

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

Randall Kowalke,)
)
 Plaintiff,)
 v.)
)
 David Eastman,)
)
)
 Defendant.)
 _____)

Case No. 3AN-22-07404 CI

ORDER GRANTING MOTION TO COMPEL

Plaintiff Randall Kowalke has filed a motion asking the court to compel Defendant David Eastman to provide certain materials in response to discovery requests. Kowalke argues that the requested materials are discoverable. Representative Eastman opposes, arguing that the materials are not related to Kowalke's claims and that producing them would be unduly burdensome. The court grants the motion to compel because the materials are related to the claims brought by Kowalke and the materials are reasonably calculated to lead to the discovery of admissible evidence.

I. Factual and Procedural Background

Kowalke argues that Representative Eastman is barred from holding public office by Article XII, § 4 of the Alaska Constitution. That clause mandates that, "No person who advocates, or who aids or belongs to any party or organization or association which advocates, the overthrow by force or violence of the

government of the United States or of the State shall be qualified to hold any public office of trust or profit under this constitution.”¹ Trial is currently scheduled to begin on December 12, 2022.

As part of the discovery process, Kowalke sent Representative Eastman requests for admission, interrogatories, and requests for production. Representative Eastman responded, objecting to requests for production numbers 3-14 and 16-18. Kowalke filed this motion to compel, seeking to have the court order Representative Eastman to provide responsive materials. Representative Eastman opposed, and the parties agreed for the court to decide this motion on an expedited schedule.²

II. Analysis

Representative Eastman first argues that any discovery about his personal actions is outside the scope of the lawsuit. However, Representative Eastman’s personal actions are relevant to the plain language of the disqualification for disloyalty clause. Article XII, § 4 expressly applies not just to membership in organizations that advocate for the violent overthrow of the government, but also to “person[s] who advocate” for the overthrow of the government. Alaska’s “notice pleading” rules require a complaint to be construed broadly.³ Thus, Representative Eastman’s personal actions are just as relevant to the claims raised

¹ Art. XII, § 4.

² The court received a request for oral argument on this motion, but declines to schedule a hearing due to the court’s schedule and the need to resolve this matter quickly in anticipation of trial. See Civil Rule 77(e)(2).

as his membership in the Oath Keepers. Moreover, Alaska's rules of civil procedure allow for broad discovery of information that is itself relevant to a claim or that is reasonably likely to lead to relevant information. Civil Rule 26(b)(1) states that:

Parties may obtain discovery regarding any matter, not privileged which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party, including the existence, description, nature, custody, condition and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of any discoverable matter. The information sought need not be admissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

Under this standard, Representative Eastman's personal communications are reasonably likely to lead to admissible evidence related to his membership in the Oath Keepers or his awareness or knowledge of their beliefs and actions. The discovery requested by Kowalke meets the standard in Civil Rule 26(b), and it therefore must be provided.

Representative Eastman next argues that because the language of the disqualification for disloyalty clause is in the present tense, his past actions are not relevant. But the interpretation urged by Representative Eastman is unconvincing as it would render Article XII, § 4 effectively impotent. Regardless, under Civil Rule 26(b)(1), materials related to Representative Eastman's past actions are

³ See *Gamble v. Northstore P'ship*, 907 P.2d 477, 482 (Alaska 1995).

discoverable to the extent that they are reasonably likely to lead to admissible evidence related to the claims brought by Kowalke.

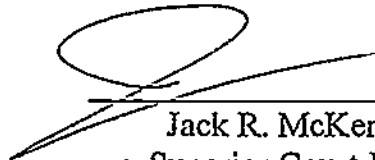
Representative Eastman also argues that the discovery requested is overly burdensome due to the time it will take him to search multiple email and social media accounts. He also argues that the materials may contain privileged communications that will need to be reviewed. The court finds that the requested materials are relevant and not unduly broad. Indeed, requests to search email accounts for specific terms are relatively standard in most litigation. And the fact that some materials may be privileged is not a reason to fail to provide relevant, non-privileged discovery. The court finds that the discovery requested by Kowalke is not unduly burdensome and must be produced.

III. Conclusion

For the reasons stated in this Order, Kowalke's motion to compel is GRANTED. The requested discovery materials and responses must be provided by November 18.

Kowalke's request for attorney's fees incurred to bring this motion is denied.

DONE this 10th day of November, 2022, at Anchorage, Alaska.



Jack R. McKenna
Superior Court Judge

I certify that on 11/10/2022
a copy of the above was mailed to
each of the following at their
addresses of record:

G Dudakjian, S Fletcher,
J Davis, T Flynn, L Harrison,
C. Ferntheil
Judicial Assistant J Miller