

In the Supreme Court of the State of Alaska

Kenneth P. Jacobus, P.C. &)	
Kenneth P. Jacobus,)	
)	Supreme Court No. S-16977
Appellants,)	
v.)	Order
)	
Estate of Eric Wayne Kalenka,)	
)	
Appellee.)	Date of Order: 4/01/2019

Trial Court Case # **3AN-04-00640PR**

The Estate of Eric Wayne Kalenka files a motion for reconsideration of a single-justice order dated 2/25/2019. That order granted in part the Estate’s earlier motion (dated 2/13/2019), which in part sought to limit the scope of the appeal. Appellants (referred to as Jacobus) filed a response indicating there was no objection to the motion to limit scope.

In its motion for reconsideration, the Estate explains that the single justice misunderstood the precise relief the motion to limit scope sought. Upon further review of the motion to limit scope, it is possible the order limiting scope was too broad. It is also possible that it wasn’t. What is clear is that the single justice misunderstood the Estate’s more limited position: as the Estate explains in its memorandum in support of its motion for reconsideration, all the Estate seeks is an order that “[t]here shall be no further briefing or argument filed in [the supreme court] based on the false statement that Uwe Kalenka reported misconduct to the Alaska Bar Association.” [Estate’s Memo in Support, p.1].

The problem with granting this specific request is that this court would appear to be accepting (or perhaps making a factual finding) that the statement made was

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in fact false. This court cannot in the course of motion practice make this determination. If it is a proper issue on appeal, the court can address it in due course.

IT IS ORDERED:

The motion for reconsideration is **GRANTED**. The single-justice order of 2/25/2019 was based on an apparently mistaken understanding of the relief the Estate was seeking. The 2/25/2019 order is **VACATED**. (Jacobus's withdrawal of point on appeal No. 2 is also **VACATED**.)

Because it is now evident that the Estate is actually seeking an order that the court cannot issue—an order that accepts as false a statement that is a point of dispute in the appeal—the Estate's motion to limit the scope of appeal is **DENIED**. The parties are free to make and respond to whatever arguments they feel it is necessary to make and the court will sort it out in due course.

The 2/25/2019 order also denied as moot the Estate's separate motion (dated 2/13/2019) to file as confidential certain ethics referrals to the Alaska Bar Association. Having now vacated the 2/25/2019 order, the court now **GRANTS** the motion to file ethics referrals as confidential.

Entered at the direction of a single justice.

Clerk of the Appellate Courts

M. Johnson, Deputy Clerk

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