

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT AT ANCHORAGE

DAVID HAEG,)
)
 Applicant,)
)
 v.)
)
 STATE OF ALASKA,)
)
 Respondent.)

POST-CONVICTION RELIEF
Case No. 3HO-10-00064CI

(Trial Case No. 4MC-04-00024CR)

**ORDER FOR INFORMATION FROM JUDICIAL CONDUCT
COMMISSION**

David Haeg seeks to disqualify Judge Margaret L. Murphy from presiding over his request for post-conviction relief (PCR). This court has been assigned to review the decision of Judge Murphy denying his request.

One of the bases of Haeg's request centers on Judge Murphy's contacts with primary state witness Trooper Gibbens during Haeg's trial and sentencing proceedings. These contacts were the subject of an investigation before the Alaska Judicial Conduct Commission.¹

The law governing the disqualification of a judge for cause is governed by AS 22.20.020. In addition, Canon 3 of the Code of Judicial Conduct requires a judge to

¹ Haeg filed complaint no. 2006-011 with the Commission. The complaint appears to have been dismissed for lack of probable cause and also to have resulted in Formal Ethics Opinion #025. See <http://www.ajc.state.ak.us/conduct/conduct.html#ethicops>; see also letters from Marla Greenstein, Executive Director of

weigh the possibility that an appearance of impartiality is likely to flow from his or her participation in any case, in light of the circumstances, even if the judge finds him or herself fully capable of subjective fairness in the matter.² The purpose of this rule is to further the important goal of “promoting ‘public confidence in the integrity and impartiality of the judiciary.’”³

In order to more fully assess the issues of impartiality and information provided to the Judicial Conduct Commission by Judge Murphy, Officer Gibbens, and any other witnesses in the Commission’s investigation of Mr. Haeg’s complaint,⁴ a review of the investigation record is necessary.

Rule 5 of the Alaska Judicial Conduct Commission Rules provides for confidentiality of “[a]ll investigative records, files, and reports” of the Commission. “[N]o disclosure may be made except as permitted by AS 22.30.060.” Alaska Statute 22.30.060(b) provides that “[a]ll proceedings, records, files, and reports of the commission are confidential and disclosure may not be made except (1) upon waiver in writing by the judge at any stage of the proceedings”⁵ So that the court may review the contents of the investigation *in camera*, this court requests a waiver from

the Alaska Commission on Judicial Conduct to David Haeg, dated January 12 and 25, 2007, attached.

² *Perotti v. State*, 806 P.2d 325, 327-28 (Alaska 1991).

³ *Amidon v. State*, 604 P.2d 575, 578 (Alaska 1979) (quoting Canon 2(A)).

⁴ See Formal Ethics Opinion #025, <http://www.ajc.state.ak.us/conduct/conduct.html#ethicops> (advising that when a judicial officer accepts rides from law enforcement while on duty in a small village, the “best practice” is to disclose the special needs and accommodations on the record at the beginning of the relevant court proceedings so as to avoid appearance of impropriety).

⁵ AS 22.30.060(b).

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Judge Murphy of all the records related to the investigation of complaint no. 2006-011. Alternatively, if AS 22.30.060 does not apply to judicial *in camera* review, this court requests that the Judicial Conduct Commission submit the relevant records to this court directly for *in camera* review.

If the court determines that any of the requested information should be disclosed, notice shall be provided to the Judicial Conduct Commission and Judge Murphy before the disclosure is made.

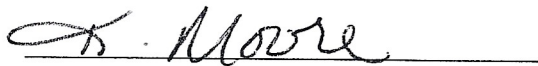
DONE this 28 day of July 2010, at Anchorage, Alaska.


Stephanie E. Joannides
Superior Court Judge

I certify that on 7.28.10
a copy of the above was mailed to
each of the following at their
addresses of record:

--Judicial Conduct Commission
--Judge Murphy

D. Haeg
A. Peterso c/o of Spec Prosc.


Kadell Moore
Secretary