

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

Randall Kowalke,

Plaintiff,

v.

David Eastman et al,

Defendant.

COPY

Case No. 3AN-22-07404 CI

**ORDER GRANTING MOTION TO STRIKE JURY DEMAND**

Plaintiff Randall Kowalke has filed a motion asking this court to strike Defendant Representative David Eastman's demand for a jury trial. Kowalke argues that under Alaska law, there are no issues that can be tried to a jury because he seeks equitable relief. Representative Eastman opposes the motion, arguing that Kowalke has raised legal claims that must be tried in front of a jury. The court grants the motion to strike the jury demand because under both Alaska law and the common law, an injunction is an equitable claim that must be decided by the court.

**I. Factual and Procedural Background**

Representative Eastman is running for election in House District 27. Kowalke brought this case seeking to have Representative Eastman declared ineligible for public office. The first cause of action in Kowalke's complaint alleged that Representative Eastman "through his membership in the Oath Keepers," violated Article XII, § 4 of the Alaska Constitution and is therefore disqualified from public office. Kowalke asks the court to prohibit Representative

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Eastman from serving in the legislature. The second cause of action alleged that Representative Eastman was barred from serving in the legislature by AS 24.05.060, and that the Division of Elections therefore improperly determined that Representative Eastman was eligible for public office. Kowalke requests in the second cause of action that the court find that the Division of Elections improperly certified his candidacy and issue an order stating that Representative Eastman is "not eligible to run for legislative office."

Representative Eastman filed a Demand for Jury Trial, asking the court to empanel a jury to decide "all issues triable by jury in this case." Kowalke has asked the court to strike the jury trial demand. The Division has not taken a position.

## II. Analysis

The Alaska Constitution mandates that "[i]n civil cases where the amount in controversy exceeds two hundred fifty dollars, the right of trial by a jury of twelve is preserved to the same extent as it existed at common law."<sup>1</sup> The Alaska supreme court has explained that "the Alaska Constitution only preserves a jury trial for legal causes of action, not those which are equitable in nature."<sup>2</sup> "Generally, a legal claim is one that provides compensatory and punitive monetary damages."<sup>3</sup> "When only equitable relief is sought, there is

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<sup>1</sup> Alaska Const. Art I, § 16.

<sup>2</sup> *Alyssa B. v. State, Dep't of Health & Soc. Servs., Div. of Fam. & Youth Servs.*, 165 P.3d 605, 613 (Alaska 2007).

<sup>3</sup> Robert L. Strayer, II, *Asserting the Seventh Amendment: An Argument for the Right to A Jury Trial When Only Back Pay Is Sought Under the Americans with Disabilities Act*, 52 Vand. L. Rev. 795, 812 (1999) *citing* *Curtis v. Loether*, 415 U.S. 189, 196 (1974) ("More important, the relief sought here—actual and punitive damages—is the traditional form of relief offered in the courts of law.").

no right to a jury trial."<sup>4</sup> Thus, whether Representative Eastman is entitled to a jury trial is determined by whether Kowalke's claims are "legal causes of action" or "equitable in nature."<sup>5</sup>

In this case, Kowalke requests an order from the court barring Representative Eastman from holding public office and ordering the Division of Elections to not certify him as qualified to hold public office. These are requests for injunctive relief. "Claims for injunctive relief are equitable in nature."<sup>6</sup> The Alaska supreme court has emphasized that "where equitable relief is sought, such as reformation, an injunction, or restitution, this court has disallowed the right to a trial by jury."<sup>7</sup> Because Kowalke seeks injunctive relief, Alaska law disallows the right to a jury trial.

Representative Eastman argues in response that he has the right to a jury trial because an order barring him from office would deprive him of a legislator's salary and benefits. He therefore argues that because the amount in controversy is more than two hundred and fifty dollars, he is entitled to a jury trial. This is

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<sup>4</sup> *State v. First Nat. Bank of Anchorage*, 660 P.2d 406, 424 (Alaska 1982).

<sup>5</sup> *Id.*

<sup>6</sup> *Anderson v. Dep't of Admin., Div. of Motor Vehicles*, 440 P.3d 217, 220 (Alaska 2019); *see also Calista Corp. v. Deyoung*, 562 P.2d 338, 339 (Alaska 1977) (stating that "[t]his is an equitable action in the nature of a complaint for injunctive relief.").

<sup>7</sup> *Keltner v. Curtis*, 695 P.2d 1076, 1080 n.5 (Alaska 1985); *see also First Nat. Bank of Anchorage*, 660 P.2d at 424 *citing* 5 Moore's Federal Practice ¶ 38.24 (2d ed. 1981) ("In this case, the State sought injunctive and restitutory relief only. Such relief being equitable, Brown was not entitled to a jury trial and the lower court thus did not err in refusing Brown's jury trial demand.") *and* Civil Rule 39(a) ("When trial by jury has been demanded and not waived as provided in Rule 38, the trial of all issues so demanded shall be by jury, unless ... the court upon motion by a party or upon its own motion finds that a right of trial by jury of some or all of those issues does not exist under the state constitution or statutes of the state.").

incorrect. An equitable claim such as the one brought by Kowalke is not converted to a legal claim because the defendant could potentially face economic harm as the result of an injunction. Nor does potential economic loss by the defendant due to the effects of an injunction satisfy the amount in controversy threshold entitling a party to a jury trial.<sup>8</sup> The test articulated by the supreme court is clear that it is the nature of the remedy sought that determines whether an action is equitable or legal. In this case, Kowalke seeks equitable relief and Representative Eastman is not entitled to a jury trial.

Representative Eastman next argues that Kowalke's claims are legal in nature because he has sought attorney's fees and nominal damages. This argument is without legal support. Again, Alaska law requires a jury trial "for legal causes of action, not those which are equitable in nature."<sup>9</sup> A request for attorney's fees does not alter that distinction.

Finally, Representative Eastman asks the court to empanel an advisory jury under Civil Rule 39(c). Under that rule, in cases in which there is no right to a jury trial "the court upon motion by a party or upon its own motion may try an issue with an advisory jury."<sup>10</sup> However, an advisory jury's decision would not be binding upon the court. When an advisory jury is empaneled, "it is entirely within the trial court's discretion to accept or reject, in whole or in part, the verdict of the advisory jury."<sup>11</sup> The court cannot avoid the legal requirement to render a

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<sup>8</sup> See *First Nat. Bank of Anchorage*, 660 P.2d at 408 and 424, in which the state sought an injunction and \$1,611,357.60 in restitution and no right to a jury trial existed.

<sup>9</sup> *Alyssa B.*, 165 P.3d at 613.

<sup>10</sup> Civil Rule 39(c).

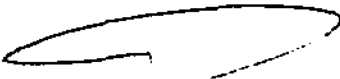
<sup>11</sup> *State v. l'Anson*, 529 P.2d 188, 190 (Alaska 1974).

final decision in a case seeking injunctive relief. This is because even when an advisory jury provides a decision, "it is the court, not the jury, that must determine the appropriate equitable relief."<sup>12</sup> Additionally, empaneling an advisory jury would significantly lengthen the trial and increase the risk that this expedited case cannot be timely decided. The court therefore declines Representative Eastman's request.

### III. Conclusion

Because Kowalke seeks injunctive relief, the Alaska Constitution and the Alaska supreme court have "disallowed the right to a trial by jury."<sup>13</sup> Instead, Alaska law is clear that decisions on equitable relief must be made by the court.<sup>14</sup> The motion to strike Representative Eastman's jury trial demand is therefore GRANTED.

DONE this 15<sup>th</sup> day of November, 2022, at Anchorage, Alaska.

  
Jack R. McKenna  
Superior Court Judge

<sup>12</sup> *Martinez v. Cape Fox Corp.*, 113 P.3d 1226, 1232 (Alaska 2005).

<sup>13</sup> *Keltner v. Curtis*, 695 P.2d 1076, 1080 n.5 (Alaska 1985). See also *First Nat. Bank of Anchorage*, 660 P.2d at 424 citing 5 Moore's Federal Practice ¶ 38.24 (2d ed. 1981) ("In this case, the State sought injunctive and restitutory relief only. Such relief being equitable, Brown was not entitled to a jury trial and the lower court thus did not err in refusing Brown's jury trial demand.") and Civil Rule 39(a) ("When trial by jury has been demanded and not waived as provided in Rule 38, the trial of all issues so demanded shall be by jury, unless ... the court upon motion by a party or upon its own motion finds that a right of trial by jury of some or all of those issues does not exist under the state constitution or statutes of the state.").

<sup>14</sup> *Martinez*, 113 P.3d at 1232.

I certify that on 11/15/20  
a copy of the above was mailed to  
each of the following at their  
addresses of record:

G. Dudukyan, S Fletcher,  
J Davis, T Flynn, L Harrison,  
C. Fentley  
Judicial Assistant T Miller