted only upon a showing of diligence and substantial need. **The motion must be filed before the expiration of the time prescribed for filing the brief, and must be accompanied by an affidavit stating:** (A) when the brief is due; (B) when the brief was first due and the number and length of previous extensions requested; (C) the length of the requested extension; (D) the reason an extension is necessary; (E) movant's representation that movant has exercised diligence and that the brief will be filed

within the time requested; and (F) **whether any other party separately represented objects to the request, or why the moving party has been unable to determine any such party's position.** A conclusory statement as to the press of business does not constitute a showing of diligence and substantial need.

Not only has Cole failed to file before the expiration of time as he must, Cole failed to include the affidavit, which **must** support the motion. In addition, Cole failed to state if he contacted Haeg to see if he objected to the request or why Cole has been unable to determine Haeg's position, as Cole **must**.

Cole, as reason for the extension, makes a conclusory statement as to the press of business, which **does not** constitute a showing of diligence and substantial need.

Cole claims he filed one day late. Yet his brief was due on April 13, 2007, he mailed it on April 16, 2007, and Haeg did not receive it until April 18, 2007. This is far more than one day, especially when all post offices in Anchorage are open on Saturday and one is open 24 hours a day 7 days a week.

Time limits for the filing of documents are strictly enforced in all courts. The due date for Cole's brief was well known to him and it was no surprise to him that the right to file his brief was waived when it expired.

"[H]is failure to object within the 30 days waived his right to raise any objection to the judgment." Rubalcava v. Hall, Op. No. 2755,674 P2d 767 (Alaska 1983)

"Failure of the clerk of the superior court to notify defendant of the order denying his motion for rehearing not considered a factor which would impel the supreme court to dispense with the time limit for taking appeal prescribed under this rule." Stephens v. City of Anchorage, Op. No. 162, 384 P2d 959 (Alaska 1963).

Cole made no showing whatsoever that strict enforcement of Appellate Rule 612 would work surprise or injustice to him. Because Cole had asked for, and received, a previous extension of time in which to file his brief, including supplying the actual due date, he was well aware of the time by which he must file.

Vogt v. Winbauer, Op. No. 117, 376 P2d 1007 (Alaska 1962);  
Whitney Bros. Plumbing & Heat., Inc. v. Industrial & Commercial Const., Inc., Op. No. 438, 432 P2d 533 (Alaska 1967):

"Where appellant made no sufficient showing that strict enforcement of Supreme Ct. R. 7(a) would work surprise... he was not relieved of the requirement of filing timely notice of appeal."

In the Supreme Court Milne v. Anderson Op. No. 1587, 576 P2d 109 (Alaska 1978):

"Defendant's waiver of the right to file a brief on appeal to superior court was not revoked by the supreme court's remand for a determination on the merits of the appeal, hence waiver was effective as to defendant's second appeal on the same issues."

Haynes v. State Comm. Fisheries Entry, Op. No. 3254, 746 P2d 892 (Alaska 1987):

"Administrative appeals, even when they are labeled independent actions, **must** be taken within 30 days."

Powers v. State, Public Employees' Retirement Bd. 757 P.2d 65 (Alaska 1988):

"Employee's appeal from a decision of the Public Employees Retirement System Board, filed 34 days after the employee received the Board's written decision, **was properly dismissed as untimely.**" (Time limit for filing is 30 days.)

Kollodge v. State, Op. No. 3355, 757 P2d 1028 (Alaska 1988):

"A challenge to an administrative decision, even if it is a constitutional challenge, **is subject to a thirty-day period of limitation contained in this rule.**"

Beavers v. Alaska Const., Inc. Op. No. 3560, 787 P2d 643

(Alaska 1990):

"Negligence of attorney in failing to timely file appeal from adverse decision of Alaska Workers' Compensation Board was not sufficient ground to relieve the attorney's client of the filing requirement."

Diedrich v. City of Ketchikan, Op. No. 3661, 805 P2d 362

(Alaska 1991):

"Any claim which is functionally an administrative appeal **must** be brought within the 30-day limit of this rule".

There is no doubt that if Haeg had missed any deadlines for filing documents he would have been held to waive that right even since he is a pro se litigant and Cole is an experienced attorney.

"Pro se litigant **waived** his right to fee arbitration by failing to assert it in a timely manner. Noey v. Bledsoe, Op. No. 5107, 978 P2d 1264 (Alaska 1999).

Strict adherence to the written rules, especially filing deadlines, is the entire basis for the U.S. judicial system. As U.S. Supreme Court Chief Justice Marshall stated in the seminal case Marbury v. Madison, 5 U.S. 137 (1803):

"The government of the United States has been emphatically termed a government of laws, and not of men. It will certainly cease to deserve this high appellation, if the laws furnish no remedy for the violation of a vested right. Is it to be contended that where the law in precise terms directs the performance of an act in which an individual is interested, the law is incapable of securing obedience to its mandate? Is it on account of the character of the person against whom the complaint is made? Whatever the practice on particular occasions may be, the theory of this principle will certainly never be maintained. When the legislature proceeds to impose on that officer other duties; when he is directed

peremptorily to perform certain acts; when rights of individuals are dependant on the performance of those acts; he is so far the officer of the law; is amenable to the laws for his conduct; and cannot at his discretion sport away the vested rights of others."

Haeg is very interested in his right for Cole to abide by the same rules Haeg must. Haeg will be gravely harmed if Cole does not have to follow the written rules and thus respectfully asks the court not "sport away" this vested right.

This same prior conduct by Cole, of not following the rules, and allowing prosecutor Scot Leaders to violate nearly every one of Haeg's rights unchallenged even though Haeg asked over and over how he could do this, is exactly why Haeg is now before this court.

#### CONCLUSION

In its ruling of January 31, 2006 this court **refused** to grant Haeg a non-routine motion for extension of time which was filed **before the expiration of the time prescribed for filing the brief**. The court stated that "The Appellant has failed to comply with appellate Rule 503.5(c) and will not be granted a non-routine extension of time." The requirements Haeg failed to put on his **included affidavit** are as follows:

(B) when the brief was first due and the number and length of previous extensions requested(although Haeg did state when it was currently due);

(F) whether any party separately represented objects to the request, or why the moving party has been unable to determine any such party's position.

The reason that Haeg filed for the extension was that **after** he received his first extension the Alaska Court of Appeals made an unexpected ruling requiring a brief that overlapped the opening brief scheduled by this court. Haeg included a copy of this order with his motion and affidavit.

The refusal of this court to grant Haeg's non-routine motion for extension of time because he failed to comply completely with the rules prejudiced Haeg immensely. **Both** briefs were extremely substandard as they lacked weeks of research needed to perfect and support them and much pertinent case law was undoubtedly never discovered or included.

Cole has now filed for a non-routine motion **after** the expiration of time prescribed for filing the brief - an absolute waiver of the right to file a brief. (Haeg filed 16 days before his time expired) Cole also failed to file the mandatory affidavit stating:

- (A) when the brief is due;
- (B) when the brief was first due and the number and length of previous extensions requested;
- (C) the length of the requested extension;
- (D) the reason an extension is necessary;
- (E) movant's representation that movant has exercised diligence and that the brief will be filed within the time requested; and
- (F) whether any party separately represented objects to the request, or why the moving party has been unable to determine any such party's position.

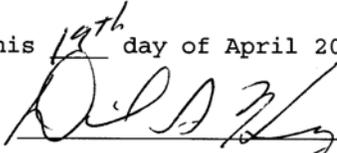
Cole also made a conclusory statement as to the press of business - which "does not constitute a showing of diligence and substantial need".

Cole even had notice, because he was copied with this court's denial of Haeg's non-routine request that this court was going to strictly observe Appellate Rule 503(c). Cole then proceeded to violate the rule to a far greater extent than Haeg. Cole's failure to file before the expiration of the time prescribed for filing his brief is inexcusable - especially when Haeg was denied after he filed on time and supplied the required affidavit. The

rules Cole failed to comply with are in terms of "must" and are more numerous and far more binding than the rules Haeg failed to comply with. If Cole's motion is granted it is a very clear and very prejudicial violation of Haeg's rights, under both U.S. and Alaska constitutions, to equal protection under law and due process - both of which guarantee fundamentally fair procedures. Thus Cole's motion must be denied.

This motion is supported by the accompanying affidavit of appellant.

DATED at Soldotna, Alaska this 19<sup>th</sup> day of April 2007.

By:   
David S. Haeg, Pro Se Appellant

**CERTIFICATE OF SERVICE**

I certify that on the 19<sup>th</sup> day of April 2007, a copy of the forgoing document by  mail,  fax, or  hand-delivered, to the following party:

Brent R. Cole  
745 W. 4th Ave., Suite 502  
Anchorage, AK 99501

By: 