

Linda J. Johnson  
Ruth Botstein  
Assistant Municipal Attorney  
Email: courtdocs@muni.org

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

MUNICIPALITY OF ANCHORAGE,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	
KRINER'S DINER LLC, ANDREW	)	
AND NORANN KRINER,	)	
	)	
Defendants.	)	Case No. 3AN-20-07394 CI
	)	

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**MOTON FOR ORDER TO SHOW CAUSE**

Defendants Kriner’s Diner, LLC, Andrew Kriner and Norann Kriner have continued operations in blatant defiance of Emergency Order 15 (EO-15) and this Court’s clear ruling on August 7, 2020. In violation of his duties as an officer of the Court, Kriner’s attorney, Blake Quackenbush, is actively encouraging and participating in the ongoing violation. The Municipality of Anchorage (MOA) now seeks the extraordinary remedy of contempt sanctions to respond to these egregious actions. Specifically, the MOA moves for an order to show cause why Defendants as well as their attorney, Blake Quackenbush, should not be

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held in contempt of court for violation of the Court's direct order dated August 7, 2020, pursuant to Alaska Rules Civ. P. 90(b) and 95(b).<sup>1</sup>

Defendants have continued operation in defiance of this Court's clear ruling an Emergency Order 15 (EO-15). After the Court issued its temporary restraining order on August 7, 2020, Defendants willfully refused to close their doors to indoor dining, continuing to operate well into the afternoon. See KTVA report, *Judge Orders Kriner's Diner to Follow Anchorage Emergency Order Barring Indoor Dining Service* ("An hour after the judge ordered Kriner's Diner to cease dine-in services, Alaskans packed into the diner for a busy lunch hour.")<sup>2</sup> Ex. 1.

Today, August 8, 2020, Defendants have not only opened their doors to dining, they had a "packed" restaurant, as evidenced by numerous photos on Facebook from a user-group with the name: "*Save Anchorage*." This page showed people lined up outside the diner waiting to get inside, and also eating inside the diner. Ex. 2. None of the people in the photos are wearing masks. The posts included receipts for breakfast at Kriner's Diner dated August 8, 2020. *Id.*

"Alaska Watchman" posted on Facebook<sup>3</sup> an interview with Andy Kriner dated August 8, 2020, at 8:58 a.m. in which Mr. Kriner admits that "I lost the preliminary hearing, court case, whatever, and I can't open" which indicated his knowledge of the Court's Order. The interviewer said Mr. Kriner is "playing a game of chess right now", and Mr. Kriner

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<sup>1</sup> This motion is not "ex parte" because it has been emailed to Defendant's attorney, which is the mode of service used by the parties to date.

<sup>2</sup> <https://www.ktva.com/story/42468460/judge-orders-kriners-diner-to-follow-anchorage-emergency-order-barring-indoor-dining-service>

<sup>3</sup> <https://www.facebook.com/AlaskaWatchman/videos/860482051025917/>

answered “I guess I’m just going to be open until I can’t be open.” This statement was made *the day after* the Court issued its order, indicating that Mr. Kriner has no intention of following the Court’s Order. Mr. Kriner further said he did not know the “ramifications” for remaining open, but that he “does not worry about stuff like that.” *Id.*

**Worse**, midday today Defendant’s attorney, Blake Quackenbush, publicly posted a video to the “Save Anchorage” Facebook group, taken from inside the diner. Ex. 3. It shows a view outside and then pans across the diner. The diner is packed with people eating inside the diner. Mr. Quackenbush’s post is labeled: “Americans peacefully protesting in a historic ‘sit-in’! Breakfast is served.” *Id.* Below the video, Mr. Quackenbush’s further commented on his own post flagrantly urging residents of Alaska to disobey this Court and EO-15:

We have a right to work and support our families and communities. Please, if you are healthy, get out and go to businesses and encourage businesses to have the courage to work. It’s crazy to think that we are fighting for a right to work and support our families!

*Id.*

It is clear from the Defendants’ conduct that they have no intention of obeying the Court’s Order. Unfortunately, it is equally clear that Blake Quackenbush has willfully disobeyed the Court’s Order and he affirmatively fomented violation of the Court’s Order by others, by calling for other residents of Anchorage to disobey the Court’s Order.

After the MOA heard on August 7, 2020 that Defendants had failed to shut down their business as the Court’s Order required, the undersigned called Blake Quackenbush to discuss the failure with him, in an attempt to gain compliance. The phone call was memorialized in an email. Ex. 4. The undersigned noted that during the conversation the

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two attorneys discussed that the diner had been open that day in violation of the Court's Order, but that Blake Quackenbush advised he told his client to obey the Court's Order. *Id.* Mr. Quackenbush alleged he had not seen the written order<sup>4</sup>, so the undersigned attached a copy of the written Court order for him. *Id.* The final request was:

Please impress upon your client the serious nature of disobeying a court order. We expect that your client will do the right thing and not reopen the diner tomorrow for in-person dining.

*Id.* Mr. Quackenbush responded back to the undersigned that he had advised his client to follow court orders. Affidavit. Despite that assurance, it is clear from his posts on August 8, 2020, that Mr. Quackenbush is actively working to undermine the Court's Order and EO-15, despite his acknowledgement that it was his duty to inform his client not to violate the law.

The Court has the authority to sanction both parties and attorneys who disobey a court order. As stated in *Tobey v. Superior Court, Third Judicial District, at Anchorage*, 680 P.2d 782, 784 (Alaska 1984):

Alaska's trial courts may insure proper efficiency and discipline by exercise of (1) the power of contempt authorized by statute and court rule, (2) the power to impose fines as sanctions authorized by court rule, or (3) the inherent power to punish for contempt. *Davis v. Superior Court*, 580 P.2d 1176, 1178 n. 3 (Alaska 1978).

### **Sanctions Against Each Defendant, Individually.**

Alaska R. Civ. P. 90(b) provides that:

the court shall either order the accused party to show cause at some reasonable time, to be therein specified, why the accused party should not be punished for the alleged contempt, or shall issue a bench

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<sup>4</sup> There was some misunderstanding by Mr. Quackenbush over whether the MOA could enforce a verbal order from the Court, which was cleared up in the course of the conversation.

warrant for the arrest of such party. Such proceeding may be commenced and prosecuted in the same action or in an independent proceeding either by the state, or by the aggrieved party whose right or remedy in an action has been defeated or prejudiced or who has suffered a loss or injury by the act constituting a contempt.

*Id.* An order of contempt must be signed by the Court and entered on the record. Civil Rule 90(a).

This Court's Order was premised upon Alaska R. Civ. P. 65 (Injunctions) and broadly stated that Defendants were "prohibited from providing, allowing or facilitating, directly or indirectly, indoor dining." See Judge Aarseth's *Order Granting Plaintiff's Motion for Temporary Injunction*, issued August 7, 2020. Defendants have openly flouted the Court's Order and continue to flout EO-15. There is no question that Defendants were represented by counsel at the hearing during which the Court announced its ruling nor that Defendants were provided with a copy of the written order. The Court found that the nature of the potential harm to the Anchorage public is of such significant importance, that the closure of a business would be warranted, if necessary, because property interest does not outweigh a person's interest in life. *Id.*

Although the Rule provides for a bench warrant, the MOA is *not* seeking to jail any Defendant. The MOA wants to ensure that the Defendants cease indoor dining, in order to protect the health and safety of the residents of Anchorage. Each day that Kriner's Diner remains open, Defendants have knowingly incurred a fine of \$600.00. See AMC 15.20.130, AMC 14.60.030. Clearly, that amount of money is insufficient to deter the conduct. Therefore, the MOA seeks a court order that sanctions *each* of the three Defendants \$5,000.00 per day of violation, which would be *in addition to* the fines amassing under

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AMC 15.20.130, AMC 14.60.030. The MOA requests that the sanction be paid immediately. No other remedy seems to have worked to date.

**Sanctions against Blake Quackenbush.**

Alaska R. Civ. P. 95 provides:

In addition to its authority under (a) of this rule and its power to punish for contempt, a court may, after reasonable notice and an opportunity to show cause to the contrary, and after hearing by the court, if requested, impose a fine not to exceed \$50,000.00 against any attorney who practices before it for failure to comply with these rules or any rules promulgated by the supreme court.

*Id.* See *In re Schmidt*, 114 P.3d 816, 821 (Alaska 2005), in which the Court explained that the phrase “these rules” as used in Civil Rule 95(a) refers to the Alaska Rules of Civil Procedure.

This Court was authorized to issue the TRO pursuant to Rule 65. Violation of the TRO based on Rule 65 is no different from a violation of any other civil rule. Mr. Quackenbush’s defiance of the Court Order, and his call for other residents to also defy EO-15 is shocking and reprehensible behavior for a member of the Alaska Bar. Mr. Quackenbush is bound by the rules of professional conduct. Alaska R. Professional Conduct 8.4 states:

It is professional misconduct for a lawyer to:  
(a) violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another.

In addition, the conduct may be a violation of Alaska R. of Professional Conduct 3.4(c) which states that “A lawyer shall not knowingly violate or disobey an order of a tribunal or an obligation under the rules of a tribunal....”

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Mr. Quackenbush's personal conduct in posting a video from inside the diner, and publicly posting his endorsement of his client willfully disobeying the Court's Order, knowingly violated the Court's Order as well as EO-15 and Alaska Professional Rules of Conduct. Further, the follow up public statement made by Mr. Quackenbush affirmatively encouraged others to commit conduct he knows to be illegal and a violation of the Court's Order. The follow up comment shows that Mr. Quackenbush was knowingly assisting or inducing his client and others to violate or attempt to violate the Court's Order, granted under Alaska R. Civ. P. 65 (Injunctions), conduct which is sanctionable by this Court. The MOA seeks a monetary sanction against Mr. Quackenbush, to be imposed at the Court's discretion.

A violation by an attorney is rare, but should not be overlooked by this Court. See e.g. *Iowa Supreme Court Attorney Discipline Bd. v. Gailey*, 790 N.W.2d 801, 807 (Iowa 2010) ("In order for our system of justice to work, attorneys should counsel their clients to abide by court orders. It is outside the well-understood norms and conventions of the practice of law for a lawyer to aid and abet the violation" of a court order.) The conduct should be sanctioned.

**Remedy.**

The MOA seeks an immediate hearing pursuant to Civil Rule 90(f) on shortened time. This is necessitated by the nature of the conduct of Defendants and the health and safety issues of Anchorage residents which is at stake. A separate motion for shortened time is filed herewith.

The Court should sanction each Defendant \$5,000.00 per day for willfully violating the Court's Order.

The Court should sanction Mr. Quackenbush for his shocking behavior.

Finally, the MOA should not have been required to bring this action against either the Defendant or Mr. Quackenbush in order for them to follow this Court's Order. Therefore, the MOA seeks its attorney fees expended in bringing this motion, for a total of \$1,430.00. See Affidavit, attached.

Respectfully submitted this 8<sup>th</sup> day of August, 2020.

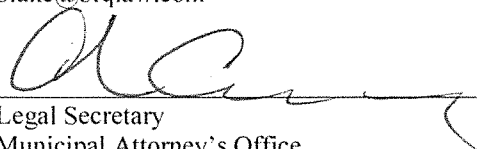
KATHRYN R. VOGEL  
Municipal Attorney

By: s/ Linda J. Johnson  
Linda J. Johnson  
Assistant Municipal Attorney  
Alaska Bar No. 8911070  
Ruth Botstein  
Assistant Municipal Attorney  
Alaska Bar No. 9901016

Certificate of Service

I certify that on August 8, 2020, I caused to be emailed a true and correct copy of the foregoing to:

Blake F. Quackenbush  
blake@bfqlaw.com

  
Legal Secretary  
Municipal Attorney's Office

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NEWS

## Judge orders Kriner's Diner to follow Anchorage emergency order barring indoor dining service

Friday, Anchorage 7/15/2020 12:09 PM AKDT



63° (/weather)



An Anchorage Superior Court judge has ordered Kriner's Diner to follow the mayor's emergency order prohibiting indoor dining<sup>1,1K</sup> service at restaurants, bars and nightclubs.

After hearing oral arguments by phone Friday morning from attorneys representing Kriner's Diner and the Municipality of Anchorage, Judge Eric Aarseth ordered the owners of Kriner's Diner, Andrew and Norann Kriner, to comply with [Emergency Order 15](https://www.ktva.com/story/42438304/more-restrictions-may-be-on-the-horizon-for-anchorage-mayor-says). (<https://www.ktva.com/story/42438304/more-restrictions-may-be-on-the-horizon-for-anchorage-mayor-says>)



"The defendants must not provide, facilitate or allow directly or indirectly any inside dining in their facility," said Aarseth.

Kriner's Diner has been defying the emergency order since it went into effect Monday, ignoring a stop work order and daily fines.

**RELATED:** [Mixed compliance as '4 week reset' restrictions begin in Anchorage](https://www.ktva.com/story/42447107/mixed-compliance-as-4-week-reset-restrictions-begin-in-anchorage) (https://www.ktva.com/story/42447107/mixed-compliance-as-4-week-reset-restrictions-begin-in-anchorage)

Attorney Blake Quackenbush, who is representing the owners and Kriner's Diner LLC, argued during the hearing that the order is unconstitutional and noted that Kriner's Diner has not appeared on the public list of exposure locations.

"If the court goes forward and enters this temporary injunction, the Kriners are not going to survive COVID-19, and many other businesses who follow suit are not going to survive COVID-19," said Quackenbush. "This is about freedom. It's also about protecting Alaska — and protecting Alaska even from itself."

Attorney Ruth Botstein with the Anchorage Municipal Attorney's Office argued that legal challenges to the emergency order can be litigated in the future, but urged the court to focus on deciding whether the diner should follow the law now.

"Because of how the virus is spread from one person to another, this places everyone in Anchorage at risk," said Botstein. "And these are harms that we can't put back in the bottle. If the court says, 'alright, even though the municipality has said indoor dining is too risky right now, but we're gonna let businesses around town decide for themselves whether they want to open,' and that sickens people, that's not a harm we can walk back."

Eventually, Aarseth sided with the city.

"There just isn't really any way to equate the life and health of an individual with the money and property interest of another individual," Aarseth said.

Shortly after the hearing concluded, Anchorage Mayor Ethan Berkowitz reacted to the order during a news conference.

"I think it's a heavy day for everybody. And it's a heavy day because I like for us as Alaskans to be able to solve problems amongst ourselves without resorting to litigation," he said.

1.1K

An hour after the judge ordered Kriner's Diner to cease dine-in services, Alaskans packed into the diner for a busy lunch hour.

It is unclear whether the diner will comply with the judge's order moving forward.

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**RELATED NEWS HEADLINES:**



'There is no joy in this decision:' Berkowitz speaks to coronavirus response, Kriner's Diner kerfuffle (<http://www.ktva.com/story/42468433/following-public-debate-surrounding-emergency-orders-berkowitz-gives-community-update>)

Alaska reports 67 more cases of coronavirus (<http://www.ktva.com/story/42468454/alaska-reports-67-more-cases-of-coronavirus>)

Berkowitz: If cases decline, '4-week reset' restrictions could be relaxed sooner (<http://www.ktva.com/story/42467251/berkowitz-if-cases-decline-4week-reset-restrictions-could-be-relaxed-sooner>)

Judge denies latest action to move virus relief lawsuit forward (<http://www.ktva.com/story/42465677/judge-denies-latest-action-to-move-virus-relief-lawsuit-forward>)

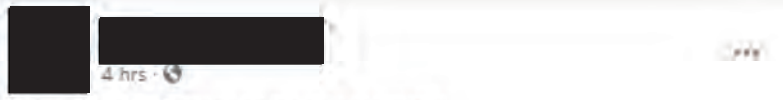


# Save Anchorage

Public group · 6.0K members

About Discussion Members Events Media Files

## From Notifications



Kriner's is THE place to be this morning!



👍❤️😄 771

143 Comments 204 Shares

[Redacted] Save Anchorage  
23 mins · 🌐

Great breakfast this morning.



👍😂❤️ 19

3 Comments



Blake F. Quackenbush is at Kriner's Diner.



6 hrs · Anchorage · 🌐

Americans peacefully protesting in a historic "sit-in"! Breakfast is served.




👍❤️😄 145

32 Comments 7 Shares

Blake F. Quackenbush is at Kriner's Diner. 6 hrs · Anchorage ·

Saturday, August 8, 2020 at 9:51 AM Testing in a historic "sit-in"! Breakfast is served.




0:03 / 0:06

145 32 Comments 7 Shares

4 shares

[View previous comments...](#)

  
Perfect I love Andy he does have balls!!!!  
1h Like  3









**Blake F. Quackenbush**

We have a right to work and support our families and communities. Please, if you are healthy, get out and go to businesses and encourage businesses to have the courage to work. It's crazy to think that we are fighting for a right to work and support our families!

1h Like

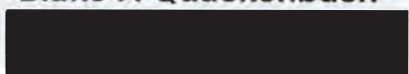
  16

[View 4 previous replies...](#)

  
**Blake F. Quackenbush** next to my good friend   
I'm putting you in the "Top Anchorage Lawyer" category 🇺🇸  
    
1h Like  1



**Blake F. Quackenbush**

 brother!



---

**From:** Blake Quackenbush <[blake@bfqlaw.com](mailto:blake@bfqlaw.com)>

**Sent:** Friday, August 7, 2020, 9:45 PM

**To:** Johnson, Linda J.

**Cc:** Botstein, Ruth; Vogel, Kathryn R.; [REDACTED]

**Subject:** Re: Kriner's TRO

Linda,

I have advised my client to follow court orders.

Please, speak to your client about settling this case.

Blake F. Quackenbush, Esq.

---

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[www.BFQLaw.com](http://www.BFQLaw.com) (Website)

On Fri, Aug 7, 2020, 3:35 PM Johnson, Linda J. <[linda.johnson@anchorageak.gov](mailto:linda.johnson@anchorageak.gov)> wrote:

Blake,

As we talked about on the phone at 3 pm, the TRO issued by Judge Aarseth was effective immediately. Your client breached that order by remaining open for the remainder of the day. I appreciate you confirming that you have advised him to follow the judge's order.

While the judge's order was oral, it was still effective. Despite that fact, shortly after the hearing, J. Aarseth served a written order. Since you said you had not yet seen it, I am attaching that order. It does indicate that it was served on you.

Please impress upon your client the serious nature of disobeying a court order. We expect that your client will do the right thing and not reopen the diner tomorrow for in-person dining.

Linda



**Linda J. Johnson**

*Assistant Municipal Attorney*

Municipality of Anchorage

632 W.6<sup>th</sup> Avenue, Suite 730 Anchorage, Alaska 99501  
(907) 343-2509

[linda.johnson@anchorageak.gov](mailto:linda.johnson@anchorageak.gov)

[www.muni.org/Departments/Legal/](http://www.muni.org/Departments/Legal/)

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his client to obey the Court's Order. The email attached to the Motion is a true and correct copy of the email I sent and received from Mr. Quackenbush.

3. Also attached to the Motion are Facebook posts from the page called "Save Anchorage" which were posted today, August 8, 2020.

4. I listened to the interview of Defendant Andrew Kriner on "Alaska Watchman" which was posted on August 8, 2020 at 8:58 a.m. Mr. Kriner admitted that "I lost the preliminary hearing, court case, whatever, and I can't open," which indicated his knowledge of the Court's Order. The interviewer said Mr. Kriner is "playing a game of chess right now", and Andy Kriner answered "I guess I'm just going to be open until I can't be open." This statement was made *the day after* the Court issued its order, indicating that Mr. Kriner has no intention of following the Court's Order. Mr. Kriner further said he did not know the "ramifications" for remaining open, but that he "does not worry about stuff like that." *Id.*

5. I have been an active a member of the Alaska Bar for over 30 years, and my experience is in litigation. I have expended 4.5 hours in researching, drafting and editing the motions filed today. The MOA set rates for attorneys at \$220 per hour. I was in private practice for over 15 years, and my rate was much, much higher than \$220. Given my years of experience and the industry standard for attorneys in Alaska, \$220 is a reasonable rate.

6. Pamela Weiss, is an Assistant Municipal Attorney, and an active member of the Alaska Bar. She has expended 2.0 hours on research and editing. She has 17 years of experience as a litigation attorney in Alaska. Her rate is also \$220, and given her years of experience and the standard rates for the industry, \$220 is a reasonable rate.

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Affidavit of Linda J. Johnson  
*Kriner's Diner LLC, MOA v.*; Case No. 3AN-20-07394 C1  
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7. The total amount of attorney fees requested is \$1,430.00

FURTHER YOUR AFFIANT SAYETH NAUGHT.

Pursuant to Alaska Statute 09.63.020, I hereby certify that I executed this affidavit on August 8, 2020; that a notary public or other official empowered to administer oaths is unavailable to me; and I certify under penalty of perjury that the foregoing is true.

By: s/ Linda J. Johnson  
Linda J. Johnson  
Assistant Municipal Attorney  
Alaska Bar No. 8911070

Certificate of Service

I certify that on August 8, 2020, I caused to be emailed a true and correct copy of the foregoing to:

Blake F. Quackenbush  
blake@bfqlaw.com



Legal Secretary  
Municipal Attorney's Office

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violated the Court's order and aided and/or abetted his client and others to willfully violate the Court's Order. Therefore Mr. Quackenbush is sanctioned in the amount of \$\_\_\_\_\_.

The Court awards the MOA its attorney fees of \$1,430.00, to be paid by Defendants and Mr. Quackenbush.

Dated \_\_\_\_\_, 2020

\_\_\_\_\_  
Eric Aarseth  
Judge of the Superior Court

Certificate of Service

I certify that on August 8, 2020, I caused to be emailed a true and correct copy of the foregoing to:

Blake F. Quackenbush  
blake@bfqlaw.com



\_\_\_\_\_  
Legal Secretary  
Municipal Attorney's Office

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