

LAW OFFICE OF

BRENT R. COLE, P.C.

BRENT@AKCOLELAW.COM

821 N STREET, SUITE 208

TELEPHONE (907) 277-8001

WWW.AKCOLELAW.COM

ANCHORAGE, ALASKA 99501-2136

TELECOPIER (907) 277-8002

_____, 2017

Client #1: _____

Client #2: _____

F/V: _____

Re: *State of Alaska v.* _____
Case No.: _____
State of Alaska v. _____
Case No.: _____
Citation Nos.: _____
Our File No.: 1469. _____

Dear _____ and _____:

You have requested that the Law Office of Brent R. Cole, P.C. ("Firm") represent both of you with regards to the recent charges filed by the State of Alaska. This letter confirms terms and conditions upon which this Firm is willing 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 send me all the documents addressed in this letter**, I can and will make both of your court appearances, and **NEITHER of you will need to go to court.**

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 e-mailed or faxed the documents listed below, mail all the originals to my office as well. The fax number is (907) 277-8002. My office email is info@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*. This form is **critical** because it provides the information I need to maintain contact with you after the fishing season.
- **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 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. Finally, 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 judge or jury within 120 days from the date he was issued or served with the citation. This rule is in 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 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 purposes of the 120 days computation. Again, my advice is to sign the Rule 45 waiver document and, by that, allow me the discretion to continue or reschedule the trial date where it is 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 (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 you including arraignment, status hearings, and 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 videotapes, statements, and other information relevant to your case from the prosecutor (this called a Rule 16 discovery request). I will provide you with all those materials and documents after we receive them at my office. It is important that you review all that I send to 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 which may arise. Representation on any appeals must be negotiated separately.

Additionally, I agree to represent both of you during the course of this litigation up and through trial, unless an unwaivable conflict arises in the representation of both of you. 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 you at trial.

1. **Potential Conflicts of Interest.** You have requested that I represent both of you in this case. At this point, this firm is agreeable to representing both of you until I receive information that indicates that a conflict of interest that cannot be waived exists.

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 his or her client.

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 the 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.

4. **Professional Undertaking.** I will have primary responsibility for legal representation. Other attorneys and legal assistants in the office 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 abilities, but we cannot guarantee the outcome of any given matter.*

5. **Fees.** *This firm will enter into a flat fee arrangement with both of you, meaning that for a fee of \$3,400, 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. Included in that amount are attorney's fees for time spent focused on attorney/client consultations and communications with the state prosecutor and/or state troopers; legal research services; private investigation services; secretarial and paralegal time and 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 \$3,400 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

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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 Dillingham. This separate fee will be in addition to travel costs, as I will need to travel to 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 \$300 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 attorneys 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.

6. **Retainers.** ***We are requiring a retainer of \$3,400 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 costs of a trial.***

☐ _____ (Initials) I authorize the Law Office of Brent R. Cole, P.C., to charge my credit card for the \$3,400 retainer.

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

OR

☐ _____ (Initials) I authorize the Law Office of Brent R. Cole, P.C., to request payment of the \$3,400 retainer from my processor.

_____ [name of processor].

7. **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 our client's consent to their disclosure.***

15. **Billings.** Our invoices generally will be prepared and mailed midmonth.

16. **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

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alternative representation and, where required, to obtain permission of the judge before whom a litigation matter is pending.

17. **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 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.

DATED: _____

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:

(to be filled in by _____)

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DOCUMENTS TO SIGN AND RETURN TO BRENT COLE:

1. **Bristol Bay Fishery Client Intake Form (1 for EACH of you)**
2. **Consent to Proceed (1 for EACH of you)**
2. **Rule 45 Waiver (1 for EACH of you)**
3. **Consent (See pages 5-6)**
4. **Retainer (See page 4)**

BRC/ejs