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BEFORE THE ANCHORAGE EQUAL RIGHTS COMMISSION

PAMELA BASLER,)
Complainant,)
v.)
DOWNTOWN HOPE CENTER,)
AND BRENA, BELL & CLARKSON, P.C.,)
Respondents.)

AERC Case No. 18-167

RESPONDENT BRENA, BELL & CLARKSON, P.C.'S MOTION
TO DISMISS FOR LACK OF JURISDICTION AND REQUEST FOR WITHDRAWAL
OF COMPLAINT 18-167

Against centuries of jurisprudence, Complaint 18-167 (the "167 Complaint") seeks to censure Brena, Bell, and Clarkson, P.C., ("BBC") for statements it made while representing the Downtown Hope Center ("DHC") during litigation pending before this commission. The Anchorage Equal Rights Commission's (the "Commission") actions improperly and insidiously seek to drive a wedge between DHC and its chosen counsel. The Commission should immediately withdraw the '167 Complaint because it violates the absolute immunity widely afforded to attorney statements pertaining to litigation. As the United States Supreme Court notes, this absolute immunity is "for the public interest, and best calculated to subserve the purposes of justice, **to allow counsel full freedom of speech**, in conducting the causes and advocating and sustaining the rights, of their constituents; and **this freedom of discussion ought not to be impaired by numerous and refined distinctions.**" *Imbler v. Pachtman*, 424

1 U.S. 409, 426 n.23 (1976) (quoting *Hoar v. Wood*, 44 Mass. 193, 197-98 (Mass
2 1841)(emphasis added))).

3 Furthermore, the allegations in the '167 Complaint affirmatively refute any
4 liability under AMC §§ 5.20.020 and 5.20.050. For example, the Commission
5 concedes that "media sources," not Respondents, "published" the statements at issue.
6 Because BBC did not publish **any statement**, much less a written or printed
7 statement, there is no basis to charge BBC under AMC § 5.20.050.

8 Similarly, BBC has no ownership or operating interest in any relevant real
9 estate or public accommodation. The '167 Complaint implicitly accuses BBC of acting
10 as DHC's agent, but the Commission lacks jurisdiction over DHC, a "shelter[] for the
11 homeless" **expressly exempted** from AMC § 5.20.020. See AMC § 5.20.020(A)
12 (exempting "those conditions described in Section 5.25.030(A) as 'lawful practices'");
13 AMC § 5.25.030(A)(7). Likewise, DHC is not a "place of public accommodation" under
14 AMC § 5.20.050. See, e.g., *Buscaglia ex. rel. Roach v. Friendship Mission*, OAH No.
15 06-0933-HRC, ASCHR No. J-14-004 (determining that a non-profit homeless shelter is
16 not a public accommodation subject to the Alaska Human Rights Act). It would be
17 absurd to expressly exempt homeless shelters from anti-discrimination ordinances
18 regarding land use only to hold them liable for the same actions as public
19 accommodations. Because DHC is not subject to the jurisdiction of the Commission
20 under either cited ordinance, its legal counsel BBC must also be beyond the
21 Commission's jurisdiction under any theory of agency. The Commission therefore
22 lacks jurisdiction over BBC and should withdraw the '167 Complaint.
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1 Not only are the ordinances at issue inapplicable, they are unconstitutional.
2 AMC §§ 5.20.020(A)(7) and 5.20.050(A)(2) are unconstitutional content- and
3 viewpoint-based restrictions both facially and as applied to Respondents, violating
4 Respondents' First Amendment rights of free speech and free assembly.

5 For these reasons, Respondent BBC moves the Commission and its executive
6 director to dismiss or withdraw Complaint 18-167 for lack of jurisdiction and the
7 reasons provided below, pursuant to AMC §§ 5.60.020(A)(4) and 5.70.080(C).

8 BACKGROUND

9 The Downtown Hope Center is a religiously affiliated, private non-profit
10 organization that provides numerous services to Anchorage's homeless population,
11 including providing a free shelter for homeless women, many of whom have been
12 battered and abused and some of whom have escaped from human trafficking. See
13 Ex. 1, Affidavit of Sherry Laurie, at ¶ 6; see also Ex. 5 (certifications of non-profit
14 status). In addition to caring for Anchorage's homeless population, DHC maintains
15 and operates a church on its property. *Id.* at ¶ 2. DHC does not provide any
16 commercial services or serve the general public. *Id.* at ¶ 7.

17
18 On February 1, 2018, Samantha Coyle (a/k/a Timothy Coyle), a biological male,
19 filed Complaint 18-041 (the "'041 Complaint") against DHC under AMC § 5.20.050,
20 alleging that DHC refused to provide him services on the basis of his sex or gender
21 identity. In response to the '041 Complaint, DHC retained attorney Kevin G. Clarkson
22 of Brena, Bell & Clarkson, P.C. to represent it before the Commission. See Ex. 2,
23 Answer to the '041 Complaint; Ex. 3, Affidavit of Kevin Clarkson at ¶ 2. Pursuant to his
24

1 representation of DHC, Mr. Clarkson filed a mandatory answer to the '041 Complaint,
2 explaining that in the instances alleged, Coyle was not denied services because of his
3 sex or gender identity, but rather because of his inebriation and because he arrived at
4 a time that DHC was not accepting new admissions into its shelter. Ex. 2 at 3-4; Ex. 1
5 at ¶¶ 8-11. Indeed, DHC supplied Coyle with cab fare to travel to the emergency room
6 to seek medical assistance for injuries he had sustained in a fight that led to his being
7 expelled from the Brother Francis Shelter, another homeless shelter with which DHC
8 has historically worked cooperatively to shelter homeless and battered women. Ex. 2
9 at 4; Ex. 1 at ¶¶ 4, 9. Other than the attorney-client relationship established by Mr.
10 Clarkson's representation, neither he nor any representative of BBC has or has ever
11 had a relationship with DHC. Ex. 3 at ¶¶ 2, 3.

12
13 In its mandatory answer, DHC further expressed that it "does not house
14 biological 'men' in its abused women's shelter . . . because this would traumatize and
15 present unreasonable safety risks for the abused and battered women who . . . have
16 experienced domestic or other forms of violence and abuse," including sexual
17 exploitation and human trafficking. *Id.* at 3. DHC explained that because of its "open
18 design and high ceiling" all of the sheltered women sleep in one large open room;
19 DHC is therefore unable to segregate a portion of its shelter for biological males. *Id.*

20
21 In light of a then impending initiative election, the '041 Complaint and DHC's
22 response attracted media attention in Anchorage, including a reporter for the
23 Anchorage Daily News (the wrote an article regarding the '041 Complaint and
24 underlying allegations; as a part of this article, Ms. Kelly sought comment from DHC's

1 legal counsel, Mr. Clarkson, regarding the pending case. *See id.* In connection with
2 Ms. Kelly's interview, Mr. Clarkson provided oral responses to her questions regarding
3 the '041 Complaint, the underlying facts, and DHC's defense. *See Ex. 3 at ¶ 5.*
4 Mr. Clarkson was speaking to Ms. Kelly solely in his role as DHC's legal representative
5 before the Commission and none of his statements go beyond or expand on DHC's
6 position contained in its mandatory response to the '041 Complaint. *Id.*; *compare* '167
7 Complaint to Ex. 2.

8 Nonetheless, on May 15, 2018, Executive Director Pamela Basler filed
9 Complaint 18-167 against DHC and its legal counsel Brena, Bell & Clarkson, P.C.
10 (collectively, "Respondents") alleging that one or both Respondents violated AMC §
11 5.20.020 and AMC § 5.20.050 when "various online and printed media sources"¹
12 published "statements and information" attributed to Mr. Clarkson, whose "firm
13 represent[s] the Downtown Hope Center in regards to" the '041 Complaint. Neither
14 BBC nor DHC solicited media coverage nor had any role in the publication or content
15 of any news articles regarding the '041 Complaint and related facts. *Ex. 3 at ¶ 4-5.*
16 Moreover, the Commission admits it does not know "whether Kevin Clarkson was
17 speaking at the behest of or on behalf of the Downtown Hope Center when he made
18 these communications."
19

20 The '167 Complaint does not dispute or contain any allegations contradicting
21 that DHC is a non-profit homeless shelter, that Mr. Clarkson was DHC's legal counsel
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23 _____
24 ¹ Although the '167 Complaint alleges multiple "media sources," none are named in the '167
25 Complaint. Only the Anchorage Daily News is identified by implication through the attachment
26 of a Daily News article to the '167 Complaint.

1 before the Commission at the time he spoke to Ms. Kelly and when the '167 Complaint
2 was filed, or that any publication was made by "various online and printed media
3 sources," and not DHC, Mr. Clarkson or BBC. Under the allegations of the '167
4 Complaint and otherwise undisputed facts, the ordinances at issue are inapplicable
5 and the Commission lacks jurisdiction. If the ordinances are applicable to DHC's, Mr.
6 Clarkson's and/or BBC's speech—answering the questions of a news reporter
7 regarding a case pending before the Commission—then the ordinances are
8 unconstitutional burdens upon free speech in violation of the First Amendment.²

9 ARGUMENT

10 I. BBC is entitled to absolute immunity for statements made in furtherance 11 of its representation

12 Forty-eight states, including Alaska, "recognize absolute immunity for lawyers
13 involved in litigation." T. Leigh Anenson, *Absolute Immunity from Civil Liability:
14 Lessons for Litigation Lawyers*, 31 PEPP. L. REV. 915, 917 (2004). This immunity
15 arises from recognition that "the rights of clients should not be imperiled by subjecting
16 their legal advisers to the constant fear" of personal liability. *Youmans v. Smith*, 153
17 N.Y. 214, 220 (1897). This doctrine is "as old as the law." See *Randall v. Bigham*, 74
18 U.S. (7 Wall.) 523, 536 (1868). Nonetheless, the Commission ignores centuries of
19 jurisprudence regarding absolute immunity for attorneys and now seeks to punish BBC
20 for statements contained in pleadings before the Commission and made in furtherance
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22
23 ² BBC specifically denies any wrongdoing alleged in the '167 Complaint and any factual
24 allegations contained therein, except as specifically admitted herein. This denial is not an
25 acceptance of the Commission's jurisdiction.

1 of BBC's representation of DHC before the Commission. See '167 Complaint (stating
2 that BBC "represented [DHC] in regards to [Complaint 18-041]").

3 Alaska's courts, like the courts of nearly every other state, have frequently
4 recognized that statements made by an attorney in the representation of his or her
5 client should not subject the attorney to civil or criminal liability. See *Lawson v.*
6 *Helmer*, 77 P.3d 724, 727 n.11 (Alaska 2003) ("[P]articipants in judicial proceedings
7 are free to express themselves without fear of retaliation." (quoting *Couch v. Schultz*,
8 483 N.W.2d 684, 686 (Mich. App. 1992))); see also *Gilbert v. Sperbeck*, 126 P.3d
9 1057, 1059 (Alaska 2005) ("Testimony in a judicial proceeding, if pertinent to the
10 matter under inquiry, is absolutely privileged, even if given maliciously or with
11 knowledge of its falsity."). Indeed, because the privilege applies "when the defamatory
12 matter has some reference to the subject matter of the proposed or pending litigation,"
13 but "need not be strictly relevant to any issue involved in it,"³ many states have
14 extended this privilege to attorneys' out-of-court statements to the media. See
15 *Johnston v. Cartwright*, 355 F.2d 32 (8th Cir. 1966) (applying Iowa law); *Jones v.*
16 *Clinton*, 974 F. Supp. 712 (E.D. Ark. 1997) (applying Arkansas law); *Dallas Indep. Sch.*
17 *Dist. v. Finalan*, 27 S.W.3d 220 (Tex. Ct. App. 2000); *Prokop v. Cannon*, 583 N.W.2d
18 51 (Neb. Ct. App. 1998). Tellingly, none of the statements the news media attributed to
19 Mr. Clarkson go beyond facts properly pleaded before the Commission.
20

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22 _____
23 ³ Restatement (Second) of Torts § 586, comment c at 248; see also *id.* at 247 ("An attorney at
24 law is absolutely privileged to publish defamatory matter concerning another in
25 communications preliminary to a proposed judicial proceeding, or in the institution of, or during
26 the course and as a part of, a judicial proceeding in which he participates as counsel, if it has
some relation to the proceeding.").

1 The '167 Complaint is therefore invalid because it violates the absolute
2 immunity Alaska (and nearly every state) affords attorney statement pertaining to
3 litigation.

4 **II. The inapplicability of laws under the Commission's authority is**
5 **jurisdictional.**

6 As the Alaska State Commission for Human Rights (ASCHR) determined on
7 nearly identical facts, the Commission has no jurisdiction over DHC, a nonprofit
8 homeless shelter, because it is not a "public accommodation." In *Buscaglia ex. rel.*
9 *Roach v. Friendship Mission*, the ASCHR determined that Friendship Mission, "a non-
10 profit homeless shelter" was "not a place of public accommodation" and therefore "its
11 refusal to allow service animals, however contrary to the underlying purposes of the
12 Alaska Human Rights Act, is not actionable in this forum." OAH No. 06-0933-HRC,
13 ASCHR No. J-14-004, at 1, 14; see also *id.* at 14 (noting that despite the "broad reach"
14 of the Alaska Human Rights Act, its application against a nonprofit homeless shelter
15 would extend the scope of the Human Rights Act "further than its language reasonably
16 will bear").⁴

17 As in *Friendship Mission*, the '167 Complaint is not actionable by the
18 Commission. The Commission's jurisdiction is limited to investigation of Complaints
19 brought under Title 5 of the Anchorage Municipal Code (the "Code"). See AMC §
20 5.10.040. Neither of the two ordinances identified in the Commission is applicable to
21 Respondents as alleged: 1) Neither DHC nor BBC is a "public accommodation" for the
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24 ⁴ For the convenience of the Commission, ASCHR's opinion is attached hereto as Exhibit 4.

1 purposes of providing housing as required to invoke jurisdiction under AMC §
2 5.20.050; 2) DHC is a “shelter for the homeless” and *expressly exempted* from AMC §
3 5.20.020; 3) BBC is not the owner, lessor, manager, or agent of the real property at
4 issue or otherwise subject to AMC § 5.20.020; and (4) BBC is not the owner, lessor,
5 manager, or agent of a “public accommodation” that serves the homeless and is not
6 subject to AMC § 5.20.050 as related to the facts underlying the ‘167 Complaint.
7 Because the ‘167 Complaint fails to provide any basis for the Commission to exercise
8 jurisdiction over the Respondents, and no such basis exists, the Commission must
9 dismiss or withdraw the Complaint pursuant to AMC §§ 5.60.020(A)(4) or AMC
10 5.70.080(C).

11 **III. The Commission lacks jurisdiction because AMC § 5.20.020 and AMC §**
12 **5.20.050 are inapplicable.**

13 **a. DHC is a homeless shelter and expressly exempted from AMC §**
14 **5.20.020.**

15 DHC cannot be liable for a violation of Section 5.20.020 because it *is expressly*
16 *exempted from that ordinance*. The Code expressly exempts “those conditions
17 described in 5.25.030A as ‘lawful practices[.]’” AMC § 5.20.020(A). Under AMC
18 5.25.030(A)(9), “shelters for the homeless” are “lawful practices” expressly exempted
19 from the dictates of AMC 5.20.020. See AMC § 5.25.030(A)(9) (creating an exemption
20 for “the establishment of a . . . shelter . . . for the care and lodging of persons in need
21 of special medical, rehabilitative, social, and psychological support, including, but not
22 limited to . . . *shelters for the homeless*.”).

1 Because DHC is a homeless shelter exempted from the application of AMC §
2 5.20.020, the ordinance is inapplicable and the '167 Complaint against both DHC and
3 BBC "is not actionable" by the Commission. See, e.g., *Friendship Mission*, OAH No.
4 06-0933-HRC, ASCHR No. J-14-004, at 14. Assuming *arguendo* that BBC was acting
5 as DHC's agent, as implied in the '167 Complaint, BBC cannot be liable under AMC §
6 5.20.020 for discussing DHC's "lawful practices" with the media or press. Further,
7 BBC is not otherwise "an owner, lessor, agent, brokerage service, or other person
8 having the right to sell, lease, rent, [or] advertise" the real property at issue, nor does
9 the '167 Complaint provide any other basis for jurisdiction over BBC relevant to AMC §
10 5.20.020. For these reasons, AMC § 5.20.020 is not applicable to DHC or BBC and
11 the Commission lacks jurisdiction over any allegations in the '167 Complaint.

12
13 Moreover, because AMC §§ 5.20.020(A) and 5.25.030(A)(9) expressly exempt
14 "shelters for the homeless" from the housing discrimination law—the law that makes it
15 illegal to discriminate in housing on the basis of sex and gender identity—it is
16 axiomatic that a "shelter for the homeless" cannot be interpreted to be a "public
17 accommodation" under AMC § 5.20.050. Adjudicative bodies are obliged to avoid
18 construing statutes [or ordinances] in a way that leads to patently absurd results or to
19 defeat of the obvious legislative purpose behind the law. See *Sherbahn v. Kerkove*,
20 987 P.2d 195, 201 (Alaska 1999); *Underwater Constr., Inc. v. Shirley*, 884 P.2d 150,
21 155 n. 21 (Alaska 1994); *Sherman v. Holiday Construction Co.*, 435 P.2d 16, 19
22 (Alaska 1967); *Williams v. State*, 853 P.2d 537, 538 (Alaska App. 1993); *Wylie v.*
23 *State*, 797 P.2d 651, 657 (Alaska App. 1990); *Belarde v. Anchorage*, 634 P.2d 567,
24

1 568 (Alaska App. 1981). Here, because AMC §§ 5.20.020(A) and 5.25.030(A)(9)
2 **expressly exempt** a “shelter for the homeless” from the prohibition against
3 discrimination on the basis of sex and gender identity—identifying such discrimination
4 by a shelter as a “lawful practice”—it would be patently absurd for a “shelter for the
5 homeless” to be treated as a “public accommodation” under AMC § 5.20.050 and held
6 liable for this “lawful practice.” It is axiomatic that the reason AMC § 5.20.020
7 incorporates an express exemption for “shelters for the homeless,” whereas its
8 companion ordinance AMC § 5.20.050 does not, is because a “shelter for the
9 homeless” is **not** a public accommodation subject to AMC § 5.20.050. If DHC is not a
10 public accommodation then neither DHC nor BBC can be charged with a violation of
11 AMC § 5.20.050 as asserted in the ‘167 Complaint.
12

13 **IV. The Commission has no jurisdiction over BBC because AMC § 5.20.050 is**
14 **inapplicable to the alleged and undisputed facts.**

15 To be subject to AMC § 5.20.050, an entity must be “the owner, operator, agent
16 or employee of an owner or operator of a public accommodation.” The Code defines a
17 public accommodation as “any **business or professional activity** that is open to,
18 accepts or solicits the patronage of, or caters or offers goods or services to the general
19 public, subject only to the conditions and limitations established by law and applicable
20 alike to all persons.” AMC § 5.20.010 (emphasis added).
21

1 **a. BBC is not “the owner, operator, agent or employee of an owner or**
2 **operator of a public accommodation.”**

3 1. *Because DHC is not a “public accommodation,” BBC cannot be the*
4 *agent of a public accommodation under the alleged facts.*

5 As previously noted in DHC’s motion to dismiss the ‘041 Complaint, DHC is not
6 a public accommodation subject to AMC § 5.20.050. A “public accommodation” is a
7 **“business or professional activity** that is open to, accepts or solicits the patronage
8 of, or caters or offers goods or services **to the general public**, subject only to the
9 conditions and limitations established by law and **applicable alike to all persons.”**
10 AMC § 5.20.010 (emphasis added). However, DHC, a non-profit homeless shelter
11 catering to abused and battered women, is not “a business or professional activity”
12 and does not offer goods or services “to the general public.” Because AMC § 5.20.050
13 is inapplicable to DHC, the Commission lacks jurisdiction over DHC.

14 Municipal ordinances, such as the ones at issue, are subject to principles of
15 statutory construction. See *S. Anchorage Concerned Coalition, Inc. v. Municipality of*
16 *Anchorage*, 172 P.3d 768, 771 (Alaska 2007) (citing *City of Skagway v. Robertson*,
17 143 P.3d 965, 968 (Alaska 2006)); *Marlow v. Municipality of Anchorage*, 889 P.2d 599,
18 602 (Alaska 1995). Under principles of statutory construction, words “are to be
19 construed according to their common usage” unless they “have acquired a peculiar
20 meaning, by virtue of statutory definition or judicial construction.” *Muller v. BP Expl.*
21 *(Alaska), Inc.*, 923 P.2d 783, 787 (Alaska 1996).

22 As numerous courts and relevant adjudicative bodies, including the ASCHR,
23 have found, neither “business” nor “professional activity” should be read so broadly as
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1 to include operating a non-profit homeless shelter that caters to battered and abused
2 women. See *Friendship Mission*, ASCHR No. J-14-004 at 14 (finding that “volunteer-
3 run non-profit organization receiving no governmental funds and operating no
4 commercial activities or facilities” is not a “business establishment or ‘functional
5 equivalent’ of one.”); *City of Kenai v. Friends of the Recreation Ctr., Inc.*, 129 P.3d
6 452, 459 (Alaska 1996) (noting that “services of a professional nature” are “commonly
7 understood to be services that are rendered by a member of the learned professions
8 or that require a high level of training and proficiency” and concluding that the
9 operation and management of a facility is not a professional service); see also *Curran*
10 *v. Mt. Diablo Council of the Boy Scouts*, 952 P.2d 218, 220 (Cal. 1998) (finding that “a
11 charitable, expressive, and social organization . . . whose formation and activities are
12 unrelated to the promotion or advancement of the economic or business interests of its
13 members” is not a public accommodation).⁵ Incidental sales are not sufficient to
14 transform an entity into a public accommodation. See *Curran*, 952 P.2d at 238-39
15 (incidental sales “distinct from the Scouts’ core functions” do not create a public
16 accommodation); *Cal. Lutheran High Sch. Ass’n*, 88 Cal. Rptr. 3d 475, 481-82 (Cal.
17 App. 4th Dist. 2009) (private school’s sale of event tickets, yearbooks, and
18 memorabilia did not transform it into a public accommodation or business enterprise).

19
20 Similarly, as the **Anchorage Municipal Code itself acknowledges**, DHC does
21 not offer shelter services to “the general public,” but to “persons in need of special
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24 ⁵ The ASHRC found California authority to be particularly persuasive because “both states’
25 legislatures chose to situate public accommodation laws within the context of ‘business
26 establishments.’” *Friendship Mission*, ASCHR J-14-004 at 13.

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1 medical, rehabilitative, social, or psychological support.” AMC § 5.25.030(A)(9)
2 (exempting “shelters for the homeless” from land use regulations); AMC § 5.20.020(A)
3 (exempting “shelters for the homeless” from the housing discrimination law); *see also*
4 *Seabourn v. Coronado Area Council, Boy Scouts of Am.*, 891 P.2d 385, 392, 403
5 (Kan. 1995) (noting that “public accommodations” are places “to which the public is
6 invited indiscriminately.”); *Quinnipiac Council, Boy Scouts of Am. v. Comm’n for*
7 *Human Rights & Opportunities*, 528 A.2d 352, 359 (Conn. 1987) (defining “general
8 public” as “the public at large.”). This is particularly so here, where DHC does not
9 cater to the general homeless population, but to homeless women who typically have
10 a history of being the victims of violence, abuse or human trafficking. Indeed, DHC
11 began offering shelter services in conjunction with the Brother Francis Shelter in
12 recognition of the benefits of segregating abused and battered women from the
13 general homeless population. Ex. 1 at ¶ 4. Because DHC is not a public
14 accommodation, no agency theory against BBC could fall under the confines of AMC §
15 5.20.050, and the Commission therefore lacks jurisdiction.

17 2. *Brena, Bell & Clarkson is not a “public accommodation” in any sense*
18 *relative to the alleged facts.*

19 As noted, the ‘167 Complaint implicitly accuses BBC as being an agent of DHC.
20 Brena, Bell, and Clarkson is not an owner, operator, or employee of DHC, and the ‘167
21 Complaint does not allege such (nor does it allege any facts that would support such
22 an allegation). Because BBC is not an owner, operator, employee, or agent of a public
23 accommodation in any sense relevant to the ‘041 or ‘167 Complaints, the Commission
24

1 lacks jurisdiction over this matter and should withdraw its complaint as to Respondent
2 BBC.

3 **b. The Commission has not alleged a violation of the speech restrictions
4 of AMC § 5.20.050.**

5 The Commission further lacks jurisdiction because it has not identified any
6 actions by Respondents that support a violation of the speech restrictions of AMC §
7 5.20.050 as required by the Code. Under AMC § 5.20.050, it is unlawful for the
8 "owner, operator, agent, or employee of an owner or operator of a public
9 accommodation" to publish, circulate, issue, display, post, or mail a written or printed
10 communication, notice, or advertisement . . .". AMC § 5.20.050(A)(2).

11 1. *Complaint 18-167 does not allege BBC "published" any statements.*

12 The '167 Complaint does not allege that BBC "publish[ed], circulate[d], issue[d],
13 post[ed], or mail[ed] a written or printed communication," but rather that "*various online*
14 *and printed media sources*" published "statements and information" that were
15 attributed to Mr. Clarkson. See Compl. 18-167. These "media sources," not
16 Respondents, "published" the information at issue. Neither Mr. Clarkson nor DHC
17 solicited interviews, nor did they have any involvement or influence in the media's (1)
18 decision to publish any statements; or (2) determination of how to formulate the
19 reporting of the statements. Rather, the media sources sought out Mr. Clarkson as
20 DHC's legal representative and then made their own decisions about what to write,
21 what to publish, what to quote, and how to quote it. Ex. 3 at ¶ 5.

22 Even if Respondents had sought media coverage regarding the '041
23 Complaint, which they did not, this would not be a violation of AMC § 5.20.050 absent
24

1 an agency relationship between the “media sources” and Respondents, and the
2 Commission’s apparent decision not to name ADN as a respondent implicitly refutes
3 such a relationship. Merely answering questions from a reporter does not constitute
4 “caus[ing]” a “communication, sign, notice, statement or advertisement” to be “made or
5 displayed, printed or published.” AMC § 5.20.020(A)(7). And, AMC § 5.20.050(A)(2)
6 does not even use the phrase “**cause to be made or displayed, printed or published,**”
7 unlike AMC § 5.20.020 which makes it a violation for to “cause to be made or
8 displayed, printed or published . . .”. Compare AMC § 5.20.050(A)(2) with AMC
9 § 5.20.020(A)(7).

10
11 *2. Complaint 18-167 does not identify an actionable “written or printed”
statement.*

12 Further, the ‘167 Complaint fails to identify a “written or printed communication,
13 notice, or advertisement” made by Respondents that otherwise meets the elements of
14 AMC § 5.20.050(A)(2) and there is none. Rather, the ‘167 Complaint only identifies
15 “statements and information” attributed to Mr. Clarkson by the press.⁶ To the extent
16 that Mr. Clarkson was the source of these “statements and information,” it was only
17 through 1) DHC’s mandatory answer to the ‘041 Complaint; 2) oral statements Mr.
18 Clarkson made in response to unsolicited media inquiries; and 3) the presses own
19 independent decisions about what to write, print and publish. To the extent DHC’s
20 response to the ‘041 Complaint is the source of the media’s information, the ‘167
21 Complaint contradicts the strong policy of Alaska not to impose liability on attorneys for
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24 ⁶ Compare with 5.20.050(3) (indicating that a “written or oral” inquiry into protected status is a
violation).

1 statements made in legal filings. See § I, *supra*. To the extent that the “statements
2 and information” came from Mr. Clarkson’s oral responses to media or press inquiries,
3 Respondents made no “written or printed statement,” much less “published” such
4 statements.

5 Accordingly, the facts alleged in the ‘167 Complaint affirmatively refute that
6 there is any violation of AMC § 5.20.050 and affirm that the Commission lacks
7 jurisdiction over this matter.

8 **IV. The ordinances at issue are also unconstitutional content and viewpoint-**
9 **based restrictions on expression on their face and as applied.**

10 **a. The ordinances are impermissible content-based restrictions on speech.**

11 The First Amendment, applicable to the States through the Fourteenth
12 Amendment, prohibits the enactment of laws “abridging the freedom of speech.” U.S.
13 CONST., amend. I. Under that Clause, a government, including a municipal government
14 vested with state authority, “has no power to restrict expression because of its
15 message, its ideas, its subject matter, or its content.” *Police Dept. of Chicago v.*
16 *Mosley*, 408 U. S. 92, 95 (1972). The Supreme Court reaffirmed this term that
17 content-based laws—those that target speech based on its communicative content—
18 are presumptively unconstitutional and may be justified only if the government proves
19 that they are narrowly tailored to serve compelling state interests. *Nat’l Inst. of Fam. &*
20 *Life Advocates v. Becerra*, No. 16-1140, at 6 (U.S. June 26, 2018); *see also R. A. V. v.*
21 *St. Paul*, 505 U. S. 377, 395 (1992); *Simon & Schuster, Inc. v. Members of N. Y. State*
22 *Crime Victims Bd.*, 502 U. S. 105, 115, 118 (1991).

1 The Commission has no compelling governmental interest in censoring speech
2 to the press on matters of public importance. See *N.Y. Times v. Sullivan*, 376 U.S.
3 254, 270-71 (U.S. 1964). This is especially so here, where the Commission's
4 complaint goes against Alaska's (and nearly every other state's) policy to absolutely
5 privilege statements made in connection with legal proceedings. Assuming that BBC
6 actually published the pertinent speech—which the '167 Complaint affirmatively
7 refutes—the speech is entirely truthful and accurate. DHC, which is not a place of
8 public accommodation, does not admit men. The ordinances at issue are therefore
9 invalid and unconstitutional, both on their face and especially as applied here.

10
11 **b. Viewpoint-based restrictions, such as those at issue, are always
unconstitutional.**

12 The ordinances at issue not only regulate speech on the basis of its content
13 but also on the basis of viewpoint. Viewpoint-based restrictions, as here, are uniformly
14 impermissible and *always unconstitutional*. "It is axiomatic that the government may
15 not regulate speech based on its substantive content or the message it conveys."
16 *Rosenberger v. Rector and Visitors of University of Virginia*, 515 U.S. 819, 828
17 (1995) (emphasis supplied) (citing *Police Department of Chicago v. Mosley*, 408 U.S.
18 92, 96 (1972)). "[I]n the realm of private speech or expression, government regulation
19 may not" target the particular views of a speaker regarding a given subject. *Id.* at 828.
20 Bluntly put, "Viewpoint discrimination is . . . an egregious form of content
21 discrimination. The government must abstain from regulating speech when the
22 specific motivating ideology or the opinion or perspective of the speaker is the
23

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1 rationale for the restriction.” *Id.* (citing to *Perry Educ. Ass’n v. Perry Local Educators’*
2 *Ass’n*, 460 U.S. 37, 46 (1983)(emphasis added).

3 The present restrictions are undoubtedly viewpoint-based. The ordinances and
4 their general applicability are a perfectly permissible subject matter or topic of
5 discussion. Likewise, the subject of men and women staying overnight in homeless
6 shelters, together in close proximity, is a perfectly permissible speech topic. But—
7 under the ordinance—when the speaker expresses the view or opinion that DHC
8 policy excludes men from its shelter for homeless, abused and/or
9 battered females, these words amount to a violation of the law. Such a viewpoint-
10 based restriction on speech is constitutionally impermissible. *Rosenberger*, 515
11 U.S. at 829.

12 It is quite irrelevant that some in the community may find the proscribed
13 expression upsetting or disturbing, or that it invites people to anger. In the oft quoted
14 words of the Supreme Court,
15

16 [a] function of free speech under our system of government is to invite
17 dispute. It may indeed best serve its high purpose when it induces a
18 condition of unrest, creates dissatisfaction with conditions as they are, or
19 even stirs people to anger. Speech is often provocative and challenging. It
20 may strike at prejudices and preconceptions and have profound unsettling
21 effects as it presses for acceptance of an idea. That is why freedom of
speech, though not absolute . . . is nevertheless protected against
censorship or punishment, unless shown likely to produce a clear and
present danger of a serious substantive evil that arises far above public
inconvenience, annoyance, or unrest.

22 *Terminiello v. City of Chicago*, 337 U.S. 1, 4 (1949) (ellipsis in original). Here the city
23 has made a crime out of protected speech.

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1 The Anchorage speech restriction also falls afoul of a separate and additional
2 category of content-based regulations of speech: laws that were adopted by the
3 government "because of disagreement with the message [the speech] conveys," *Ward*
4 *v. Rock Against Racism*, 491 U. S. 781, 791 (1989) (emphasis supplied); see also,
5 generally, *Town of Gilbert v. Reed*, No. 13-502, 576 U.S. _____ (2015) (striking down
6 law disfavoring signs for nonprofit events). The government may not, as here, favor
7 particular messages or words over others and to do so is invariably
8 unconstitutional. See, e.g., *R.A.V.*, 505 U.S. at 431 (Stevens, J., concurring in
9 judgment) ("[A] regulation that on its face regulates speech by subject matter may in
10 some instances effectively suppress particular viewpoints...") (citing *Consol. Edison*
11 *Co. of N.Y. v. Pub. Serv. Comm'n of N.Y.*, 447 U.S. 530, 546-47 (1980) (Stevens, J.,
12 concurring in judgment). Government action taken because of disagreement with a
13 message—as in the present case—is the most egregious type of viewpoint and
14 content-based discrimination. *Rosenberger*, 515 U.S. at 829. It's not the government's
15 business to suppress "dangerous ideas." *Nat'l Endowment for the Arts v. Finley*, 524
16 U.S. 569, 587 (1998) (quoting *Regan v. Taxation With Representation of Wash.*, 461
17 U.S. 540, 550 (1983). Efforts to do so never withstand constitutional scrutiny.

19 CONCLUSION

20 For the foregoing reasons, the Commission should find it had no jurisdiction to
21 issue Complaint 18-167 or to enforce its unconstitutional dictates and it must withdraw
22 or dismiss the Complaint pursuant to AMC § 5.60.020(4) and/or AMC § 5.60.020(7).
23
24

Respectfully submitted this 5th day of July, 2018.



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1 **CERTIFICATE OF SERVICE**

2 I certify that a true copy of the foregoing has been
3 served via email and hand delivery where noted on
4 July 5, 2018, to the following:

5 Pamela T. Basler, Esq. (hand delivered)
6 Executive Director
7 Anchorage Equal Rights Commission
8 632 W. Sixth Ave., Suite 110
9 Anchorage, Alaska 99501
10 [REDACTED]

11 David A. Cortman
12 Jonathan A. Scruggs
13 Ryan J. Tucker
14 Alliance Defending Freedom
15 15100 N. 90th Street
16 Scottsdale, Arizona 85260
17 [REDACTED]

18 Sonja Redmond
19 Law Office of Sonja Redmond
20 P.O. Box 3529
21 Soldotna, Alaska 99669
22 [REDACTED]

23 By _____
24 Michelle Martin

Kevin G. Clarkson, Esq.
Brena, Bell & Clarkson, P.C.
810 N Street, Suite 100
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Telephone: (907) 258-2000
E-Mail: [REDACTED]

Attorneys for Respondent

BEFORE THE ANCHORAGE EQUAL RIGHTS COMMISSION

SAMANTHA AMANDA COYLE,)
)
)
Complainant,)
)
v.)
)
DOWNTOWN HOPE CENTER,)
)
Respondent.)

AERC Case No. 18-041

AFFIDAVIT OF SHERRIE LAURIE

STATE OF ALASKA)
) ss.
THIRD JUDICIAL DISTRICT)

Sherrie Laurie, being first duly sworn upon her oath, deposes and states:

1. I am the Executive Director of the Downtown Hope Center ("DHC").
2. Downtown Hope Center is a religiously affiliated, private nonprofit IRC § 501(c)(3) organization. A true and correct copy of DHC's 501(c)(3) certificate from the IRS is attached to DHC's Motion to Dismiss as Exhibit 1. A true and correct copy of DHC's Nonprofit Corporation Biennial Report is attached to DHC's Motion to Dismiss as Exhibit 2. DHC currently provides: (1) food and showers to homeless individuals in the

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downtown Anchorage, Alaska, area; (2) shelter to homeless women in the downtown Anchorage, Alaska, area, many of whom are abused and battered; and (3) culinary and bakery job skill training and life-skill development. In addition, DHC has a church on its premises that offers religious services.

3. DHC was formed over thirty years ago in a garage and originally operated exclusively as “The Downtown Soup Kitchen” (“DSK”). The DSK was prompted by the vision of a few Anchorage church leaders who wanted to share the love of God with Anchorage’s homeless. Operating out of a little red house on Fourth Avenue in downtown Anchorage, the DSK provided nearly 300 free cups of soup each day to homeless and low-income families; in addition, it offered free showers and free clothing handouts from a yellow A-frame located next door. In 2013, DSK moved into its new facility on Third Avenue in downtown Anchorage, where it operates as DHC.

4. On December 1, 2015, DHC’s soup kitchen expanded its mission to include assisting the Brother Francis Shelter (“BFS”), a program of Catholic Social Services that provides free emergency shelter for men and women in Anchorage who are without a home. BFS often found itself being asked to shelter more homeless individuals than its facilities could accommodate. BFS and DHC agreed that DHC would assist BFS as an emergency cold weather overflow shelter by taking in and providing safe and sober shelter to BFS’s overflow of homeless women who presented themselves at BFS and who otherwise qualified for shelter at BFS. Many of the homeless women to whom DHC provides overflow shelter have been abused or battered on the streets, and some have escaped the horrendous conditions of human trafficking. Originally, BFS would check individuals in and then DHC would transport the

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overflow of women from BFS to DHC. Eventually, however, both BFS and DHC recognized the benefit to having the guests directly check in at DHC. Thus, DHC began taking into its shelter both an overflow of homeless women from BFS, as well as women who appear at DHC directly. DHC has the ability to provide overnight shelter to as many as fifty women at any given time.

5. At this time, DHC continues to operate a soup kitchen to feed homeless and needy individuals in Anchorage. DHC's soup kitchen is open to any homeless or needy individual. DHC also maintains bathrooms and showers that it makes available to all homeless and needy individuals.

6. DHC operates an overnight shelter for homeless women off the streets of Anchorage. DHC has one large open room in which it provides dinner to the homeless women. After dinner, the homeless women who have signed up and who qualify—*e.g.*, no one is allowed to stay if they are inebriated or high or if they present a safety threat to others—are permitted to stay for the night, based upon space availability and priority at sign-up time. Those who stay for the night are given mats, along with a bag of blankets and a sheet so that they can sleep on the floor in the one large open room. Showers and laundry are also provided to those who have signed up and qualified to stay the night, and breakfast is provided in the morning to those who stayed the previous night. The shelter is limited to women, because of DHC's concern for the physical, psychological, and emotional safety of the women. Many of the homeless women that DHC shelters serve have been abused or battered by men on the streets of Anchorage and some have escaped the horrendous conditions of human trafficking.

7. DHC women's shelter receives no government funds, but instead receives private donations from individuals, businesses, foundations, and churches. DHC women's shelter has received at least one donation from the Providence Alaska Foundation ("PAF"). The PAF is a nonprofit organization that helps fund organizations that offer medical and compassionate care to the community. The DHC women's shelter operates exclusively on a charitable basis for nonprofit charitable purposes; it does not conduct commercial transactions or other forms of "for profit" activities, and it does not cater to, or offer goods or services to, "the general public." DHC's "Feed Me Hope Bakery" sells baked items that the homeless women working in its bakery job skill training program make, but it applies all bakery proceeds to cover costs of the bakery and shelter. DHC exists only to serve the homeless (men and women) of Anchorage, and it shelters only the homeless women of Anchorage, many of whom are abused and battered. DHC does not provide food to the general public—rather it seeks to serve the homeless in Anchorage. DHC admits only homeless women to its shelter.

8. On January 26, 2018, at about 6:00 p.m., Samantha Coyle ("Coyle") was dropped at the DHC women's shelter by officers of the Anchorage Police Department. I was called to the dining hall, which also serves as the sleeping area for our homeless, abused women's shelter, to discern the course of action to be taken regarding Coyle. Coyle smelled strongly of alcohol, and was obviously inebriated, and had an open wound above the eye. Coyle acted very agitated and was aggressive in body language towards DHC's staff.

9. DHC women's shelter is a sober-and-clean shelter. No one is allowed to stay in the shelter if they are inebriated or high. I informed Coyle that DHC did not accept individuals who are inebriated or under the influence of alcohol or drugs, and that Coyle could not stay at DHC for that reason. I recommended that Coyle pursue medical care for the wound. After

further conversation, I learned that Coyle had been involved in a fight at the BFS and had been removed from BFS by the Anchorage Police Department. Investigating further, I called BFS and inquired regarding Coyle. A BFS representative informed me that Coyle had initiated a very disruptive fight at BFS, the police had been called to handle the situation, and that Coyle had been banned from BFS property until July 4, 2018.

10. I once again recommended that Coyle go to the hospital in order to receive medical care for the wound. After much resistance, Coyle agreed to go to the hospital for medical care, and I saw to it that DHC paid for a cab to take Coyle to the emergency room. DHC did not see Coyle again that evening.

11. Around 2:00 p.m. the next day, January 27, 2018 (a Saturday), Coyle showed up at DHC again and knocked on the facility door wanting to be admitted. On Saturdays, shelter guests are monitored by volunteers. DHC's Saturday shelter policy is that no one is allowed in the building to participate in the day shelter unless they stayed in the shelter the night before, having filled out the necessary paperwork and gone through a bag check. DHC does not have its volunteers handle bag checks. Saturday check-in time for new guests is 5:45 p.m. Coyle was not admitted at 2:00 p.m. due to not having checked in the previous evening. Coyle was asked to leave the property because DHC, as a courtesy to neighbors, does not allow loitering. Coyle left DHC and never returned.

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DATED this 23rd day of April, 2018.

Sherrie Laurie

Sherrie Laurie

SUBSCRIBED AND SWORN TO before me this 23rd day of April, 2018.



Justin Meek

Notary Public in and for ~~Alaska~~ California
My Commission Expires: 10-10-21

Certificate of Service

The undersigned hereby certifies that a copy of the foregoing document was mailed and e-mailed to the following attorneys/parties of record this 23rd day of April, 2018:

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Kevin G. Clarkson

March 6, 2018

VIA E-MAIL

Mr. Andrew B. Sundboom, Investigator
Anchorage Equal Rights Commission
632 West Sixth Avenue, Suite 110
Anchorage, Alaska 99519-6650

Re: AERC Complaint No. 18-041, Downtown Hope Center/Timothy or Samantha Coyle

Gentlemen,

We represent the Downtown Hope Center, which has operated in the past as the Downtown Soup Kitchen (hereafter "Hope Center"). Hope Center has forwarded to us your February 2, 2018, letter and the Complaint by Timothy Paul/Samantha Coyle ("Coyle") that is attached thereto. Hope Center did not violate AMC 5.20.050 with respect to Coyle. First, Hope Center is not a public accommodation within the meaning of AMC 5.20.010 and AMC 5.20.050. Second, Hope Center did not discriminate against Coyle on the basis of gender identity. Hope Center has permitted Coyle to receive food service and lavatory and shower access in the past without incident. However, on two occasions Coyle, who has a criminal record involving violence and the use of a deadly weapon, was turned away by Hope Center. Coyle was turned away initially because he presented himself to Hope Center under the influence of alcohol after having been ejected and banned from the Brother Francis Shelter for fighting and being under the influence of alcohol. Next, Coyle was turned away when he returned the following day at a time when Hope Center was not open for receiving homeless individuals for shelter. On neither occasion was Coyle turned away because of his gender identity. Third, Hope Center has First Amendment rights to religious liberty and association that permit it to operate exclusively so as to provide charitable shelter to abused and battered women, and to exclude biological males from its abused and battered women's shelter.

Hope Center/History and Operation. Hope Center is a religiously affiliated, private non-profit IRC § 501(c)(3) organization that provides (1) food and showers to homeless individuals in the downtown Anchorage, Alaska, area; and (2) shelter to homeless abused and battered women in the downtown Anchorage, Alaska, area. In addition to providing charitable food and shelter to homeless individuals, Hope Center maintains and operates a church on its property. Hope Center

was originally formed over thirty years ago in a garage as “The Downtown Soup Kitchen.” The Soup Kitchen was prompted by the vision of a few Anchorage church leaders who wanted to share the love of God with Anchorage’s homeless. Operating out of a little red house on Fourth Avenue in downtown Anchorage, the Soup Kitchen provided nearly 300 free cups of soup each day to homeless and low-income families; in addition, it offered free showers and clothing handouts from a yellow A-frame located next door. In 2012, the organization moved into its new facility on Third Avenue in downtown Anchorage.

The Soup Kitchen later expanded its mission to include assisting the Brother Francis Shelter (“BFS”), a program of Catholic Social Services that provides free emergency shelter for men and women in Anchorage who are without a home. Essentially, BFS often found itself being asked to shelter more homeless individuals than its facilities would accommodate and it also found itself facing the challenge of trying to provide a safe shelter environment for homeless women who had been abused or battered by men. Therefore, BFS and Hope Center agreed that Hope Center would assist BFS by taking in and providing safe and sober shelter to BFS’s overflow of homeless abused and battered women who presented themselves at BFS, and who otherwise qualified for shelter at BFS. Originally, BFS would check individuals in and then Hope Center would transport the overflow of women from BFS to Hope Center. Eventually, however, the Anchorage homeless community learned of Hope Center’s “shelter” and began appearing at Hope Center directly. Thus, Hope Center now takes into its shelter both an overflow of abused and battered women from BFS, as well as some abused and battered women who appear at Hope Center directly. Hope Center has the ability to provide shelter to as many as fifty abused and battered women at any given time.

Over time, funded primarily by individual donors and churches, Hope Center was able to customize its facility to allow it to better meet the needs of those abused and battered women it seeks to serve. Hope Center has one large open room in which it provides dinner to abused and battered women. Following dinner, the abused and battered women who have signed up and who qualify—*e.g.*, no one is allowed to stay if they are inebriated or high or if they present a safety threat to others—are permitted to stay for the night, based upon space availability and priority of sign-up time. Those who stay for the night are given mats, along with a bag of blankets and a sheet so that they can sleep on the floor in the one large open room. Showers and laundry are also provided to those who have signed up and qualified to stay the night, and breakfast is provided in the morning to those who stayed the previous night.

In addition to Hope Center’s regular services, the organization expanded its programs to create opportunities for its guests to gain experience and marketable job skills. Feed Me Hope Bakery opened its doors in March 2016 to abused and battered women staying in the emergency cold-weather shelter. In the Fall of 2016, Hope Center also launched Feed Me Hope Culinary School—a vocational training program for homeless and formerly incarcerated individuals, both men and women. Already, Hope Center has seen remarkable transformations take place as hope has been restored to students of the bakery and culinary schools. Hope Center’s future plans include barista training, a bakery store front, and a food truck for students to work.

Hope Center is Not a Public Accommodation. The provisions of AMC 5.20.050 only apply to “public accommodations.” Under AMC 5.20.010 a “Public Accommodation” is defined as “any business or professional activity that is open to, accepts or solicits the patronage of, or caters or offers goods or services to the general public. . . .” Hope Center is not a “business” or a “professional activity.” Hope Center is a non-profit religious-affiliated charity that operates to provide (1) free food and showers to homeless individuals; (2) free shelter, showers, laundry, breakfast and potential bakery training to homeless abused and battered women; and (3) free culinary training to homeless and/or economically distressed and unemployed individuals.

Moreover, Hope Center is not “open to” “the general public,” and it does not “accept[] or solicit[]” “the patronage of;” nor does it “cater[] or offer goods or services to” “the general public.” Again, Hope Center operates as a religious charity to feed, shelter, and train a select group of qualifying individuals: (1) homeless—the homeless are provided free food and showers and potential training in the culinary school; (2) homeless abused and battered women—homeless abused and battered women are provided shelter overnight along with laundry, showers, and breakfast and also potential training in the bakery and/or the culinary schools; and (3) financially needy/impoverished individuals—these individuals are provided food at lunch time (soup), access to showers and potential training in the culinary school. Members of the general public are not served, catered to, or sheltered at the Hope Center. If non-homeless, economically self-sustaining individuals appear at the Hope Center, they are turned away because they do not qualify as either “needy” or “homeless.”

The Hope Center does not house biological “men” in its abused women’s shelter, *i.e.*, it does not shelter homeless men in its overnight shelter because this would traumatize and present unreasonable safety risks for the abused and battered women who are admitted for overnight shelter. Many of the abused and battered women who stay at the Hope Center have come out of or have been referred by the AWAIC Shelter because they have experienced domestic or other forms of violence and abuse. Also, many of the women who the Hope Center shelters have escaped the horrendous conditions of sexual exploitation and human trafficking. It would be wholly irresponsible and potentially dangerous for Hope Center to house biological males in its shelter overnight with the population of abused and battered women who stay at the shelter. Hope Center has no ability to provide safety or security to the women in the shelter during the night hours. And, because of the building’s open design and high ceiling, it is not possible for Hope Center to segregate a portion of the shelter for biological males. In any event, housing biological males in close proximity to abused and battered women, some of whom have escaped from human trafficking, would be cruel, possibly negligent, and virtually criminal. Also, Hope Center would be opening itself up to substantial civil liability if a biological male were to harm, rape, or, God forbid, kill one of the abused or battered women in the shelter.

Hope Center Did Not Discriminate Against Coyle on the Basis of Gender Identity. Hope Center regularly feeds Coyle and allows him access to showers during daytime hours. Hope

Mr. Andrew B. Sundboom
March 6, 2018
Page 4 of 4

Center turned Coyle away initially because he presented himself to the abused women's shelter one evening under the influence of alcohol—Hope Center is a clean-and-sober shelter and facility and never admits anyone who is under the influence of drugs or alcohol. Coyle smelled strongly of alcohol when he appeared at the Hope Center and he had apparently been expelled and banned from BFS due to his behavior—fighting and drunkenness. Hope Center explained to Coyle that he would not be admitted to its facility due to his inebriation and Hope Center gave him cab fare to travel to the Hospital Emergency Room for treatment of the wounds he incurred in his earlier fight. When Coyle appeared at Hope Center the following day, a Saturday, at about 2 p.m. Hope Center turned him away because it was not open to receive individuals at that time: Hope Center serves lunch (soup) at mid-day on weekdays and then begins the entry process for abused and battered women at 5:45 p.m. On Saturdays, Hope Center does not serve lunch and only opens to admit qualifying abused and battered women to the shelter at 5:45 p.m. Qualifying women are admitted to Hope Center following 5:45 p.m., after they fill out the necessary paperwork and undergo a bag check (*i.e.*, drugs, alcohol, or weapons are not permitted inside the shelter facility). Coyle was informed that Hope Center did not begin admittance to the shelter until 5:45 p.m. Coyle left and did not return.

Hope Center Has First Amendment Religious Liberty and Association Rights to Operate as It Does. Because Hope Center is a religiously affiliated organization it has First Amendment rights to religious liberty and association. These constitutional rights exempt Hope Center from being required to shelter a biological male in its shelter for abused and battered women.

CONCLUSION

The March 15, 2018, fact-finding conference should be cancelled and Coyle's Complaint should be dismissed for the reasons stated above. Hope Center is not a public accommodation and it is not covered by AMC 5.20.050. Moreover, Hope Center did not discriminate against Coyle on the basis of gender identity. Hope Center has constitutional rights that exempt it from being required to house a biological male in its abused and battered women's shelter. Hope Center will not be attending the March 15, 2018, fact-finding conference. In the event that AERC determines to proceed with this matter, Hope Center intends to file a Motion to Dismiss on the basis that Hope Center is not a public accommodation.

Sincerely,

BRENA, BELL & CLARKSON, P.C.


Kevin G. Clarkson

KGC:alm

BEFORE THE ANCHORAGE EQUAL RIGHTS COMMISSION

PAMELA BASLER,)
Complainant,)
v.)
DOWNTOWN HOPE CENTER,)
AND BRENA, BELL & CLARKSON, P.C.,)
Respondents.)

AERC Case No. 18-167

AFFIDAVIT OF KEVIN CLARKSON

STATE OF ALASKA)
THIRD JUDICIAL DISTRICT) ss.

Kevin G. Clarkson, being first duly sworn upon his oath, deposes and states:

1. I am a senior attorney at the law firm of Brena, Bell & Clarkson, P.C. and a member in good standing of the Alaska Bar Association. In connection with my practice, I have substantial constitutional litigation experience, including First Amendment litigation, and I have testified before the Alaska State Legislature regarding constitutional law issues.

2. The Downtown Hope Center ("the Hope Center") retained me as its legal counsel following the Anchorage Equal Rights Commission's ("AERC") service of Complaint 18-041 alleging that the Hope Center violated certain provisions of the Anchorage Municipal Code. I entered an appearance for Hope Center with the AERC in connection with Complaint 18-041 and was the attorney of record for the Hope Center in connection with that complaint and related legal proceedings. I similarly later

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1 entered an appearance for Hope Center with the AERC in connection with Complaint
2 18-167 and related proceedings. Alliance Defending Freedom later substituted as
3 counsel for Hope Center in both cases after the initiation of Case No. 18-167.

4 3. Other than the attorney-client relationship described above, neither I nor
5 any attorney or employee of Brena, Bell & Clarkson, P.C. have any other relationship
6 with the Hope Center. Neither I nor any attorney or employee of Brena, Bell &
7 Clarkson, P.C. have any ownership or other proprietary interest in the Hope Center,
8 any of its facilities, or its real property. Other than the limited legal representation
9 identified herein, neither I nor any attorney or employee of Brena, Bell & Clarkson,
10 P.C. perform or have ever performed any other work or other service, legal or
11 otherwise, for Hope Center. Neither I nor any attorney or employee of Brena, Bell &
12 Clarkson, P.C. have or ever have had authority to operate, or to make policy decisions
13 regarding, any aspect of Hope Center. Neither I nor any attorney or employee of
14 Brena, Bell & Clarkson, P.C. have or have ever had any right or responsibility to make
15 business decisions for the Hope Center or to otherwise act as an agent on its behalf
16 with respect to its non-profit business operations or activities.

17 4. Neither I nor any attorney or employee of Brena, Bell & Clarkson, P.C.
18 solicited any media publication or coverage regarding Complaint 18-041, Complaint
19 18-167, or any facts underlying or related to those complaints. I am not aware of any
20 owner, operator, agent, or employee of the Hope Center having solicited press or
21 media attention.
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1 5. In response to media requests, and solely in my capacity as the attorney
2 for Hope Center in Case No. 18-041, I answered questions that were posed to me by
3 reporters regarding that case, the underlying facts of that case, and the Hope Center's
4 defense in that case against the AERC's allegations. I acted solely in my role as the
5 Hope Center's legal counsel when responding to press inquiries. Neither I nor any
6 attorney or employee of Brena, Bell & Clarkson, P.C. provided any written or printed
7 statement to the media or press. Other than communications with and pleadings filed
8 in the AERC, neither I nor any attorney or employee of Brena, Bell & Clarkson, P.C.
9 provided any written or printed statement regarding Hope Center in any other context.
10 No attorney or employee at Brena, Bell & Clarkson, myself included, had any role or
11 influence in the decision of any media source to publish or to formulate the content of
12 articles regarding any matters involving the AERC and the Hope Center.

14 FURTHER AFFIANT SAYETH NOT.

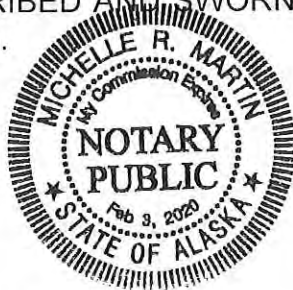
15 Dated this 5th day of July, 2018.

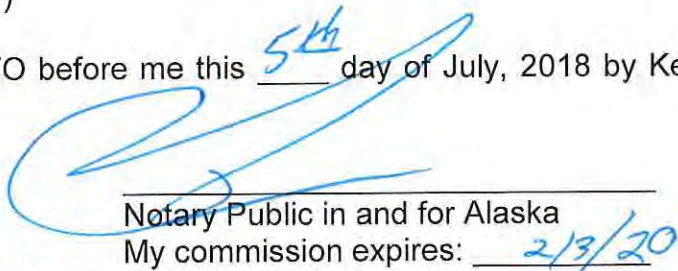


Kevin G. Clarkson

18 STATE OF ALASKA)
19) ss.
20 THIRD JUDICIAL DISTRICT)

21 SUBSCRIBED AND SWORN TO before me this 5th day of July, 2018 by Kevin G. Clarkson.




Notary Public in and for Alaska
My commission expires: 2/3/20

Clapp, Peterson, Tiemessen,
Thorsness & Johnson, LLC
711 H Street, Suite 620
Anchorage, Alaska 99501-3454
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CERTIFICATE OF SERVICE

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I certify that a true copy of the foregoing has been served via email on July 5, 2018, to the following:
Pamela T. Basler, Esq. *(hand delivered)*
Executive Director
Anchorage Equal Rights Commission
632 W. Sixth Ave., Suite 110
Anchorage, Alaska 99501

David A. Cortman
Jonathan A. Scruggs
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Alliance Defending Freedom
15100 N. 90th Street
Scottsdale, Arizona 85260

Sonja Redmond
Law Office of Sonja Redmond
P.O. Box 3529
Soldotna, Alaska 99669

By _____
Michelle Martin

BEFORE THE ALASKA OFFICE OF ADMINISTRATIVE HEARINGS ON
APPOINTMENT BY THE ALASKA STATE COMMISSION FOR HUMAN RIGHTS

Marti Buscaglia, Executive Director, Alaska State)
Commission for Human Rights, *ex rel.*)
FRANCIS ROACH,)
)
Complainant,)
)
v.)
)
FRIENDSHIP MISSION,)
)
Respondent.)

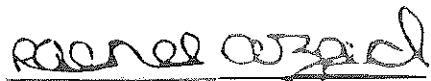
OAH No. 16-0933-HRC
ASCHR No. J-14-004

NOTICE OF RECOMMENDED DECISION

Attached is the administrative law judge's recommended decision in this matter. Alaska Statute 44.64.060 does not apply to this case. Pursuant to 6 AAC 30.470(d), within 15 days after receipt of the recommended decision, any party may file objections with the Office of Administrative Hearings, serving copies upon opposing counsel. Responses to objections may not be filed unless ordered by the administrative law judge.

If no objections are filed by the deadline set under 6 AAC 30.470, the recommended decision and the record of all proceedings to date will be sent to the hearing commissioners for issuance of a final order. If an objection is filed, the undersigned administrative law judge will consider all objections filed, and take action pursuant to 6 AAC 30.470(d).

DATED July 18, 2017


Office of Administrative Hearings
550 W. 7th Ave., Ste. 1940
Anchorage, Alaska 99501
(907) 269-8170 (Phone)
(907) 269-8172 (Fax)

Certificate of Service: The Undersigned certifies that on July 18, 2017, a true and correct copy of this document was distributed to the following: Sonja Redmond, counsel for Friendship Mission (by certified mail); Steve Koteff, Human Rights Advocate, ASCHR (by certified mail).

By: 
Law Office Assistant

**BEFORE THE ALASKA OFFICE OF ADMINISTRATIVE HEARINGS ON
APPOINTMENT BY THE ALASKA STATE COMMISSION FOR HUMAN RIGHTS**

Marti Buscaglia, Executive Director, Alaska State)
 Commission for Human Rights, *ex rel.*)
 FRANCIS ROACH,)
)
 Complainant,)
)
 v.)
)
 FRIENDSHIP MISSION,)
)
 Respondent.)

OAH No. 16-0933-HRC
 ASCHR No. J-14-004

RECOMMENDED DECISION

I. Introduction

Alaska law prohibits places of public accommodation from engaging in disability-based discrimination. Friendship Mission, a volunteer-run, non-profit homeless shelter in Kenai, Alaska, has a policy barring all animals from its facility. Under this policy, the Friendship Mission will not allow any disabled patrons' service animals to accompany them at the Mission. On behalf of Francis Roach, a potential patron of Friendship Mission, the Executive Director of the Alaska State Commission for Human Rights filed an Accusation asserting that the enforcement of the "no pets" policy against service animals violates the Human Rights Act's prohibition on disability-based discrimination, and seeking declaratory and injunctive relief. Friendship Mission admits that it refuses to make exceptions to its "no pets" policy, but contends that it is not a place of public accommodation within the scope of the Act. The parties have filed cross-motions for summary decision.

Because the evidence in the record does not support the Executive Director's position that Friendship Mission is a place of public accommodation for purposes of the Act, this decision recommends that the Accusation be dismissed.

II. Legal background

Both state and federal laws prohibit employers, public entities, and places of public accommodation from engaging in disability-based discrimination. The Alaska legislature has:

[D]etermined and declared as a matter of legislative finding that discrimination against an inhabitant of the state because of . . . physical or mental disability . . . is a matter of public concern and that this discrimination not only threatens the rights and privileges of the inhabitants of the state but also menaces the institutions of the state and

threatens peace, order, health, safety, and general welfare of the state and its inhabitants.¹

In furtherance of this policy, Alaska's Human Rights Act, AS 18.80, prohibits disability-based discrimination in employment, financing, housing rental and sales, the activities of public entities, and in places of public accommodation. It is this final prohibition which is at issue in this case. Alaska Statute 18.80.230(a)(1) makes it unlawful for a place of public accommodation "to refuse, withhold from, or deny a person any of its services, goods, facilities, advantages or privileges, because of . . . physical or mental disability[.]"²

The specific discriminatory act alleged in this case is the refusal to modify a "no pets" policy to allow a service animal to accompany a disabled individual to a place of public accommodation. Although the Alaska Supreme Court has never addressed the application of AS 18.80 to issues involving service animals, the Court and the Commission generally follow the analytical framework of analogous federal laws in interpreting the scope of the Human Rights Act. The Americans with Disabilities Act, its regulations, and cases construing it clearly provide that a place of public accommodation cannot rest on a generic "no pets" policy to exclude service animals. The legislative history of the ADA contains strong support for the premise that exclusion of service animals under the guise of blanket "no pets" policies is discriminatory.³

Federal regulations provide that "[g]enerally, a public accommodation shall modify policies, practices, or procedures to permit the use of a service animal by an individual with a disability."⁴ Applying them, federal courts have observed that "service dogs are a common example of a reasonable accommodation for people with disabilities."⁵ "In most circumstances, waiving a no-pet rule to allow a disabled resident the assistance of a service animal is a

¹ AS 18.80.200.

² AS 18.80.230(a)(1); *see also* AS 18.80.210 ("The opportunity to obtain . . . public accommodations . . . without discrimination because of . . . physical or mental disability . . . is a civil right.").

³ *See* H.R. Rep. No. 485(III), 101st Cong., 2d Sess. 59 (1990), reprinted in 1990 U.S.C.C.A.N. 445, 482 ("It is discriminatory to fail to make reasonable modifications in policies and practices when such modifications are necessary to provide goods or services, unless it can be demonstrated that the modifications would fundamentally alter the nature of the goods or services provided. For example, it is discriminatory to refuse to alter a "no pets" rule for a person with a disability who uses a guide or service dog."); 135 Cong. Rec. S10,800 (1989) (Sen. Simon: "One form of discrimination faced by thousands of people with disabilities in public accommodations is prohibiting entry by an assistive animal. Part of the problem lies in ignorance Regretfully, many people still don't understand that these animals are well-trained and certified, and don't create public disturbances nor pose any public health risk whatsoever. Generally speaking, any facility where it is safe for a person to go, it is safe for a trained assistive animal to go, including restaurants and other public accommodations It should be further understood that a person with a disability using a guide, signal or service dog should not be separated from the dog A person with a disability and his or her assistive animal function as a unit and should never be involuntarily separated. Nor is there any need for this separation. To require it would be discriminatory under the Americans with Disabilities Act.").

⁴ 28 C.F.R. § 36.302(c)(1).

⁵ *Petty v. Portofino Council of Coowners, Inc.*, 702 F. Supp. 2d 721, 731 n.8 (S.D.Tex. 2010).

reasonable accommodation.”⁶ Federal regulations further provide that a place of public accommodation may exclude a service animal if (1) making such modifications would fundamentally alter the nature of the entity’s goods, services, facilities, privileges, advantages, or accommodations; (2) the safe operation of the entity would be jeopardized; or (3) such modifications would result in an undue financial or administrative burden.⁷ Such determinations, however, “must be based on actual risks rather than on mere speculation, stereotypes, or generalizations about individuals with disabilities.”⁸

The same principles apply under the Human Rights Act. A place of public accommodation may not refuse to consider making an exception to a “no pets” policy. Instead, a determination as to the reasonableness of the accommodation sought must be made on a case-by-case basis, based upon actual risks and not upon mere speculation or generalizations.⁹ A public accommodation’s blanket refusal to accommodate a service animal violates the Alaska Human Rights Act.

III. Relevant facts

Friendship Mission is an Alaska non-profit corporation that operates a small homeless shelter for men on the Kenai Peninsula.¹⁰ The shelter, which houses between four and ten men at a time, is open to “any man who applies and agrees to obey the rules.”¹¹

Friendship Mission was founded and is operated by Graydon and MaryAnn Cowgill. Its bylaws describe it as “an Independent, Non-Denominational, Evangelical organization,” and identify its “purpose” as follows:

We are a Christian organization and our purpose is to show God’s love through example and in a practical manner by providing for the needs of the homeless, poor, needy and dysfunctional men on the Kenai Peninsula, to the best of our ability. Our goal is to rescue and rehabilitate. Our aim is to return the men that come to us for help to being useful citizens in society.¹²

At oral argument, counsel argued that Friendship Mission carries out that purpose “by ministering to homeless men.”¹³

⁶ *Prindable v. Ass’n of Apartment Owners of 2987 Kalakaua*, 304 F. Supp. 2d 1245, 1257 (D. Haw. 2003).

⁷ See 28 C.F.R. §§ 36.301(b), 36.302(c)(1), 36.303(a), 35.130(b)(7), 35.136, 35.150(a)(3), 35.164.

⁸ 28 C.F.R. §§ 36.301(b), 35.130(h).

⁹ See *Anderson v. Anchorage School District*, OAH Case No. 09-0233-HRC; *affirmed*, Anchorage Superior Court Case No. 3AN-10-10122CI (October 2011).

¹⁰ Resp. Ex. 1.

¹¹ Cowgill Affidavit, ¶ 14; statement of counsel at oral argument.

¹² Resp. Ex. 2, p. 1.

¹³ Statement of counsel at oral argument.

The Cowgills receive no salary, and Friendship Mission has no paid staff.¹⁴ The Mission receives no government funding, and is “supported entirely by donations from individuals and churches.”¹⁵ Residents who have jobs are encouraged, but not required, to donate \$10 per day to the Mission “as an act of obedience to God and to practice [the] traditional Christian biblical teachings [of] tithing and caring for those less fortunate.”¹⁶ In practice, relatively few residents do so.¹⁷ No one has ever been turned away for not donating.¹⁸

Men at the shelter share common eating and sleeping facilities.¹⁹ Prospective residents sign an admittance statement that provides, in part, as follows:

[I] recognize my need for assistance and hereby apply for admittance to Friendship Mission. I understand that this is a religious and charitable organization. The Mission is dedicated primarily to the social and physical rehabilitation and the spiritual regeneration of those persons who are in need of such assistance.²⁰

There is no religious test for admission (i.e. no inquiry into a prospective resident’s religion or lack of religion).²¹ However, residents must attend daily Bible study as well as twice-weekly church services.²² Residents must also follow rules about profanity, drug and alcohol use, grooming, and personal hygiene.²³ Friendship Mission dictates residents’ schedules, including what time they wake up, when they may be in their rooms, how often they must shower and for how long, chore obligations, meal times, and other restrictions.²⁴

It is undisputed that Friendship Mission maintains a policy prohibiting animals at its facility, and that it publicizes this policy on its website.²⁵ It is also undisputed that the Mission makes no exceptions to this policy, including making no exception for service animals for persons with disabilities. The Mission justifies this policy by claiming there is nowhere for animals to stay, that animals could pose sanitation problems, and that other residents could have allergies.²⁶

¹⁴ Cowgill Aff., ¶¶ 3-4. In an affidavit, Mr. Cowgill explained that he views “serving the poor and needy and providing for them” to be “an act of religious worship to God.” Cowgill Aff., ¶ 29.

¹⁵ Cowgill Aff., ¶¶ 7, 29; statement of counsel at oral argument.

¹⁶ Cowgill Aff., ¶¶ 11-17.

¹⁷ Cowgill Aff., ¶¶ 15-16 (“Typically none of the residents have jobs or contribute to the Mission. Currently there are 6 residents and 2 have jobs. One is contributing to the Mission, the other is not.”).

¹⁸ Cowgill Aff., ¶ 12; statement of counsel at oral argument.

¹⁹ Cowgill Aff., ¶ 22.

²⁰ Ex. 6.

²¹ Statement of counsel at oral argument.

²² Cowgill Aff., ¶¶ 9-10.

²³ Ex. 4.

²⁴ Ex. 4, p. 2.

²⁵ Ex. 4, p. 1.

²⁶ Cowgill Aff., ¶¶ 23-27.

Contending there is no way it could accommodate animals, the Mission claims that, if required to accommodate service animals, “we’d have to shut down.”²⁷

Francis Roach alleges that he is legally blind and has a service dog that assists him.²⁸ Mr. Roach alleges that he wanted to stay at Friendship Mission, but was told that his service dog could not stay there with him.²⁹ The Mission denies any specific knowledge of Mr. Roach’s claims, but admits that a service dog would not be allowed to stay at the facility.³⁰

IV. Procedural history

The Executive Director referred this matter for hearing in August 2016. The Amended Accusation alleges that Mr. Roach uses a service dog because of “a sight impairment that substantially limits his ability to see.”³¹ It alleges that twice in 2013, Mr. Roach called Friendship Mission to ask about staying there, and was told “that he was welcome to stay at the shelter but that his service dog would not be allowed to accompany him” because Friendship Mission does not allow animals, including service animals.³² The Amended Accusation also asserts that Friendship Mission’s website lists among the shelter’s rules a blanket “no pets” policy.³³ Based on these allegations, the Executive Director contends that Friendship Mission has violated AS 18.80.230(a)(1) (denying services and facilities based on disability) and AS 18.80.230(a)(2) (publishing communications implying services will be denied because of a disability).³⁴

In the course of these proceedings, Friendship Mission has never denied that it has a blanket “no pets” policy to which it refuses to make exceptions. But Friendship Mission has contended that it is outside the scope of Alaska’s Human Rights Act because it is not within any class of activities or entities regulated by the Act. In particular, it contends that, contrary to the jurisdictional allegations in the Accusation, it is not a place of public accommodation. It reasons that, if it is not within the Act’s coverage, it is not required to modify its policies to accommodate disabled residents.³⁵

At a case planning conference held in September 2016, both counsel agreed that this matter did not involve disputed facts, but instead boiled down to a legal dispute about whether

²⁷ Cowgill Aff., ¶ 28; statement of counsel at oral argument.

²⁸ Roach Aff., ¶¶ 1, 2, 3.

²⁹ Roach Aff., ¶¶ 4, 5. These allegations are accepted as true for purposes of this motion.

³⁰ Cowgill Aff., ¶ 18-28.

³¹ Amended Acc., ¶¶ 2-3.

³² Amended Acc., ¶¶ 4-7.

³³ Amended Acc., ¶ 11.

³⁴ Amended Acc., ¶¶ 13-27.

³⁵ See Answer; comments of counsel at September 2016 case planning conference.

Friendship Mission fell within the statute's reach. The parties thus agreed to present the matter for decision based on briefing.

On December 5, 2016, the Executive Director filed a Motion for Summary Decision. On December 28, 2016, Friendship Mission filed an Opposition to the Executive Director's Motion. A procedural order issued January 6, 2017, converted that Opposition into an Opposition and Cross-Motion for Summary Decision. The Executive Director filed her Reply on February 22, 2017, and on March 6, 2017 submitted a request for oral argument. That request was granted and argument was scheduled for May 16, 2017.³⁶

On May 4, 2017, counsel for Friendship Mission notified the Executive Director of her intent to "call witnesses" to testify at the upcoming oral argument. The Executive Director filed a motion to strike; Friendship Mission opposed the motion and also submitted an affidavit of Graydon Cowgill. At a status conference held May 8, it was agreed that Mr. Cowgill's affidavit would be accepted to belatedly support Friendship Mission's December 2016 Opposition and Cross-Motion. To cure any prejudice associated with this late filing, the Executive Director was permitted an opportunity to file supplemental briefing, and oral argument was rescheduled.

Oral argument was held on May 23, 2017. Following the oral argument, both counsel requested the opportunity to file post-hearing briefing. The parties submitted post-hearing briefs on June 9, 2017, and the Mission filed a notice of supplemental authority on June 27, 2017.

V. Discussion

A. Preliminary procedural and evidentiary issues

Alaska Statute 18.80.120(e) provides that, "at any time after the issuance of an accusation, the executive director or the person charged in the accusation may petition for a summary decision on the accusation."³⁷ Summary decision is appropriately granted where, after the parties have had a reasonable opportunity for discovery, "the record shows that there is no genuine issue of material fact and the petitioner is entitled to an order under AS 18.80.130 as a matter of law."³⁸

The disposition of this case was made more complicated by the sparse factual record presented by the parties. Although both counsel initially agreed that this matter should be decided on briefing and without need for an evidentiary hearing, neither party's briefing attempted to make a strong factual record as to the Mission's day-to-day operations. At oral argument, however, both counsel endorsed relying on the affidavit of Mr. Cowgill, printouts from the

³⁶ The lengthy delay was due to planned medical leave by respondent's counsel.

³⁷ AS 18.80.120(e).

³⁸ AS 18.80.120(e).

Mission's website and bylaws, and the representations of respondent's counsel as a sufficient basis from which to determine the nature of respondent's organization. These tacit stipulations have been accepted.

Both parties having cross-moved for summary decision on the same issue of law, and both parties insisting at oral argument that the record was complete for purposes of deciding that issue, this decision concludes that it is not necessary to further develop the factual record in this matter. The Executive Director ultimately bears the burden of showing that Friendship Mission is a place of public accommodation and has violated the Human Rights Act. The Executive Director did not meet that burden because she did not show that Friendship Mission is a place of public accommodation. Rather, on the record as presented by the parties, Friendship Mission has shown that it is entitled to summary decision on this issue of law.

B. Principles of interpretation of Alaska's Human Rights Act

The Alaska Supreme Court has held that the Human Rights Act is to be broadly construed.³⁹ When interpreting the Act, the Court has looked to analogous federal cases for guidance,⁴⁰ but has also held "that AS 18.80 'is intended to be more broadly interpreted than federal law to further the goal of eradication of discrimination.'"⁴¹ Thus, even as it looks to federal case law, the Court remains "mindful of 'the strong statement of purpose in enacting AS 18.80 and our legislature's intent to put as many teeth into the statute as possible.'"⁴² The Commission likewise looks to federal law as a guide in construing AS 18.80.⁴³ The Commission's regulations also acknowledge its "obligation to construe AS 18.80 liberally."⁴⁴ On the specific topic of disability-based claims, the Commission looks to the Americans with Disabilities Act and "relevant federal case law as a guideline," but favors AS 18.80 over these federal laws "when state law is more liberal than federal law."⁴⁵

³⁹ *Smith v. Anchorage School District*, 240 P.3d 834, 842 (Alaska 2010); *Moody-Herrera v. State, Dep't of Natural Resources*, 976 P.2d 79, 86 (Alaska 1998).

⁴⁰ *See, e.g., Peterson v. State*, 236 P.3d 355, 363-364 (Alaska 2010) (following federal case law to evaluate hostile work environment claim); *State v. Meyer*, 906 P.2d 1365, 1374 (Alaska 1995) (citing *Texas Dep't of Cmty. Affairs v. Burdine*, 450 U.S. 248, 253-56 (1981)). *See also, Villaflores v. Alaska State Comm'n for Human Rights*, 175 P.3d 1275, 1277 (Alaska 2008); *Villaflores v. Alaska State Comm'n for Human Rights*, 170 P.3d 663, 665 (Alaska 2007); *Mahan v. Arctic Catering, Inc.*, 133 P.3d 655, 660 (Alaska 2006); *Alaska State Comm'n for Human Rights v. Yellow Cab*, 611 P.2d 487, 490 (Alaska 1980).

⁴¹ *VECO, Inc. v. Rosebrock*, 970 P.2d 906, 912-13 (Alaska 1999) (quoting *Wondzell v. Alaska Wood Prods., Inc.*, 601 P.2d 584, 585 (Alaska 1979)).

⁴² *Miller v. Safeway, Inc.*, 102 P.3d 282, 290 (Alaska 2004) (quoting *Wondzell v. Alaska Wood Prods., Inc.*, 601 P.2d 584, 585 (Alaska 1979)).

⁴³ 6 AAC 30.910(b).

⁴⁴ 6 AAC 30.910(b).

⁴⁵ 6 AAC 30.910(b).

Although the Supreme Court has acknowledged the intended broad scope of the Human Rights Act, it has also declined attempts to broaden the scope of AS 18.80's coverage beyond the statute's terms. In *U.S. Jaycees v. Richardet*, for example, the Court rejected the argument that a nonprofit club without a fixed physical location was a "place of public accommodation" under the statute.⁴⁶

Jaycees is not the only case in which the Court has declined an expansive reading of the Human Rights Act. In *Miller v. Safeway*, the Court rejected a claim that AS 18.80's prohibition against gender discrimination bars employers from enforcing gender-based grooming policies. On this issue, the Court expressly declined to construe Alaska law more broadly than the analogous federal cases.⁴⁷ Similarly, in *Muller v. BP Exploration (Alaska) Inc.*, the Court rejected a claim that the requirement to "broadly" interpret AS 18.80.220 allowed a claim for marital status discrimination based on the identity of the plaintiff's spouse.⁴⁸ This "broad reading," the Court found, went too far, and would apply the law beyond its intended goals and protections.⁴⁹

The Court has also declined to interpret AS 18.80 according to principles of federal law where obvious distinctions exist between Alaska's statute and its federal counterpart. Thus, in *Cole v. State Farm Ins. Co.*, the Court rejected an attempt to read terms into AS 18.80 based on a federal statute that post-dated the enactment of Alaska's law.⁵⁰ The Court has likewise declined to follow federal case law that relies on federal statutory language not found in AS 18.80.⁵¹

C. Friendship Mission is not a place of public accommodation for purposes of AS 18.80.230(a)(1)'s prohibition on disability-based discrimination

As noted at the outset, places of public accommodation may not rely on a blanket "no pets" policy to exclude service animals of disabled patrons. But the Mission denies that its shelter is a "place of public accommodation," and therefore contends that it is not within the statute's scope. The legislature has defined "public accommodation" as:

⁴⁶ *U.S. Jaycees v. Richardet*, 666 P.2d 1008, 1011-1012 (Alaska 1983).

⁴⁷ *Miller v. Safeway*, 102 P.3d 282, 293 (Alaska 2004) ("agree[ing] with the reasoning of the numerous federal cases addressing this issue and conclud[ing] that Alaska law should not be more broadly construed in this particular respect").

⁴⁸ *Muller v. BP Exploration (Alaska) Inc.*, 923 P.2d 783, 790-791 (Alaska 1996).

⁴⁹ *Id.* at 790-791 ("The purpose of the AHRA is to prevent prejudices and biases borne against persons who are members of certain protected classes; it seeks to eliminate the effects of offensive or demeaning stereotypes, prejudices, and biases against the members of those classes. The more expansive interpretation of the term 'marital status' does not protect the members of the class, but instead effectively enlarges it to include all persons wishing to work with their spouses[.]").

⁵⁰ *Cole v. State Farm Ins. Co.*, 128 P.3d 171, 177 (Alaska 2006) (declining to incorporate ADA identification of insurance office as public accommodation where AS 18.80 was enacted "well before the ADA" and lacks similar term).

⁵¹ See *Smith v. Anchorage School District*, 240 P.3d 834, 840-841 (Alaska 2010).

A place that caters or offers its services, goods, or facilities to the general public and includes a public inn, restaurant, eating house, hotel, motel, soft drink parlor, tavern, night club, roadhouse, place where food or spirituous or malt liquors are sold for consumption, trailer park, resort, campground, barber shop, beauty parlor, bathroom, resthouse, theater, swimming pool, skating rink, golf course, café, ice cream parlor, transportation company, and all other public amusement and business establishments, subject only to conditions and limitations established by law and applicable alike to all persons.⁵²

In construing the meaning of Alaska statutes, Alaska courts “look to the meaning of the language, the legislative history, and the purpose of the statute in question.”⁵³ Here, inquiry into the meaning of the language of the statute begins with the definition’s direction that place of public accommodation “includes” twenty-four specific types of entities. It is well-established by statute in Alaska that use of the phrase “includes” denotes a non-exhaustive list.⁵⁴ While the word “includes” indicates a non-exhaustive list, it is also generally construed to group items that are categorically similar. This principle appears in the legal doctrine of *ejusdem generis* (“of the same kind”), which tells us that, “where general words follow an enumeration of persons or things, . . . such general words are not to be construed in their widest extent, but are to be held as applying only to persons or things of the same general kind or class as those specifically mentioned.”⁵⁵

Applying these principles, the Alaska Supreme Court explained in *Jaycees* that the list of public accommodations is not considered exhaustive, and that other establishments are considered public accommodations if “similar in nature to those enumerated.”⁵⁶ The question here is whether respondent’s homeless shelter is similar in nature to the enumerated list. The Executive Director argues that a homeless shelter is similar to a hotel, motel, or inn, because all of these offer a place to stay. But hotels, motels, and inns all offer a place to stay as part of a commercial transaction. Respondent’s homeless shelter, on the other hand, offers a place to stay, without charge but with considerable rules and restrictions, as part of a volunteer-led, not-for-profit religious ministry. These are not similar entities for *ejusdem generis* purposes.

⁵² AS 18.80.300(16).

⁵³ *Muller v. BP Expl. (Alaska) Inc.*, 923 P.2d 783, 787 (Alaska 1996).

⁵⁴ AS 01.10.040(b).

⁵⁵ Black’s Law Dict. (5th ed. 1979) at 464. An example of an application of *ejusdem generis* would be the interpretation of the phrase “horses, cattle, sheep, goats, or any other farm animal”; in the absence of contrary factors, the doctrine would suggest that “any other farm animal” would encompass only similarly large mammals, and would exclude chickens. *West v. Municipality of Anchorage*, 174 P.3d 224, 228 (Alaska 2007).

⁵⁶ *U.S. Jaycees v. Richardet*, 666 P.2d 1008, 1012 (Alaska 1983).

Complicating the analysis is that, although Alaska looks to related federal laws for guidance in interpreting the Human Rights Act, the ADA *expressly* includes homeless shelters in its enumerated list of entities that constitute “public accommodations.”⁵⁷ As the Alaska Supreme Court observed in *Cole*, however, the ADA was enacted after AS 18.80, and is therefore not the source of AS 18.80’s definition of this term. Further, in the ADA, homeless shelters appear in the enumerated list of “social service center establishments,” not the section on “places of lodging.” While the ADA lists numerous types of entities beyond traditional commercial enterprises, Alaska’s law does not. And the ADA’s location of homeless shelters within the category of social service establishments – and not in the category of “places of lodging” – further undermines the Executive Director’s suggestion that homeless shelters are appropriately categorized, for *ejusdem generis* purposes, with hotels and motels.

At least one other court has construed another jurisdiction’s Human Rights Act as including homeless shelters within the broad category of “place of public accommodation.”⁵⁸ In *Hunter v. District of Columbia*, the U.S. District Court for the District of Columbia concluded that the mandate to broadly read the D.C. Human Rights Act, and the inclusion of “homeless shelter” in the ADA’s list of public accommodations, supported treating the respondent as a place of public accommodation.⁵⁹ But in that case, the homeless shelter in question was receiving substantial governmental funds from federal and local sources, and was operating an apartment

⁵⁷ 42 USC § 12181(7)(K); 18 C.F.R. 36.104(11). The ADA’s complete definition is as follows:

(7) Public accommodation. The following private entities are considered public accommodations for purposes of this subchapter, if the operations of such entities affect commerce –

- (A) an inn, hotel, motel, or other place of lodging, except for an establishment located within a building that contains not more than five rooms for rent or hire and that is actually occupied by the proprietor of such establishment as the residence of such proprietor;
- (B) a restaurant, bar, or other establishment serving food or drink;
- (C) a motion picture house, theater, concert hall, stadium, or other place of exhibition or entertainment;
- (D) an auditorium, convention center, lecture hall, or other place of public gathering;
- (E) a bakery, grocery store, clothing store, hardware store, shopping center, or other sales or rental establishment;
- (F) a laundromat, dry-cleaner, bank, barber shop, beauty shop, travel service, shoe repair service, funeral parlor, gas station, office of an accountant or lawyer, pharmacy, insurance office, professional office of a health care provider, hospital, or other service establishment;
- (G) a terminal, depot, or other station used for specified public transportation;
- (H) a museum, library, gallery, or other place of public display or collection;
- (I) a park, zoo, amusement park, or other place of recreation;
- (J) a nursery, elementary, secondary, undergraduate, or postgraduate private school, or other place of education;
- (K) a day care center, senior citizen center, homeless shelter, food bank, adoption agency, or other social service center establishment; and
- (L) a gymnasium, health spa, bowling alley, golf course, or other place of exercise or recreation.

⁵⁸ See *Hunter on behalf of A.H. v. District of Columbia*, 64 F. Supp. 3d 158 (D.D.C. 2014).

⁵⁹ *Hunter*, 64 F. Supp. 3d at 180.

building through a governmental contract.⁶⁰ Moreover, that case was decided under the D.C. Human Rights Act, whose definition of “place of public accommodation” differs from Alaska’s in at least one key respect: the D.C. statute does not refer to “business establishments.”

As discussed further below, the question whether a homeless shelter – in particular, respondent’s homeless shelter – is a place of public accommodation necessarily must address the significance of the phrase “business establishments” in the definition of that term. Friendship Mission urges that, like the list of identified establishments, this phrase, too, signals that a “place of public accommodation” under AS 18.80 does not encompass lodging provided as part of a gratuitous charitable ministry with no commercial purpose.

In assessing statutory language, the Alaska Supreme Court has noted that “unless words have acquired a peculiar meaning, by virtue of statutory definition or judicial construction, they are to be construed in accordance with their common usage.”⁶¹ Friendship Mission points to the Webster’s New Collegiate definition of business as “a commercial or industrial establishment.” But even courts that have broadly construed the phrase “business establishment” in public accommodation laws have recognized that the phrase is necessarily narrower than “all” establishments.⁶²

The inquiry into the meaning of the phrase “business establishment” brings us to the related issue of legislative history. The definition of “place of public accommodation” in AS 18.80 appears to have emerged largely from a pre-statehood public accommodation law.⁶³ The Territory of Alaska first enacted its own public accommodation law in 1945. The Alaska Anti-

⁶⁰ *Id.*, at 163-165, 172.

⁶¹ *See Muller*, at 788. At the same time, “[t]o seek the meaning of a statute is not simply to look up dictionary definitions and then stitch together the results. Rather, it is to discern the sense of the statute, and therefore its words, in the legal and broader culture.” *Curran v. Mt. Diablo Council of the Boy Scouts*, 952 P.2d 218, 240 (Cal. 1998) (Mosk, J., conc.).

⁶² *See, e.g., Burks v. Poppy Constr. Co.*, 370 P.2d 313, 315-16 (California 1962) (“The legislature used the words ‘all’ and ‘of every kind whatsoever’ in referring to business establishments covered by the Unruh Act (Civ. Code § 51), and the inclusion of these words without any exception and without specification of particular kinds of enterprises, leaves no doubt that the term ‘business establishments’ was used in the broadest sense reasonably possible. The word ‘business’ embraces everything about which one can be employed, and it is often synonymous with ‘calling, occupation, or trade, engaged in for the purpose of obtaining a livelihood or gain.’”); *Warfield v. Peninsula Golf & Country Club*, 896 P.2d 776 (California 1995) (“the reach of [the public accommodation law] cannot be determined invariably by reference to the ‘plain meaning’ of the term ‘business establishment’”); *Curran v. Mt. Diablo Council of the Boy Scouts*, 952 P.2d 218, 239 (California 1998) (even lack of other available remedies against organization’s “invidious discrimination . . . cannot justify extending the scope of the [public accommodation law] further than its language reasonably will bear”).

⁶³ Many states had their own public accommodation laws prior to the passage of the federal Civil Rights Act in 1964. *See Heart of Atlanta Motel, Inc. v. United States*, 379 U.S. 241, 259 (1964) (noting that 32 states, including Alaska, have enacted public accommodation laws); Lisa G. Lerman & Annette K. Sanderson, *Comment, Discrimination in Access to Public Places: A Survey of State and Federal Public Accommodations Laws*, 7 N.Y.U. REV. L. & SOC. CHANGE 215 (1978).

Discrimination Act, enacted “to provide for full and equal accommodations, facilities and privileges to all citizens in all places of public accommodation within the jurisdiction of the Territory of Alaska,” provided:

All citizens within the jurisdiction of the Territory of Alaska shall be entitled to the full and equal enjoyment of accommodations, facilities and privileges of public inns, restaurants, eating houses, hotels, soda fountains, soft drink parlors, taverns, road houses, barber shops, beauty parlors, bathrooms, resthouses, theaters, skating rinks, cafés, ice cream parlors, transportation companies, and all other conveyances and amusements, subject only to the conditions and limitations established by law and applicable alike to all citizens.⁶⁴

This list of establishments was nearly identical to the list now defining places of public accommodation under AS 18.80, although the concluding phrase referred to “all other conveyances and amusements.”

When Alaska was admitted into the Union as a state in 1959, then-existing Territorial laws remained in full force and effect as state laws.⁶⁵ Three years later – and still before the passage of the federal Civil Rights Act – the legislature reenacted the public accommodation statute as AS 11.60.230-240.⁶⁶ The list of places of public accommodation was slightly modified, and the end phrase in the definition was changed from “and all other conveyances and amusements” to “and all other public amusements and business establishments.” The new law provided:

A person is entitled to the full and equal enjoyment of accommodations, advantages, facilities and privileges of public inns, restaurants, eating houses, hotels, motels, soda fountains, soft drink parlors, taverns, roadhouses, trailer parks, bathrooms, resorts, campgrounds, barbershops, beauty parlors, resthouses, theatres, swimming pools, skating rinks, golf courses, cafes, ice cream parlors, transportation companies, and all conveyances, housing accommodations, and all other public amusement and business establishments, subject only to the conditions and limitations established by law and applicable alike to all persons.⁶⁷

This newly-added reference to “business establishments” mirrored language in California’s 1959 public accommodations statute. Prior to 1959, California’s statute had – similarly to Alaska’s Territorial law – prohibited discrimination in a number of specified establishments and, more generally, in “all other places of public accommodation or

⁶⁴ S.L. 1945, HB 14.

⁶⁵ Alaska Statehood Law, Pub. L. 85-508, Sec. 8(d), July 7, 1958, 72 Stat. 399.

⁶⁶ S.L.A. 1962, Ch. 49 (HB 8).

⁶⁷ AS 11.60.230-240 added “motels,” “trailer parks,” “resorts,” “campgrounds,” “swimming pools,” and “golf courses” to the itemized list of places of public accommodation.

amusement.”⁶⁸ In 1959, California’s legislature revised and expanded that statute to prohibit discrimination “in all business establishments of every kind whatsoever.”⁶⁹ Alaska’s 1962 law prohibited discrimination in a number of specified establishments and then, broadly, in “all other public amusement and business establishments.”

Three years after the Alaska legislature re-codified the public accommodation law through AS 11.60.230-.240, it enacted the Alaska Human Rights Act.⁷⁰ The Alaska Human Rights Act, enacted the year after passage of the federal Civil Rights Act, repealed existing anti-discrimination provisions and reenacted them under AS 18.80. Although the federal law did not contain the “business establishments” language, nor do the vast majority of state public accommodation laws, the legislature retained that language in the Alaska law.⁷¹

Because both states’ legislatures chose to situate public accommodation laws within the context of “business establishments,” cases interpreting the California law – while obviously not controlling here – provide a useful analytical framework for interpreting the scope of public accommodations under Alaska’s law. The California Supreme Court has analyzed the scope of the “business establishment” language in a variety of contexts. In a case heavily relied on by the Executive Director, that Court held that a recreational facility operated by a nonprofit club (and which excluded girls) was a business establishment under California’s law.⁷² But in a later case, the Court refused to find the Boy Scouts to be a business establishment at least for purposes of membership policies and decisions.⁷³

In *Ibister v. Boys Club of Santa Cruz*, the Court concluded that a charitable non-profit organization’s recreational facility – which included a pool, a gym, a snack bar, and craft rooms all available for use for a fee on a drop-in basis to any boy in the community – was a “business

⁶⁸ Cal.Stats. 1923, ch. 245, § 1, p. 485 (“All citizens with the jurisdiction of this state are entitled to the full and equal accommodations, advantages, facilities and privileges of inns, restaurants, hotels, eating-houses, places where ice cream or soft drinks of any kind are sold for consumption on the premises, barber shops, bath houses, theaters, skating rinks, public conveyances and all other places of public accommodation or amusement, subject only to the conditions and limitations established by law and applicable alike to all citizens.”).

⁶⁹ Cal. Civ. Code § 51 (“All persons within the jurisdiction of this state are free and equal, and no matter what their sex, race, color, religion, ancestry, or national origin are entitled to the full and equal accommodations, advantages, facilities, privileges, or services in all business establishments of every kind whatsoever.”).

⁷⁰ Alaska Statute 18.80.010, creating the State Commission for Human Rights, was enacted in 1963. SLA 1963, ch. 15, § 1. In 1965, the legislature passed the Human Rights Act, which revised and strengthened existing anti-discrimination laws and reenacted them under AS 18.80. See generally, 1965 Annual Report of the State Commission on Human Rights. <http://humanrights.alaska.gov/files//Public%20Notices/1965%20Annual%20Report.pdf>

⁷¹ AS 18.80 removed “soda fountains” from the itemized list of places of public accommodation, and added “night clubs” and “places where food or spirituous or malt liquors are sold for consumption.”

⁷² *Ibister v. Boys Club of Santa Cruz*, 707 P.2d 212 (California 1985).

⁷³ *Currán v. Mt. Diablo Council of the Boy Scouts*, 952 P.2d 218, 220 (California 1998).

establishment” under the public accommodations law. The Court based its conclusion both on the Club’s “public nature” in offering access to its facilities to a “broad segment of the population,” and its “functional similarity to a commercial business.”⁷⁴ Similarly, the Court had previously found that a non-profit homeowners association was a business establishment because its activities were comparable to those of a landlord and were carried out for a commercial and economic purpose – enhancing members’ property values.⁷⁵ And the Court later held that a private golf club that excluded women came within the reach of the statute because of the business transaction conducted on its premises. Because the golf club through these commercial activities operated as the “functional equivalent of a commercial enterprise,” it was subject to the public accommodations law.⁷⁶

But in the later *Curran* case, by way of contrast, the Court found that the Boy Scouts – at least for purposes of its membership decisions and policies – did not fall within the reach of the term “all business establishments whatsoever.” Although the organization is open to any boy ages 11-18 willing to take the Boy Scout oath, the Court found that its activities and objectives were primarily educational, it lacked a significant business purpose, and its primary function was the inculcation of a specific set of values.⁷⁷

Here, likewise, the evidence does not support the conclusion that the Mission is a business establishment and place of public accommodation under AS 18.80. While the purpose of the Alaska Human Rights Act no doubt supports extending a broad reach to eliminate invidious discrimination, just as in *Curran*, that purpose “cannot justify extending the scope of the [Human Rights Act] further than its language reasonably will bear.”⁷⁸ As discussed above, application of *ejusdem generis* does not support inclusion of the Mission within the categories of places of public accommodation specifically identified in the statute. Nor is the Mission – a volunteer-run non-profit organization receiving no governmental funds and operating no commercial activities or facilities – either a business establishment or “functional equivalent” of one. Accordingly, its refusal to allow service animals, however contrary to the underlying purposes of the Alaska Human Rights Act, is not actionable in this forum.

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⁷⁴ *Ibister*, 707 P.2d at 218-220.

⁷⁵ *O’Connor v. Village Green Owners Association*, 662 P.2d 427 (California 1983).

⁷⁶ *Warfield v. Peninsula Golf & Country Club*, 996 P.2d 776 (California 1995).


⁷⁷ *Curran*, 952 P.2d at 223, 236.

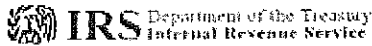
⁷⁸ *Curran*, 952 P.2d at 239.

VI. Conclusion

The Mission's cross-motion for summary decision established that it is not a "place of public accommodation" within the reach of AS 18.80. Accordingly, while in no way endorsing the Mission's refusal to extend reasonable accommodations with regard to service animals, this decision recommends dismissal of the Amended Accusation in this matter.

DATED: July 18, 2017.

By: 
Cheryl Mandala
Administrative Law Judge



OGDEN UT 84201-0038

In reply refer to: 0438186857
Mar. 29, 2013 LTR 4168C 0
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00036999
BODC: TE

DOWNTOWN SOUP KITCHEN

ANCHORAGE AK 99520-2684



040102

Employer Identification Number: [REDACTED]
Person to Contact: Deb Bridgewater
Toll Free Telephone Number: 1-877-829-5500

Dear Taxpayer:

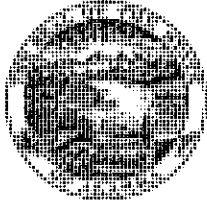
This is in response to your Mar. 20, 2013, request for information regarding your tax-exempt status.

Our records indicate that you were recognized as exempt under section 501(c)(03) of the Internal Revenue Code in a determination letter issued in AUGUST 1993.

Our records also indicate that you are not a private foundation within the meaning of section 509(a) of the Code because you are described in section(s) 509(a)(1) and 170(b)(1)(A)(vi).

Donors may deduct contributions to you as provided in section 170 of the Code. Bequests, legacies, devises, transfers, or gifts to you or for your use are deductible for Federal estate and gift tax purposes if they meet the applicable provisions of sections 2055, 2106, and 2522 of the Code.

Please refer to our website www.irs.gov/eo for information regarding filing requirements. Specifically, section 6033(j) of the Code provides that failure to file an annual information return for three consecutive years results in revocation of tax-exempt status as of the filing due date of the third return for organizations required to file. We will publish a list of organizations whose tax-exempt status was revoked under section 6033(j) of the Code on our website beginning in early 2011.



THE STATE
of **ALASKA**

Department of Commerce, Community, and Economic Development
Division of Corporations, Business, and Professional Licensing
PO Box 110806, Juneau, AK 99811-0806
(907) 465-2550 • Email: corporations@alaska.gov
Website: Corporations.Alaska.gov

AK Entity #: 49803D
Date Filed: 05/09/2016
State of Alaska, DCCED

FOR DIVISION USE ONLY

Nonprofit Corporation
2016 Biennial Report
For the period ending June 30, 2016

Web-5/9/2016 7:12:26 PM

- This report is due on July 02, 2016
- \$25.00 if postmarked before August 02, 2016
- \$30.00 if postmarked on or after August 02, 2016

Entity Name: THE DOWNTOWN SOUP KITCHEN
Entity Number: 49803D
Home Country: UNITED STATES

Home State/Province: ALASKA

Registered Agent

Name: SHERRIE LAURIE
Physical Address: 240 EAST 3RD AVE,
ANCHORAGE, AK 99501
Mailing Address: PO BOX 202684, ANCHORAGE,
AK 99520

Entity Physical Address: 3401 Lakeshore Dr. #2, Anchorage, AK 99517
Entity Mailing Address: PO BOX 202684, ANCHORAGE, AK 99520

Please include all officials. Check all titles that apply. Must use titles provided. All domestic non-profit corporations must have a president, vice president, secretary, treasurer, and at least three directors. The secretary and the president cannot be the same person.

Name	Address	% Owned	Titles
LORRAINE O'NEAL	12110 PORTAGE DR, ANCHORAGE, AK 99515	N/A	Director, Secretary
RICHARD IRWIN	2531 LEGACY DR, ANCHORAGE, AK 99516	N/A	Director, President
ALAN ROBILLARD	2531 Laird Circle, Anchorage, AK 99516	N/A	Vice President
GREG LOUDON	14010 Venus Way, Anchorage, AK 99515	N/A	Treasurer
SHERI SCHMITZ	12040 JEROME STREET, ANCHORAGE, AK 99516	N/A	Director
TOM ARMINSKI	2931 CROWN POINT CR, ANCHORAGE, AK 99502	N/A	Director
CHERYL JONES	2234 DAYBREAK CRT, ANCHORAGE, AK 99501	N/A	Director
LINDA WAGGONER	2579 NATHANIAL CRT, ANCHORAGE, AK 99517	N/A	Director

Purpose: CHARITABLE

NAICS Code: 624210 - COMMUNITY FOOD SERVICES

New NAICS Code (optional):

Exhibit 5

Estimated value of all real or personal property of the corporation:



I certify under penalty of perjury under the Uniform Electronic Transaction Act and the laws of the State of Alaska that the information provided in this application is true and correct, and further certify that by submitting this electronic filing I am contractually authorized by the Official(s) listed above to act on behalf of this entity.

Name: Sherrie Laurie