

NOTICE

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IN THE COURT OF APPEALS OF THE STATE OF ALASKA

DAVID S. HAEG,

Appellant,

v.

STATE OF ALASKA,

Appellee.

Court of Appeals No. A-13501
Trial Court No. 3KN-10-01295 CI

MEMORANDUM OPINION

No. 6926 — March 3, 2021

Appeal from the District Court, Third Judicial District,
Anchorage, William F. Morse, Judge.

Appearances: David S. Haeg, *in propria persona*, Soldotna,
Appellant. Donald Soderstrom, Assistant Attorney General,
Office of Criminal Appeals, Anchorage, and Kevin G. Clarkson,
Attorney General, Juneau, for the Appellee.

Before: Allard, Chief Judge, and Wollenberg and Harbison,
Judges.

Judge ALLARD.

David S. Haeg appeals the denial of his application for post-conviction relief. For the reasons explained in this opinion, we affirm the judgment of the district court.

Background

The following facts are drawn from our decisions in *Haeg I* and *Haeg II*.¹

David Haeg was a licensed master big game guide operating in game management unit 19. In early March 2004, he and his co-defendant, Tony Zellers, received permits allowing them to participate in a predator control program near McGrath. The predator control program applied solely to wolves in game management unit 19-D East, an area located inside unit 19-D. Within unit 19-D East, participants in the program were allowed to kill wolves by shooting them from an airborne aircraft or by landing the aircraft, exiting it, and immediately shooting the wolves.² This is also known as same-day airborne hunting.³

In March 2004, unit 19-D East was the only unit where this type of same-day airborne predator control was permitted. Outside of unit 19-D East, it was a criminal offense to take wolves through same-day airborne hunting.⁴ The criminal penalties could be heightened if the person taking the wolves was a licensed guide.⁵

Haeg and Zellers did not take a single wolf in unit 19-D East. Instead, they took wolves outside of that unit, and illegally killed nine wolves same-day airborne.

Afterward, Haeg and Zellers, to hide their unlawful conduct, committed additional crimes by knowingly filing false sealing certificates for all nine wolves. Haeg

¹ *Haeg v. State*, 2008 WL 4181532 (Alaska App. Sept. 10, 2008) (unpublished) (*Haeg I*); *Haeg v. State*, 2016 WL 7422687 (Alaska App. Dec. 21, 2016) (unpublished) (*Haeg II*).

² *See* 5 AAC 92.039(h)(1), (3).

³ *See* AS 16.05.783.

⁴ *See* AS 16.05.783(a), (c).

⁵ *See* AS 08.54.720(a)(15). A guide's first offense of unlawfully taking wolves same-day airborne is a misdemeanor, punishable by up to one-year in jail and a \$30,000 fine. AS 08.54.720(d)(1). A second offense is a felony. AS 08.54.720(d)(2).

and Zellers untruthfully claimed they had taken only three wolves same-day airborne in unit 19-D East in accordance with the predator control program, and they untruthfully claimed they had taken the remaining six wolves in a lawful manner — *i.e.*, by shooting the wolves from the ground and transporting by snowmachine — outside unit 19-D East.

The predator control program required participants to report the wolves taken under the program, and to provide certain information to the State. One of the officials designated to receive the predator control reports was Alaska State Trooper Brett Gibbens. It was part of Gibbens's duties under the program to verify the information provided by participants about the wolves they killed.

Gibbens was unable to verify Haeg's and Zellers's first three wolf kills because there was no evidence of any kill sites in 19-D East where the wolves had reportedly been taken. Gibbens did, however, find kill sites well outside of unit 19-D East where evidence showed that four wolves had been killed by an aerial shooter. Gibbens was aware of Haeg's distinctive airplane skis and tail wheel, and observed similar ski and tail wheel tracks near these kill sites.

Based on this evidence, Gibbens conducted a much more involved investigation at the kill site locations and elsewhere. After serving various search warrants, Gibbens found additional evidence showing that Haeg and Zellers had illegally taken a total of nine wolves in a five-day period by shooting them from an airplane, and had later filed certificates falsely stating where and, in some cases, how the wolves had been taken.

Based on Gibbens's investigation, Haeg and Zellers were charged with a number of criminal offenses. Haeg was ultimately convicted of five counts of unlawful acts by a guide (killing wolves same-day airborne);⁶ two counts of unlawful possession

⁶ AS 08.54.720(a)(15) and 5 AAC 92.085(8).

of game;⁷ one count of unsworn falsification;⁸ and one count of trapping wolverine in a closed season.⁹ Zellers, who reached a plea agreement with the State, was also charged with and convicted of guide-related game offenses.

Haeg fired his attorney because he was unhappy with the attorney's efforts during plea negotiations with the State. Plea discussions never resumed with the State, and Haeg went to trial with a different attorney.

Both Zellers (as part of his plea agreement) and Haeg testified at Haeg's criminal trial. Among other things, they both admitted that they had knowingly taken the wolves same-day airborne outside of the unit where they were permitted to do so, and that they had falsified the sealing certificates regarding those wolf kills.

Their testimony therefore corroborated Gibbens's findings: that Haeg was a licensed guide who had knowingly taken nine wolves over five days illegally by shooting them same-day airborne outside unit 19-D East, and that Haeg had falsified the sealing certificates for those wolves.

Under the criminal statutes, it did not matter that Haeg was not guiding when he took the wolves, nor did it matter that he had not taken the wolves in the areas where he was licensed to guide.¹⁰ Under Alaska law, it is a criminal offense for a

⁷ 5 AAC 92.140(a).

⁸ AS 11.56.210(a)(2).

⁹ 5 AAC 84.270(14).

¹⁰ One of the wolves was killed in Unit 19-B, an area in which Haeg guided moose hunts.

licensed guide to take game illegally, even when that guide is not guiding, and even when the game taken is not in an area where he is licensed to guide.¹¹

At sentencing, the trial judge ordered Haeg to forfeit the nine wolf hides, a wolverine hide, the airplane used to shoot the wolves, and the guns and ammunition used to shoot the wolves. The trial judge sentenced Haeg to 60 days' imprisonment with 55 days suspended (5 days to serve) on each conviction of unlawful acts by a guide; 90 days' imprisonment with 80 days suspended (10 days to serve) on the unsworn falsification conviction; 60 days' imprisonment with 60 days suspended (no time to serve) on the unlawful possession convictions; and 60 days' imprisonment with 60 days suspended (no time to serve) on the trapping in a closed season conviction, for a composite sentence of 35 days to serve.¹² The trial judge also suspended Haeg's guiding license for 5 years.¹³

After firing his appellate attorney, Haeg chose to represent himself in his direct appeal. In *Haeg I*, we affirmed Haeg's convictions and sentence (with one minor sentencing correction).¹⁴

¹¹ Alaska Statute 08.54.720(a)(15) makes it a crime for any licensed guide to knowingly violate a statute or regulation prohibiting same-day airborne hunting. Under AS 16.05.783(a), a "person may not shoot or assist in shooting a free-ranging wolf or wolverine the same day that a person has been airborne."

¹² In his briefing, Haeg asserts that he was sentenced to 2 years in prison. This is incorrect. Haeg was sentenced to 35 days to serve with additional suspended time. Haeg was never sentenced to serve any of the suspended time.

¹³ The judgment states that Haeg's guiding license was "revoked" for 5 years. In Haeg's direct appeal, we held that the trial judge's sentencing comments indicated that she intended to suspend rather than revoke Haeg's license. *See Haeg I*, 2008 WL 4181532, at *14 (Alaska App. Sept. 10, 2008) (unpublished).

¹⁴ *Haeg I*, at *14.

Haeg, continuing to represent himself, filed an application for post-conviction relief raising a number of allegations. The district court eventually dismissed Haeg's application, ruling that Haeg had, with one exception, failed to plead a *prima facie* case on any of his allegations. Regarding the exception, the district court found that Haeg's pleadings had established, as a matter of law, an appearance of judicial bias with regard to his sentencing, and the district court therefore vacated Haeg's sentence and scheduled a new sentencing hearing.

Continuing to represent himself, Haeg appealed the dismissal of his application for post-conviction relief to this Court. The State cross-appealed, arguing that the district court erred when it vacated Haeg's sentence because there were material facts in dispute regarding the appearance of judicial bias claim that needed to be resolved before a ruling could be made on that claim.

We issued a twenty-three page opinion detailing Haeg's various post-conviction relief claims.¹⁵ For the most part, we agreed with the district court that Haeg had failed to establish a *prima facie* case for relief on many of his claims.¹⁶ However, we concluded that Haeg's judicial bias claims with regard to both his trial and his sentencing required an evidentiary hearing and could not be decided as a matter of law.¹⁷ We also concluded that further proceedings were required on some of Haeg's ineffective

¹⁵ *Haeg II*, 2016 WL 7422687 (Alaska App. Dec. 21, 2016) (unpublished).

¹⁶ *Id.* at *2.

¹⁷ *Id.*

assistance of counsel claims against his trial attorney.¹⁸ Accordingly, we remanded these issues to the district court for further proceedings.¹⁹

Upon remand, the district court held an evidentiary hearing on the issues that had been remanded, and addressed other issues that had arisen during the remand proceedings. After the evidentiary hearing, Superior Court Judge William Morse issued a twenty-six page order dismissing Haeg's application and finding that Haeg had failed to prove he was entitled to post-conviction relief on any of the claims that had been remanded.

The current appeal

Haeg — again representing himself — now appeals Judge Morse's order. Haeg challenges Judge Morse's rulings on the issues that we remanded, and he also challenges various procedural and evidentiary decisions Judge Morse made during the remand proceedings. In addition, Haeg raises additional claims of error, many of which we have already ruled were properly dismissed because Haeg failed to plead a *prima facie* case. A significant portion of Haeg's briefing is related to these other issues.

As has been the case in the past, Haeg's briefing is often difficult to understand. In addition, many of the claims on appeal are so cursorily presented that they are waived. But it is evident from his briefing that Haeg believes that the judicial system — to include police, prosecutors, defense attorneys, and judges — is corrupt and purposely took illegal actions to ruin him and his guide business. To that end, Haeg consistently views and presents his alleged facts in this light — and in doing so, he often inaccurately portrays the course of events in this case.

¹⁸ *Id.*

¹⁹ *Id.* at *23.

Haeg also appears to be operating under a fundamental misunderstanding of the criminal statute under which he was convicted. To convict Haeg of unlawful conduct by a guide under AS 08.54.720(a)(15), the State was required to prove that (1) Haeg was a licensed guide; and (2) Haeg knowingly engaged in unlawful conduct — *i.e.*, taking wolves same-day airborne outside unit 19-D East, the area designated for the predator control program. The State did not need to prove that Haeg was guiding at the time he illegally took the wolves; nor did it need to prove that Haeg illegally took the wolves in an area where he was licensed to guide. As we explained in *Haeg I*, AS 08.54.720(a)(15) does not make it a crime to knowingly violate a statute or regulation prohibiting same-day airborne *while guiding*.²⁰ Rather, that statute makes it a crime for any person licensed to guide to knowingly violate a statute or regulation prohibiting same-day airborne hunting. Haeg was a licensed guide and while *licensed*, he knowingly took wolves same-day airborne in violation of AS 16.05.783.

Many of Haeg’s claims of corruption appear to arise from the fact that a trial exhibit identified some of the wolf kills as occurring in unit 19-C, an area in which Haeg was licensed to guide, when they were actually (according to Haeg) killed in unit 19-D. But as we just explained, this discrepancy in the boundary line between 19-C and 19-D was not material to Haeg’s guilt. All that mattered, for purposes of Haeg’s trial, was whether Haeg and Zellers illegally took wolves same-day airborne outside of unit 19-D East, the predator control program area. And on that point, both Haeg and Zellers testified that they knowingly took the wolves same-day airborne outside unit 19-D East, and both Haeg and Zellers admitted that they then falsified their reports about the wolf kills to make it seem as though the wolves had been killed in a lawful manner.

²⁰ *Haeg I*, at *6.

We have organized this decision into three sections. First, we will address Haeg’s challenges to Judge Morse’s substantive rulings on the issues that were remanded. Then we will address Haeg’s various procedural and evidentiary challenges. Lastly, we will address the additional issues raised by Haeg that were not part of the remand.

I. Substantive Issues on Remand

In *Haeg II*, we remanded the following issues for further consideration: (1) whether Haeg’s claim of judicial bias had merit and whether Haeg was diligent in raising that claim; (2) whether Haeg’s trial attorney, Arthur “Chuck” Robinson, was ineffective for failing to seek to enforce a plea agreement that Haeg alleged existed; (3) whether Robinson was ineffective for misrepresenting the strength of his “subject matter jurisdiction” defense; and (4) whether Robinson was ineffective for failing to correct misstatements at sentencing that some of the wolves had been killed in unit 19-C.²¹ We now address Judge Morse’s rulings on these issues and Haeg’s challenges to those rulings.

A. *Judicial Bias*

1. Relevant background

District Court Judge Margaret Murphy presided over Haeg’s trial and sentencing. During a break in sentencing, the judge told the parties that she needed to get a Diet Coke from the store and that she intended to “commandeer” Trooper Gibbens

²¹ *Haeg II*, at *23.

to take her to the store because she did not have any transportation.²² The prosecutor turned to Haeg's attorney to make sure that there was no objection to the judge's actions. Haeg's attorney, Robinson, stated that he did not have any problem with the judge's actions, and he told the trooper "you've been commandeered." The judge explained that the trooper was just going to drive her to the store to get the Diet Coke and there would be no discussion of the case. Robinson again signaled that he was "all right" with this plan. Haeg did not say anything during this exchange.

Haeg later raised a claim of judicial bias in his application for post-conviction relief. According to Haeg, this exchange was not the first time that the judge had used Trooper Gibbens as her "personal chauffeur." Haeg alleged that the judge had used Trooper Gibbens to transport the judge to and from the courthouse every day of the trial as well as during lunch and other breaks. In support of these allegations, Haeg attached affidavits from himself, his wife, and four other witnesses. Haeg asserted that the judge's multiple *ex parte* contacts with the trooper created the appearance of judicial bias, entitling him to a new trial in front of a different judge, and that the judge was actually biased in her rulings against Haeg as a result of the chauffeuring.

Superior Court Judge Carl Bauman, the judge originally assigned to Haeg's post-conviction relief proceedings, ruled on Haeg's claim on the pleadings, without holding an evidentiary hearing. The judge dismissed the claim as it related to Haeg's trial, concluding that the alleged *ex parte* contacts did not create an appearance of bias because there was no allegation that any *ex parte* communication about the case had occurred and the trooper's transport of the judge was a "[matter] of convenience/necessity in McGrath in the absence of public transportation." In reaching

²² Judge Murphy flew in to the small community of McGrath to preside over the trial. She did not have personal transportation in McGrath and there was no public transportation.

this conclusion, the judge relied on the Alaska Commission on Judicial Conduct’s Formal Ethics Opinion No. 25. Opinion No. 25 states that “[a] judicial officer who accepted rides from law enforcement while on duty in a small village without any form of public transportation did not violate the Code of Judicial Conduct where no *ex parte* communication concerning the pending criminal matter occurred.”²³

However, Judge Bauman granted Haeg’s claim as it related to his sentencing, based, in part, on a different judge’s finding, in the context of a motion to disqualify Judge Murphy from the post-conviction relief proceedings, that Haeg’s evidence of *ex parte* contacts, if true, created an appearance of bias.²⁴ Judge Bauman

²³ See ACJC Formal Ethics Opinions No. 025 (2007), <http://www.acjc.alaska.gov/formalethicsopinions.html>. The opinion noted that “[t]he circumstances in rural Alaska often create a need for accommodations that would not be suitable if there were other alternatives.” *Id.* The opinion also stated that “best practice would be to disclose the special needs and accommodations on the record at the beginning of the court proceeding to avoid appearance of impropriety questions.” *Id.*

²⁴ Apparently, Judge Bauman misunderstood the scope of the other judge’s ruling. Judge Bauman appeared to consider Superior Court Judge Stephanie Joannides’s ruling on Judge Murphy’s recusal from Haeg’s post-conviction relief case as a ruling on the merits of Haeg’s judicial bias claims. This was error.

Additional background is useful here: At the beginning of his post-conviction relief case, Haeg moved to disqualify Judge Murphy from presiding over the post-conviction relief proceedings based on the judicial bias claims. Judge Murphy denied the motion to disqualify, and that denial was reviewed (and reversed) by Judge Joannides pursuant to AS 22.20.020(c).

Judge Joannides’s role in Haeg’s case was limited to deciding whether Judge Murphy could preside over the post-conviction relief proceedings. Judge Joannides concluded that “Judge Murphy’s request for a ride from Trooper Gibbens toward the end of the sentencing hearing, which was coupled with an explanation that she would not discuss the case with him and was acknowledged as appropriate by Haeg’s counsel, *does not in and of itself raise an appearance issue.*” (Emphasis added.) But she also concluded that an evidentiary hearing was needed to determine the extent of the other alleged *ex parte* contacts and it would

(continued...)

thereafter set aside Haeg’s sentence.

Haeg appealed the denial of his judicial bias claim as it related to his trial, and the State cross-appealed the granting of his judicial bias claim as it related to Haeg’s sentencing. On appeal, we reversed both rulings because we concluded that there were material questions of fact in dispute regarding the extent of the alleged *ex parte* contacts, and these material questions of fact should be resolved through an evidentiary hearing before any final ruling on Haeg’s bias claim could be made.²⁵ We also noted that there were procedural obstacles that Haeg had to overcome because he had not objected on the record to the judge’s conduct at the time it allegedly occurred.²⁶ We therefore remanded the judicial bias claim with directions to the court to hold an evidentiary hearing to determine the extent of the alleged *ex parte* contacts and to give Haeg the opportunity

²⁴ (...continued)

therefore be improper for Judge Murphy to preside over such a hearing. *See also Haeg II*, at *6 (noting that Judge Joannides did not rule on the merits of Haeg’s judicial bias claims and noting that Judge Murphy should have recused herself from the post-conviction relief proceedings because it was likely that she would be called as a witness at the post-conviction relief evidentiary hearing (citing AS 22.20.020(a)(3); Alaska Code Jud. Conduct Canon 3(E)(1)(c)(iv); Alaska Evid. R. 605)).

²⁵ *Haeg II*, at *2.

²⁶ *Id.* at *11; *see Greenway v. Heathcott*, 294 P.3d 1056, 1062-63 & n.7 (Alaska 2013) (questioning whether a litigant can raise a claim of judicial bias on direct appeal when no objection was made below). *See generally* Richard E. Flamm, *Recusal and Disqualification of Judges: For Cause Motions, Peremptory Challenges and Appeals* § 43.3, at 652-55 (2018) (summarizing relevant state and federal case law which requires that a litigant show “reasonable diligence” in moving for judicial disqualification at the “earliest practical opportunity” after discovery of the facts on which the challenge to the judge is based).

to show that he was diligent in informing Robinson about the conduct he alleged gave rise to an appearance of judicial bias.²⁷

2. The proceedings on remand

At the remand hearing, Haeg, his wife, and three other witnesses testified that they saw Judge Murphy and Trooper Gibbens travel together to and from the courthouse every day of the trial and at sentencing.²⁸ Haeg, his wife, and one other witness testified that they saw Judge Murphy and Trooper Gibbens eat meals together. No witness testified that they heard Judge Murphy and Trooper Gibbens talk about Haeg's case. Haeg and his wife testified that Haeg brought the issue of the *ex parte* contacts to Robinson's attention during the trial, and Robinson took no action.

For his part, Robinson denied observing any significant *ex parte* contacts between the judge and the trooper. Robinson testified that he did hear during trial that the trooper had provided transport to the judge, but he did not give it significant thought "understanding how rural things work" in Alaska. He further testified that the first time Haeg told him about the alleged multiple *ex parte* contacts was in 2011, long after the

²⁷ *Haeg II*, at *23.

²⁸ In his original post-conviction relief application, Haeg submitted an affidavit from a witness who died prior to the evidentiary hearing. On appeal, Haeg argues that this affidavit should have been admitted as evidence under Alaska Evidence Rule 804. But the record does not show that Haeg ever offered this affidavit into evidence. In any case, Haeg misapprehends Evidence Rule 804. Under Evidence Rule 804(a)(4), a declarant is considered unavailable when the declarant is unable to be present or to testify at the hearing because of death. But even an unavailable declarant's out-of-court statement is not admissible unless it falls under one of the hearsay exceptions listed in 804(b). There is a hearsay exception for dying declarations — that is, statements made under the belief of pending death. *See* Alaska R. Evid. 804(b)(2). But the affidavit clearly does not fit under that exception, and Haeg has not identified any other exception that would apply.

trial was over. Robinson testified that he would have addressed allegations of significant *ex parte* contacts on the record if he had been aware that they were occurring, particularly if he had been told the judge and the trooper were dining together.

Haeg did not call either Judge Murphy or Trooper Gibbens as a witness, and neither did the State.²⁹

Following the evidentiary hearing, Judge Morse issued an order in which he detailed his findings of fact and conclusions of law. In the order, Judge Morse found Robinson's testimony credible and Haeg and his wife's testimony not credible. That is, Judge Morse found that Robinson was credible when he said that Haeg and his wife had not alerted him to the multiple *ex parte* contacts that they now claim had occurred, and that Haeg and his wife's contrary testimony was not credible. Based on those findings, Judge Morse ruled that Haeg had not been diligent in raising his concerns about Judge Murphy's alleged conduct, and that Robinson was not ineffective for not raising the issue at the trial or sentencing.

Judge Morse also found that Haeg and his witnesses were not credible in their descriptions of how extensive the alleged *ex parte* contacts were. The judge reasoned that if Judge Murphy's contacts with the trooper had been as egregious as Haeg and his witnesses now claimed, then Haeg *would* have complained to Robinson and Robinson would have taken action. The judge also reasoned that if Judge Murphy's conduct had been that egregious, there would have been further corroboration of Haeg's claims — *e.g.*, Haeg or his witnesses would have taken pictures, the prosecutor would

²⁹ Judge Murphy and Trooper Gibbens had previously submitted affidavits in response to Haeg's allegations of judicial bias. *See Haeg II*, at *7-8. Because neither Judge Murphy nor Trooper Gibbens was called to testify at the evidentiary hearing, these affidavits were inadmissible hearsay and Judge Morse's order makes clear that he did not consider these affidavits in his decision.

have been alerted to what was going on and would have taken action as he did in the “Diet Coke” incident at sentencing, or Haeg would have said something on the record about the conduct even if his attorney did not.

Accordingly, Judge Morse found that, although Judge Murphy may have shared rides with Trooper Gibbens on occasion, there was no credible evidence that the conduct occurred with the frequency that Haeg alleged, or that the conduct was so egregious as to cause a reasonable disinterested person to objectively believe “that the judge’s ability to carry out judicial responsibilities with integrity, impartiality, and competence is impaired.”³⁰ Judge Morse further found that Judge Murphy’s “commandeering” of the trooper to get a Diet Coke at sentencing did not give rise to an appearance of bias because the judge made clear there would be no *ex parte* communication and Haeg’s attorney made clear that he had no objection. Judge Morse also noted that the judge’s announcement at sentencing that she was “commandeering” Trooper Gibbens to drive to the store to get a Diet Coke suggested that there were no earlier occasions when such conduct occurred as it would be “strange that she would make this announcement for the first time in the proceedings if she had been riding with Gibbens three or more times each day during the seven-day trial without making a similar announcement.”

³⁰ *Labrenz v. Burnett*, 218 P.3d 993, 1002 (Alaska 2009) (quoting *Ogden v. Ogden*, 39 P.3d 513, 516 (Alaska 2001)); *see also Vent v. State*, 288 P.3d 752, 757-58 (Alaska App. 2012). *See generally* Richard E. Flamm, *Judicial Disqualification: Recusal and Disqualification of Judges* § 15.4, at 279 (3d ed. 2017) (describing the standard as whether “an objective, disinterested lay observer, who has been fully informed of the relevant facts, would entertain a significant doubt about the ability of the challenged judge to be impartial”).

3. *Haeg's challenges to the district court's findings*

On appeal, Haeg argues that Judge Morse erred by finding that Haeg and his witnesses were not credible regarding both the extent of the *ex parte* contact and whether Haeg alerted his attorney to the issue. Haeg asserts that Judge Morse was required to believe his witnesses because their testimony was not controverted.³¹

But, as the fact finder, Judge Morse was authorized to reject testimony that he found incredible or unpersuasive, even if it was uncontroverted by other evidence.³² And, as a general matter, a trial court's findings of credibility are entitled to broad deference on appeal.³³

Moreover, Haeg's evidence *was* controverted, at least in part, by Robinson's testimony that Haeg never complained about this alleged conduct. To prove an appearance of judicial bias as a basis for post-conviction relief, Haeg was required to

³¹ On appeal, Haeg asserts that “neither Judge Murphy nor Trooper Gibbens [were] willing to testify that the chauffeuring did not happen” and he asserts that “[t]he truth was proven when neither Judge Murphy nor Trooper Gibbens took the stand to deny it happened — if they did cross-examination would prove they were committing perjury.” But the record indicates only that Judge Murphy and Trooper Gibbens were never called as witnesses, not that they were unwilling to testify or what their testimony would have been. Their absence from the evidentiary hearing is only that: an absence of evidence. As the plaintiff in a post-conviction relief proceeding, it was Haeg (not the State) who bore the burden of proving his post-conviction relief claim by clear and convincing evidence. *See* AS 12.72.040. In other words, if Haeg believed that questioning Judge Murphy or Trooper Gibbens would prove that they were perjuring themselves, he needed to call them as witnesses and subject them to that questioning to make his record.

³² *See Lott v. State*, 836 P.2d 377 n.5 (Alaska App. 1992).

³³ *See Maloney v. State*, 667 P.2d 1258, 1267-68 (Alaska App. 1983); *see also Limeres v. Limeres*, 320 P.3d 291, 296 (Alaska 2014) (“The trial court’s factual findings enjoy particular deference when they are based primarily on oral testimony, because the trial court, not this court, judges the credibility of witnesses and weighs conflicting evidence.” (internal quotations omitted)).

prove, by clear and convincing evidence, that the judge’s conduct was so egregious that a reasonable disinterested mind would perceive “that the judge’s ability to carry out judicial responsibilities with integrity, impartiality and competence [was] impaired.”³⁴ If, as Haeg claimed, Judge Murphy’s conduct rose to that level, then one would expect that Haeg would have brought the conduct to his attorney’s attention so that some action could be taken. As a general matter, defendants are not allowed to stay quiet about a perceived error and “take a gambler’s risk and complain only if the cards [fall] the wrong way.”³⁵

Notably, this is not a situation where the factual basis for the claim of judicial bias was not known to the defendant until later. To the contrary, Haeg was a direct witness of the conduct he claims would have led a reasonable objective person to question the judge’s impartiality. Under the circumstances, it was incumbent on Haeg to contemporaneously raise these concerns so that they could be addressed.³⁶

³⁴ *Labrenz*, 218 P.3d at 1002.

³⁵ *Owens v. State*, 613 P.2d 259, 261 (Alaska 1980) (quoting *Mares v. United States*, 383 F.2d 805, 808 (10th Cir. 1967), opinion after remand, 409 F.2d 1083 (10th Cir. 1968)); *see also United States v. Amico*, 486 F.3d 764, 773 (2d Cir. 2007) (explaining that the legal requirement that a timely motion for disqualification be made ensures that a party does not “hedge its bets against the eventual outcome of a proceeding,” and therefore a party must move for recusal at the earliest possible moment after discovering the facts on which its challenge is based (citation omitted)).

³⁶ *See* Richard E. Flamm, *Recusal and Disqualification of Judges: For Cause Motions, Peremptory Challenges and Appeals* § 57.1, at 885 (2018) (“A court is most likely to conclude that the right to challenge a judge for cause has been waived by implication in a situation where the person who is complaining about a judge’s participation in a proceeding, although well aware of the facts which formed the basis for its complaint, failed to file a disqualification motion, or even to object to the assigned judge’s participation in that proceeding, in a timely manner.” (internal citations omitted)).

After listening to the testimony presented at the evidentiary hearing, Judge Morse did not find Haeg and his wife’s testimony regarding the *ex parte* contacts credible. The judge further found that Haeg failed to act diligently in raising any of his alleged concerns regarding the appearance of judicial bias. Judge Morse also found that Haeg’s failure to take contemporaneous action undermined his claim that the judge’s conduct was as egregious as he claimed. Haeg has not shown that these findings are clearly erroneous.³⁷ Accordingly, we affirm the district court’s dismissal of this claim.

B. Plea Agreement

In his application for post-conviction relief, Haeg alleged that he had reached an enforceable plea agreement with the State, and that the State improperly reneged on that agreement. In *Haeg II*, we remanded this issue to the trial court to determine (1) whether there was an enforceable plea agreement; and (2) whether Haeg’s trial attorney (Robinson) was ineffective for failing to seek to enforce such a plea agreement.

1. The proceedings on remand

On remand, Judge Morse held an evidentiary hearing on this issue. At the evidentiary hearing, Brent Cole, Haeg’s first attorney, testified regarding the negotiations that occurred before charges were filed. Cole testified that Haeg’s primary concern at

³⁷ *Limeres*, 320 P.3d at 296 (“A finding is clearly erroneous when our ‘review of the entire record leaves us with a definite and firm conviction that a mistake has been made.’” (internal quotation omitted) (citations omitted)); *State v. Waterman*, 196 P.3d 1113, 1119 (Alaska App. 2008) (“On appeal, we review the trial judge’s findings of fact and her determination of the credibility of witnesses deferentially — we will reverse only if we find the trial judge’s decision was clearly erroneous.”).

the time was ensuring that his work as a guide could continue and that any future impact on his guide license was minimized.

In accordance with these wishes, Cole negotiated with the State to hold off filing any charges until after Haeg completed the six to eight bear hunts that he had already scheduled. In exchange, Haeg agreed to give a statement to the State and to work with the State to reach a favorable final agreement that would resolve the case short of trial and allow Haeg to get his license back quickly. To show Haeg's contriteness and willingness to cooperate with the State in order to later negotiate a favorable final plea deal, Cole also had Haeg voluntarily stop guiding after the bear hunts were over, and so Haeg did not guide in the fall of 2004. (Haeg's wife testified that Cole said it would look good if Haeg did not guide that season.) Cole testified that the State agreed that if Haeg and the State were able to resolve the case with a plea agreement, then the State would allow Haeg at sentencing to get retroactive credit against his mandatory guide license suspension for the guiding he had given up.

According to Cole, the parties were never able to reach an agreement that did not require forfeiture of the airplane. Cole initially believed that they had reached an agreement that would result in reduced charges, suspension of Haeg's guiding license for slightly more than the minimum one year, and credit against the suspension for the time Haeg had voluntarily refrained from guiding. But this agreement also included forfeiture of Haeg's airplane.³⁸ Cole scheduled a change-of-plea hearing with the understanding that Haeg had agreed to these terms. However, when it became clear that Haeg did not agree to forfeiture of the airplane, the State amended the charges to prevent

³⁸ Under the terms of the plea agreement, Haeg would have been able to apply for reinstatement of his guiding license sixteen months after the date of the original crime, which would have allowed him to advertise as a guide for the 2005 fall season.

Haeg from proceeding to open sentencing with the reduced charges that the State was only willing to offer if the plane was forfeited.

Cole testified that the State was still willing to offer the same terms to Haeg, provided that the airplane was forfeited. According to Cole, Haeg did not want to forfeit the airplane he used when killing the wolves, and Haeg proposed that he forfeit a different airplane, but the prosecutor refused that offer. Haeg then fired Cole and hired Robinson.

Robinson testified that it did not appear there was an enforceable plea agreement, and he told Haeg that he could try to enforce the plea agreement Haeg thought he had, or Haeg could go to trial. According to Robinson, Haeg told him that he would go to trial. At the evidentiary hearing, Haeg stated that he would not agree to a deal because he did not trust the prosecutor.

Based on the testimony at the evidentiary hearing, Judge Morse found that the parties had reached a *pre-charging* agreement — that is, an agreement that provided a benefit to both parties before charges were filed. The court further found that the parties never reached a final enforceable plea agreement that did not involve forfeiture of Haeg’s airplane — a condition that Haeg would not agree to. Based on these findings, the court ruled that Robinson was not ineffective for failing to seek to enforce the plea agreement the State offered.

2. Haeg’s challenges to the district court’s findings

On appeal, Haeg argues that “Judge Morse corruptly claims that Robinson . . . had nothing to indicate he should seek enforcement of the plea agreement Cole made.” In support of this argument, Haeg refers to a letter from Robinson’s private investigator to Robinson in which the investigator apparently stated that Cole had said that the State “broke[]” the plea agreement and the investigator recommended that

Robinson file a motion to enforce the plea agreement. Haeg does not otherwise challenge Judge Morse’s findings that there was never an enforceable plea agreement that Haeg would have agreed to — *i.e.*, that there was never an enforceable plea agreement that did not require forfeiture of Haeg’s airplane.

We have reviewed the record. The court’s finding that Haeg would not have agreed to a plea agreement that included forfeiture of his airplane is well-supported by the record. The court’s finding that the State never offered a plea agreement that did not include forfeiture of the airplane is also well-supported by the record. Accordingly, we affirm the court’s ruling that Robinson was not ineffective for failing to file a motion to enforce the plea agreement the State offered because that plea agreement included a condition that Haeg would not agree to.

C. “*Subject Matter Jurisdiction*” Defense

In *Haeg II*, we recognized that even if there had not been an enforceable plea agreement, Robinson might still have been ineffective for misleading Haeg concerning the strength of the subject matter jurisdictional defense that Robinson intended to raise at trial.³⁹ We stated specifically that “[i]f Haeg can show that Robinson’s assessment of this defense was incompetently optimistic, and that Haeg would have continued plea negotiations with the State but for this incompetent advice, then Haeg may be entitled to post-conviction relief on this claim.”⁴⁰ But we also noted

³⁹ *Haeg II*, 2016 WL 7422687, at *14 (Alaska App. Dec. 21, 2016) (unpublished). Robinson believed that the district court never obtained subject matter jurisdiction over Haeg’s case because the original criminal complaint was not signed under oath. The State later filed an amended criminal complaint that was signed, rendering this argument moot. *Id.*

⁴⁰ *Id.*

that Haeg would have to prove that “his refusal to continue plea negotiations with the State was a result of Robinson’s poor legal advice, not a result of [Haeg’s] own distrust of the State or his unwillingness to compromise on the issue of the forfeiture of his airplane.”⁴¹ We therefore directed the district court to determine whether Haeg would have been willing to renew plea negotiations and not go to trial but for Robinson’s advice regarding the “strength” of the subject matter jurisdictional defense.⁴²

Based on the evidence presented at the evidentiary hearing, Judge Morse found that Haeg had failed to show that he was prejudiced by Robinson’s legal advice. Specifically, the court found that Haeg chose to go to trial and not to renew plea negotiations because Haeg distrusted the prosecutor and was unwilling to forfeit his airplane. In other words, the court found that, regardless of the competency of Robinson’s legal advice, Haeg was not prejudiced by that advice because he was unwilling to renew plea negotiations or to plead guilty for reasons of his own.

On appeal, Haeg asserts that Judge Morse failed to rule on whether Robinson was ineffective for providing incompetent advice about the strength of Robinson’s subject matter jurisdictional defense. This is incorrect. To prove that Robinson was ineffective, Haeg was required to prove by clear and convincing evidence that (1) Robinson’s legal advice was incompetent; and (2) Haeg was prejudiced by that incompetent legal advice.⁴³ As we just explained, Judge Morse found that Haeg was not prejudiced by the advice (however incompetent) because Haeg wanted to go to trial and

⁴¹ *Id.*

⁴² *Id.* at *15, 23.

⁴³ AS 12.72.040; *Risher v. State*, 523 P.2d 421, 425 (Alaska 1974).

did not want to engage in any further plea negotiations for reasons distinct from any belief in the strength of the subject matter defense.⁴⁴

Haeg also asserts that “Judge Morse corruptly claims that Robinson never recommended that I go to trial.” But this is not precisely what Judge Morse found. Judge Morse found that “Robinson advised Haeg he could try to enforce the plea agreement Cole had negotiated (if there was such a deal) or [Haeg] could go to trial,” and he found that “Haeg told Robinson to go to trial.” In other words, Judge Morse found that Haeg (not Robinson) was the primary reason why plea negotiations never resumed and Haeg went to trial.

Judge Morse’s findings are supported by the record. Addressing Haeg’s questions on this issue at the hearing, Robinson testified:

Well, if I understand your question, your question is, did I advise you to take the plea deal or go to trial? Based on my memory, Mr. Haeg, I asked you and told you, I said, we have two avenues that we could take here, Mr. Haeg. We could try to enforce the plea agreement, if we have sufficient evidence that there really was an agreement. Or we can go to trial.

Haeg also asked Robinson, “Did you advise me to go to trial?” Robinson responded, “After you decided you wanted to, yes.” Robinson further testified that there was never a time when Haeg asked Robinson to negotiate a new plea deal. Judge Morse found this

⁴⁴ On appeal, Haeg appears to be asserting that he was forced to “sacrifice” an entrapment defense because of the subject matter jurisdictional defense. But there is no reason why the two defenses could not be run simultaneously. And, in any case, the record does not support Haeg’s assertion that he had a viable entrapment defense, as we explained in *Haeg II*. See *Haeg II*, at *16-18.

testimony credible, and we generally defer to a trial court’s credibility findings on appeal.⁴⁵ Accordingly, we find no error.

D. Wolf-Kill Boundary References at Sentencing

1. Relevant background

A recurring issue in this case is whether the State incorrectly drew the boundary between units 19-C and 19-D, thereby creating the erroneous impression that Haeg had killed some of the wolves in 19-C (an area where he was licensed to guide). (It is undisputed that Haeg killed one wolf in unit 19-B, an area that he was licensed to guide.)

As we have explained in this opinion (and previously explained in *Haeg I* and *Haeg II*), the dispute over the boundary between 19-C and 19-D did not prejudice Haeg at trial because the State did not need to prove that Haeg killed any of the wolves in his guiding area to convict Haeg of being a licensed guide who illegally took wolves same-day airborne outside unit 19-D East, the area designated for the predator control program.⁴⁶

However, as we explained in *Haeg II*, the discrepancy between the two boundaries was potentially relevant to Haeg’s sentencing because the prosecutor argued for a harsher sentence, in part, because the prosecutor believed that “[i]t’s [Haeg’s] guiding area, it’s his guiding operation that’s most directly benefitting” from Haeg’s

⁴⁵ See *Matter of Rabi R.*, 468 P.3d 721, 734-35 (Alaska 2020) (citing *In re Hospitalization of Danielle B.*, 453 P.3d 200, 202-03 (Alaska 2019)); *State v. Waterman*, 196 P.3d 1113, 1119 (Alaska App. 2008); *Figueroa v. State*, 689 P.2d 512, 513 (Alaska App. 1984).

⁴⁶ See *Haeg I*, 2008 WL 4181532, at *6 (Alaska App. Sept. 10, 2008) (unpublished); see also *Haeg II*, at *15-16, 22.

unlawfully taking of wolves same-day airborne outside the predator control program area.⁴⁷ The district court’s sentencing comments indicated that the sentence it imposed was also, at least in part, related to what it perceived as Haeg’s commercial interests in his unlawful actions. The court stated that it found “extremely disturbing” that “the majority, if not all of the wolves were taken in 19-C” and that the majority of the wolves were killed right after the Board of Game denied Haeg’s request to expand the wolf predator control program into 19-C.⁴⁸ Because it appeared that the State’s incorrect boundaries may have influenced the trial court’s sentence, and because we could not tell from the record before us why Robinson had not corrected the State’s apparent mistake, we directed the district court on remand “to have Robinson provide an explanation for why he did not challenge the apparent factual inaccuracies presented at sentencing, especially once it became clear that the judge was relying on these inaccuracies in imposing Haeg’s sentence.”⁴⁹ Then, after Robinson provided an explanation for his inaction, the district court was to determine whether Haeg had established a *prima facie* case of ineffective assistance of counsel on this sentencing claim and whether further proceedings on the merits of this claim were required.⁵⁰

⁴⁷ See *Haeg II*, at *22.

⁴⁸ One of the wolves was killed in unit 19-B, an area in which Haeg guided. The other wolves were apparently killed in 19-D, in an area that was closer to 19-C (one of Haeg’s guiding areas) than it was to 19-D East (the predator control program area).

⁴⁹ *Haeg II*, at *20.

⁵⁰ *Id.*

2. The proceedings on remand

Robinson was called to testify at the evidentiary hearing on remand. However, Haeg did not question Robinson about the inaccuracies at sentencing and his failure to correct them or to ask for a new sentencing based on them. Instead, Haeg questioned Robinson about a map (Exhibit 25) that was used at trial that Haeg asserts misrepresented the boundaries of 19-C and 19-D and was apparently the source of the misidentifications of the wolf-kill sites at trial and at sentencing. Haeg used the map to argue that the prosecutor and Trooper Gibbens had “falsified” evidence against him in order to “frame” him for these crimes. (We address these arguments in the third section of this opinion.)

Based on the fact that the inaccuracies in the map were not discovered until years after the trial, Judge Morse found that Haeg had not told Robinson about the alleged errors and that Robinson was therefore not ineffective for not perceiving the errors made at sentencing regarding the location of the kill sites.

3. Haeg’s challenges to the district court’s findings

On appeal, Haeg argues that Judge Morse’s finding that he never told Robinson about the alleged errors during trial or sentencing is “unjust,” but he does not argue that it is factually incorrect. (Haeg argues that it is “unjust” because he asserts the map was evidence of a conspiracy against him that should have been provided to Robinson as *Brady* evidence.⁵¹ We address this claim in the third section of this opinion.)

⁵¹ See *Brady v. Maryland*, 373 U.S. 83 (1963).

Haeg also faults Judge Morse for failing to himself question Robinson about Robinson’s failure to correct the inaccuracies at sentencing, and he asserts that Judge Morse “falsified” our order directing the judge to do so.

Haeg misunderstands the import of our directions to the district court on remand. As already explained, in *Haeg II*, we first directed the district court to make Robinson respond to Haeg’s implicit allegation that Robinson had been incompetent at sentencing.⁵² We then stated, “After Robinson has provided an explanation for his inaction, the court shall determine whether Haeg has established a *prima facie* case of ineffective assistance of counsel on this claim and shall likewise determine whether further proceedings on this claim are required.”⁵³ That is, if Haeg was able to establish a *prima facie* case of Robinson’s ineffectiveness at sentencing, *then* Haeg would be entitled to litigate this claim at the evidentiary hearing.

But upon remand, Judge Morse allowed Haeg to litigate this allegation at the evidentiary hearing without first obtaining an explanation from Robinson. Judge Morse also informed Haeg that he (Haeg) could call Robinson as a witness and he could directly question Robinson concerning this issue at the evidentiary hearing. In other words, Judge Morse informed Haeg that — like any applicant seeking post-conviction relief — it would be Haeg’s burden to prove his allegation that Robinson had been ineffective at sentencing.⁵⁴ Judge Morse had no responsibility — or authority — to litigate Haeg’s ineffective assistance of counsel claim at the hearing. And we did not direct the court to do so.

⁵² *Id.*

⁵³ *Haeg II* at *20; *see also Haeg II* at *22.

⁵⁴ *See* AS 12.72.040 (“A person applying for post-conviction relief must prove all factual assertions by clear and convincing evidence.”).

In short, it was Haeg’s burden to prove that Robinson was ineffective at the sentencing proceedings, but he failed to question Robinson about his actions and the reasons for those actions. By failing to introduce testimony on this matter, Haeg failed to show that Robinson acted incompetently. Haeg also failed to prove prejudice. That is, he failed to introduce any evidence to prove that had Robinson corrected the judge, it would have made a material difference in the sentence the judge imposed.⁵⁵

We note that prejudice cannot simply be assumed on this record. As we noted in *Haeg I*, there was evidence that Haeg illegally killed the wolves in an effort to benefit his own guiding operations, regardless of where precisely the wolves were killed.⁵⁶ At trial, Haeg testified that he and Zellers had killed one wolf in unit 19-B, one of the areas where he guides, and he also admitted that some of the moose in his guiding area came from the area where he had killed wolves. Haeg also testified that he and Zellers killed the wolves because they were frustrated that the wolves were killing so many moose, including the moose in their guiding area. Likewise, at sentencing, Haeg talked about the declining moose population, its impact on guiding, and his constitutional right to “enjoy the rewards of [his] own industry.”

We remanded this case to the district court to give Haeg an opportunity to prove that he was entitled to a new sentencing based on Robinson’s failure to correct the judge’s misimpression that “the majority” of the wolves were taken in 19-C. Because Haeg failed to meet his burden or to even fully litigate the issues on remand, we uphold Judge Morse’s denial of this claim.

⁵⁵ See *Haeg II*, at *20 (“The record is unclear . . . whether correction of this [kill-site] mistake would have made a material difference in the judge’s understanding of Haeg’s motivations or [the judge’s] sentencing.”).

⁵⁶ *Haeg I*, 2008 WL 4181532, at *10 (Alaska App. Sept. 10, 2008) (unpublished).

II. Challenges to the District Court’s Procedural and Evidentiary Rulings

We now turn to Haeg’s claims of error regarding various procedural and evidentiary rulings during the remand proceedings.

A. *Untimely Peremptory Challenge*

Under AS 22.20.022 and Alaska Civil Rule 42(c), the prosecution and the defense in a post-conviction relief case are each entitled to one judicial peremptory challenge of right, subject to a timeliness requirement.⁵⁷ Civil Rule 42(c)(3) provides that a party must file their peremptory challenge within five days after receiving notice that the judge has been assigned to sit on the case. Failure to timely file a peremptory challenge constitutes forfeiture of that right.⁵⁸

When we remanded this case, it was returned to the Kenai District Court. But it was soon apparent that the Kenai area judges were unavailable, either because they had disqualified themselves from Haeg’s case or because of pending retirement.

On June 14, 2017, Judge Morse — who is the presiding judge of the Third Judicial District — assigned the case to himself, and provided notice to the parties of the assignment. Almost a month later, on July 5, 2017, Haeg filed a peremptory challenge under Civil Rule 42(c). Judge Morse denied the challenge as untimely.

Haeg moved for reconsideration. In his motion for reconsideration, Haeg asserted that, in May 2017, he had informed Superior Court Judge Jennifer Wells that he

⁵⁷ Haeg was entitled to exercise this right to peremptory challenge because Judge Morse had not previously presided over his case. *See Plyler v. State*, 10 P.3d 1173, 1176 (Alaska App. 2000).

⁵⁸ *See Marcy v. Matanuska-Susitna Borough*, 433 P.3d 1056, 1062 (Alaska 2018); *see also Saofaga v. State*, 435 P.3d 993, 998 (Alaska App. 2018) (explaining forfeiture of the right to a peremptory challenge in the criminal context under Alaska Criminal Rule 25(d)).

would be working road construction during the summer and into the fall, and he would therefore be unavailable for a hearing during that time. Haeg argued that his unavailability meant that he should be excused from the timeliness requirement for peremptory challenges.

Judge Morse denied the motion for reconsideration. Judge Morse concluded that the notice of unavailability for a hearing did not mean that no administrative actions could be taken on the case in the interim.

On appeal, Haeg challenges Judge Morse's denial of his peremptory challenge as untimely. Haeg asserts that Judge Wells, before later recusing herself, had ordered that no "substantive hearings" would be held while Haeg was working out of town.

But Judge Wells's order that no substantive hearings would be held did not mean that no administrative actions would be taken. Judge Wells had recused herself from sitting on the case, and it was clear that another judge would need to be assigned. Assigning a judge to a case is an administrative action that does not require a hearing.

Alaska law requires any peremptory challenge to a judge to be made within five days after notice of the judge's assignment to the case.⁵⁹ Judge Morse found that Haeg was not entirely out of communication for those months, and "in fact Haeg was getting information forwarded to him from his wife." He therefore found that Haeg could have filed a timely peremptory challenge. Haeg has not shown that these findings are clearly erroneous.

Accordingly, we find no error in Judge Morse's denial of Haeg's untimely peremptory challenge.

⁵⁹ See Alaska R. Civ. P. 42(c)(3).

B. Challenge of Judge Morse for Cause

Under AS 22.20.020(a)(9), a judge is required to disqualify himself or herself from a proceeding if the judge “feels that, for any reason, a fair and impartial decision cannot be given.” Canon 3(E)(1) of the Alaska Code of Judicial Conduct requires judicial disqualification in any case where the judge’s impartiality “might reasonably be questioned.”

In the current case, Judge Morse disclosed to the parties that he was acquainted with Haeg’s former defense attorney, Robinson, because the two had been criminal defense lawyers in the Kenai area in the early 1980s. According to Judge Morse, they had not worked any cases together, and they did not socialize when they were both criminal defense attorneys except for “maybe . . . a beer after work . . . occasionally.”

Haeg orally moved to disqualify Judge Morse based on his past association with Robinson. Judge Morse denied the motion on the record.

Under AS 22.20.020(c), when a judicial officer denies a motion to disqualify the judge for cause, “the question [must] be heard and determined by another judge assigned for that purpose by the presiding judge of the next higher level of courts.” But this procedure was not followed in this case. That is, no further review occurred at the time the oral motion was denied.

On appeal, Haeg argues that Judge Morse erred in denying his motion to disqualify for cause and he also argues that Judge Morse erred when he failed to ensure that the immediate independent review contemplated by AS 22.20.020(c) occurred.

In response to the latter claim, the State argues that, under *Coffey v. State*, it was Haeg’s burden to request the independent review and Haeg therefore waived his

right to that independent review by failing to request it.⁶⁰ (The State also argues that Judge Morse properly denied the underlying motion to disqualify for cause.)

The State is correct that, under *Coffey*, it is technically the defendant's burden to request the independent review and failure to request that independent review will generally result in waiver of that review — although the loss of the independent review does not mean that the defendant has waived appellate review of the original denial of the motion to disqualify for cause.⁶¹ However, in an order dated February 20, 2020,⁶² we noted that the Alaska Supreme Court had previously suggested in an unpublished case that the *Coffey* rule could be unfair if applied to a self-represented litigant.⁶³ Consequently, shortly after the briefing in this case was completed, we *sua sponte* referred Judge Morse's denial of the motion to disqualify to another superior court judge for review under AS 22.20.020(c) — thus remedying any claim of error related to the absence of this additional review.⁶⁴

As a result of our *sua sponte* order, Superior Court Judge Philip M. Pallenberg was assigned to review Judge Morse's decision. After reviewing the record, Judge Pallenberg affirmed Judge Morse's denial of Haeg's challenge for cause. Relying in large part on our decision in *Phillips v. State*, Judge Pallenberg concluded that the facts before him did not establish any bias on the part of Judge Morse, nor did those facts show that any reasonable person would conclude that there was an appearance of

⁶⁰ *See Coffey v. State*, 585 P.2d 514, 525-26 (Alaska 1978).

⁶¹ *Id.*; *see also Johnson v. Anchorage*, 475 P.3d 1128, 1130-32 (Alaska App. 2020).

⁶² *See Haeg v. State*, File No. A-13501 (Order dated Feb. 20, 2020).

⁶³ *Kurka v. Kurka*, 2007 WL 1723468, at *6 (Alaska June 13, 2007) (unpublished).

⁶⁴ *See Haeg v. State*, File No. A-13501 (Special Order of the Chief Judge dated Feb. 20, 2020).

impropriety.⁶⁵ Given that conclusion, Judge Pallenberg ruled that Judge Morse did not err in denying Haeg’s motion for disqualification.

Haeg now argues that Judge Pallenberg erred in affirming Judge Morse’s ruling denying disqualification. Haeg argues that Judge Pallenberg gave too little weight to Judge Morse’s statement that he was acquainted with Robinson and that the two may have had a beer or two back in the early 1980s, and the fact that at the evidentiary hearing, Robinson joked about the results of a sports event the night before, to which Judge Morse briefly responded by saying, “Don’t rub it in.”

We agree with both Judge Pallenberg and Judge Morse that there was no basis for recusal. As a general matter, a judge’s social acquaintance with a party or a witness is not grounds for disqualification.⁶⁶ As Richard Flamm notes in his seminal treatise on judicial disqualification, “A judge who has lived in a community for a lengthy period of time can be expected to have made a number of casual acquaintances,”⁶⁷ and

⁶⁵ See *Phillips v. State*, 271 P.3d 457, 463-70 (Alaska App. 2012).

⁶⁶ See, e.g., *Phillips*, 271 P.3d at 470-71 (upholding judge’s denial of motion to recuse based on judge’s tangential social acquaintance with victim’s sister); *Anderson v. State*, 2014 WL 3889056, at *3 (Alaska App. Aug. 6, 2014) (unpublished); *Nighswonger v. State*, 1992 WL 12153670, at *9 (Alaska App. Dec. 9, 1992) (unpublished).

⁶⁷ Richard E. Flamm, *Judicial Disqualification: Recusal and Disqualification of Judges* § 31.4, at 494 (3d ed. 2017); see also *In re Complaint of Judicial Misconduct*, 816 F.3d 1266, 1268 (9th Cir. Jud. Council Mar. 14, 2016) (“[F]riendship between a judge and a lawyer or other participant in a trial, without more, does not require recusal.”) (citing *Penn v. Local Union 542, Int’l Union of Operating Engineers*, 388 F. Supp. 155, 159 (E.D. Pa. 1974) (“A judge must have neighbors, friends, and acquaintances, business and social relations and be a part of his day and generation.”)).

“there is no reason to presume that a judge’s mere acquaintance, or past association with, attorneys . . . would render the judge biased.”⁶⁸ As he further explains:

[J]udges are not expected to disqualify themselves every time a person with whom the judge is only casually acquainted comes into court. This is so, a fortiori, in a situation where the relationship that once existed between the judge and the person she is acquainted with has long since terminated.^[69]

In other words, a judge’s social acquaintance with a party or a witness is generally not grounds for recusal.⁷⁰

Although a very close friendship can, under certain circumstances, require recusal,⁷¹ there is no evidence of any sort of close friendship in this case. Instead, there is only evidence of a passing casual friendship or social acquaintance from more than thirty years ago, and a residual knowledge of each other’s interests in sports. Under these circumstances, Judge Morse was not required to disqualify himself, and we therefore uphold the denial of Haeg’s motion to disqualify for cause.

C. *Attempt to Present Evidence at a Status Hearing*

On December 18, 2017, Judge Morse held a status hearing in Haeg’s case. This status hearing pre-dated the evidentiary hearing and was intended to set out the issues to be litigated on remand and to set the deadlines for filing pleadings. At the end of the status hearing, Haeg refused to leave the courtroom until he had been allowed to

⁶⁸ Flamm, *Judicial Disqualification* § 31.4, at 498-99 n.33; *see also* Flamm § 31.5, at 501 (noting that this rule is particularly applicable in states with relatively small populations such as Alaska); *Nelson v. Jones*, 781 P.2d 964 (Alaska 1989).

⁶⁹ Flamm, *Judicial Disqualification* § 31.4, at 496; *see also Phillips*, 271 P.3d at 469-70.

⁷⁰ *See Phillips*, 271 P.3d at 469; *Anderson*, 2014 WL 3889056, at *3.

⁷¹ *See Flamm, Judicial Disqualification* § 31.3, at 491.

read what he announced would be a five-hour statement addressing his allegations of judicial corruption. Court security ultimately resorted to force to remove Haeg from the courtroom.

On appeal, Haeg argues that Judge Morse erred when he refused to allow Haeg to present his five-hour statement at the status hearing. But Judge Morse was under no obligation to allow Haeg to present evidence at a status hearing, and we find no abuse of discretion in Judge Morse limiting the status hearing to its intended purpose. We also find no support for Haeg’s claim that Judge Morse ordered Haeg tased and arrested to prevent him from presenting his evidence at the status hearing.

D. Challenge to Venue

Following the status hearing in which Haeg refused to leave the courtroom and force was used by court security, Judge Morse ordered that, for security reasons, the evidentiary hearing on Haeg’s post-conviction relief application would take place in Anchorage, rather than Kenai or Homer. Specifically, Judge Morse ordered that “[f]urther hearings, including any evidentiary hearings, will be held in Anchorage rather than in Homer or Kenai. This is because of the need for additional security in the courtroom.”

Although Haeg filed a subsequent motion for clarification, he never objected to Judge Morse’s order setting venue in Anchorage, nor did Haeg challenge Judge Morse’s reason for setting venue in Anchorage — that is, the need for additional security.

Haeg now argues that Judge Morse erred when he ordered that the hearing would occur in Anchorage, rather than in Kenai. But Haeg did not object to the order

setting venue in Anchorage — or if he did, he does not identify where in the record he objected. He therefore must show plain error on appeal.⁷²

We do not find plain error here. Judge Morse ordered venue changed because of security concerns. Those concerns are well documented in the record. Indeed, over the course of this case, Haeg has made several threats of violence or use of force against judicial officers and law enforcement.⁷³ Haeg fails to address these security concerns in his briefing on appeal.

In any event, Haeg fails to establish prejudice. Although Haeg asserts that he was prejudiced because some of his witnesses were unable to attend the hearing, he does not identify where he made a record of this issue in the trial court, nor does he identify the missing witnesses or how they relate to the issues that were actually on remand.

Accordingly, we conclude that Haeg has failed to show that Judge Morse setting the hearing in Anchorage for security reasons constitutes plain error.

E. Challenge to Scheduling of Evidentiary Hearing

Haeg asserts that Judge Morse erred when he set the evidentiary hearing for two days. He states that he asked for a “full week” for his hearing because of the number of issues he wanted to litigate and the number of witnesses he wanted to call. We find

⁷² See *Adams v. State*, 261 P.3d 758, 764 (Alaska 2011).

⁷³ For example, in his original post-conviction relief application and pleadings, Haeg threatened “to exercise [his] second amendment right” against Judge Bauman. He also, after oral argument in *Haeg II*, filed a notice claiming he would take the forfeited airplane back by force, and die in a suicide by cop. And, in the current briefing, Haeg again threatens to take back the airplane by force, encouraging others to accompany him. He opines that he is ready to be killed for his efforts and to “expose” what he strongly believes is mass judicial corruption.

no abuse of discretion in Judge Morse’s decision to schedule the evidentiary hearing for two days, given the limited issues that were to be considered on remand.⁷⁴

F. Request to Depose Robinson

Early in the proceedings, Haeg filed a motion requesting to depose Robinson. At the time, Judge Morse erroneously believed that Robinson had died, and he denied the motion on that basis. It later became clear that Robinson had not died, and Robinson appeared and testified at the evidentiary hearing.

On appeal, Haeg asserts that Judge Morse “corruptly” issued a written order preventing him from deposing Robinson. This claim is without merit. There is nothing in the record to suggest that Judge Morse knew Robinson was alive when he issued his order, and it is clear that Haeg was not prejudiced by that order as he was able to secure Robinson as a witness for the evidentiary hearing.

G. Testimony of Dale Dolifka

At the evidentiary hearing, Haeg called his business attorney, Dale Dolifka, to testify that in his opinion, Robinson and Cole had provided ineffective assistance of counsel. Haeg now asserts that Judge Morse erred by failing to take into account Dolifka’s testimony concerning Haeg’s allegations that Robinson and Cole were ineffective.

But Dolifka’s testimony did not support Haeg’s allegations of ineffectiveness; nor did it support Haeg’s other allegations regarding widespread corruption. Dolifka testified that he was not at the hearing “as an expert witness” and

⁷⁴ See *Haeg II*, 2016 WL 7422687, at *23 (Alaska App. Dec. 21, 2016) (unpublished).

that he was “not a criminal attorney.” In other words, he was not providing an expert opinion regarding Robinson’s and Cole’s effectiveness in Haeg’s criminal case.

Dolifka also testified that his information about the alleged plea agreement came “entirely” from Haeg and from discussions Dolifka had with Robinson after Haeg had hired Robinson. He likewise testified that his opinion of Cole came solely from Haeg and did not derive from any discussion with Cole, the prosecutor, or from any personal knowledge of the plea bargaining process. Dolifka also testified that he did not make his assessment of Cole’s competence based on his own independent judgment, but instead relied on Robinson’s after-the-fact comments.

Finally, Dolifka’s opinion of Cole’s performance was premised on his belief that the purported plea agreement Haeg told Dolifka about actually existed. But Judge Morse found that there was never a plea agreement in place that did not require forfeiture of Haeg’s airplane, and that finding is well supported by the record. Accordingly, we conclude that Judge Morse did not err by not relying on Dolifka’s testimony regarding Robinson’s and Cole’s competence.

We note that Haeg’s pleadings are rife with quotations concerning corruption attributed by Haeg to Dolifka. But at the evidentiary hearing, Dolifka disavowed nearly all of the statements that Haeg has liberally attributed to him.

When confronted with these past statements, Dolifka responded:

Well, I guess the only way I know to answer your question is I listened to you for hours and hours and hours. Because I was worried about you. I find out in the court hearing with [Judge] Joannides that you had been taping me this whole time. And you chose to cherry-pick what you wanted and left the rest.

Dolifka also testified, “I would be asleep late at night. I would get a phone call. My wife would get me up, and I would listen to you. I probably said a lot of things to you, Dave,

out of just trying to be a good friend.” According to Dolifka, Haeg was “taking out of context what I said.” Dolifka also explained that for “a lot of stuff . . . you would say it and I might have just agreed.”

Notably, Haeg directly asked Dolifka, “Is it true that corruption is the reason I have still not resolved my legal problems?” In response, Dolifka testified, “I don’t know if it’s corrupt — I wouldn’t say it’s corruption. It just seems like a lot of — I just don’t understand it. I’ll just leave it at that.”

III. Additional Claims

Haeg asserts that Judge Morse erred in failing to rule on various claims that were not part of the remand from *Haeg II*. We find no error in Judge Morse’s refusal to rule on claims that were not before him. We provide a brief explanation of some of those claims in order to clarify why they were not before Judge Morse and why they are not before us in this appeal.

A. Prosecutorial Misconduct

Haeg has repeatedly claimed that his convictions are invalid because of prosecutorial corruption. This claim was dismissed by Judge Bauman for failure to state a *prima facie* case for relief. We affirmed that dismissal in *Haeg II*.⁷⁵

On appeal, Haeg refers to two pieces of evidence that he believes support his claim of prosecutorial corruption. But neither of these pieces of evidence actually support Haeg’s claim.

The first piece of evidence is a 2004 audio recording of a pre-plea interview between Tony Zellers (Haeg’s co-defendant), Trooper Gibbens and the prosecutor.

⁷⁵ *Haeg II*, at *21.

During the interview, Zellers questioned Trooper Gibbens's assertion in the search warrant application that some of the wolves had been taken in 19-C. Trooper Gibbens expressed uncertainty regarding whether Zellers and Haeg were properly identifying the boundary between 19-D and 19-C, and Gibbens stated that he would need to look at the definition of the units because he did not have the definition "in front of [him]."

This discussion was interrupted by the prosecutor, who pointed out (correctly) that the real issue in this case was whether the wolves were killed "in the zone"— *i.e.*, killed inside 19-D East, the area designated for the predator control program. Zellers agreed that all of the wolves were taken outside 19-D East.

Haeg asserts that this discussion is proof that the prosecutor conspired with Trooper Gibbens to falsify where the wolves were killed so that he could convict Haeg for illegally taking wolves same-day airborne in his guiding area (19-C). But, as we explained in *Haeg I*, *Haeg II*, and this decision, the prosecutor did not need to prove that Haeg illegally took the wolves same-day airborne in his guiding area in order to convict Haeg under AS 08.54.720(a)(15), the statute that makes it a crime for a licensed guide to knowingly violate a statute or regulation that prohibits same-day airborne hunting. The prosecutor's statement in the audio recording was correct — that is, it did not matter whether the wolves were taken in unit 19-C or unit 19-D; all that mattered is that they were taken outside 19-D East. In the recording, Zellers admitted that all of the wolves were taken same-day airborne outside unit 19-D East and he later testified to that fact at trial — as did Haeg himself.

The second piece of evidence that Haeg claims demonstrates prosecutorial corruption is Exhibit 25, a map that was used as an exhibit at trial. At the evidentiary hearing on remand, Haeg asserted that the map had an inaccurate boundary line between units 19-D and 19-C, and the inaccurate boundary between 19-D and 19-C made it look like Haeg killed wolves in 19-C (a unit where Haeg guided), rather than in 19-D.

According to Haeg, the prosecutor “falsified” this map with the inaccurate boundary to “factually make this a guide case.” But, as just explained, Haeg’s case was a “guide case” because Haeg was a licensed guide. Again, the State did not need to prove that Haeg was guiding at the time he took the wolves to prove him guilty under AS 08.54.720(a)(15); nor did the State need to prove that Haeg took the wolves in one of his guiding areas. The State was only required to prove that Haeg, a licensed guide, knowingly took wolves same-day airborne outside unit 19-D East, the area where taking wolves same-day airborne was permitted. In other words, any inaccuracies in Exhibit 25 regarding the boundary between unit 19-C and 19-D was immaterial to Haeg’s guilt.

Haeg also asserts that the prosecutor, in violation of his duty under *Brady v. Maryland*, did not give a copy of Exhibit 25 to Haeg’s attorney prior to trial.⁷⁶ But the record does not support Haeg’s claim that the map was never discovered to his defense attorney. At the evidentiary hearing, Robinson testified, “I don’t recall during the receipt of discovery from the State [that] there was any discrepancy between any maps that I received in discovery and what [the State] produced at trial.” Robinson also indicated that, as far as he could recall, the materials he had gotten in discovery were the same as the evidence used at trial.

During the evidentiary hearing, Haeg asserted that he did not know Exhibit 25 was inaccurate until long after trial because he “did not ever look” at the map during trial. Judge Morse asked Haeg, “When you testified, did you do anything with the map? . . . Didn’t [you] stand up and point to it? Did you look at it?” Haeg answered, “Nope.” But the record suggests otherwise. The record shows that Haeg interacted with and used Exhibit 25 during his testimony to show the jury where both his guide area and lodge were located, and at one point, he was directed by his attorney to actually mark the map

⁷⁶ See *Brady v. Maryland*, 373 U.S. 83 (1963).

for the record. The record also shows that Exhibit 25 was admitted as an exhibit only after the parties stipulated that, with the exception of the northern boundary,⁷⁷ the map accurately depicted the boundaries of unit 19-D East — *i.e.*, the only boundary relevant to Haeg’s guilt.

B. Claim that Trooper Gibbens Falsified Affidavits

In Haeg’s direct appeal, we concluded that Haeg’s attorney had failed to preserve any claim that Trooper Gibbens falsified the affidavits in the search warrant application because the attorney never filed any motions related to these allegations.⁷⁸ In Haeg’s post-conviction relief application, the claim was reframed as an ineffective assistance of counsel claim against Robinson for failing to file any motions. The ineffective assistance of counsel claim was dismissed by Judge Bauman for failure to state a *prima facie* case. This Court upheld the dismissal in *Haeg II*, explaining that Haeg could not show prejudice because the material fact for purposes of finding probable cause for the search warrant was the (undisputed) fact that the wolves were killed outside Unit 19-D East.⁷⁹ Accordingly, the claim that Trooper Gibbens “falsified” the affidavits was not before Judge Morse on remand.

⁷⁷ At trial, the parties apparently agreed to disagree about the northern boundary because it was not relevant since all of the wolf-kill sites were outside of unit 19-D East. At the evidentiary hearing, Zellers stated that because the predator control area had expanded, the northern boundary of unit 19-D East on Exhibit 25 was inaccurate.

⁷⁸ *Haeg I*, 2008 WL 4181532, at *5 (Alaska App. Sept. 10, 2008) (unpublished) (citing *Moreau v. State*, 588 P.2d 295, 279-80 (Alaska 1978)).

⁷⁹ *Haeg II*, at *15-16.

C. *Transactional Immunity*

This claim was dismissed by Judge Bauman for failure to state a *prima facie* case for relief. We affirmed this dismissal in *Haeg II*.⁸⁰ As we explained, the record showed that Haeg’s allegation that the State granted him transactional immunity was “patently unfounded; the record shows only Haeg’s own confusion about the difference between transactional immunity and the limited use immunity provided by Evidence Rule 410.”⁸¹

We note that, at the evidentiary hearing on remand, Brent Cole (Haeg’s first attorney) testified that Haeg had only use immunity under Evidence Rule 410, not transactional immunity.

D. *Use of Map at Trial*

Haeg asserts that the State violated Alaska Evidence Rule 410 by using a map with wolf-kill sites that Haeg had marked during his pre-trial statement to the State. This claim was dismissed by Judge Bauman and that dismissal was upheld by this Court in *Haeg II*. As we explained in that decision, Haeg failed to demonstrate prejudice, even assuming *arguendo* that the map exhibit did include his marked wolf-kill sites.⁸²

The record shows that there were multiple independent sources of information regarding the location of the wolf-kill sites, including Zellers’s pre-trial interview and trial testimony. Indeed, the record shows that, in the presence of the jury, Zellers marked Exhibit 25 to identify kill sites during his testimony at Haeg’s trial. Zellers was also asked to confirm some additional marks already on that map — marks

⁸⁰ *Id.* at *19.

⁸¹ *Id.*

⁸² *Id.* at *18.

that also identified areas near kill sites — but these marks were not attributed to Haeg. Moreover, Haeg himself admitted at trial that they had killed the wolves outside unit 19-D East.

E. “Wolf Statement” Removal

As we previously explained, Haeg was originally represented by attorney Brent Cole, who negotiated a plea agreement with the State that required Haeg to forfeit his airplane. A change-of-plea hearing was set, but the hearing was later vacated after the plea negotiations broke down. However, before the change-of-plea hearing was vacated, Haeg prepared a “wolf statement” — a seventeen-page written document that was intended to be Haeg’s allocution at sentencing. Although Haeg repeatedly refers to this document as “exculpatory,” it has no exculpatory value. In the document, Haeg admits that he broke the law and killed the wolves illegally. He also admits that he did so, in part, to aid his guide business: “[w]hat we did does indeed benefit my guide business along with subsistence users and especially those who will come to depend on moose and caribou in the future. It may preserve a resource that my business, lodge, cabins, camps and land leases must have to survive.”

The “wolf statement” also contains Haeg’s allegation that a Board of Game member, Ted Spraker, told him to kill the wolves outside 19-D East and then lie about it to make the predator control program look successful.⁸³ Notably, Ted Spraker testified on Haeg’s behalf at his trial, but he was not questioned about this alleged conversation.

⁸³ We note that this allegation is the basis for Haeg’s repeated assertion that “the State” told him where to shoot wolves and then punished him for shooting wolves where they told him to. But, as we explained in *Haeg II*, there is some question as to whether this type of private conversation with a Board member would qualify as state action, and there has never been an assertion that Haeg did not know that the actions he took were illegal. *See Haeg II*, at *17.

Robinson later explained that he did not question Spraker about the alleged conversation because he had talked to Spraker, and Spraker did not corroborate Haeg’s account of the conversation.⁸⁴

Because the “wolf statement” was prepared for a change-of-plea hearing that did not occur, there is no reason to believe that it was ever made part of the trial court record. However, Haeg believes that it was made part of the court record, and he further asserts that Judge Murphy removed this “evidence” from the court record to prevent the jury from seeing it.

This claim was dismissed for failure to state a *prima facie* case for relief by Judge Bauman, and that dismissal was upheld by this Court in *Haeg II*. As we explained in *Haeg II*, even assuming that the “wolf statement” was removed from the court record, Haeg has failed to show that he was prejudiced by its loss. The “wolf statement” was a hearsay document created by Haeg in preparation for his change of plea; it was not “evidence” that the jury would have seen. Indeed, Haeg had the opportunity to present actual evidence of what he claimed happened at trial and at sentencing, and he did not need to rely on the “wolf statement” to do so. Nor would doing so have been helpful to Haeg, given that the “wolf statement” is, for the most part, an admission of guilt.

F. Allegations of Widespread Corruption

Haeg alleges that Marla Greenstein, the Executive Director of the Alaska Commission on Judicial Conduct, lied to him about the investigation into his judicial

⁸⁴ We note that Haeg’s own conduct is also inconsistent with his claim that he was just following directions to make the predator control program look successful. Of the nine wolves Haeg illegally took same-day airborne, he only reported three of them as having been killed in the predator control program area. The other six he claimed that he had shot outside the predator control program in a lawful manner — *i.e.*, not same-day airborne. *See Haeg II*, at *18.

conduct complaint against Judge Murphy. But, as we explained in *Haeg II*, this post-conviction relief case is not the proper forum to litigate this claim.⁸⁵ There are other forums in which Haeg could litigate (and has litigated) this claim.⁸⁶

Haeg also alleges that various State attorneys illegally stopped a grand jury investigation into his claims of corruption. But this claim is not part of the post-conviction relief proceedings,⁸⁷ and Haeg must pursue other avenues of relief for these allegations.

Haeg also makes numerous assertions of widespread judicial corruption. But virtually all of these assertions are based on judicial rulings with which Haeg disagrees. As we explained in *Haeg II*, adverse rulings (even if erroneous) generally do not give rise to a presumption of judicial bias.⁸⁸

G. *Remaining Claims*

Haeg's briefs and other pleadings are sometimes difficult to understand, and he may have intended to raise other claims besides the claims we have discussed here.

⁸⁵ *Haeg II*, at *22.

⁸⁶ Haeg filed a grievance against Greenstein with the Alaska Bar Association. According to the record, the investigation into Haeg's grievance was deferred until Haeg's post-conviction relief proceedings concluded. It is unclear if that investigation is still pending.

⁸⁷ See AS 12.72.010 (codifying the scope of post-conviction relief).

⁸⁸ *Haeg II*, at *22 (citing *Jerry B. v. Sally B.*, 377 P.3d 916, 930 n.50 (Alaska 2016)) (further citations omitted).

To the extent that Haeg may be attempting to raise other claims in his briefs or in any of his other pleadings, we conclude that these claims are inadequately briefed.⁸⁹

Conclusion

The judgment of the district court is AFFIRMED.

⁸⁹ See *Petersen v. Mutual Life Ins. Co. of New York*, 803 P.2d 406, 410 (Alaska 1990) (“Where a point is not given more than a cursory statement in the argument portion of the brief, the point will not be considered on appeal.” (citation omitted)); see also *A.H. v. W.P.*, 896 P.2d 240, 243-44 (Alaska 1995) (explaining that the majority of the litigant’s fifty-six arguments are waived for inadequate briefing).