

LAW OFFICE OF
BRENT R. COLE, P.C.

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ANCHORAGE, ALASKA 99501-2136

TELEPHONE (907) 277-8001
TELECOPIER (907) 277-8002

Today's Date: _____

Dual Permit Holder

Client #1:
Client #2:
F/V:

Re: State of Alaska v. _____ (Client #1¹)
Case No.: 3 -23- _____ CR (Client #1)
State of Alaska v. _____ (Client #2)
Case No.: 3 -23- _____ CR (Client #2)
Citation Nos.:
Our File No.: 2069. _____

Dear _____ and _____:

You have requested that the Law Office of Brent R. Cole, P.C. ("Firm") represent both of you in regard to the recent charges filed by the State of Alaska. This letter confirms terms and conditions upon which this Firm is willing and able to undertake the foregoing representation.

1. Please carefully read this entire letter. If we have already spoken, some of this information will be a repeat of our conversation. We will speak again of this information in the future. Still, please carefully read this entire letter. Attached are the necessary documents for both of you to sign. **If you both complete and send me all the documents addressed in this letter, I can and will appear in court on your behalf, and you will NOT need to go to court or call into the Court at your Court hearings.**

2. Documents to be signed and returned. BOTH OF YOU WILL NEED TO COMPLETE THE FORMS LISTED BELOW AND FAX OR EMAIL THE COMPLETED DOCUMENTS IMMEDIATELY TO MY OFFICE IN ANCHORAGE. After you have emailed or faxed the documents listed below, mail the originals to my office as well. The fax number is (907)277-8002. My office email is staff@akcolelaw.com. You will find the Firm's address at the top of this page.

- **Bristol Bay Fishery Client Intake Form.** The top section of this form needs to be filled out in its entirety by each of you e-mailed or faxed immediately to my office

¹ Normally client #1 is the permit holder who was running the boat. Client #2 s generally the non-operating permit holder. If this is not the case here, please advise me when I speak to you later.

in Anchorage. This form is **critical** because it provides the information I need to maintain contact with you during and after the fishing season.

PLEASE NOTE--- It is your responsibility to update your contact information with my office. If I am unable to contact you due to not having adequate contact information, I am required to notify the court which can result in the issuance of a bench warrant for your arrest. IF A BENCH WARRANT IS ISSUED IN YOUR CASE UNDER THESE CONDITIONS, I WILL WITHDRAW FROM YOUR CASE AND YOUR RETAINER PAYMENT WILL BE APPLIED AS MY FEE. IF, AFTER A BENCH WARRANT IS ISSUED, YOU STILL WANT ME TO REPRESENT YOU AND RESOLVE YOUR CASE, I WILL REQUIRE THAT YOU PAY ADDITIONAL FEES FOR CONTINUING LEGAL SERVICES IN THE AMOUNT OF \$1,000, EXCLUDING MOTION PRACTICE AND TRIAL. THESE FEES ARE NEGOTIATED SEPARATELY.

Please initial if you have read and understand this provision. _____/_____
Initials/Initials

- **Consent to Proceed.** Per Alaska Rule of Criminal Procedure 38, a signed Consent to Proceed allows me to appear for you as legal counsel in all noncritical matters related to your case. In other words, **after each of you sign and return this document, neither of you will need to come to court,** and I will have the ability to act as your legal representative in court. To accomplish that, I will file your signed consent with the court and send a copy to the prosecutor. Of course, I will keep you advised of the progress of your case. In addition, I am prohibited from making any important decisions in your case without your explicit authorization. Also, at any time, you can withdraw the “consent to proceed.”
- **Rule 45 Waiver.** The Criminal Rule 45 Waiver allows me to continue or reschedule your case into the future. Under Alaska law, a criminal defendant has a right to have his case tried by a judge or jury within 120 days from the date he was issued or served with the citation. This rule is in the place largely to prevent the government from delaying a case to the detriment of the client. At your arraignment, (the court date the state trooper listed on the citation advising you when you had to be in court, in which you are formally read the charges against you) a trial date will be scheduled, likely for September or October. It is my experience that it most often benefits the client to continue (or postpone) a trial into the future. For the court to grant a request to continue a trial, the court often requires a defendant to waive (give up) his right to have his case brought to trial within 120 days. In other words, the time between the request to continue the case and the date the case is continued to is not counted for the purpose of the 120 days computation. Again, my advice is

to sign the Rule 45 Waiver and allow me the discretion to continue or reschedule the trial date where it will be in your best interests.

- **Consent.** This is located at the end of this letter. By signing this Consent, you are indicating that you consent to the Law Office of Brent R. Cole, P.C.'s representation of you with regards to this matter, on the terms and conditions set forth in this letter.

3. Subject of Representation. I agree to represent you both during the course of this litigation up and through trial if possible (see below). Although as addressed below, the flat fee will not include my representation at trial, which will need to be negotiated separately. This means that I will make all court appearances for both you including: arraignment, status hearings, change of plea, and sentencing (if that is the resolution or end result). It will be my effort to resolve your case to your satisfaction without a trial. That said, I will request all reports, audio and video recordings, statements, and other information relevant to your case from the prosecutor (this is called a Rule 16 discovery request). I will provide you with all those materials and documents after we receive them at the Firm. It is important that you review all that I send you. Again, please contact me at any time if you have any questions. Please note, this representation does not include representing you on any appeals with may arise. Representation on any appeals must be negotiated separately.

Additionally, I agree to represent both of you during the course of the negotiation phase of this case. If I am unable to get your case dismissed and one or both of you is unwilling to accept the State of Alaska's offer, I may not be able to represent you at trial. It may be that a non-waivable conflict arises in the representation of both of you at a trial. An example of this would be a trial where one of you is pointing the finger at the other person as the criminally responsible party. Under those circumstances, I could not represent both of you at trial. Under these circumstances, I will have to find another attorney to represent the non-operating permit holder at trial. If we are unable to resolve this matter, then we will discuss this issue further before requesting a trial. If you have any questions about this, feel free to contact me.

4. Potential Conflicts of Interest. You have requested that I represent both of you in this case. At this point, I believe I will be able to provide competent and diligent representation to each of you and therefore, the Firm is agreeable to representing both of you until I receive information that indicates that a conflict of interest exists that cannot be waived.

Whenever a firm undertakes to represent more than one defendant in a criminal proceeding, it must do so carefully, and after fully advising both clients about the potential positive and negative consequences of such joint representation. The positive consequences are that this arrangement is generally less expensive and ensures a united stand. The negative consequences

include the risk that an attorney might favor one client over another in negotiations or take some other action which might be inconsistent with an attorney's duty to zealously represent the client.

Generally, when representing a client, all communications between the attorney and his client are confidential. Joint representation precludes this. You must understand that for me to represent both of you, your communications to me will not be confidential and I am authorized to speak with each client about what the other person has told me. If you are not agreeable to this condition, I cannot represent both of you.

Please initial if you have read and understand this provision. _____/_____
Initials/Initials

Although my knowledge of the facts in this case are limited at this stage, my understanding is that there is not an assertion of a claim made by one of you against the other client. I will get a better understanding of this after reviewing the discovery from the SOA (police reports and audio recordings) and speaking to you. If after reviewing this information, there is a claim being brought by one client against the other, I will not be able to represent both of you.

Please initial if you have read and understand this provision. _____/_____
Initials/Initials

However, in order to represent both of you, I am required by the Ethical Rules of Alaska Bar Association to have each of you sign a statement acknowledging that I have explained the ethical issues to you and that you waive any potential conflict of me representing both of you in this matter. By signing this engagement letter at the bottom, you acknowledge that you have been made aware of this nature of any potential or actual conflict and waive any such conflicts. If the situation changes and I cannot represent both of you, then I will inform you of this change in circumstances. The Firm does not and has never represented the State of Alaska.

5. Professional Undertaking. I will have primary responsibility for legal representation. Other attorneys, paralegals and legal assistants in the Firm may be used in the best exercise of our professional judgment. *We will endeavor to assist you in a professional manner and to the best of our ability, but we cannot guarantee the outcome of any given matter.*

6. Fees. *This firm will enter into a flat fee arrangement with both of you, meaning that for a flat fee of \$3,000, I will represent you both in all matters up to but not including trial.* A "flat fee" means that the client makes a single payment for legal representation. The only exception is if your case requires a trial. This fee must be negotiated separately. This minimum fee does not apply if either of you are facing a suspension of your fishing privileges as a result of this citation, or you have more than five (5) prior BB fishing convictions. The fees for these cases must be negotiated separately.

This one-time payment includes all our office services including arranging for the filing of necessary pleadings; attending your arraignment and other court hearings, getting copies of the police reports and other evidence the SOA intends to use against you, sending this discovery to you, consulting with you about your case, negotiating plea arrangements if necessary, consulting with you about your options to plea or go to trial, and preparing you for and attending any sentencing hearings with you. This fee includes all attorney fee time, support staff time and costs associated with representing you in this case, legal research costs, costs associated with obtaining and dispersing discovery including investigative reports, photographs, audio recordings and/or video tapes, and clerical expenses like copying, transcriptions, postage, and long distance telephone charges.

Again, the flat fee mentioned above does not include any fees or costs associated with a trial. That being said, you are being charged the \$3,000 flat fee in exchange for referenced services to resolve the case with a plea bargain that is acceptable to you, or potentially a dismissal. If after those efforts the case is not dismissed, and it is your decision to take your case to trial, it will be necessary for you and me to speak so I can advise you as to the attorney fees and costs associated with a trial in Naknek or Dillingham. This separate fee will be in addition to travel costs, as I will need to travel to Naknek or Dillingham for the proceedings.

If prior to a conclusion of this matter, you wish to represent yourself or hire another attorney, then this fee arrangement will convert to an hourly rate fee. My hourly rate is \$450 per hour. I may also assign work to an associate attorney at rate is \$250 per hour, to a paralegal, at a rate of \$150 per hour, or an administrative assistant at a rate of \$50 per hour.

We take into account many factors in charging for our services. The principal factor is our schedule of hourly rates in effect at the time the services are rendered. Our hourly rates for attorney and other staff members are based on years of experience and level of professional attainment. In setting fees, we also consider the uniqueness of the services rendered, the result obtained, the time limitation imposed by the client or the circumstances, and whether or not the work precludes other work which we otherwise would have done. All statements will be reviewed to ensure that the charges are appropriate.

7. **Retainers.** *We are requiring a retainer of \$3,000 at this time. This must be paid prior to our firm entering an appearance on your behalf. We accept credit cards or confirmed payments from the cannery on your behalf for payment of your retainer. Again, this does not include the cost of a trial.*

_____ (Initials) I authorize the Law Office of Brent R. Cole, P.C., to charge my credit card for the \$3,000 retainer.

_____ [credit card #] _____ [exp. date]

_____ (Initials) I authorize the Law Office of Brent R. Cole, P.C., to request payment of the \$3,000 retainer from my processor.

_____ (name of processor)

8. Client's Duty to Be Truthful. In nearly all circumstances, the communications between an attorney and the client are confidential and cannot be disclosed to another party without the client's consent. This protection is available in order to encourage clients to be truthful and forthright with their counsel, to ensure that appropriate legal advice is given in any one circumstance. *Our communications with our clients will remain confidential, absent of our client(s) consent to their disclosure.*

9. Billings. Our invoices generally will be prepared and mailed to you with a closing letter at the end of your case.

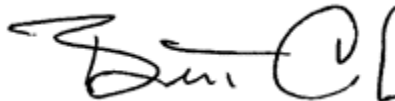
10. Termination. You have the right to terminate our representation at any time. We will have the same right, subject to our obligation to give you reasonable notice to arrange alternative representation and, where required, to obtain permission of the judge before whom a litigation matter is pending. **We will terminate our representation of you and withdraw as your counsel if you fail to maintain contact with our office while your case is pending in court.**

11. Closing Files. At the close of this matter, we will store the file on-site for a period of fourteen days. After that time, the original documents will be scanned and stored electronically, and the paper copies destroyed. If you would like to keep any items, including discovery or any documents you may have provided us, please advise us when the matter is closed, and we will be happy to accommodate you.

If you are willing to consent to our representation based on the conditions stated above, please so indicate in the space provided below and return one copy of this letter to me.

Very truly yours,

LAW OFFICE OF BRENT R. COLE, P.C.



Brent R. Cole

Consent

I, _____, consent to the Law Office of Brent R. Cole, P.C.'s representing both of us on the terms and conditions set forth in the foregoing letter. By signing below, I acknowledge that Brent R. Cole has explained to us the ethical issues of the Law Office of Brent R. Cole, P.C.'s representing us at the same time. I waive any potential conflict of the Law Office of Brent R. Cole, P.C.'s representing each of us in this matter.

I authorize the Law Office of Brent R. Cole, P.C. to send any and all correspondence or documents to me at the following email address:

PLEASE PROVIDE AN EMAIL ADDRESS

DATED: _____

Signature

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PLEASE PROVIDE AN EMAIL ADDRESS

DATED: _____

Signature

DOCUMENTS TO SIGN AND RETURN TO BRENT COLE:

1. Client Information Form, 1 for each
2. Consent to Proceed, 1 for each
3. Rule 45 Waiver, 1 for each
4. Client Consent to Retain this Firm (See page 7 of this letter)
5. Retainer, page 7/8

BRC/nm