

Pamela D. Weiss
Assistant Municipal Attorney
Municipal Attorney's Office
P.O. Box 196650
Anchorage, Alaska 99519-6650
Phone: (907) 343-4545
Fax: (907) 343-4550
Email: uslit@muni.org

Attorney for Defendants
Municipality of Anchorage, Matthew Hall,
Nathan Lewis, Brett Eggiman

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA**

THE ESTATE OF BISHAR ALI HASSAN,)
AHMED HASSAN, and BILAY ADEN IDIRIS,)
)
Plaintiffs,)

vs.)

MUNICIPALITY AND CITY OF)
ANCHORAGE, MATHEW HALL, NATHAN)
LEWIS, BRETT EGGIMAN, and DOES 1-2)
INCLUSIVE,)
)
Defendants.)

Case No. 3:21-cv-00076 JWS

MOTION RESTRICTING FURTHER PRETRIAL PUBLICITY

Defendants Municipality of Anchorage, Matthew Hall, Nathan Lewis and Brett Eggiman (“Municipal Defendants”), by and through Assistant Municipal Attorney Pamela Weiss, hereby request that the court order Plaintiffs to refrain from further publicity in this matter. Plaintiffs are using the media to manipulate public opinion in order to obtain a benefit in this civil case.

Plaintiff filed a lawsuit in USDC on 3/30/21 (Dkt. 1). The next day the Anchorage Daily News ran a story on the lawsuit, quoting from the complaint but also including statements from plaintiff's attorney. *See* ADN article, attached as Exhibit 1.

But now, on February 10, 2021, NBC News published another story. *See* [Dash camera video shows Anchorage police officers fatally shooting man \(nbcnews.com\)](https://www.nbcnews.com/news/us-news/dash-camera-video-shows-anchorage-police-officers-fatally-shooting-man-rcna15616) available at <https://www.nbcnews.com/news/us-news/dash-camera-video-shows-anchorage-police-officers-fatally-shooting-man-rcna15616> (viewed Feb. 11, 2022).

According to the article, as well as the notation on the embedded video, plaintiff's attorney, Rex Butler, provided a copy of the dashcam video of the shooting to NBC. Then Mr. Butler and his client, Ahmed Hassan, made various statements to NBC about the case and decedent Bishar Hassan.

Alaska Rule of Professional Conduct 3.6 on Trial Publicity states:

(a) A lawyer who is participating or has participated in the investigation or litigation of a matter shall not make an extrajudicial statement that the lawyer knows or reasonably should know will be disseminated by means of public communication and will have a substantial likelihood of materially prejudicing an adjudicative proceeding in the matter.

Both the video and the statements are outside the judicial proceedings. Prior to Mr. Butler's provision of the video to NBC, it was not available publicly.¹ Instead, Municipal Defendants provided the video to plaintiffs in the Initial Disclosures for use in

¹ While the video could be requested in a public records request, the Municipality would have redacted the graphic portions of the video in order to protect Mr. Hassan's and his family's privacy. Interestingly NBC notes that the video was released "exclusively to NBC."

the litigation. The video has not yet been provided to the court or included as an exhibit in any court pleading. Mr. Butler then provided statements concerning both the video and various facts related to the case. If these actions do not directly violate Ak RPC 3.6(a), they come dangerously close such that the court should intervene to control counsel's conduct.

The comments to Rule 3.6 provide:

There are ... certain subjects that are more likely than not to have a material prejudicial effect on a proceeding, particularly when they refer to a civil matter triable to a jury, a criminal matter, or any other proceeding that could result in incarceration. These subjects relate to:

(1) the character, credibility, reputation, or criminal record of a party, suspect in a criminal investigation or witness, or the identity of a witness, or the expected testimony of a party or witness;

(5) information that the lawyer knows or reasonably should know is likely to be inadmissible as evidence in a trial and that would, if disclosed, create a substantial risk of prejudicing an impartial trial . .

. .

Plaintiff knows or should know that providing selective items of evidence and making statements to the media would have a substantial likelihood of materially prejudicing an adjudicative proceeding. The topic of police shootings is a highly sensitive one that is at the forefront of public discourse and media coverage. Mr. Butler provocatively claims that the “video sells itself in something not being right here” and embellishing the facts alleged in the complaint, now claiming that Bishar Hassan had a medical condition and ensuring that statements about his background are known.

Plaintiffs have requested a jury trial. (Dkt. 1 at 2) It is the job of a jury selected in this case to determine—using the evidence presented—whether the officers were justified in their actions. Mr. Butler’s statements are not evidence in the case. The sole purpose for offering these statements is to sway public opinion against the Municipality and its officers, discredit testimony that is anticipated at trial, and impact the outcome at trial. The Court should not allow plaintiffs to use the media for such purposes.

The Court, therefore, should prevent plaintiffs from contacting the media in this case or from making any further comments to the media during the pendency of the case.

Respectfully submitted this 11th day of February, 2022.

PATRICK N. BERGT
Municipal Attorney

By: /s/Pamela D. Weiss
Municipal Attorney's Office
P.O. Box 196650
Anchorage, Alaska 99519-6650
Phone: (907) 343-4545
Fax: (907) 343-4550
E-mail: uslit@muni.org
Alaska Bar No. 0305022

Certificate of Service

The undersigned hereby certifies that on February 11, 2022, a true and correct copy of the foregoing was served by electronic means through the CM/ECF system.

Rex Butler
745 W 4th Avenue, Suite 300
Anchorage, AK 99501
Email: rexbutlercalendar@gmail.com

s/ Amber J. Cummings
Amber J. Cummings, Legal Secretary
Municipal Attorney’s Office

Motion to Restrict Publicity
Estate of Hassan v. MOA, et al.; Case No. 3:21-cv-00076 JWS
Page 4 of 4