

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

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

Case No. 3AN-22-07404 CI

Order Denying Representative Eastman's Motion to Compel

Defendant David Eastman has filed a motion asking the court to compel plaintiff Randall Kowalke to respond to discovery requests regarding Kowalke's motives for bringing this action as well as any injury he suffered as a result of Eastman's alleged membership in the Oath Keepers. Kowalke opposes the request, arguing that the information sought is not discoverable because Kowalke's motive and any potential harm he may have suffered are not relevant. The court denies the motion to compel because the requested materials will not lead to admissible evidence related to the claims or defenses at issue, and so Representative Eastman is not entitled to discovery on those topics.

I. Analysis

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 admissible evidence. 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.

The discovery requests must therefore be reasonably likely to lead to the discovery of admissible evidence.

To be admissible, evidence must be relevant.¹ The Disqualification for Disloyalty clause of the Alaska Constitution 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."² The evidence presented at trial must therefore be relevant to whether Representative Eastman "aids or belongs" to the Oath Keepers and whether the Oath Keepers are a "party or organization or association which advocates . . . the overthrow by force or violence of the government of the United States or of the State."³

¹ Alaska Rule of Evidence 402.

² Art. XII, § 4.

³ Kowalke also argued that he would show that the Division erred when it denied his complaint and placed Representative Eastman's name on the ballot. This element is not necessary to entitle Kowalke to relief. The Division argued during its motion to dismiss that it is only required to review documents in the public record and the court declined to rule on whether that interpretation was reasonable. Kowalke has also emphasized that his complaint is not an administrative appeal. In seeking a preliminary injunction, Kowalke has produced significantly more information on the Oath Keepers than what the Division considered when it denied his complaint. It is therefore possible for the

a. Discovery Requests Related to Motive

Representative Eastman first argues that Kowalke's motives for bringing this suit, especially if they are political or "otherwise untoward", would color his claims and consideration of his proffered experts. In support, Representative Eastman points the court to several cases to argue that motive of the opposing party is a proper topic for discovery and argument.⁴ Those cases are not applicable because in both cases the party whose motive was potentially relevant had taken actions that related to the claims or had relevant testimony to provide. This case requires the court to determine whether Representative Eastman is a member of the Oath Keepers and whether that organization has tried to overthrow the United States government by force or has advocated in concrete terms for the same. Kowalke is not a fact witness so his motive or any potential bias are not relevant. Similarly, Kowalke's motive for bringing the suit is not in any way relevant to the claims at issue. Furthermore, information on Kowalke's motives for bringing this suit is not likely to lead to admissible evidence that would be relevant to cross-examining his proffered experts. A party cannot impeach an expert witness by asking them about the motives of the person who hired them. Because evidence of Kowalke's motive is not relevant or admissible, discovery on that topic is not permitted even under the broad terms of Rule 26(b)(1).

Division to have not erred in applying its own regulations when deciding the complaint and also for Kowalke to show a clear probability of success on the merits in this action for declaratory and injunctive relief.

b. Discovery Requests Related to Potential Harm

Representative Eastman also seeks an order compelling Kowalke to respond to discovery requests related to any potential harm he may have suffered in relation to his claims in order to bring an argument challenging Kowalke's standing. The court has found that Kowalke has standing to bring this suit after assuming that no harm exists other than what was described in the Court's order denying Representative Eastman's motion to dismiss. The motion to compel information related to harm is therefore also denied.

c. Discovery Requests Related to Laches

Lastly, Representative Eastman asks the court to compel Kowalke to respond to discovery requests related to a potential laches claim. Kowalke opposes, arguing that laches does not apply in this case. Representative Eastman responds that at the discovery phase, the merits of a defense are not at issue.⁵ However, whether laches is available as an equitable defense to an action is a legal question that may be decided here prior to discovery on the issue. "Laches is an equitable defense available 'when a party delays asserting a claim for an unconscionable period.'"⁶ Prior to deciding whether its elements are met, the court "must decide the threshold question whether the laches

⁴ See *Cook Inlet Fisherman's Fund v. Dep't of Fish & Game*, 514 P.3d 1250, 1261 n.61 (Alaska 2022) and *DeNardo v. Maassen*, 200 P.3d 305, 313 (Alaska 2009).

⁵ *Prentzel v. DPS*, 53 P.3d 587, 596 (Alaska 2002).

⁶ *Corkery v. Municipality of Anchorage*, 426 P.3d 1078, 1083–84 (Alaska 2018) ("In order for laches to bar a claim, two elements must be shown: (1) the plaintiff unreasonably delayed seeking relief, and (2) this delay has resulted in

defense may be invoked by the [defendant] at all.”⁷ “This raises a question of law.”⁸

In this case, Kowalke argues Representative Eastman is disqualified from holding public office by Article XII, § 4 of the Alaska Constitution. That claim may be brought at any time. In *Begich v. Jefferson*, both the State and a private plaintiff sued sitting legislators seeking declaratory and injunctive relief related to their working as teachers while also being sitting legislators.⁹ Similarly, in *Warwick v. State ex rel. Chance* the Alaska supreme court decided a suit brought by the chairman of the legislative council in order to have the court declare that a member of the legislature was disqualified under Article II, § 5 from serving as a state commissioner following their service in the legislature.¹⁰ It is clear from these cases that Kowalke’s suit could have been filed against Representative Eastman at any time—either before or after the election. Thus, laches is a defense that is not applicable to this suit. The motion to compel responses to discovery requests related to it is denied.

“prejudice to the defendant. The party raising laches bears the burden of demonstrating these two elements.”).

⁷ *Corkery*, 426 P.3d at 1084.

⁸ *Kollander v. Kollander*, 322 P.3d 897, 902 (Alaska 2014).

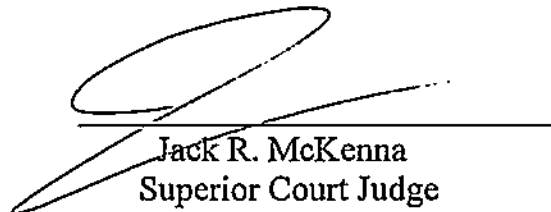
⁹ 441 P.2d 27, 29 (Alaska 1968).

¹⁰ 548 P.2d 384, 386 (Alaska 1976)(“The Chairman of the Legislative Council of the Alaska State Legislature, on behalf of the state, filed the suit on September 8, 1975. The case was commenced in the Supreme Court as an ‘Original Application for an Action in the Nature of a Writ Quo Warranto’. We remanded the case to the superior court to be handled on an expedited basis. The trial court granted summary judgment in favor of plaintiffs on November 3, 1975.”).

II. Conclusion

For the reasons explained above, the court denies Representative Eastman's motion to compel.

DONE this 9th day of December, 2022, at Anchorage, Alaska.



Jack R. McKenna
Superior Court Judge

I certify that on 12/09/2023
a copy of the above was mailed to
each of the following at their
addresses of record:

G Oudukjian, S Fletcher,
J Davis, T Flynn, L Harrison,
C. Ferntheil J Miller
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