

SUPREME COURT OF ALASKA

Alaska State Commission for Human Rights v. Anderson

426 P.3d 956 (Alaska 2018) · No. S-16197 · Decided August 31, 2018

SUMMARY

The Alaska Supreme Court considers whether the Alaska State Commission for Human Rights may exclude third parties from investigative interviews conducted during a confidential workplace-discrimination investigation. The court holds that the statutory confidentiality requirement necessarily authorizes the Commission to limit third-party attendance and reverses the superior court’s dismissal of the Commission’s contempt petition.

CASE DETAILS

COURT	Supreme Court of Alaska
WRITING FOR THE COURT	Maassen, Justice; Stowers, Chief Justice; Winfree, Justice; Bolger, Justice; Carney, Justice
JURISDICTION	Alaska
DECIDED	August 31, 2018
DOCKET	S-16197
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	The Alaska State Commission for Human Rights appealed the superior court's order vacating an order to show cause and dismissing contempt proceedings arising from a subpoenaed investigative interview.
STANDARD OF REVIEW	The court reviewed the superior court's contempt decision for abuse of discretion, legal questions de novo, and the Commission's statutory interpretation under the substitution-of-judgment standard, giving due deliberative weight to a longstanding agency interpretation. Whether agency action required rulemaking under the Alaska Administrative Procedure Act was reviewed independently.
PRECEDENTIAL VALUE	published binding precedent
PARTIES	Alaska State Commission for Human Rights, Marti Buscaglia, Executive Director v. Dori Lynn Anderson

TOPICS

administrative law

employment law

civil rights

statutory interpretation

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PRACTICE AREAS

employment law

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QUESTIONS PRESENTED

1. Whether the statutory requirement that the Commission's investigations and investigative information remain confidential authorizes the Commission to exclude third parties from investigative interviews.
2. Whether the Commission's longstanding unwritten policy excluding third parties from informal investigative interviews was required to be promulgated as a regulation under the Alaska Administrative Procedure Act.
3. Whether the subpoena was valid and whether the superior court abused its discretion by concluding that Anderson complied with it and dismissing the contempt proceeding.

HOLDINGS

1. The statutory requirement that Commission investigations and investigative information remain confidential necessarily authorizes the Commission to exclude third parties from informal investigative interviews.
2. The Commission's longstanding policy excluding third parties from informal investigative interviews was a commonsense interpretation of existing law and did not have to be promulgated as a regulation under the Alaska Administrative Procedure Act.
3. The subpoena was valid, and the superior court abused its discretion by concluding that Anderson complied with it and dismissing the contempt proceeding.

KEY QUOTATIONS

“We conclude, however, that the confidentiality of the Commission's investigations, mandated by statute, necessarily entails the authority to conduct confidential interviews.” (426 P.3d at 962)

“The mandate of AS 18.80.115 — that investigations be confidential — contains by strong implication the authority the Commission needs to limit third-party attendance at investigative interviews.” (426 P.3d at 963)

“We conclude that the Commission's longstanding policy of excluding third parties from informal witness interviews is a commonsense interpretation of the statutory requirement that it maintain the confidentiality of its investigative 'records and information.'” (426 P.3d at 966)

“A witness cannot satisfy a subpoena by simply showing up and then declining to testify except on conditions she knows are unacceptable to the subpoenaing authority.” (426 P.3d at 967)

FACTUAL BACKGROUND

The Commission investigated two workplace-discrimination complaints filed by a State employee against DHSS. Anderson, identified as the complainant's supervisor, was subpoenaed to provide testimony in an

investigative interview. The Commission's longstanding policy generally barred third parties from investigative interviews, although it allowed limited exceptions such as the interviewee's attorney, an interpreter, or a guardian. Anderson appeared for the telephone interview but repeatedly refused to answer questions unless Greta Jones, a DHSS EEO manager, could remain present.

PROCEDURAL HISTORY

The Commission investigated workplace-discrimination complaints involving the State of Alaska Department of Health and Social Services. It subpoenaed Anderson, a complainant's supervisor, to provide testimony but refused to allow an employer representative to attend the interview. After Anderson declined to proceed without the representative, the Commission petitioned the superior court for a show-cause order. The superior court granted Anderson's motion to vacate the order and dismiss the contempt proceeding, concluding that the Commission lacked authority to exclude third parties; the Alaska Supreme Court reversed and remanded.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The superior court must conduct further proceedings consistent with the opinion, including proceedings on the Commission's petition for enforcement and contempt.

CASES CITED

- Hotel, Motel, Rest., Constr. Camp Emps. & Bartenders Union Local 879 v. Thomas, 551 P.2d 942 (Alaska 1976)
- Stuart v. Whaler's Cove, Inc., 144 P.3d 467 (Alaska 2006)
- Bernard v. Alaska Airlines, Inc., 367 P.3d 1156 (Alaska 2016)
- Healy Lake Vill. v. Mt. McKinley Bank, 322 P.3d 866 (Alaska 2014)
- Heller v. State, Dep't of Revenue, 314 P.3d 69 (Alaska 2013)
- Chugach Elec. Ass'n v. Regulatory Comm'n of Alaska, 49 P.3d 246 (Alaska 2002)
- Alyeska Pipeline Serv. Co. v. State, Dep't of Envtl. Conservation, 145 P.3d 561 (Alaska 2006)
- Alaska Ctr. for the Env't v. State, Office of the Governor, 80 P.3d 231 (Alaska 2003)
- McDaniel v. Cory, 631 P.2d 82 (Alaska 1981)
- Toliver v. Alaska State Comm'n for Human Rights, 279 P.3d 619 (Alaska 2012)
- McLean v. State, 583 P.2d 867 (Alaska 1978)
- Md. Comm'n on Human Relations v. Talbot Cty. Det. Ctr., 803 A.2d 527 (Md. 2002)
- Nassau Health Care Corp. v. N.Y. State Ethics Comm'n, 764 N.Y.S.2d 795 (N.Y. Sup. Ct. 2003)
- Croft v. Pan Alaska Trucking, Inc., 820 P.2d 1064 (Alaska 1991)
- Puller v. Municipality of Anchorage, 574 P.2d 1285 (Alaska 1978)
- Russello v. United States, 464 U.S. 16 (1983)

- United States v. Wong Kim Bo, 472 F.2d 720 (5th Cir. 1972)
- Barnhart v. Peabody Coal Co., 537 U.S. 149 (2003)
- Chevron U.S.A. Inc. v. Echazabal, 536 U.S. 73 (2002)
- Chevron U.S.A. Inc. v. LeResche, 663 P.2d 923 (Alaska 1983)
- Beck v. State, Dep't of Transp. & Pub. Facilities, 837 P.2d 105 (Alaska 1992)
- Arabian Motors Grp. W.L.L. v. Ford Motor Co., 228 F. Supp. 3d 797 (E.D. Mich. 2017)
- Moreno Rios v. United States, 256 F.2d 68 (1st Cir. 1958)
- Bowles v. Baer, 142 F.2d 787 (7th Cir. 1944)
- Atchison, Topeka & Santa Fe Ry. Co. v. Kan. Comm'n on Civil Rights, 529 P.2d 666 (Kan. 1974)
- Barngrover v. Med. Licensure Comm'n of Ala., 852 So. 2d 147 (Ala. Civ. App. 2002)
- Warner v. State, 819 P.2d 28 (Alaska 1991)
- Johnson v. Johnson, 239 P.3d 393 (Alaska 2010)
- Anchorage Police & Fire Ret. Sys. v. Gallion, 65 P.3d 876 (Alaska 2003)
- United States v. Wilson, 421 U.S. 309 (1975)
- Dow Chem. Co. v. United States, 476 U.S. 227 (1986)
- In re Nowell, 237 S.E.2d 246 (N.C. 1977)