THE YEAR IN REVIEW 2015

SELECTED CASES FROM THE ALASKA SUPREME COURT AND THE ALASKA COURT OF APPEALS

INTRODUCTION

The *Alaska Law Review*'s Year in Review is a collection of brief summaries of selected state and federal appellate cases concerning Alaska law. They are neither comprehensive in breadth, as several cases are omitted, nor in depth, as many issues within individual cases are omitted. Attorneys should not rely on these summaries as an authoritative guide; rather, they are intended to alert the Alaska legal community to judicial decisions from the previous year. The summaries are grouped by subject matter. Within each subject matter, the summaries are organized alphabetically.

ADMINISTRATIVE LAW

DeVilbiss v. Matanuska-Susitna Borough

In *DeVilbiss v. Matanuska-Susitna Borough*,[1] the court held that although the legislature provides a remedy for property owners wishing to have their property excluded from a road service area ("RSA"), the remedy is not mandatory and that such requests may be denied.[2] In 1981, an RSA in Matanuska-Susitna Borough was expanded by annexing territory that had not previously been in the RSA—three pieces owned by Ray DeVilbiss were part of the newly annexed territory.[3] In 2011, DeVilbiss petitioned the Matanuska-Susitna Borough Assembly remove his property from the RSA, his petition was denied.[4] DeVilbiss filed a complaint against the Borough and subsequently both filed for summary judgment on the entire case.[5] DeVilbiss's primary argument was that AS 29.35.450(c)(4) required the Borough remove his property from RSA 19.[6] The superior court rejected DeVilbiss's argument that the statute mandated that his property be removed and granted summary judgment for the Borough.[7] On appeal, the court affirmed the superior court's grant of summary judgment, holding that AS 29.35.450 did not establish a mandate to remove property from RSAs at the request of the owner.[8] The court pointed to the legislative history of AS 29.35.450, concluding that the addition of the subsection (c)(4) in 2007 was meant to increase the Borough's ability to exercise judgment to exclude property like DeVilbiss's from the RSA without have to seek voter approval.[9] Affirming the lower court's decision, the supreme court held that the statute grants a political remedy to property owners, but it does not create a judicial remedy requiring Boroughs to exclude property from an RSA at the request of property owners.[10]

Estrada v. State

In *Estrada v. State*,[11] the supreme court held that charges brought under agency regulations promulgated without following the requirements of the Alaska Administrative Procedure Act ("APA") should be dismissed.[12] The Alaska Department of Fish and Game (the Department) issued a statewide regulation specifying how many fish may be harvested annually under a subsistence fishing permit.[13] Estrada and three other Angoon fishermen challenged the regulation after they were charged with taking more salmon than their permits allowed.[14] Namely, the fishermen argued that since the harvest limits had not been promulgated in accordance with the APA, it could not form the basis of their prosecution.[15] The district court agreed with the fisherman, but when the state appealed, the court of appeals deferred to the agency and

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[1] 356 P.3d 290 (Alaska 2015).
[2] *Id.* at 295.
[3] *Id.* at 292.
[4] *Id.*
[5] *Id.* at 293.
[6] *Id.*
[7] *Id.*
[8] *Id.* at 296.
[9] *Id.* at 295.
[10] *Id.* at 296.
[11] 362 P.3d 1021.
[12] *Id.* at 1022.
[13] *Id.*
[14] *Id.*
[15] *Id.*

reversed.[16] On appeal to the supreme court, the court reasoned that the Department's harvest limits indeed constituted a regulation (which the State disputed so as to relieve the Department of formal APA requirements), since they were used to interpret, make specific, and implement a statutory requirement, and they were used not as an internal guideline but rather as a tool in dealing with the public.[17] The court further reasoned that the APA requires agencies satisfy formal notice and comment requirements in promulgating valid regulations, while here the parties stipulated the Department failed to comply with the APA in adopting the harvest limits.[18] Reversing the court of appeals' decision and reinstating the district court's judgment of dismissal, the supreme court held that charges brought under agency regulations promulgated without following the requirements of the APA should be dismissed.[19]

Haar v. State, Dep't of Administration

In *Haar v. State, Dep't of Administration*,[20] the supreme court held that the Division of Motor Vehicles ("DMV") had reasonable basis to deny title and registration for a non-standard vehicle when compliance with safety standards was not satisfactorily demonstrated.[21] Haar applied for a low-speed vehicle title and registration for her 1972 Noland car.[22] Initial DMV inspections denied title based on the lack of any indication the manufacturer had followed federal safety standards or that the vehicle met those standards.[23] An administrative hearing again found the car did not meet title requirements.[24] The superior court affirmed the agency decision.[25] On appeal, Haar argued that the agency decision was in error because it relied on factors not listed in the statute and because she had presented sufficient evidence of compliance with safety standards.[26] The supreme court applied the reasonable basis standard of review because the titling decision implicated agency expertise.[27] Reviewing the entire record, the supreme court found that Haar's evidence was conclusory and failed to demonstrate actual compliance.[28] Haar's failure to demonstrate actual compliance provided the agency with substantial evidence and a reasonable basis in law to deny the title.[29] The supreme court held that the DMV had reasonable basis to deny title and registration for a non-standard vehicle when compliance with safety standards was not satisfactorily demonstrated.[30]

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[16] *Id.* at 1022–23.
[17] *Id.* at 1024.
[18] *Id.* at 1025–26.
[19] *Id.* at 1026.
[20] 349 P.3d 173 (Alaska 2015).
[21] *Id.* at 175.
[22] *Id.*
[23] *Id.* at 176.
[24] *Id.* at 177.
[25] *Id.*
[26] *Id.* at 178.
[27] *Id.* at 180.
[28] *Id.* at 179–80.
[29] *Id.* at 181.
[30] *Id.* at 175.

McGlinchy v. State, Department of Natural Resources

In *McGlinchy v. State, Department of Natural Resources*,[31] the supreme court affirmed the lower court's decision holding that the Department of Natural Resources (DNR) had not misapplied the law in denying the appellants permit to mine a mineral deposit for use as construction rock.[32] In May 2010, M & M Constructors, owned by James P. McGlinchy submitted a Plan of Operation to DNR requesting a permit to mine the land under 30 U.S.C. § 22, the General Mining Law of 1872 to develop the Flag Hill deposit to supply a nearby Alaska Railroad project.[33] A DNR committee concluded that the Flag Hill rock was common variety under the Common Varieties Act of 1955—and therefore nonlocatable, a requirement to allow mining under the General Mining Law of 1872.[34] M & M appealed the decision and requested a hearing that the Commissioner of DNR granted rendering the same decision that the Flag Hill rock was not locatable.[35] M & M appealed the Commissioner's final denial to the superior court on the grounds that the hearing officer had misapplied the law—the superior court affirmed the DNR decision and M & M appealed.[36] The supreme court affirmed that DNR had applied the correct law in denying M & M's permit to mine the Flag Hill deposit because the mineral deposit is not locatable nor subject to any of the exceptions under the Common Varieties Act.[37] The supreme court reasoned that the exceptions claimed by M & M in order to mine the deposit: (1) a valuable constituent mineral theory[38] and (2) an uncommon variety rock theory did not apply.[39] The supreme court affirmed the DNR finding that the valuable constituent mineral theory did not apply because M & M planned to mine the rock as a totality and not for the constituent minerals.[40] Additionally, the supreme court agreed with the DNR finding that the Flag Hill rock is not an uncommon rock because it lacks unique physical properties as outlined in the McClarty test.[41] Affirming the lower court's decision, the supreme court held that the DNR did not misapply the law in denying a permit for mining a mineral deposit for use as a construction rock, where the applicant's could not satisfy the valuable constitute mineral and uncommon variety rock exceptions.

Nunamta Alukestai v. State

In *Nunamta Alukestai v. State*,[42] the supreme court held Miscellaneous Land Use Permits allowing intensive mineral exploration on state land are functionally irrevocable, and thus convey state interests in land for which public notice is required prior to the disposal of such interests.[43] Pebble Limited Partnership ("PLP") applied for, and received, a Miscellaneous Land Use Permit ("MLUP") from the Department of Natural Resources ("DNR") allowing them to conduct intensive mining operations in the Pebble ore deposit from 2009 to 2010.[44] Nunamta, an

[31] 354 P.3d 1025 (Alaska, 2015).
[32] *Id*. at 1027.
[33] *Id.*
[34] *Id.*
[35] *Id.* at 1027–28.
[36] *Id*. at 1028–29.
[37] *Id*. at 1029.
[38] *Id*. at 1030.
[39] *Id*. at 1032.
[40] *Id*. at 1030.
[41] *Id*. at 1032.
[42] 341 P.3d 1041 (Alaska 2015).
[43] *Id.* at 1043.
[44] *Id.* at 1043-45.

association of eight Native village corporations in the Bristol Bay region, appealed the issuance of the MLUP by the DNR, challenging the lack of public notice prior to issuing the permit.[45] DNR denied Nunamta's appeal, and Nunamta filed a complaint for declaratory judgment in superior court.[46] The superior court ruled for PLP, holding the MLUP at issue did not amount to a disposal of an interest in state lands under Article VIII, Section 10 of the Alaska Constitution, and public notice was not required.[47] The supreme court reversed the superior court, ruling that, although licenses generally were not interests in land, the MLUP at issue was functionally irrevocable because its revocation would substantially destroy PLP's investment and leave long-lasting changes to the land.[48] Reversing the superior court, the supreme court held MLUPs allowing intensive mineral exploration on state land are functionally irrevocable, and thus convey state interests in land for which public notice is required prior to the disposal of such interests.[49]

Pacifica Marine, Inc. v. Solomon Gold, Inc.

In *Pacifica Marine, Inc. v. Solomon Gold, Inc.*,[50] the supreme court held that the Commissioner of the Department of Natural Resources can make a final decision on mineral bidding issues, so long as the decision is supported by substantial evidence and not arbitrary.[51] In 2011, the Department of Natural Resources (Department) auctioned 20,000 acres of mining leases, with the requirement that all bidders must submit a Bid Form and a Statement of Qualifications.[52] Mike Benchoff was the high bidder on ten tracts but neglected to file a Statement of Qualifications, prompting the Director of the Department's Division of Mining, Land & Water to grant Benchoff ten extra days to file.[53] Solomon Gold, Inc., the second-highest bidder on four of Benchoff's tracts, appealed this decision to the Department Commissioner, who later reversed the Director and rejected Benchoff's bids.[54] Benchoff and Pacifica Marine, Inc., a company holding some of Benchoff's leasing rights, appealed to the superior court.[55] The superior court held that the Commissioner's decision was appropriate because he interpreted Department regulations in a manner that was largely reasonable and not arbitrary.[56] Pacifica Marine appealed, arguing that the Commissioner's decision was arbitrary in nature.[57] The supreme court affirmed the lower court's decision, reasoning that the Commissioner's findings of fact are supported by substantial evidence and not arbitrary or unreasonable.[58] The court further reasoned that the Commissioner found evidence proving that all bidders had ample notice that both forms were required.[59] The court determined that the requirements were sufficiently

[45] *Id.* at 1045.
[46] *Id.*
[47] *Id.* at 1050.
[48] *Id.* at 1057.
[49] *Id.* at 1043.
[50] 356 P.3d 780 (Alaska 2015).
[51] *Id*. at 782, 795.
[52] *Id*. at 782–83.
[53] *Id*. at 783–84.
[54] *Id*. at 785–86.
[55] *Id*. at 786.
[56] *Id*. at 787.
[57] *Id*.
[58] *Id*. at 789, 793.
[59] *Id*. at 789.

clear and there was no unreasonable or unfair treatment.[60] Affirming the lower court's decision, the supreme court held that the Commissioner of the Department of Natural Resources can make a final decision on mineral bidding issues, so long as the decision is supported by substantial evidence and not arbitrary.[61]

State, Alaska Police Standards Council v. Parcell

In *State, Alaska Police Standards Council v. Parcell*,[62] the supreme court held that questions of law involving agency expertise are reviewed using the rational basis test.[63] Following a string of sexually offensive behavior towards his coworkers as well as borderline dishonesty in the ensuing investigation of his conduct, Parcell, a police officer, found his police certificate revoked by the Alaska Police Standards Council ("the Council") for lack of good moral character.[64] Parcell then appealed to the superior court, which concluded that the Council's moral character determination was not entitled to deference, because good moral character is an ordinary professional requirement whose meaning is not unique to the Council.[65] Using substitution of judgment as its standard of review, the superior court deemed the revocation unwarranted, and reversed the Council's decision.[66] On appeal, the supreme court reversed the lower court's decision and affirmed the Council's revocation.[67] The supreme court reasoned that the appropriate standard of review for questions of law involving agency expertise is the rational basis test, deferring to an agency's application of its own rules unless the agency's decision was arbitrary, unreasonable, or an abuse of discretion.[68] Such rational basis deference is appropriate even when interpreting commonly used words if the legislature has granted the agency broad discretion.[69] The court further reasoned that the Council's statutory mandate authorized the agency to establish mandatory qualifications for police officers, including moral character, and granted the agency broad discretion in making revocation decisions along those lines.[70] Thus, the Council's revocation based on a determination that Parcell lacked good moral character was well within the agency's purview, and, lacking arbitrariness or unreasonableness, was entitled to rational basis deference.[71] Reversing the lower court's decision and affirming the Council's revocation, the supreme court held that questions of law involving agency expertise are reviewed using the rational basis test.[72]

State, Dep't of Health & Social Services v. Gross

In *State, Dep't of Health & Social Services v. Gross*,[73] the supreme court held that the Alaska Department of Health and Social Services does not need to replicate the federal Supplemental Security Income ("SSI") analysis to determine state interim assistance benefits, but cannot deny

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[60] *Id*. at 793–94.
[61] *Id*. at 782, 795.
[62] 348 P.3d 882 (Alaska 2015).
[63] *Id.* at 886.
[64] *Id.* at 884–85.
[65] *Id.* at 886.
[66] *Id.*
[67] *Id.* at 889.
[68] *Id.* at 886.
[69] *Id.* at 888.
[70] *Id.* at 887.
[71] *Id.* at 888.
[72] *Id.* at 886.
[73] 347 P.3d 116 (Alaska 2015).

state benefits to persons eligible for SSI who are unable to perform other work in the national economy.[74] In December 2011, Gross applied for SSI and state benefits because of a serious mental disorder.[75] The Social Security Administration ("SSA") uses a five-step process to determine whether applicants are disabled and thus eligible for SSI, while the Alaska Department of Health and Social Services ("Department") determines eligibility for state benefits based on whether the applicant will likely be found disabled by the SSA.[76] After a hearing, Gross was found eligible for state benefits under step five because there was no evidence that he could perform other work in the national economy.[77] The Department's deputy commissioner ultimately decided against state benefits because the Department only considers steps one through three, but the superior court ruled that the Department must consider all five steps.[78] The Department appealed, arguing that it only needs to follow steps one through three.[79] The supreme court affirmed in part and reversed in part, ruling that the Department does not need to fully replicate the federal government's five step SSI analysis, but that the Department cannot deny state benefits to persons eligible under step five.[80] The court reasoned that no statutes mandate using the complete five step analysis, but the current statutes do require the state and federal analyses to be similar.[81] If the Department only considered steps one through three, an entire category of persons eligible for SSI under section five would be excluded from state benefits.[82] Accordingly, the Department must consider section five of the federal SSI analysis.[83] Affirming in part and reversing in part, the supreme court held the Alaska Department of Health and Social Services does not need to replicate the federal SSI analysis to determine state interim assistance benefits, but cannot deny state benefits to persons eligible for SSI who are unable to perform other work in the national economy.[84]

[74] *Id*. at 119, 126.
[75] *Id*. at 120.
[76] *Id*. at 118–19.
[77] *Id*.
[78] *Id*.
[79] *Id*.
[80] *Id*. at 126.
[81] *Id*. at 123–24.
[82] *Id*. at 125.
[83] *Id*.
[84] *Id*. at 119, 126.

Brooks v. Horner

In *Brooks v.* Horner,[85] the supreme court had its first opportunity to apply the "entire fairness" test to a purchase of a corporate asset by a shareholder during a voluntary winding up of a closely held corporation.[86] The closely held corporation was created for the purpose of managing a group of contiguous mining claims, its sole asset.[87] Three shareholders held an equal stake in the corporation.[88] With the corporation in risk of financial collapse, the shareholders elected to voluntarily wind up the corporation and sell off the mining claim.[89] The corporation's attorney drafted documents laying out the minimum bid price of $100,000, a confidentiality agreement, and a requirement that all bidders must provide proof of financial pre-qualification by a certain date.[90] With only a month left until the bidding period closed, no one had yet submitted a bid for the claim.[91] Two of the shareholders, the appellees, created a joint venture to purchase the claim and submitted a bid of $105,000.[92] Once the deadline for bidding had passed, the shareholders called a special meeting to vote on the proposed bids.[93] Appellees' bid was the only qualifying offer submitted, and, therefore, the shareholders voted to award the mining claim to the appellees.[94] Two months later, the third shareholder brought this suit against the appellees, objecting to the sale of the asset and claiming that they breached their fiduciary duty to the corporation by misrepresenting facts material to the sale, amongst other claims.[95] In an apparent matter of first impression, the supreme court examined whether the sale qualified as "just and reasonable," under the "entire fairness" test used in instances of self-interested transactions by parties that hold a fiduciary duty to the corporation it is representing.[96] This test examines whether the price and manner in which the deal took place are at least as favorable as would have been achieved without the fiduciary's conflict of interest.[97] Since the asset was sold above a minimum bid price that was agreed upon before the conflict of interest arose14[98] and appellees did not withhold any material fact that would have altered the decision of a reasonable shareholder,[99] the supreme court upheld the lower court's ruling that the sale was just and reasonable.[100]

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[85] 344 P.3d 294 (Alaska 2015).
[86] *Id*. at 301.
[87] *Id*. at 296.
[88] *Id*.
[89] *Id*.
[90] *Id.*
[91] *Id*.
[92] *Id*.
[93] *Id*. at 297.
[94] *Id*.
[95] *Id*.
[96] *Id*. at 301.
[97] *Id*.
[98] *Id*. at 301–02.
[99] *Id.* at 299.
[100] *Id.* at 302.

Pister v. State, Dept. of Revenue

In *Pister v. State, Dept. of Revenue*,[101] the supreme court held that res judicata does not bar the State from seeking to pierce a corporation's corporate veil to collect upon a tax debt.[102] Dr. Pister owns a radiology business called Northwest Medical Imaging, which in 1997 the Alaska Department of Revenue assessed for unpaid taxes, penalties and interests.[103] The Office of Tax appeals entered a judgment against Northwest Medical for $123,188 and the State filed a complaint in 2008 seeking to collect that judgment from Pister personally.[104] The superior court held that the corporation's veil could be pierced in order to do so.[105] The shareholders and corporation appealed arguing that the superior court erred by not barring the suit under the principle of res judicata.[106] The supreme court affirmed the lower court's decision, reasoning that piercing the corporate veil is not a claim for damages, instead it is a means of imposing liability on an underlying cause.[107] It is a procedural rather than a substantive claim.[108] Moreover, the supreme court noted that other courts that have considered this question agree that veil piercing should not be barred by res judicata.[109] Affirming the lower courts decision, the supreme court held that res judicata does not bar the State from seeking to piece a corporation's corporate veil to collect upon a tax debt.[110]

[101] 354 P.3d 357 (Alaska 2015).
[102] *Id.* at 360.
[103] *Id.*
[104] *Id.*
[105] *Id.* at 361.
[106] *Id.* at 360.
[107] *Id.* at 362.
[108] *Id.* at 363.
[109] *Id.*
[110] *Id.* at 360.

CIVIL PROCEDURE

Alaska Commercial Fishermen's Memorial in Juneau v. City and Borough of Juneau

In *Alaska Commercial Fishermen's Memorial in Juneau v. City and Borough of Juneau*,[111] the supreme court held that the superior court did not err in dismissing a case as unripe and granting judgment on the pleadings, when presented with only hypothetical facts.[112] Juneau planned to build a dock on the waterfront, and sought the transfer of state lands.[113] Alaska Commercial Fishermen's Memorial, an organization, annually hosted a blessing of fishing boats on the waterfront and filed suit against Juneau, seeking to enjoin the city from moving forward with its dock project.[114] Following multiple motions, the superior court denied the organization's motions and granted motion for judgment on the pleadings to Juneau, stating that the organization had failed to demonstrate the presence of an actual controversy.[115] On appeal, the supreme court affirmed the dismissal, because no evidence in the record demonstrated that Juneau had or intended to trespass or start construction on state lands prior to the lands' transfer, which meant only hypothetical facts had been presented.[116] Because a claim cannot be supported using solely hypothetical facts, the organization's claims were not ripe, and, therefore, the organization lacked standing to sue and the dismissal and grant of judgment on the pleadings by the superior court were reasonable.[117] Affirming the superior court, the supreme court held that a claim is unripe when supported by hypothetical facts, and dismissal is the appropriate response to a lack of standing.[118]

Alaska Conservation Foundation v. Pebble Ltd. Partnership

In *Alaska Conservation Foundation v. Pebble Ltd. Partnership*,[119] the supreme court held that a key inquiry in deciding whether to award attorneys' fees under a statute protecting constitutional lawsuits is whether the plaintiff had any direct economic interest in the claim.[120] Alaska Conservation Foundation and other non-profit organizations unsuccessfully sued Pebble Ltd. Partnership and the State of Alaska, challenging the constitutionality of a permitting process for a mining project.[121] The State sought to collect attorney's fees.[122] The non-profits sought protection under a statute that shields legitimate constitutional claimants, who lack an economic interest in their lawsuit, from paying attorneys' fees.[123] On appeal, the non-profits argued that the lower court should not have allowed discovery into their private financial records.[124] The supreme court ruled that the nature of the claim, the relief sought, and the direct economic benefits at stake should be evaluated in determining whether a sufficient economic interest exists

[111] 357 P.3d 1172 (Alaska 2015).
[112] *Id.* at 1175–77.
[113] *Id.* at 1173.
[114] *Id.* at 1174.
[115] *Id.* at 1175.
[116] *Id.* at 1176.
[117] *Id.* at 1176–77.
[118] *Id.* at 1175–77.
[119] 350 P.3d 273 (Alaska 2015).
[120] *Id.* at 286.
[121] *Id.* at 275.
[122] *Id*.
[123] *Id.*
[124] *Id.* at 278.

under the constitutional litigation statute.[125] The court reasoned that no direct economic interests were implicated by the permitting claim, only indirect interests.[126] Reversing the lower court's decision, the supreme court held that a key inquiry in awarding attorneys' fees under a statute governing constitutional lawsuits is whether the plaintiff had a direct economic interest in its claim.[127]

Alaska Fur Gallery, Inc. v. First National Bank Alaska

In *Alaska Fur Gallery, Inc. v. First National Bank Alaska*,[128] the supreme court held that direct discrepancies in deposition testimony across two cases are generally not sufficiently egregious to constitute fraud on the court under Alaska Civil Rule 60(b).[129] Alaska Fur Gallery, Inc. ("AFG") sued their lender, First National Bank Alaska ("the Bank"), alleging fraudulent inducement to invest based on a loan officer's conduct.[130] At a second trial in 2010, AFG was awarded apportioned damages, enhanced attorneys' fees for the first trial in 2008, and standard fees for the second trial.[131] AFG appealed the denial of their fraud upon the court motions, desiring enhanced fees for the 2010 trial.[132] On appeal, AFG argued that deposition statements made by senior Bank officials in other litigation post-dating the 2008 trial revealed knowledge of the loan officer's violations of Bank policies beginning in 2005.[133] The same Bank officials had presented contradictory testimony in the 2008 trial that they were unaware of any such policy violations.[134] Reviewing for abuse of discretion, the supreme court affirmed the lower court's holding specifying that fraud on the court should be limited to the most egregious circumstances of procedural corruption causing injury to many litigants.[135] While potentially false and misleading, the Bank officials' statements were not sufficiently egregious because they were based purely on later-discovered perjury in litigation not directly related to AFG's claim.[136] AFG had additionally already received remedy in the form of relief from judgment, a second trial, and enhanced attorneys' fees.[137] Affirming the lower court, the supreme court held direct discrepancies in deposition testimony across two cases are generally not sufficiently egregious to constitute fraud on the court under Alaska Civil Rule 60(b).[138]

Barber v. Schmidt

In *Barber v. Schmidt,*[139] the supreme court held a class action cannot be certified with pro se litigants at the helm.[140] In May 2012, a group of six Alaska prisoners collectively filed a putative class-action complaint against Department of Corrections ("Department") Commissioner Joseph

[125] *Id.* at 283-84.
[126] *Id.* at 285.
[127] *Id*. at 286.
[128] 345 P.3d 76 (Alaska 2015).
[129] *Id.* at 87–88.
[130] *Id.* at 82.
[131] *Id.* at 85.
[132] *Id.*
[133] *Id.* at 87.
[134] *Id.*
[135] *Id.* at 86.
[136] *Id.* at 87–88.
[137] *Id.* at 88.
[138] *Id.* At 87–88.
[139] 354 P.3d 158 (Alaska 2015).
[140] *Id.* at 161.

Schmidt and other Department officials.[141] The complaint included eighteen causes of action, alleging violations of the prisoners' rights under both the Alaska and United States Constitutions.[142] Many of the alleged violations pertained to Department policy changes regarding inmate purchase and possession of video gaming systems and mature-rated video games.[143] One of the inmates, Jack Earl, Jr., moved for class certification under Alaska Rule of Civil Procedure 23(a).[144] The superior court denied Earl's motion, ruling that a pro se plaintiff cannot represent a class in a class-action lawsuit.[145] Although Earl raised the issue on appeal, he conceded that applicable precedent precluded pro se litigants from representing a class under Civil Rule 23(a).[146] The supreme court affirmed the superior court's decision, ruling that Civil Rule 23(a) could not be satisfied in Earl's case without the appointment of counsel.[147] Affirming the superior court's decision, the supreme court held a class action cannot be certified with pro se litigants at the helm.[148]

Cooper v. Thompson

In *Cooper v. Thompson*,[149] the supreme court held that a lower court erred in excluding evidence of domestic violence in a case that evaluated compensatory damages relating to a continuing injury from an automobile accident.[150] In 2008, Cooper, a driver for Central Plumbing & Heating, caused a car accident that injured Thompson.[151] In the following months, Thompson complained of neck and back pain, and had surgery to correct the pain in 2009.[152] During this same period, Thompson was dating a woman who committed various instances of domestic assault against him.[153] After filing suit, Thompson asked that evidence of the domestic violence be excluded, which the superior court granted, finding that the evidence was more so unfairly prejudicial than probative.[154] The jury subsequently awarded Thompson nearly one and a half million dollars in damages.[155] On appeal, Central argued that the excluded evidence of domestic violence was relevant to the determination of compensatory damages, and could be admitted without unfairly prejudicing the jury.[156] Reversing the lower court's decision, the supreme court found that the superior court abused its discretion in its wholesale exclusion of the evidence of domestic violence.[157] The supreme court noted that the type of domestic assaults committed by Thompson's former girlfriend were such that they could have cause injuries similar to those allegedly caused by the automobile accident.[158] The assaults therefore qualified as potentially

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[141] *Id.* at 160.
[142] *Id.* at 159.
[143] *Id.* at 159-60.
[144] *Id.* at 160.
[145] *Id.*
[146] *Id.*at 161.
[147] *Id.*
[148] *Id.*
[149] 353 P.3d 782 (Alaska 2015).
[150] *Id.* at 791.
[151] *Id.* at 785.
[152] *Id.* at 787.
[153] *Id.* at 787.
[154] *Id.* at 787–790.
[155] *Id.* at 785.
[156] *Id*. at 790–791.
[157] *Id.* at 789.
[158] *Id.* at 790.

significant intervening trauma, which could be relevant to a jury's evaluation of damages.[159] Reversing the superior court's decision, the supreme court held that the lower court erred in excluding evidence of domestic violence in a case that evaluated compensatory damages in relation to an injury from an automobile accident.[160]

Erica G. v. Taylor Taxi, Inc.

In *Erica G. v. Taylor Taxi, Inc.*,[161] the supreme court held that to establish excusable neglect in failing to respond to an opposing party's motion for summary judgment, a patron must show a causal link between the excusable neglect and the patron's failure to timely act.[162] Erica G. brought a negligence suit against Taylor Taxi, Inc., claiming damages for an alleged sexual assault she suffered by a licensed taxi driver operating under a permit issued to Taylor Taxi.[163] Taylor Taxi moved for summary judgment on a variety of grounds, and the deadline for opposition came and went without any action by Erica or her attorneys.[164] Consequently, the superior court granted Taylor Taxi's motion.[165] Pursuant to state rules of civil procedure, Erica then moved for an extension of time based on excusable neglect, with she and her attorneys filing affidavits citing several hardships: during the filing period, Erica was pregnant and had pending criminal charges; Erica suffered from post-traumatic stress disorder following the alleged sexual assault as well as the death of her son, making her difficult to contact; and her attorneys were overburdened with a particularly heavy caseload and disruption of mail service following an office relocation.[166] However, these affidavits never contested Taylor Taxi's contention that it actually mailed all pleadings directly to the *new* office address, while one attorney's affidavit contradictorily pointed to a clerical error as the initial cause of the missed deadline (as opposed to Erica's absence).[167] The superior court denied Erica's motion, noting that no excusable neglect had been shown for extension of time after the expiration of time for filing an opposition to the summary judgment motion.[168] On appeal, the supreme court upheld the superior court's judgment, reasoning that there must be a causal link between the instances of excusable neglect and the party's failure to timely act.[169] The litany of explanations in the affidavits failed to assert a nexus between the various hardships and missing the deadline for opposition or a motion seeking more time to respond.[170] Therefore, affirming the lower court, the supreme court held that to establish excusable neglect in failing to respond to an opposing party's motion for summary judgment, a patron must show a causal link between instances of excusable neglect and the patron's failure to timely act.[171]

Fernandez v. Fernandez

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[159] *Id.* at 790.
[160] *Id.* at 791.
[161] 357 P.3d 783 (Alaska 2015).
[162] *Id.* at 787.
[163] *Id.* at 784.
[164] *Id.* at 785.
[165] *Id.*
[166] *Id.* at 786.
[167] *Id.* at 788.
[168] *Id.* at 785.
[169] *Id.* at 787.
[170] *Id.* 788.
[171] *Id.* at 787.

In *Fernandez v. Fernandez*,[172] the supreme court held that the lower court did not abuse its discretion under Alaska Civil Rule 60(b) in concluding that a sham marriage dissolution filing constituted fraud upon the court.[173] The Fernandezes filed for dissolution of their marriage in 1986 after having two children together, but they continued living together as husband and wife until 2007.[174] They stipulated that they filed for dissolution only to shield some marital assets from bankruptcy.[175] In 2010, the former wife attempted to enforce child support obligations dating back to 1986 and the former husband moved for relief.[176] The superior court granted equitable remedy to the former husband by setting aside the 1986 dissolution as fraud upon the court and ordering child support beginning on the date of actual separation.[177] On appeal, the former wife argued that the lower court abused its discretion in setting aside the dissolution.[178] The supreme court reasoned that the sham dissolution did not solely concern private parties.[179] Rather, it defiled the court system as a whole[180] by granting windfalls to both parties, undermining bankruptcy proceedings, and interfering with public protections for investors.[181] Moreover, the former husband requested relief under Rule 60(b) within a reasonable time given all the circumstances.[182] Affirming the lower court's action, the supreme court found that the lower court did not abuse its discretion in setting aside the parties' sham dissolution as fraud upon the court.[183]

Geotek Alaska, Inc. v. Jacobs Engineering Group, Inc.

In *Geotek Alaska, Inc. v. Jacobs Engineering Group, Inc.*,[184] the supreme court held that the right to decline arbitration shall only be decided by the court, not the arbitrator.[185] The arbitrator was overseeing a contract dispute between Jacobs Engineering Group, Inc. and GeoTek Alaska.[186] Jacobs did not have a contract with GeoTek, but Jacob's contract included a 'flow down' on all terms and conditions to any sub-subcontract, such as the one with GeoTek.[187] When Jacobs received the demand for arbitration, they stated that they rejected the demand, but GeoTek went ahead with the proceedings and the arbitrator awarded GeoTek $257,687.62.[188] GeoTek filed a complaint in superior court seeking to confirm the arbitration award, but the court concluded that Jacobs was not legally obligated to participate in the arbitration.[189] On appeal, GeoTek argues that it was up to the arbitrator to decide whether Jacobs had exercises its right to reject arbitration.[190] The supreme court affirmed the lower court's

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[172] 358 P.3d 562 (Alaska 2015).
[173] *Id.* at 564.
[174] *Id.*
[175] *Id.*
[176] *Id.*
[177] *Id*. at 564–65.
[178] *Id*. at 565.
[179] *Id*. at 567.
[180] *Id.*
[181] *Id*. at 570.
[182] *Id*. at 569.
[183] *Id.* at 571.
[184] 2015 WL 4774257 (Alaska 2015).
[185] *Id.* at 369.
[186] *Id.* at 370.
[187] *Id.*
[188] *Id.* at 371.
[189] *Id.*
[190] *Id.*

decision, reasoning that Alaska statutes provide that the courts are the proper forum to determine whether a dispute is arbitrable.[191] The only claims Jacobs has agreed to arbitrate are those that it elects to have decided by arbitration.[192] Affirming the lower court's decision, the supreme court held that the right to decline arbitration shall only be decided by the court, not the arbitrator.[193]

Jacko v. State, Pebble Ltd. Partnership

In *Jacko v. State, Pebble Ltd. Partnership*, the supreme court held under the implied preemption standard, a state law conferring gatekeeper authority to a state department preempts an initiative granting a borough veto power.[194] Lake and Peninsula Borough voters passed a law prohibiting mining activities with a negative impact on certain waters in the boroughs.[195] The Alaska Land Act grants the Department of Natural Resources ("DNR") authority on all matters impacting "exploration, development, and mining" of state resources.[196] The lower court granted summary judgment for the state and enjoined the borough from enforcing the initiative.[197] On appeal, Jacko argued that there is no express or implied preemption of the Borough's authority to regulate the resources.[198] The supreme court affirmed the lower court's decision, finding that the Alaska Land Act granted gatekeeper authority to the state department, thereby preempting the Borough's veto power. The supreme court reasoned that under the scheme proposed in the initiative, the DNR would no longer function as the sole gatekeeper in granting and denying mining permits and the Alaska Land Act impliedly preempted this power shift away from the DNR.[199] Affirming the lower court's decision, the supreme court held that the Alaska Land Act's grant of gatekeeper authority to a state department implicitly preempted a Borough's initiative-derived authority over the same activities.[200]

Manning v. State, Department of Fish & Game

In *Manning v. State, Department of Fish & Game*,[201] the supreme court held that attorneys' fees cannot be awarded for work on procedural aspects of a constitutional lawsuit unless the fee applicant can prove the procedural work was solely related to a non-constitutional aspect of the lawsuit.[202] In 2011, Kenneth Manning brought both statutory and constitutional claims in a lawsuit seeking to stop the Department of Fish & Game ("DF&G") from instituting caribou hunting regulations.[203] DF&G successfully defended the regulations and received summary judgment.[204] DF&G was awarded attorney's fees for time it spent working on procedural aspects of the lawsuit.[205] On appeal, Manning argued that all aspects of the lawsuit involved

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[191] *Id.* at 372.
[192] *Id.* at 374.
[193] *Id.* at 369.
[194] 353 P.3d 337, 344 (Alaska 2015).
[195] *Id.* at 338.
[196] *Id.*
[197] *Id.*
[198] *Id.* at 343.
[199] *Id.* at 340–44.
[200] *Id.* at 344.
[201] 355 P.3d 530 (Alaska 2015).
[202] *Id.* at 540.
[203] *Id.* at 532.
[204] *Id.* at 533-34.
[205] *Id.* at 539.

constitutional issues and thus he should not have to pay any attorneys' fees.[206] The supreme court vacated the lower court's attorneys' fees award, reasoning that DF&G could not get attorneys' fees for work on procedural issues unless it could prove that work was not related to Manning's constitutional claims.[207] The court said that work done on the lawsuit's procedural issues could not be distinguished from the constitutional claims involved in the lawsuit.[208] The court further reasoned that the lower court should assume all procedural work done for the lawsuit related to constitutional claims, unless the DF&G could produce detailed documentation showing otherwise.[209] Reversing the lower court's decision, the supreme court held that attorneys' fees cannot be awarded for work on procedural issues in a constitutional lawsuit unless the fee applicant can prove the procedural work was solely related to a non-constitutional aspect of the lawsuit.[210]

Moore v. Olson

In *Moore v. Olson*,[211] the supreme court held that state courts are not required to sua sponte conduct an evidentiary hearing on arbitration awards and may confirm an award so long as there is no gross error.[212] Aimee Moore and Donald Olson had personal and business relationships between 1995 and 2004, which included Moore managing Olson's businesses for a share of the profits.[213] Moore and Olson signed a final settlement agreement in 2005 to terminate their business relationship, under the condition that either party could arbitrate any future disputes and the losing party would pay costs and attorney's fees.[214] Moore initiated arbitration in 2012, arguing that Olson breached the settlement agreement in connection with the sale of two properties.[215] The arbitrator decided that Olson did not breach the settlement agreement and he was awarded costs and attorney's fees.[216] The superior court confirmed this award, ruling that Olson was correctly granted costs and attorney's fees pursuant to the parties' arbitration agreement.[217] On appeal, Moore argued that the superior court acted erroneously and violated her right to due process by ruling without holding a hearing.[218] The supreme court affirmed the lower court's decision, reasoning that the arbitrator's decisions were not gross error and there was no due process violation because the superior court was not obligated to conduct an evidentiary hearing.[219] The court noted that the arbitrator's decisions complied with state arbitration statutes and were soundly justified, so the gross error standard was not met.[220] The supreme court further noted that no statutes required a sua sponte evidentiary hearing and that Moore did not meet the plain error standard necessary to demonstrate that the lack of an evidentiary hearing violated due

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[206] *Id.* at 538.
[207] *Id.* at 540.
[208] *Id.*
[209] *Id.*
[210] *Id.* at 540.
[211] 351 P.3d 1066 (Alaska 2015).
[212] *Id*. at 1075–76.
[213] *Id*. at 1068–69.
[214] *Id*. at 1069.
[215] *Id*.
[216] *Id*. at 1070.
[217] *Id*.
[218] *Id*. at 1071.
[219] *Id*. at 1075–77.
[220] *Id*. at 1075–76.

process.[221] Affirming the lower court's decision, the supreme court held that state courts are not required to sua sponte conduct an evidentiary hearing on arbitration awards and may confirm an award so long as there is no gross error.[222]

Patterson v. GEICO General Insurance Co.

In *Patterson v. GEICO General Insurance Co.*,[223] the supreme court affirmed all of the lower court's rulings: denying the appellant's motions to amend his complaint, awarding attorneys' fees and costs to the appellee, as well as other procedural and evidentiary rulings.[224] The appellant, Tommie Patterson, was injured in a hit-and-run accident in December 2009 and claimed that he was entitled to medical benefits for uninsured motorists through a provision in his General Insurance Company ("GEICO") automobile insurance policy.[225] Both parties disputed the severity of the injuries sustained in the accident.[226] Patterson filed a complaint alleging breach of the insurance contract.[227] Consequently, GEICO raised affirmative defense that Patterson's injuries might have been a result of a pre-existing condition and that he was not entitled to recover for expenses already paid by his Medical Payments Coverage.[228] The appellants attorney subsequently withdrew and Patterson proceeded with the litigation pro se, amending his complaint to include new claims of racketeering, embezzlement, mail fraud, and bad faith on the part of GEICO.[229] The lower court denied Patterson's motion to amend, finding it untimely and futile.[230] Paterson further moved to disqualify the trial judge for bias and prejudice.[231] The superior court denied Patterson's motion and submitted the matter to another superior court judge for review where no basis for his claims was found.[232] A pretrial conference was held in which Patterson agreed to follow the court's orders to not pursue the claims in his amended complaint while in the presence of the jury and limit his evidence and arguments to the severity of the accident.[233] The jury returned a verdict finding GEICO liable for $5,000 in past noneconomic damages and $10,000 in past medical expenses.[234] Patterson motioned for a new trial and relief from judgment, alleging violation of his right to impartial judge and jury.[235] GEICO moved for and prevailed on reduction in the verdict for medical expenses already paid on Patterson's behalf, an entry of final judgment and recognition as the prevailing party, and for attorneys' fees and costs under Alaska Civil Rule 68.[236] As a result, the final net judgment in favor of Patterson was $1,556.75, that he appealed for abuse of discretion.[237] Affirming the entire

[221] *Id*. at 1076–77.
[222] *Id*. at 1075–76.
[223] 347 P.3d 562 (Alaska, 2015).
[224] *Id.* at 565.
[225] *Id.*
[226] *Id.* at 566.
[227] *Id*.
[228] *Id*.
[229] *Id*.
[230] *Id.*
[231] *Id.* at 566–67.
[232] *Id*. at 567.
[233] *Id*.
[234] *Id*.
[235] *Id*.
[236] *Id*.
[237] *Id*.

judgment, the supreme court found no abuse in the lower court's discretion, deeming all of the rulings reasonable.[238]

Ray v. Draeger

In *Ray v. Draeger*,[239] the supreme court held that it was an abuse of discretion to exclude evidence of an expert witness's substantial connection to the insurance industry.[240] Draeger experienced and sought treatments for neck and back pain following an auto accident caused by Ray.[241] Draeger sued Ray, defended by her insurance company, for damages relating to her medical care.[242] At trial, the judge granted a motion to preclude any reference to the fact that Ray was covered by insurance.[243] The order also limited questions on the bias of an expert witness retained by the insurance company to the scope of his work for defense attorneys, rather than for insurance companies.[244] A jury awarded Draeger only some of her medical expenses based on testimony of the expert witness.[245] Draeger appealed, arguing it was improper for the district court to preclude questions on the extent of the expert's work for and payments from the insurance agencies.[246] The superior court reversed the district court's order which Ray appealed.[247] Reviewing for abuse of discretion, the supreme court affirmed the conclusion of the superior court that the exclusion was improper.[248] The supreme court reasoned that evidence of an expert witness's substantial connection to the insurance industry, such as receiving a sizeable portion of income from insurance work, is relevant to bias and likely outweighs the danger of unfair prejudice under Alaska Evidence Rule 403 and 411.[249] The supreme court held that exclusion of evidence not unfairly prejudicial of an expert witness's substantial connection to the insurance industry constitutes abuse of discretion.[250]

State v. W.P.

In *State v. W.P.*,[251] the court of appeals held that a trial court retained subject-matter jurisdiction to adjudicate the dollar amount of restitution owed by a juvenile delinquent and his mother, even after the juvenile completed his probation.[252] W.P., a juvenile, admitted guilt for arson in November 2011, and accepted a plea bargain calling for one year of juvenile probation as well as restitution from both W.P. and his mother, A.P., with the amount to be determined later.[253] The litigation of A.P.'s restitution obligation was repeatedly delayed throughout the following year, due to procedural errors in filing a restitution amount and difficulties in obtaining an attorney for

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[238] *Id*. at 577.
[239] 353 P.3d 806 (Alaska 2015).
[240] *Id.* at 808.
[241] *Id.*
[242] *Id.*
[243] *Id.* at 809.
[244] *Id.*
[245] *Id.* at 810.
[246] *Id.*
[247] *Id.*
[248] *Id.*
[249] *Id.* at 813.
[250] *Id.* at 816.
[251] 349 P.3d 181 (Alaska Ct. App. 2015).
[252] *Id.* at 188.
[253] *Id.* at 183.

A.P.[254] In February 2013, with W.P's probation completed and a restitution amount still not filed, A.P. filed a motion contending that, under Alaska Statute 47.12.160, the superior court no longer had jurisdiction to enter restitution against her once W.P.'s probation ended.[255] The superior court granted A.P.'s motion to dismiss the restitution proceedings.[256] The court of appeals reversed the superior court, ruling that subsection (f) of Alaska Statute 47.12.160 strongly implies that a court retains subject-matter jurisdiction to issue an order fixing the dollar amount of restitution even after the court has lost its jurisdiction to alter other aspects of the delinquency judgment.[257] The court of appeals held that a trial court retained subject-matter jurisdiction to adjudicate the dollar amount of restitution owed by a juvenile delinquent and their parent, event after the juvenile completed probation.[258]

[254] *Id.*
[255] *Id.* at 184.
[256] *Id.*
[257] *Id.* at 187.
[258] *Id.* at 188.

CONSTITUTIONAL LAW

Hughes v. Treadwell

In *Hughes v. Treadwell*,[259] the supreme court held that a ballot initiative requiring final legislative approval for large-scale mining operations within a watershed did not violate constitutional prohibitions on appropriation of state assets or on local or special legislation.[260] In 2012, Treadwell received and subsequently approved an initiative designed to protect the Bristol Bay Fisheries Reserve by requiring legislative approval for large-scale metallic sulfide mining operations within the Bristol Bay Fisheries Reserve watershed.[261] Hughes brought forth a suit, challenging the constitutionality of the initiative, but the superior court ruled in favor of Treadwell, stating that the initiative was not unconstitutional.[262] On appeal, Hughes argued that the ballot initiative violated constitutional prohibitions on appropriation, as well as on enacting local or special legislation by initiative.[263] The supreme court affirmed the lower court's decision, reasoning that the initiative did not violate the Alaska Constitution's anti-appropriation clause because violations of the clause only occurred when voters effectively took over the legislature's resource allocation role.[264] In this case, the initiative still left the final decision over allocation of state assets to the legislature, therefore keeping the resource allocation role in the hands of the legislature.[265] The court further reasoned that the initiative did not violate the Alaska Constitution's local and special legislation clause because it bore a fair and substantial relationship to its legitimate purpose,[266] since the initiative aimed to protect substantial biological and economic characteristics through legislative approval of potentially environmentally and economically harmful large-scale mining operations.[267] Affirming the lower court's decision, the supreme court held that a ballot initiative requiring final legislative approval for large-scale mining operations within a watershed did not violate constitutional prohibitions on appropriation of state assets or on local or special legislation.[268]

Phillip v. State

In *Phillip v. State*,[269] the court of appeals held that the state constitution's free exercise clause cannot provide an exemption from a religiously neutral law, when granting the exemption would harm a compelling state interest.[270] David Phillip and twelve other Alaska Native subsistence fishermen sought a religious exemption under the free exercise clause after they were charged with violating the state's emergency restrictions on king salmon fishing.[271] The Alaska Department of Fish and Game put limits on fishing king salmon in the Kuskokwim River during the 2012 fishing season after estimating that the river's king salmon population could fall to an

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[259] 341 P.3d 1121 (Alaska 2015).
[260] *Id.*
[261] *Id.* at 1124.
[262] *Id.*
[263] *Id.* at 1123.
[264] *Id.* at 1131.
[265] *Id.*
[266] *Id.* at 1133.
[267] *Id.* at 1132–1133.
[268] *Id.* at 1121.
[269] 347 P.3d 128 (Alaska Ct. App. 2015).
[270] *Id.* at 134.
[271] *Id.* at 129.

unsustainable level.[272] On appeal, Phillip argued that he was fishing for king salmon based on traditional Yup'ik religious beliefs, and thus the state should find a less restrictive way to protect the king salmon population.[273] The court of appeals affirmed the lower court's decision, reasoning that the state had a compelling interest in protecting the king salmon and did not have to show that the emergency measures it used were the least restrictive available.[274] The court of appeals found it sufficient that other potential emergency measures were not practical under the circumstances.[275] The court further reasoned that the state only needed to show that its compelling interest would be harmed if it granted a religious exemption allowing Phillip to freely fish for king salmon.[276] Affirming the lower court's decision, the court of appeals held that the state constitution's free exercise clause does not provide an exemption from a religiously neutral law when the exemption would harm a compelling state interest.[277]

RBG Bush Planes, LLC v. Kirk

In *RBG Bush Planes, LLC v. Kirk*,[278] the supreme court held that a state constitutional due process claim against an administrative agency procedure requires exhaustion of available administrative remedies or, alternatively, a clear showing that administrative remedies would be manifestly futile.[279] The Alaska Public Offices Commission ("Commission") opened an investigation against RBG Bush Planes ("RBG") alleging a violation of Alaska's campaign finance laws.[280] RBG subsequently brought state and federal due process claims against the Commission, alleging it was biased against him and seeking to enjoin it from being involved.[281] The superior court found that the case lacked ripeness, because RBG failed to exhaust his administrative remedies by pursuing the disqualification of certain officials he believed to be biased.[282] The supreme court affirmed, reasoning that the statutory scheme had anticipated such an allegation by providing for a disqualification process.[283] Further, the court reasoned that the process was not futile, because the Commission had not refused to address the bias contention.[284] Affirming the lower court's decision, the supreme court held that a state due process claim against an administrative agency requires exhaustion of administrative remedies or, alternatively, a clear showing of manifest futility.[285]

State v. Williams

In *State v. Williams*,[286] the court of appeals held as a matter of first impression that the authority to decide whether a charge of contempt should go forward to trial and judgment rests with the

[272] *Id.* at 130.
[273] *Id.* at 131–33.
[274] *Id.* at 134.
[275] *Id.* at 133.
[276] *Id.* at 134.
[277] *Id*.
[278] 340 P.3d 1056 (Alaska 2015).
[279] *Id.* at 1065.
[280] *Id.* at 1059.
[281] *Id.* at 1059–60.
[282] *Id.* at 1060.
[283] *Id.* at 1067.
[284] *Id.* at 1065.
[285] *Id.* at 1059.
[286] 2015 WL 5061254 (Alaska Ct. App.).

judiciary.[287] Williams was subpoenaed to appear and testify before an Anchorage grand jury in connection with a homicide, but failed to appear.[288] The State obtained an arrest warrant, and, after he was eventually arrested, charged Williams with contempt for failing to honor the subpoena.[289] The superior court dismissed the contempt charge, ruling that Williams had been the victim of selective prosecution.[290] On appeal, the State argued that Alaska's contempt statute requires courts to adjudicate all criminal contempt charges filed by the State.[291] The court of appeals rejected the State's argument and affirmed the lower court's decision, albeit for different reasons.[292] The court of appeals reasoned that the contempt power has traditionally been recognized as an inherent power of the judicial branch.[293] Therefore, while the contempt statute may give the executive branch the authority to *initiate* a contempt charge, the ultimate authority to decide whether that charge should go forward—or not—rests with the court whose order has been violated.[294] The State's interpretation of the contempt statute would seriously shift the balance of power between the judicial and executive branches, circumscribing the former's traditional authority over the final decision regarding who should be prosecuted for criminal contempt.[295] The court of appeals reasoned that this radical result was likely unintended by the legislature in enacting the contempt statute.[296] Affirming the lower court's dismissal of the contempt charge, the court of appeals held that the authority to decide whether a charge of contempt should go forward to trial and judgment rests with the judiciary.[297]

[287] *Id.* at *2.
[288] *Id.* at *1.
[289] *Id.*
[290] *Id.*
[291] *Id.* at *8.
[292] *Id.* at *2.
[293] *Id.* at *3.
[294] *Id.* at *2.
[295] *Id.* at *8.
[296] *Id.*
[297] *Id.* at *2.

CONTRACT LAW

Duenas-Rendon v. Wells Fargo Bank, N.A.

In *Duenas-Rendon v. Wells Fargo Bank, N.A*,[298] the supreme court held that no additional notice is due to a borrower when a lender has provided notice of default and intention to foreclose, even if the lender continues accepting payments after a notice of default.[299] When Duenas-Rendon failed to make her mortgage payments, Wells Fargo apprised her that her loan was in default and that the bank intended to accelerate and foreclose.[300] Two months later, a notice of default was recorded stating the bank's intention to foreclose and auction the house, and, for the next few months, the bank continued accepting payments from Duenas-Rendon and holding them in suspension.[301] After the auction of her house, Duenas-Rendon sued, alleging that the bank's continued acceptance of payments after recording a notice of default, without providing additional notice of its continued intention to foreclose, resulted in a waiver of its right to foreclose.[302] On appeal, the supreme court affirmed the superior court, finding that notice had been properly given before the loan was accelerated, and that the bank's later conduct in accepting payments did not cause an implied waiver.[303] The court reasoned that implied waiver was absent because, first, the loan documents provided for all of the bank's actions, making the conduct consistent with the bank's legal rights, and, second, the bank's conduct was objectively consistent with maintaining exercise of its contractual rights and did not amount to estoppel.[304] Affirming the superior court, the supreme court held that a bank can proceed with a foreclosure when it provides initial notice of default and intention to accelerate, and does not impliedly waive its right to foreclose.[305]

Erkins v. Alaska Trustee, LLC

In *Erkins v. Alaska Trustee, LLC*,[306] the supreme court held that a holder in due course is immune from a borrower's incapacity defense because incapacity results in a voidable, not void, contractual obligation.[307] In March 2000, Gregory Erkins was in a car accident and began taking strong pain medication for his injuries.[308] Erkins took out a loan from Ameriquest in 2004, which was secured by a property he owned, and then used the same property to secure a second loan from Ameriquest.[309] JPMorgan Chase Bank purchased the loan from Ameriquest in 2005 and the loan was assigned to the Bank of New York.[310] The loan fell into delinquency and Bank of New York began foreclosure proceedings, which prompted Erkins to sue Alaska Trustee, Bank of New York, and JP Morgan for fraud and misrepresentation of the loan terms.[311] The superior court granted summary judgment for the defendants, arguing that the defendants could not be

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[298] 354 P.3d 1037 (Alaska 2015).
[299] *Id.* at 1042, 1044.
[300] *Id.* at 1039–40.
[301] *Id.* at 1040.
[302] *Id.*
[303] *Id.* at 1042.
[304] *Id.*
[305] *Id.* at 1042, 1044.
[306] 355 P.3d 516 (Alaska 2015).
[307] *Id*. at 519–20.
[308] *Id*. at 517.
[309] *Id*.
[310] *Id*.
[311] *Id*.

liable for the alleged torts of Ameriquest, but the supreme court initially ruled that summary judgment was not appropriate and remanded.[312] The superior court again granted summary judgment and Erkins appealed, arguing that he was incapacitated when he entered into the contract.[313] The supreme court affirmed the lower court's decision, reasoning that since incapacity only results in a voidable contract, a holder in due course is immune from an incapacity defense.[314] The court noted that incapacity during contract formation only renders a contract voidable, not void, so Erkins' loan is not automatically void.[315] The court determined that the Bank of New York took Erkins' loan before default, without any knowledge of his alleged incapacity, and was therefore a holder in due course.[316] Affirming the lower court's decision, the supreme court held that a holder in due course is immune from a borrower's incapacity defense because incapacity results in a voidable, not void, contractual obligation.[317]

Lybourn v. City of Wasilla

In *Lybourn v. City of Wasilla*,[318] the supreme court held an easement agreement with the phrase "subject to" to be unambiguously conditional. Property owners granted a utility easement to the City in exchange for City building an access road across the property, upon obtaining necessary permits and funding.[319] The City installed water and sewer lines in the granted easement, but did not fulfill all the conditions of the easement agreement.[320] The lower court held the easement expressly conditioned construction of the access road upon available funding and obtaining a wetlands permit, which did not occur despite the City's reasonable efforts.[321] On appeal, the property owners argued that the City's failure to apply for a wetlands permit and to construct the access road breach the terms of the agreement.[322] The supreme court affirmed the lower court's decision, reasoning that the ordinary and common meaning of "subject to" used in the contract is unambiguous as imposing a condition precedent on a party's duty to perform.[323] Additionally, looking at the negotiations and expectations of the parties, it is clear that the property owners agreed to this exchange.[324] Affirming the lower court's decision, the supreme court held the phrase "subject to" to be unambiguously conditional.

Mahan v. Mahan

In *Mahan v. Mahan*,[325] the supreme court held that a contractual term could be interpreted using the plain language of the provision and factual findings of the trial court, including extrinsic evidence.[326] The Mahan's marriage dissolution included a provision to temporarily split the

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[312] *Id*. at 517–18.
[313] *Id*. at 516–18.
[314] *Id*. at 519–20.
[315] *Id*.
[316] *Id*. at 520.
[317] *Id*. at 519–20.
[318] 362 P.3d 447 (Alaska 2015).
[319] *Id.* at 450.
[320] *Id.* at 451.
[321] *Id.* at 453.
[322] *Id.* at 452.
[323] *Id.* at 454.
[324] *Id.*
[325] 347 P.3d 91 (Alaska 2015).
[326] *Id.* at 97.

profits, minus the fuel cost and cannery dues, of their commercial fishing boat.[327] Ms. Mahan filed a motion to enforce the dissolution agreement, alleging Mr. Mahan's failed to pay her the 2011 commercial fishing profits.[328] Following an evidentiary hearing, the master concluded Mr. Mahan owed Ms. Mahan half of the 2011 commercial fishing income.[329] Mr. Mahan objected to that interpretation of profits, alleging instead that only the positive income remaining after paying expenses qualified. The superior court disagreed with Mr. Mahan's interpretation.[330] Subsequently, in 2013, Ms. Mahan filed suit again, seeking the 2012 profits and remainder of the 2011 profits, and Mr. Mahan cross-motioned for a judgment against her for the commercial fishing losses incurred in 2011 and 2012.[331] The magistrate found the dissolution contract lacked evidence supporting Mr. Mahan's interpretation of profits, and the superior court approved, defining profits as income minus fuel cost and dues.[332] On appeal, the supreme court affirmed the lower court's decision in favor of Ms. Mahan, reasoning that the lower court properly relied on both the contract language and extrinsic evidence to determine whether the term profits was ambiguous.[333] The supreme court determined that the plain language of the provision, read as a whole, together with extrinsic evidence about the intention of the contract, supported the lower court's interpretation.[334] In seeking to give effect to the parties' reasonable expectations at the time of agreement, the supreme court affirmed the lower court's holding, finding that the plain meaning of a contract provision and in addition to accompanying factual and extrinsic evidence govern the interpretation of a contractual term.[335]

[327] *Id.* at 92–93.
[328] *Id.* at 93.
[329] *Id.*
[330] *Id.*
[331] *Id.*
[332] *Id.* at 94.
[333] *Id.*
[334] *Id.* at 95–96.
[335] *Id.* at 96–97.

CRIMINAL LAW

Adams v. State

In *Adams v. State*, the court of appeals held jury instructions adequately convey the requirement of proximate causation even if they state that a controlled substance need not be the sole cause of a driver's impaired performance.[336] After multiple individuals called 911 to report Adams' erratic driving, the defendant was pulled over and arrested. Adams told the officer he was tired and claimed that this was the cause of his erratic driving.[337] Adams objected o the jury instruction that explained that the use of a controlled substance need not be the only cause of the impaired driving.[338] On appeal, the defendant argued that the statute under which he was charged requires the state to prove that a defendant's impairment is attributable solely to the ingestion of controlled substances.[339] The court of appeals affirmed the lower court's decision, reasoning that the defendant's interpretation would create a defense inconsistent with the purpose of the statute.[340] The court reasoned that under Alaska law, a person's conduct is the proximate cause of a result in two circumstances: 1) the result would not have occurred "but for" the conduct and 2) the conduct was "so important" in bringing about the result that "reasonable individuals would regard it as a cause and attach responsibility to it."[341] Under the defendant's interpretation, defendants who could convince a jury that another factor, such as exhaustion, augmented their impairment would be entitled to an acquittal on a DUI charge.[342] Affirming the lower court's decision, the court of appeals held jury instructions adequately convey the requirements for a DUI charge when the judge instructs that a controlled substance need not be the only cause of a driver's impaired performance.[343]

Alaska Public Defender Agency v. Superior Court, Third Judicial District, Anchorage

In *Alaska Public Defender Agency v. Superior Court, Third Judicial District, Anchorage*,[344] the supreme court held that the state's Public Defender Act enabling statute (AS 18.85.100(a)) does not authorize the appointment of the Alaska Public Defender Agency ("the Agency") to serve as "standby" counsel in criminal cases where the defendants have waived their constitutional right to counsel and have chosen to represent themselves.[345] In this case, the defendant, Grant Matthisen, is charged with two counts of criminal non-support.[346] As an indigent, Matthisen qualifies for the appointment of counsel at public expense but has chosen to waive this right and to represent himself.[347] Regardless, the superior court appointed the Agency to "act in a consultative capacity" better known as "standby" counsel for Matthisen.[348] The Agency objected to the appointment and argued that the superior court acted beyond the scope permitted by the

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[336] 359 P.3d 990, 991, 993 (Alaska Ct. App. 2015).
[337] *Id.* at 993.
[338] *Id.* at 994.
[339] *Id.*
[340] *Id.*
[341] *Id.*
[342] 359 P.3d at 994.
[343] *Id.* at 991, 993.
[344] 343 P.3d 914 (Alaska, 2015).
[345] *Id*. at 916.
[346] *Id*. at 914.
[347] *Id*. at 914–15.
[348] *Id*. at 915.

enabling statute.[349] The superior court disagreed on the grounds that the appointment was within the scope of the Agency's authority and supported by considerations of fairness and due process.[350] The supreme court reasoned that AS 18.85.100(a) does not authorize the appointment of standby counsel because in such a capacity the Agency does not "represent" the defendant–the impetus behind the statute and vacated the superior court's order.[351] Additionally, the supreme court noted that requiring the Agency to provide unwanted "standby" counsel to indigent defendants misallocates scarce resources that might be sought by indigents actually desiring representation by the Agency.[352] Vacating the superior court's order, the supreme court held that the Public Defender Act does not authorize the appointment of an Agency attorney as standby counsel for a defendant that has decided to represent his or her self.[353]

Alexiadis v. State

In *Alexiadis v. State*,[354] the court of appeals held that a trial court cannot reject a plea agreement as too lenient when the State has agreed not to raise aggravating sentencing factors requiring a jury trial.[355] The defendant was charged with three counts of second-degree assault.[356] The defendant and the State reached a plea agreement where the defendant agreed to plead guilty to one of the counts and the State, in turn, agreed to dismiss the other two charges and not pursue any aggravating sentencing factors.[357] After reviewing the presentence report, the superior court rejected the plea agreement as too lenient, because not raising aggravating factors limited sentencing to one to three years.[358] On appeal, the court of appeals reasoned that the state has the authority to decide whether to litigate aggravating factors when they must be proved to a jury beyond a reasonable doubt.[359] The court noted that the judiciary has no authority to force prosecutors to litigate these factors.[360] Reversing the superior court, the court of appeals held that, with respect to aggravating sentencing factors requiring a jury trial, the executive branch has the sole discretion whether or not to litigate or refrain from litigating them.[361]

Beasley v. State

In *Beasley v. State*,[362] the court of appeals held that it was within a trial court's broad discretion to impose a longer sentence than that recommended in a presentence report.[363] Beasley pleaded guilty to a charge of possession of child pornography.[364] Weighing several mitigating factors, Beasley's presentence report recommended the statutory minimum sentence of four years with

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[349] *Id*.
[350] *Id*.
[351] *Id*. at 917.
[352] *Id*.
[353] *Id*.
[354] 355 P.3d 570 (Alaska Ct. App. 2015).
[355] *Id.* at 573.
[356] *Id.* at 571.
[357] *Id.*
[358] *Id.*
[359] *Id.* at 572.
[360] *Id.*
[361] *Id.* at 573.
[362] 2015 WL 9315606 (Alaska Ct. App. 2015).
[363] *Id.* at *2.
[364] *Id.* at *1.

two years suspended.[365] Nevertheless, the superior court sentenced Beasley to six years with three years suspended, plus five years of probation.[366] On appeal, Beasley argued that as a youthful offender with no prior record, a history of post-arrest cooperation, and an endorsement of good rehabilitative prospects in his presentence report, he instead merited the statutory minimum.[367] The court of appeals reasoned that excessive sentence claims are reviewed under a deferential clearly-mistaken standard.[368] While another judge might have validly concluded Beasley was a good candidate for the minimum sentence based on his presentence report, the court reasoned, here the sentencing judge had not been shown to be clearly mistaken in placing greater emphasis on the gravity and depravity of Beasley's crime.[369] Affirming the lower court, then, the court of appeals held that it was within a trial court's broad discretion to impose a longer sentence than that recommended in a presentence report.[370]

Bochkovsky v. State

In *Bochkovsky v. State*,[371] the court of appeals held that the reasonable suspicion standard requires evidence separating a package from a group of packages, which may be demonstrated by, in addition to physical mailing details of a package, evidence of a fictitious name.[372] Bochkovsky was convicted in a jury trial of misconduct involving a controlled substance after being caught with a package that state troopers had previously searched based on their assessment that the package was reasonably suspicious.[373] The troopers noted several indicia supporting their decision to search the package prior to delivery, including the mailing location, price paid to mail, handwritten label, and a possible fictitious name.[374] Bochkovsky appealed, alleging in part that the troopers lacked reasonable suspicion of the package.[375] On appeal, the court of appeals affirmed that the troopers had satisfied the reasonable suspicion standard.[376] Specifically, the reasonable suspicion standard required evidence of a fictitious name because that served as a unique characteristic outside of physical mailing details which might match innocent packages; this discovery was objectively supported by a fruitless search in a statewide database.[377] Affirming the superior court, the court of appeals held that the reasonable suspicion standard is met when evidence separates a package from other packages, in particular by discovering evidence of a fictitious name, in addition to other suspicious physical details.[378]

Byford v. State

In *Byford v. State*,[379] the court of appeals held that in order to convict a defendant of scheme to defraud, a jury does not have to unanimously agree on whether a defendant's scheme was

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[365] *Id.*
[366] *Id.*
[367] *Id.*
[368] *Id.* at *2.
[369] *Id.*
[370] *Id.*
[371] 356 P.3d 302 (Alaska Ct. App. 2015).
[372] *Id.* at 306–08.
[373] *Id.* at 304.
[374] *Id.* at 305.
[375] *Id.* at 306.
[376] *Id.*
[377] *Id.* at 307–08.
[378] *Id.* at 306–08.
[379] 352 P.3d 898 (Alaska Ct. App. 2015).

intended to defraud five or more people, or to fraudulently obtain $10,000 or more.[380] After defrauding nine people by making false promises to build log homes, and obtaining hundreds of thousands of dollars from his victims, a jury found Byford guilty of three offenses, including scheme to defraud.[381] Citing state statute, the lower court noted that a person commits this crime if he engages in conduct constituting a scheme to either (1) defraud five or more persons by fraudulent pretense, or (2) defraud one or more persons of $10,000 or more by fraudulent pretense.[382] When the superior court judge at Byford's trial instructed the jury on the elements of scheme to defraud, he told the jurors that they did not have to reach unanimous agreement as to whether the State had proved element (1) or (2).[383] Byford appealed, arguing that this instruction constituted plain error, depriving him of his right to a unanimous verdict by allowing the jury to convict him even if it did not unanimously agree on the type of scheme in which Byford engaged.[384] On appeal, the court of appeals affirmed the lower court's decision, reasoning that while Alaska law requires jury unanimity regarding the *conduct* that forms the basis of the criminal conviction, a jury does not necessarily need to be unanimous regarding a defendant's *intention*.[385] Where, as in this case, a criminal statute gives a menu of purposes defining a defendant's aims (to defraud five or more people *or* fraudulently obtain $10,000 or more) but not defining his conduct (defined by the statute exclusively as engaging in conduct constituting a scheme),[386] the court of appeals found that a trial court does not err in instructing jurors that they do not have to unanimously agree on the defendant's intention.[387] Thus, affirming the trial court's decision, the court of appeals held that in order to convict a defendant of scheme to defraud, a jury does not have to unanimously agree on whether a defendant's scheme was intended to defraud five or more people, or to fraudulently obtain $10,000 or more.[388]

George v. State

In *George v. State*,[389] the supreme court held that evidence before the jury must describe with sufficient specificity the kinds of act or acts committed, the number of acts committed, and the general time period wherein these acts occurred.[390] Kelsey George was convicted of 10 counts of sexual abuse.[391] At issue is Count Ten, where George was charged with digital penetration during the victims third-grade year.[392] At the trial, the victim could not state specifically when the abuse happened, only that it started when she was four years old and that by the time she was in fourth-grade George had engaged in penis-to-vagina penetration.[393] The jury found George guilty on Count Ten as well as all other counts but one.[394] George appealed the conviction of

[380] *Id.* at 902–03.
[381] *Id.* at 899–900.
[382] *Id.* at 901.
[383] *Id.*
[384] *Id.*
[385] *Id.* at 901–02.
[386] *Id.* at 902.
[387] *Id.* at 901.
[388] *Id.* at 902–03.
[389] 362 P.3d 1026 (Alaska 2015).
[390] *Id.* at 1032.
[391] *Id.* at 1028.
[392] *Id.*
[393] *Id.* at 1028–29.
[394] *Id.* at 1029.

Count Ten to the court of appeals, which affirmed his conviction.[395] On appeal, George argued that the evidence was insufficient to support his conviction on Count Ten, as a sexual abuse case requires evidence showing a particular type of conduct occurred within a time frame.[396] The supreme court reversed the lower court's decision, reasoning that the State failed to provide sufficient evidence about the regularity and the timing of the digital penetration such that the jury could find that George had digitally penetrated her during third grade.[397] The court reasoned that though the state provided evidence that George digitally penetrated the victim during her fourth-grade year, they did not provide evidence of a specific instance of such conduct during her third-grade year.[398] Reversing and remanding the lower court's decision, the supreme court held that evidence before the jury must describe with sufficient specificity the kinds of act or acts committed, the number of acts committed, and the general time period these acts occurred.[399]

Gibson v. State

In *Gibson v. State*,[400] the supreme court held that conduct occurring during immediate flight from a robbery is included within the scope of second-degree robbery.[401] Gibson was the get-away driver in the robbery of a donation jar from a coffee shop counter, an act immediately noticed by the shop owner and her daughter.[402] The two women immediately ran to Gibson's vehicle and told her not to leave.[403] Instead, Gibson drove away while the women were holding onto the vehicle, causing them to sustain minor injuries.[404] Gibson was convicted at trial of second-degree robbery.[405] Gibson's appeal argued that she should have been liable, at most, for third-degree robbery because her use of force occurred *after* the donation jar had already been taken from the presence and control of the shop owner, rather than *in the course of* the taking.[406] The supreme court affirmed the conviction because the statutory definition includes force used to overcome resistance after the taking as within the scope of second-degree robbery, and because the legislative history of the statute indicated that the legislature intended to expand the definition of robbery.[407] The supreme court held that conduct occurring during immediate flight from a robbery is included within the scope of second-degree robbery.[408]

Glasgow v. State

In *Glasgow v. State,*[409] the court of appeals held that a criminal defendant's due process right to present his case did not entitle him to jury instructions on matters that did not relate to any legally cognizable defense or any disputed facts in the case.[410] In August 2011, Michael Glasgow

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[395] *Id.* at 1030.
[396] *Id.* at 1032.
[397] *Id.*
[398] *Id.* at 1033.
[399] *Id.* at 1032.
[400] 346 P.3d 977 (Alaska 2015).
[401] *Id.* at 981.
[402] *Id.* at 978.
[403] *Id.*
[404] *Id.*
[405] *Id.*
[406] *Id.* at 980.
[407] *Id.* at 980–81.
[408] *Id.* at 981.
[409] 2015 WL 4965987 (Alaska Ct. App. 2015).
[410] *Id.* at 599.

was riding his bike on a bike path in Homer when Timothy Whitehead and his son walked past Glasgow with two unleashed dogs.[411] One of the dogs approached Glasgow, who pulled out a knife and jabbed it at the animal.[412] Glasgow then continued riding down the path, yelling at Whitehead to put his dogs on a leash.[413] Whitehead and Glasgow then engaged in a verbal altercation, and Glasgow walked back toward Whitehead still holding a knife in his hand.[414] Glasgow was indicted and convicted of third-degree assault.[415] At the start of Glasgow's trial, defense counsel asked the court for jury instructions on Homer code provisions concerning the control of animals, and state statutes authorizing the killing of a dog running at large.[416] The trial court refused defense counsel's request.[417] The court of appeals affirmed the trial court's ruling, reasoning that the laws Glasgow cited do not authorize attacking a dog's owner when he is trying to restrain his animals, and thus were not applicable to the controversy in question.[418] The court of appeals held that a criminal defendant's due process right to present his case did not entitle him to jury instructions on matters that did not relate to any legally cognizable defense or any disputed facts in the case.[419]

Goldsbury v. State

In *Goldsbury v. State*,[420] the supreme court held that if a constitutional error is harmless beyond a reasonable doubt, reversal of a conviction is not warranted.[421] After a dispute at a motel, Goldsbury fired a round of bird shot through the door of his motel room, injuring Marvin Long.[422] Long testified before the jury, but Goldsbury chose not to testify.[423] During her closing argument rebuttal, the prosecutor commented that two people knew what happened but only the victim testified.[424] Subsequently, Goldsbury was convicted of attempted murder in the first degree, assault in the second degree, recklessly firing a gun at a building, and criminal mischief in the fourth degree.[425] Goldsbury appealed, arguing that the prosecutor's comment violated his state and federal rights against self-incrimination.[426] The court of appeals found that Goldsbury did not preserve his argument for appeal by objecting to the comment at trial and there was no plain error.[427] Goldsbury petitioned the supreme court for review on the question of whether the comment constituted plain error.[428] The supreme court affirmed the lower court's decision, ruling that the prosecutor's error did not constitute plain error.[429] The court noted that the comment was indeed a violation of Goldsbury's constitutional right against self-incrimination, but held that

[411] *Id.* at 598.
[412] *Id.*
[413] *Id.*
[414] *Id.*
[415] *Id.*
[416] *Id.* at 598-99.
[417] *Id.* at 599.
[418] *Id.*
[419] *Id.*
[420] 342 P.3d 834 (Alaska 2015).
[421] *Id*. at 839.
[422] *Id*. at 835.
[423] *Id*.
[424] *Id*.
[425] *Id*. at 836.
[426] *Id*.
[427] *Id*.
[428] *Id*.
[429] *Id*. at 837–38.

prejudice is the key factor in plain error review, and a constitutional violation is not prejudicial if the State proves it was harmless beyond a reasonable doubt.[430] The court reasoned that any harm from the prosecutor's comment was insignificant, isolated, and cured by the jury instructions on Goldsbury's right not to testify.[431] Affirming the lower court's decision, the supreme court held that if a constitutional error is harmless beyond a reasonable doubt, reversal of a conviction is not warranted.[432]

Hutton v. State

In *Hutton v. State*,[433] the supreme court held that appellate courts reviewing the validity of a waiver of the right to jury trial must review relevant factual findings for clear error and the ultimate conclusion regarding the waiver's validity de novo.[434] Hutton was on trial for weapons misconduct in the third degree for being a felon in possession of a concealable firearm.[435] The jury found the first element by special interrogatory—Hutton knowingly possessed a firearm.[436] The court subsequently accepted Hutton's in-court admission of the second element—he was a prior felon—and waived his right to trial on that element.[437] He was then convicted and sentenced.[438] On appeal, Hutton argued he had not knowingly waived his right to a jury trial on that element.[439] The supreme court reasoned that a whether a defendant made a constitutionally valid waiver is a mixed question of law and fact.[440] Reviewing the facts for clear error, the court found that Hutton was not advised of a third element of his charge—a culpable mental state for his status as a felon.[441] Due to this incomplete and misleading information, the supreme court reversed the lower courts and found Hutton's jury waiver constitutionally defective.[442] The supreme court held that appellate courts reviewing the validity of a waiver of the right to jury trial must review relevant factual findings for clear error and the ultimate conclusion regarding the waiver's validity de novo.[443]

Lenz v. State

In *Lenz v. State*,[444] the court of appeals held a defendant's equal protection rights are not violated when a codefendant receives a more favorable offer in plea bargaining.[445] In May 2012, Anthony Lenz and Glen Anderkay burglarized and vandalized an Anchorage laundromat.[446] Both men were initially charged with two felonies and one count of misdemeanor theft, but were offered

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[430] *Id*.
[431] *Id*. at 839.
[432] *Id*.
[433] 350 P.3d 793 (Alaska 2015).
[434] *Id.* at 794.
[435] *Id.*
[436] *Id.*
[437] *Id.* at 795.
[438] *Id.*
[439] *Id.*
[440] *Id.* at 797–98.
[441] *Id.* at 798.
[442] *Id.*
[443] *Id.* at 794.
[444] 1354 P. 3d 163 (Alaska Ct. App. 2015).
[445] *Id.* at 164.
[446] *Id.* at 163.

different plea bargains.[447] Although Anderkay was allowed to plead guilty to two misdemeanors, the State insisted that Lenz plead guilty to one of the felony charges.[448] Lenz rejected the State's offer, and was convicted at trial of both felony counts.[449] On appeal, Lenz argued that the State violated his constitutional right to equal protection by refusing to offer him the same plea bargain that Anderkay received.[450] Although the State conceded the two men played equal roles in the charged criminal behavior, the superior court ruled the State did not violate Lenz's right to equal protection because Lenz's criminal record was substantially worse than Anderkay's.[451] The court of appeals affirmed the superior court's decision, reasoning that the State has broad discretion to decide the terms on which it is willing to resolve charges brought against a criminal defendant prior to trial, and that the State had articulable grounds for treating Lenz and Anderkay differently.[452] Affirming the superior court's decision, the court of appeals held a defendant's equal protection rights are not violated when a codefendant receives a more favorable offer in plea bargaining.[453]

McGowen v. State

In *McGowen v. State*,[454] the supreme court held that the defendant's conviction for three counts related to possession and manufacturing of marijuana had to be merged because it would run afoul of double jeopardy to be held liable for three charges arising out of the same act.[455] In March 2006, Alaska State Troopers charged Gerald McGowen with four counts of misconduct involving a controlled substance in the fourth degree after executing a search warrant in his house and seizing 26 plants, three baggies of marijuana weighing 11.2 grams, and equipment used in the growing marijuana.[456] At McGowen's sentencing the superior court merged the fourth count with the other three, leaving Counts I, II and III as separate convictions.[457] McGowen appealed his convictions on various grounds but he did not argue that the three convictions should be merged and as a result the court affirmed them separate convictions.[458] On petition, McGowen argued under the double jeopardy clause of the Alaska Constitution that his three convictions should be merged because they were based on the same underlying conduct.[459] The supreme court held that the three counts must be merged, because they were based on the same underlying conduct.[460] The supreme court reasoned that it is impermissible to impose separate convictions for possessing a drug with intent to sell and simply possessing the drug.[461] The supreme court further reasoned that there was no reason to distinguish between the act of growing marijuana and possessing the same marijuana once it was

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[447] *Id.* at 164.
[448] *Id.*
[449] *Id.*
[450] *Id.*
[451] *Id.*
[452] *Id.* at 165-66.
[453] *Id.* at 164.
[454] 359 P.3d 988 (Alaska 2015).
[455] *Id.* at 990.
[456] *Id.* at 988.
[457] *Id.* at 989.
[458] *Id.*
[459] *Id.*
[460] *Id.*
[461] *Id.* at 990.

grown, therefore it is appropriate to merge the separate convictions for both acts.[462] Reversing the lower court's separate convictions, the supreme court held that a defendant's convictions for three counts related to possession and manufacturing of marijuana should be merged when they arise out of the same substantive act.

Moreno v. State

In *Moreno v. State*,[463] the supreme court held that a defendant does not have the burden to prove that his or her attorney's non-objection to errors was not tactical.[464] The supreme court consolidated the petitions of the defendants, Moreno and Hicks, both of whom were separately convicted for different crimes after their respective counsels failed to object to errors at trial.[465] Both appealed, seeking plain error review, but the court of appeals held that the defendants failed to show that the error was not the result of defense counsel's tactical decision to not object, thus precluding plain error review.[466] On appeal, the supreme court reversed the lower court's decisions, citing precedent showing that evidence of tactical non-objection to a trial error must be plainly obvious from the record to persuade an appellate court that a defendant's otherwise meritorious claim of error should not trigger appellate review;[467] and further showing that the a defendant does not bear the burden of proving that such error was not the result of one's attorney's tactical decision to not object.[468] Noting a lack of such plainly obvious tactical decision-making in both cases, the supreme court went on to reason that the court of appeals first erred in presuming that the silent or ambiguous record of defendants' counsels implied a tactical decision to not object, and ultimately erred in placing the burden of negating this inference on the defendants.[469] Reversing the lower court's decisions, the supreme court held that a defendant does not have the burden to prove that his or her attorney's non-objection to errors was not tactical.[470]

Murray v. State

In *Murray v. State*,[471] the court of appeals held that counsel for a man who had a history of mental illness rendered effective pre-plea assistance, even though she failed to stop the man from making a plea against his best interests.[472] In 2007, Murray was charged with two counts of first-degree sexual assault.[473] Subsequently, the State offered him two favorable plea bargains, both of which Murray's attorney (Murphy) advised him to accept, but both of which he declined.[474] Murphy made a third plea bargain, but Murray refused again, and instead proposed a less favorable one of his own, which the court accepted.[475] In 2009, Murray brought forth relief

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[462] *Id*.
[463] 341 P.3d 1134 (Alaska 2015).
[464] *Id*. at 1146.
[465] *Id*. at 1137–38.
[466] *Id*. at 1136.
[467] *Id.*
[468] *Id.* at 1146.
[469] *Id*.
[470] *Id*.
[471] 344 P.3d 835 (Alaska Ct. App. 2015).
[472] *Id.*
[473] *Id.* at 836.
[474] *Id.*
[475] *Id* at 837.

proceedings, arguing that Murphy did not represent him competently.[476] The lower court ruled in favor of Murphy, dismissing Murray's petition for post-conviction relief.[477] On appeal, Murray argued that Murphy had been under an ethical duty to prevent him from entering his guilty plea, due to her awareness of Murray's mental impairment.[478] The court of appeals affirmed the lower court's decision, reasoning that, as according to the Alaska Professional Conduct Rules, Murphy rendered adequate assistance.[479] The court of appeals found that Murphy complied with the Conduct Rules since she hired a mental health professional to counsel Murray.[480] Additionally, the court reasoned that although Murray was mentally impaired, he himself admitted that he was not incompetent to make decisions about the plea bargain, and so Murphy was required to honor Murray's desired plea bargain.[481] The court also noted that Murphy made many attempts to dissuade Murray from making an unfavorable plea bargain.[482] Affirming the lower court's decision, the court of appeals held that an attorney rendered effective pre-plea assistance for a client who had a history of mental illness, even though the attorney failed to stop the client from making a plea against his best interests.[483]

Noble v. State

In *Noble v. State*,[484] the court held that a motorist's failure to use a turn signal when entering and exiting a roundabout is not a traffic infraction justifying a stop by police officers.[485] On November 1, 2010, University of Alaska Fairbanks campus police received a report of a reckless driver in a dark-colored Toyota.[486] Subsequently, the campus police found a vehicle matching the description in a campus parking lot and kept it under surveillance when they saw Donald Noble enter the vehicle and start driving.[487] The police officers followed Noble and pulled him over for two traffic infractions when he failed to use his turn signal upon entering and leaving a roundabout.[488] During the stop, the police discovered that Noble had been drinking and he was convicted for felony driving under the influence, the superior court did not rule on the legality of the traffic infraction.[489] On appeal, Noble challenged the legality of the traffic stop.[490] The court held that the law is unclear about the application of 13 AAC 02.2014—requiring the use of a signal 100 feet before turning left or right with regards to roundabouts.[491] In doing so, the court reasoned that it is unclear whether the act of entering or exiting a roundabout constitutes a right turn and sought clarification from either the legislature or Department of Public

[476] *Id.*
[477] *Id.* at 838.
[478] *Id.*
[479] *Id.* at 841.
[480] *Id.* at 840
[481] *Id.*
[482] *Id*.
[483] *Id.* at 835.
[484] 357 P.3d 1201 (Alaska 2015).
[485] *Id.* at 1206.
[486] *Id*. at 1202.
[487] *Id.*
[488] *Id.*
[489] *Id.* at 1201.
[490] *Id.*
[491] *Id.* at 1206.

Safety.[492] Reversing the lower court, the court held that a motorist does not commit a traffic infraction when failing to use a turn signal while entering or exiting a roundabout.[493]

Olson v. State

In *Olson v. State*,[494] the court of appeals ruled that a prosecutor did not commit misconduct when he referred to the jurors by their names during his closing argument.[495] In October 2012, an Alaskan state trooper intercepted Olson at an airport based off of a tip that said she was planning to import drugs and alcohol into a local dry community.[496] Upon inspection of Olson's bag, the trooper found alcohol and marijuana, and she was subsequently charged with importation of alcoholic beverages into a local option community, as well as misconduct involving a controlled substance.[497] At Olson's trial, the jury convicted Olson of importation, and she was sentenced to eighty-nine days in jail, with nine days to serve, along with a fine.[498] On appeal, Olson argued that the prosecutor committed misconduct during his closing argument when he referred to each juror by name.[499] The court of appeals held that the prosecutor did not commit misconduct, stating first that this was an issue of first impression for Alaska, and that there were no prior cases approving or disapproving of the use of jurors' names in trial.[500] The court's analysis then began by looking to other jurisdictions, which mostly held that such a practice was frowned upon.[501] The court differentiated these cases from the one at hand, however, because those cases generally were concerned with when attorneys singled out individual jurors to play to the other jurors' sympathies.[502] The court then said that while the prosecutor did single out an individual juror in this case, he did so in a benign way, doing mostly for the purposes of explaining hypotheticals and making metaphors.[503] The court finally mentioned that, in the other jurisdictions, it was rare for a court to reverse a conviction upon such an error, and that while they frowned upon the practice of calling each juror by their name, there was no real reason to believe that such conduct was in plain error.[504] Upholding the jury verdict, the court of appeals ruled that a prosecutor did not commit misconduct when he referred to the jurors by their names during his closing argument.[505]

Ramsey v. State

In *Ramsey v. State*,[506] the court of appeals held that a trial court's failure to instruct jurors that they must be factually unanimous as to which acts a criminal defendant committed was not harmless error.[507] Ramsey was convicted by a jury of second-degree theft based on evidence that

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[492] *Id*.
[493] *Id.*
[494] 364 P.3d 454 (Alaska Ct. App. 2015).
[495] *Id.* at 458.
[496] *Id.* at 455.
[497] *Id.*
[498] *Id.* at 456.
[499] *Id.*
[500] *Id.* at 457.
[501] *Id.*
[502] *Id.*
[503] *Id.* at 458.
[504] *Id*.
[505] *Id.*
[506] 355 P.3d 601 (Alaska App. 2015).
[507] *Id.* at 602.

she stole a variety of items from her employer on different days.[508] At trial, the judge declined defense counsel's request to instruct jurors that they had to unanimously agree on which of the alleged thefts Ramsey committed.[509] On appeal, the court of appeals cited precedent showing that when the State presents evidence that a defendant committed multiple different acts that could each support a criminal conviction, the court is still required to instruct the jury that it must be factually unanimous as to which acts the defendant actually committed.[510] This requirements holds even when, as here, the State charges a defendant with a higher degree of theft based on a connected series of smaller-value thefts: the jury's verdict must still be based on jurors' unanimous agreement as to which of the individual thefts the defendant committed.[511] Moreover, the failure to give to give such a unanimity instruction is plain error requiring reversal, unless the State can show that the error was harmless beyond a reasonable doubt (here, the State conceded the trial judge's failure to provide the instruction was error).[512] Accordingly, reversing the lower court, the court of appeals held that a trial court's failure to instruct jurors that they must be factually unanimous as to which acts a criminal defendant committed was not harmless error.[513]

Selvester v. State

In *Selvester v. State*, the court of appeals held that a separate habeas corpus claim will not be entertained when relief is available using normal court or appellate procedures.[514] While awaiting trial for sexual assault charges, Selvester filed a pro se habeas corpus claim, raising a speedy trial claim that could have been raised in his pending criminal case.[515] Instead of dismissing the claim and directing him to pursue the habeas corpus claim in his criminal trial, the superior court denied the petition on its merits.[516] On appeal, the court of appeals found that the lower court erred in reviewing the habeas corpus claim on its merits, where the petitioner could have raised the claim in his pending criminal case.[517] The court of appeals reasoned that habeas corpus is an extraordinary remedy.[518] It thus reasoned that the superior court should have dismissed the case and not litigated it on the merits when there was alternative remedy available through the criminal trial court.[519] The court of appeals held that habeas corpus is available if relief can be found using normal court or appellate procedures.[520]

Shayen v. State

In *Shayen v. State*,[521] the court of appeals held a statute requiring sex offenders to notify Department of Public Safety ("DPS") whenever they change their residence was not unconstitutionally vague as applied to a defendant who was not personally affected by potential

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[508] *Id.* at 601.
[509] *Id.* at 601–02.
[510] *Id.* at 602.
[511] *Id.*
[512] *Id.*
[513] *Id.*
[514] 349 P3d 1085, 1086 (Alaska 2015).
[515] *Id.*
[516] *Id.*
[517] *Id.*
[518] *Id.*
[519] *Id.*
[520] *Id.*
[521] 2015 WL 5167188 (Alaska Ct. App. Sept. 4, 2015).

difficulties in defining the word "residence."[522] The statute does not contain a definition of "residence."[523] However, DPS employees adopted an ad hoc definition that tailored to the situation of homeless offenders by allowing them to identify a place they are staying with as much detail as reasonably possible.[524] DPS allowed the defendant to file his change of residence citing a shelter, a café, and a campsite.[525] On appeal, the defendant argued that the statute fails to give homeless sex offenders adequate notice of when they must report a change of location because they, by definition, lack a residence.[526] The court of appeals affirmed the lower court's decision, reasoning that the defendant benefited from DPS' approach.[527] DPS repeatedly accepted the defendant's forms with varying amounts of specificity, and the defendant never asserted that he was personally affected by the difficulties in defining "residence."[528] Affirming the lower court's decision, the court of appeals held the statute requiring sex offenders to notify DPS whenever they change residence was not unconstitutionally vague as applied to the defendant.

Sickel v. State

In *Sickel v. State*,[529] the court of appeals held that AS 11.61.140(a)(2) criminalizing cruelty to animals through criminal neglect applies to people who have assumed responsibility for the care of an animal, either as an owner or otherwise.[530] Robin Lee Sickel and Jeff Waldroupe owned three horses and kept them on land owned by Waldroupe's father.[531] In mid-December 2010, the horses were found starving and without shelter, the only food and water available to them was frozen solid.[532] One of the horses had to be euthanized because it was more than 200 pounds underweight and had collapsed on the ground.[533] Sickel was convicted of cruelty to animals under AS 11.61.140(a) and appealed the conviction, claiming that because the statute fails to define who bears a duty to care for animals, that the statute is unconstitutionally vague and that her conviction is therefore unlawful.[534] The court acknowledged that although the statute fails to specify which persons have a duty to care for particular animals, the underlying aim of the statute is to protect animals from serious neglect by the people who have assumed responsibility for their care.[535] The court reasoned that the real inquiry in the statute is not to identify persons who have legal ownership of the animal, but rather to determine the persons who have taken on the duty of caring for them.[536] Sickel's attorney never contested that she had assumed the responsibility of caring for the horses, rather she claimed that the Jeff Waldroupe and his father had also assumed responsibility.[537] Affirming the lower court, the court of appeals held that

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[522] *Id.* at *2.
[523] *Id.* at *1.
[524] *Id.*
[525] *Id.*
[526] *Id.*
[527] *Id.* at *2.
[528] *Id.*
[529] 363 P.3d 115 (Alaska Ct. App., 2015).
[530] *Id*. at 118.
[531] *Id*. at 116.
[532] *Id*.
[533] *Id*.
[534] *Id*. at 117.
[535] *Id*. at 118.
[536] *Id*.
[537] *Id*. at 119.

subsection (a)(2) of the cruelty to animals statute applies to people who have assumed responsibility for the care of an animal, either as an owner or otherwise.[538]

Simmons v. State

In *Simmons v. State*,[539] the court of appeals held it was unlawful for a trial court to grant a prosecutor unilateral power to decide whether a defendant should be released on bail pending appeal.[540] Simmons was convicted of fourth-degree controlled substance misconduct, and sentenced to 42 months in prison, with 12 months suspended.[541] His attorney asked the court to stay the sentence for 30 days to give Simmons time to file an appeal.[542] The sentencing judge told the parties he would only grant the stay if the prosecutor stipulated to Simmons' bail release.[543] The prosecutor did not stipulate to Simmons' release, and the sentencing judge remanded Simmons to custody.[544] The court of appeals reversed the trial court's decision, reasoning that the judge's ruling violated Alaska Statute 12.30.040(a).[545, 546] The statute provides that defendants are entitled to post-conviction bail if they establish by clear and convincing evidence that they can be released under conditions that will assure their appearance and the safety of the community.[547] The court of appeals determined that the sentencing judge, in declaring that Simmons would be remanded to custody unless the prosecutor stipulated to his release on bail, unlawfully granted unilateral power to the prosecutor to decide whether Simmons would be released or jailed.[548] Reversing the trial court's decision, the court of appeals held it was unlawful for a trial court to grant a prosecutor unilateral power to decide whether a defendant should be released on bail pending appeal.[549]

Simon v. State

In *Simon v. State*,[550] the court of appeals held that, in the context of a modern retail store, a theft is not complete until a person exceeds the scope of possession granted to customers by the storeowner.[551] While shopping at a large retail store, Harold Simon hid several items on his person and proceeded to pay for only a few smaller items at the checkout counter.[552] Simon was stopped by one of the store's employees while attempting to leave the store.[553] After the items were discovered, Simon was charged with second-degree theft.[554] At trial, the jury sent a note to the judge asking whether Simon could rightfully be held to have exerted control over the

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[538] *Id*.
[539] 344 P.3d 833 (Alaska Ct. App. 2015).
[540] *Id.* at 835.
[541] *Id.* at 834.
[542] *Id.*
[543] *Id.*
[544] *Id.* at 834–835.
[545] Alaska stat. ann. § 12.30.040 (West 2015).
[546] *Id.* at 835.
[547] *Id.*
[548] *Id.*
[549] *Id.*
[550] 394 P.3d 191 (Alaska Ct. App. 2015).
[551] *Id*. at 192.
[552] *Id*. at 193.
[553] *Id*.
[554] *Id*.

property if he was caught in the vestibule of the store.[555] The judge instructed the jury to look at the matter of control without regard to any particular area of the store where he was apprehended, and the jury proceeded to convict Simon.[556] On appeal, the court addressed whether the lower court judge erred by instructing the jury that the area where the defendant was apprehended in a retail store where customers are allowed to possess items within the store does not matter.[557] The court of appeals affirmed the lower court's decision, reasoning that Simon had clearly gone beyond the scope of possession granted to a customer when he had taken a number of items beyond the checkout counter and was heading for the door.[558] The court of appeals further reasoned that while physical location within a store when apprehended may be relevant in some instances, the variation between Simon and the State's version of evidence were irrelevant, because, regardless, Simon's possession of the merchandise exceeded the scope of possession granted to customers.[559] Affirming the lower court's decision, the court of appeals held that, in the context of a modern retail store, a theft is not complete until a person exceeds the scope of possession granted to customers by the storeowner.[560]

Smith v. State

In *Smith v. State*, the court of appeals held a 72-year suspended sentence for possession of child pornography outside of the range of permissible reasonable sentences given the typical nature of the defendant's actions for the specific crime, despite the court's goals of deterrence and community condemnation.[561] Alaska State Troopers arrested the defendant for downloading child pornography over the Internet.[562] At his sentencing hearing, the defendant submitted a sex-offender risk assessment that indicated that he appeared amenable to sex-offender treatment and community supervision, though the report also indicated a high risk of reoffending.[563] As a first felony offender, the defendant faced a range of 2 to 12 years on each of the convictions and suspended time on each conviction, in addition to at least 5 years probation.[564] The sentencing judge ultimately sentenced the defendant to 8 years with a total suspended term of 72 years, and the defendant appealed the sentence.[565] The court of appeals reversed the lower court's decision, reasoning that given the specific circumstances and facts of the crime and conviction, the defendant's sentence was excessive.[566] The court applied the "clearly mistaken" test and found that although discretion is necessary for sentencing judges, the decision was not within a permissible range of reasonable sentences.[567] The court reasoned that while courts had upheld similar sentences where the sentencing court determined that the defendant's conduct or the defendant were particularly dangerous, and that the defendant lacked distinctly poor prospects for rehabilitation.[568] Instead, Smith's conduct was extremely typical for the type of

[555] *Id*.
[556] *Id*.
[557] *Id*. at 194.
[558] *Id.* at 198.
[559] *Id.* at 197.
[560] *Id*. at 192.
[561] 349 P.3d 1087, 1092–93 (Alaska App. 2015).
[562] *Id.* at 1090.
[563] *Id.*
[564] *Id.*
[565] *Id.* at 1091.
[566] *Id.* at 1092.
[567] *Id.* at 1091–92.
[568] *Id.* at 1092.

offense.[569] Reversing the lower court's decision, the court of appeals held a 72-year suspended sentence for possession of child pornography excessive because the sentence is not appropriate given the facts of the crime, even when taking other goals, such as deterrence of others, into consideration.[570]

Snowden v. State

In *Snowden v. State*,[571] the court of appeals held that the search of a residence after an open-line 911 call is lawful if the totality of the circumstances gave the officers reasonable grounds to believe an emergency was occurring.[572] At around 3:00 in the morning, the police received a 911 call in which the line stayed connected but no one responded on the other end.[573] Police were dispatched to the location, which had a restaurant on the top floor and a residence on the bottom.[574] When police arrived, there was a taxi driver outside who claimed to be waiting for a passenger who never arrived.[575] After finding the back door ajar, police entered the restaurant and found a phone with an open line but no one in the restaurant.[576] When police knocked at the door of the lower residence, Snowden opened it and claimed that there was no emergency and that he didn't know who had placed the call.[577] The officers entered Snowden's apartment to see if anyone inside needed assistance and found drugs in plain view.[578] At trial, Snowden was convicted on multiple drug counts.[579] On appeal, Snowden argued that the open-line call was not sufficient to justify a search of his dwelling and, therefore, the court should have suppressed the drug evidence.[580] The court of appeals affirmed the lower court's decision, holding that, while an open-line 911 call alone is not sufficient, the totality of the circumstances provided reasonable suspicion for the officers to search Snowden's dwelling.[581] The court of appeals further reasoned that police are not obligated to set aside reasonable suspicion simply because a resident claims that there is no emergency.[582] Affirming the lower court's decision, the court of appeals held that the search of a residence after an open-line 911 call is lawful if the totality of the circumstances gave the officers reasonable grounds to believe an emergency was occurring.

State v. Alexander

In *State v. Alexander*,[583] the court of appeals ruled that introduction of evidence from a "control question" polygraph examination may, under certain conditions, be admissible.[584] Alexander was charged by the state of Alaska with multiple instances of sexual abuse of a minor.[585] Before the

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[569] *Id.*
[570] *Id.* at 1092–93.
[571] 352 P.3d 439 (Alaska Ct. App. 2015).
[572] *Id*. at 444.
[573] *Id*. at 440.
[574] *Id*.
[575] *Id*.
[576] *Id*.
[577] *Id*. at 441.
[578] *Id*.
[579] *Id*. at 440.
[580] *Id.* at 442.
[581] *Id.*
[582] *Id*. at 444.
[583] 364 P.3d 458 (Alaska Ct. App. 2015).
[584] *Id.* at 471.
[585] *Id.* at 460.

trial began, Alexander's attorney arranged for him to take a polygraph exam, in which the results suggested that Alexander did not commit the acts of abuse.[586] Alexander's case was joined with another man who had also taken a polygraph test, and the issue of whether such evidence should be admissible was brought before two superior court judges.[587] The judges ruled that the polygraph evidence would be admissible, so long as Alexander submitted to an independent polygraph examination, and testified at trial.[588] On appeal, the State argued that such polygraph evidence was inadmissible, while Alexander asked that the conditions imposed by the lower court be removed.[589] The court of appeals, ruling only on the particular facts at hand, affirmed the lower court's decision, finding that the trial court judges did not abuse their discretion.[590] The court, in applying the *Daubert* test, questioned (1) whether the reasoning underlying proposed evidence is scientifically valid, and (2) whether the reasoning can be applied to the issues in a case.[591] Noting that reasonable judges could differ as to whether the reasoning was scientifically valid, the court of appeals found that the judges did not abuse their discretion for the first prong of the test.[592] The court also affirmed the lower court's ruling under the second prong of *Daubert*, reasoning that the two conditions imposed by the lower court ensured that any weaknesses of polygraph testing would be countered effectively, since the conditions ensured a lack of bias and prevented potential hearsay problems.[593] Affirming the lower court decision, the court of appeals ruled that introduction of polygraph evidence, under certain conditions, may be used as admissible evidence.[594]

State v. Howard

In *State v. Howard*,[595] the court of appeals held that it could not issue jail-time credit for time spent at a treatment facility without first determining under whose authority it was ordered.[596] After serving time for third-degree assault, Howard was released on probation, which was subsequently revoked four times.[597] After the third revocation, the sentence imposed was long enough to trigger mandatory parole.[598] After release, Howard served probation and parole concurrently and the same person served as both his probation and parole officer.[599] This officer directed Howard to reside at a halfway house and drug rehabilitation center.[600] After violating his probation again, Howard claimed he should have received enough jail-time credit from his stay at the treatment facilities for his probation to be complete.[601] Rather than ruling on this issue, the judge determined that Howard should be discharged because his probation length was

[586] *Id.*
[587] *Id.*
[588] *Id.*
[589] *Id.*
[590] *Id.* at 467.
[591] *Id.* at 468.
[592] *Id.*
[593] *Id.* at 469.
[594] *Id.* at 471.
[595] 357 P.3d 1207 (Alaska 2015).
[596] *Id.* at 1212.
[597] *Id*. at 1208.
[598] *Id*.
[599] *Id*. at 1209.
[600] *Id*.
[601] *Id*. at 1210.

miscalculated after it was revoked the second time.[602] On appeal, the State argued that this finding was erroneous and that he would not be entitled to credit if he was ordered under the authority of the Parole Board.[603] The appeals court agreed the miscalculation was erroneous; however, the record lacked sufficient facts to determine whether Howard was ordered to receive treatment as part of his parole or probation.[604] Vacating the lower court's decision, the court of appeals held that it could not issue jail-time credit for time spent at a treatment facility without first determining under whose authority it was ordered.[605]

[602] *Id*.
[603] *Id.* at 1211–12.
[604] *Id*.
[605] *Id.* at 1212.

CRIMINAL PROCEDURE

Augustine v. State

In *Augustine v. State*,[606] the court of appeals held that out-of-court evidence is admissible under evidence rules only after a trial judge evaluates and determines that the State has met its burden of proof.[607] Out-of-court interviews of Augustine's granddaughters were admitted and heavily relied upon by the State throughout Augustine's trial.[608] Augustine appealed his sexual abuse convictions, arguing that the trial judge inadequately considered two criteria necessary to admit evidence under the Evidence Rules 801.[609] Evidence Rule 801(d)(3) expressly authorizes the admission of out-of-court statements given by children under 16 years of age, provided certain criteria are met.[610] On appeal, the court of appeals found that, upon challenge by the defense, two criteria, (F) and (H), required the trial judge to determine the reliability and trustworthiness of the evidence, and the neutrality with which the evidence was gathered.[611] Specifically, the court of appeals determined that the trial judge did not adequately consider the substantive reasons presented by defense to doubt the reliability of the out-of-court interviews, as required to meet his statutory duty.[612] Remanding the case for further determinations of reliability and trustworthiness of evidence, the court of appeals held that a trial judge has an affirmative duty to determine that the criteria required for evidence admissibility are proven by the party seeking admission.

Bush v. Elkins

In *Bush v. Elkins*, the supreme court held that a trial court could not award a prevailing party insurance fees without informing the responding party that they were permitted to respond to the motion.[613] The complaint arose out of a single-car accident, in which an adult passenger was injured.[614] The passenger's father, Bush, attempted to raise a contractual interference claim, but the superior court dismissed the claim, holding that the complaint did not state such a claim on his behalf.[615] Bush later attempted to file an amended complaint, but the superior court denied it because he had already been dismissed from the case.[616] The superior court granted final judgment to the insurer, who then moved for attorneys' fees, which the court granted without soliciting a response from Bush.[617] The supreme court held that because Bush was left with the belief that he was not permitted to file responsive pleadings, and the superior court was on notice of this misunderstanding, the superior court was required to inform Bush of his ability to respond to the motion for attorneys' fees.[618] The court emphasizes however, that this holding is limited to the unique facts presented.[619] The supreme court vacated the fee award and remanded the case,

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[606] 355 P.3d 573 (Alaska Ct. App. 2015).
[607] *Id.* at 591.
[608] *Id.* at 576.
[609] *Id.*
[610] *Id.* at 577.
[611] *Id.* at 584.
[612] *Id.* at 578, 581.
[613] 342 P.3d 1245 (Alaska 2015).
[614] *Id*. at 1247.
[615] *Id*.
[616] *Id*. at 1248.
[617] *Id*.
[618] *Id*. at 1254.
[619] *Id*.

holding that a trial court could not award a prevailing party insurance fees without informing the responding party that they were permitted to respond to the motion.[620]

City of Juneau v. State

In *City of Juneau v. State*,[621] the supreme court held that the local Boundary Commission was not required to conduct a "head-to-head" analysis as between a dissolving city and a neighboring borough to determine whether the city had superior common interests to the contested area, in order to satisfy its constitutional obligations to make borough decisions from a statewide perspective prior to granting the city's petition.[622] In 2011, the city of Petersburg petitioned the Boundary Commission to dissolve the city and incorporate a new borough, which the Commission accepted.[623] Juneau filed an annexation petition which overlapped with a significant portion of Petersburg's dissolution petition, and requested concurrent consideration with the Petersburg petition.[624] The Commission eventually denied Juneau's petition for consolidation or postponement, instead giving Juneau the opportunity to object at the final hearing.[625] The Commission approved the Petersburg petition, leaving little of the contested area for Juneau's later annexation.[626] Juneau appealed to the superior court, which affirmed the Commission's decision, and Juneau appealed again.[627] The supreme court held that, although the Alaska Constitution requires the Commission to make boundary decisions using a statewide approach, that did not require the Commission to fully consider each city's petition in a "head-to-head" analysis before making a decision.[628] Rather, the Commission must simply determine whether the proposed borough embraced an area with common interests to the maximum degree possible, which presupposes a thorough consideration of alternative boundaries.[629] Thus, the supreme court affirmed the decision approving Petersburg's petition and denied Juneau's petition for a concurrent analysis.[630]

Downs v. State

In *Downs v. State*,[631] the court of appeals held that issues decided in a previous appeal become the law of the case and generally cannot be considered anew in the same case.[632] Mark Alan Downs, who was charged for driving with a revoked license, argued that police lacked reasonable suspicion to pull him over and filed a motion to suppress evidence used against him.[633] The trial court denied the motion and Downs appealed to the superior court, which affirmed the denial.[634] After Downs was convicted by the trial court, he appealed the same issue

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[620] *Id*.
[621] 361 P.3d 926 (Alaska 2015).
[622] *Id.* at 933–35.
[623] *Id.* at 928.
[624] *Id.*
[625] *Id.*
[626] *Id.* at 930.
[627] *Id.* at 930–31.
[628] *Id.* at 934.
[629] *Id.*
[630] *Id.* at 935.
[631] 349 P.3d 189 (Alaska Ct. App. 2015).
[632] *Id.* at 190. (internal quotation marks omitted).
[633] *Id.* at 189.
[634] *Id.*

to the court of appeals.[635] The court of appeals ruled that Downs could not raise the same issue again on appeal, reasoning that the superior court ruling on the issue was final, thus becoming the law of the case.[636] The court of appeals reasoned that in the absence of a clear error that would cause an injustice, the law of the case doctrine prevented the appellate court from reconsidering an issue that was already decided on appeal in the same case.[637] The court further reasoned that this doctrine was designed to promote policies of efficiency, fairness, and consistency.[638] Affirming the lower court's decision, the court of appeals held that issues decided in a previous appeal become the law of the case and generally cannot be reconsidered in the same case.[639]

In re Dakota K.

In *In re Dakota K.*, the supreme court held that the respondent in involuntary commitment cases has the burden when challenging the sufficiency of the evidence after the commitment period has passed to prove that the commitment was the respondent's first commitment.[640] After violating a restraining order, the respondent was admitted to a psychiatric institute where he was evaluated by a psychiatrist who subsequently recommended that the respondent remain until his behavior was under control.[641] The superior court granted a 30-day commitment petition.[642] After his commitment, Dakota appealed the order, challenging the sufficiency of the evidence.[643] The supreme court noted that such appeals are moot after the commitment period has passed unless the commitment was a first, giving rise to collateral consequences, such as social stigma.[644] Because the respondent could not prove that the commitment was his first, the court concluded that the appeal was moot.[645] The supreme court held that the burden rests on the respondent in involuntary commitment cases when challenging the sufficiency of the evidence after the commitment period has passed to prove that the commitment was his first.[646]

In the Matter of the Necessity for the Hospitalization of REID K.

In *In the Matter of the Necessity for the Hospitalization of REID K.*,[647] the supreme court held that when reviewing whether evidence should be disallowed, the public interest exception to the mootness doctrine does not apply if the appellant cannot point to any statutory language indicating that the legislature sought to disallow this type of evidence.[648] In August 2013 the superior court entered a 30-day involuntary civil commitment order for Reid.[649] After holding a contested evidentiary hearing, the court found that there was clear and convincing evidence that

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[635] *Id.* at 190.
[636] *Id.*
[637] *Id.*
[638] *Id.*
[639] *Id.*
[640] 354 P3d 1068, 1069 (Alaska 2015).
[641] *Id.* at 1070.
[642] *Id.*
[643] *Id.*
[644] *Id.* at 1070–71.
[645] *Id.* at 1072.
[646] *Id.* at 1069.
[647] 375 P.3d 776(Alaska 2015).
[648] *Id.* at 777.
[649] *Id.*

he was mentally ill and therefore a danger to himself and others.[650] Reid appealed this 30-day commitment.[651] However before he appealed, Reid's doctors requested a 90-day commitment.[652] At the trial for the 90-day commitment, Reid stipulated that he was mentally ill.[653] Therefore, Reid's appeal for the 30-day commitment order did not have collateral consequences in light of his stipulation to being mentally ill.[654] On appeal, Reid argued that his case was not moot because the evidence used against him was insufficient, claiming that some of the clinical risk assessments that doctor's presented at trial were unreliable.[655] The supreme court affirmed the lower courts ruling that he was mentally ill, stating that Reid's arguments turn on factual questions about the reliability of clinical tests and marijuana studies.[656] The court noted that Reid did not reference any questions of statutory interpretation, which is required in order to meet the public interest exception to the mootness doctrine.[657] Affirming the lower court's decision, the supreme court held that when reviewing whether evidence should be disallowed, the public interest exception to the mootness doctrine does not apply if the appellant cannot point to any statutory language that the legislature sought to disallow this type of evidence.[658]

Jennifer L. v. State of Alaska, Department of Health and Social Services

In *Jennifer L. v. State of Alaska, Department of Health and Social Services*,[659] the supreme court held that if public interest in the legal issue is significant enough, the court may consider an otherwise moot case.[660] The State Office of Children's Services took three minor children into emergency custody, and then sought a court order granting them temporary custody.[661] No probable cause was found and the standing master recommended that the children be returned to their mother's custody.[662] The State objected to the master's recommendation, and three weeks later the superior court reviewed the case and rejected it.[663] The mother then filed an appeal, asking the supreme court to hold that masters have the authority to return children to their homes without judicial review.[664] However, the superior court then dismissed the underlying case, making the appeal moot.[665] The supreme court, agreeing to consider the case, applied the public interest exception to the mootness doctrine.[666] The court found that the question of whether a child should be promptly returned home is a question important to the public interest that may arise again.[667] The court reasoned that this issue is unlikely to ever be resolved without a mootness exception, as in many similar cases the superior court will proceed with adjudication,

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[650] *Id.* at 779.
[651] *Id.* at 777.
[652] *Id.*
[653] *Id.*
[654] *Id.*
[655] *Id.* at 781.
[656] *Id.*
[657] *Id.*
[658] *Id.* at 777.
[659] 2015 WL 5062023 (Alaska 2015).
[660] *Id.* at 114.
[661] *Id.* at 111.
[662] *Id.*
[663] *Id.*
[664] *Id.*
[665] *Id.*
[666] *Id.*
[667] *Id.* at 114.

mooting the probable cause determination and allowing the question to evade review.[668] Affirming the lower courts decision, the supreme court held that if public interest in the legal issue is significant enough, the court may consider an otherwise moot case.[669]

Kelley v. State

In *Kelley v.* State,[670] the court of appeals held that the police cannot avail themselves of the public access exception to warrant requirement when they access a person's property at an unreasonable time of night.[671] After receiving an anonymous tip that the defendant was growing marijuana on her property, two police officers dove up the defendant's driveway shortly after midnight, claimed to smell marijuana, and obtained a warrant to search the premises.[672] After searching the defendant's home, police found a number of marijuana plants and other evidence of a commercial grow operation.[673] At trial, defendant moved to suppress this evidence, claiming that the police had no right to drive up her driveway to sniff for marijuana at that time of night and, therefore, the search and seizure was unlawful.[674] The trial court denied the motion.[675] While defendant's appeal was pending, the United States Supreme Court decided *Florida v. Jardines*,[676] which discussed the limits of this type of police access to residential premises.[677] Applying the limitations expressed by the Court in *Jardines*, the court of appeals held that the officers' entrance onto the premises was conducted at an unreasonable time and, therefore, unlawful.[678] The court of appeals reasoned that the public access exception is limited not only to the normal paths of ingress and egress, but also by the manner of the visit.[679] Reversing the lower court's decision, the court of appeals found that the public access exception does not extend to entering the curtilage of a person's property well after hours that a person could expect any private citizen to approach their property.[680]

Lampley v. State

In *Lampley v. State*,[681] the court of appeals held that dismissal of a petition following a decision of no arguable merit requires that a court issue an initial decision with reasons, allow comments from the parties, re-evaluate its decision based on any submitted comments, and then issue a final order.[682] Lampley filed a petition for post-conviction relief and was denied by the superior court following consideration of his attorney's submitted certificate of "no arguable merit" and a conclusion that the petition had no arguable merit.[683] On appeal, Lampley argued, and the State

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[668] *Id.* at 115.
[669] *Id.* at 114.
[670] 347 P.3d 1012 (Alaska Ct. App. 2015).
[671] *Id*. at 1013.
[672] *Id*.
[673] *Id*.
[674] *Id*.
[675] *Id*.
[676] 133 S.Ct. 1409 (2013).
[677] *Kelley v. State*, 347 P.3d 1012, 1013 (Alaska Ct. App. 2015).
[678] *Id*. at 1015–16.
[679] *Id.* at 1014.
[680] *Id.*
[681] 353 P.3d 844 (Alaska Ct. App. 2015).
[682] *Id.* at 846.
[683] *Id.* at 845.

conceded, that the procedure in Lampley's case did not meet criminal law requirements.[684] The court of appeals vacated the lower court's decision, reasoning that the lower court, upon determining that the petition had no merit, should have provided Lampley and the State with the opportunity to respond to the court's reasoning for its decision.[685] Reasoning that because the lower court's reasons could have differed from those provided by the attorney's certificate, the parties were entitled to an opportunity to comment prior to a final decision by the court.[686] Vacating the lower court's decision, the court of appeals held that the lower court's initial decision to dismiss a petition due to a lack of arguable merit requires an opportunity for both sides to respond with comments, prior to the court issuing its final decision.[687]

Mantor v. State

In *Mantor v. State*,[688] the supreme court held that a defendant's probation period is tolled when a probationer is imprisoned for another crime, even if the incarceration was for parole violations.[689] In 1990, Mantor was convicted of first-degree sexual assault and first-degree assault, sentenced to imprisonment and probation to expire five years after his release from incarceration.[690] After his release from incarceration in 2006, he returned to incarceration twice for parole violations.[691] When Mantor committed new crimes in 2013, the State filed a petition to revoke his probation.[692] On appeal, Mantor argued that his probation continued even when he was returned to prison for parole violations, in which case his probation period ended over a year before his new crimes.[693] The supreme court held that there is well-established precedent that a defendant's probation period is tolled between the filing of a petition to revoke probation and the petition's adjudication, regardless of whether the interruption occurs because the defendant absconds from supervision or because the defendant is incarcerated for misconduct.[694] Affirming the lower court's decision, the supreme court held that a defendant's probation period is tolled when a probationer is imprisoned for parole violations.[695]

Richardson v. Municipality of Anchorage

In *Richardson v. Municipality of Anchorage*,[696] the supreme court held that a cause of action accrues when a party knows or should know that he has a claim.[697] Richardson filed a complaint alleging obstruction of justice, trespass, unlawful arrest and false imprisonment from events that transpired when he was arrested for a shoplifting incident at Best Buy.[698] The municipality and Best Buy moved to dismiss his complaint as untimely under the two-year statute of limitations, since the alleged wrongs occurred on July 7, 2010, but Richardson only filed his suit – at the

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[684] *Id.*
[685] *Id.*
[686] *Id.*
[687] *Id.* at 846.
[688] 359 P.3d 985 (Alaska 2015).
[689] *Id.* at 987–88.
[690] *Id.* at 986.
[691] *Id.* at 986–87.
[692] *Id.* at 987.
[693] *Id.*
[694] *Id.*
[695] *Id.* at 988.
[696] 360 P.3d 79 (Alaska 2015).
[697] *Id.* at 85.
[698] *Id.* at 82.

earliest – on July 17, 2012.[699] The superior court granted this motion to dismiss.[700] On appeal, Richardson argues that his mental disorder should toll on the statute, and he only discovered this when seen by a doctor outside July 20th, 2010.[701] The supreme court affirmed the lower courts decision, reasoning that Richardson's cause of action accrued no later than July 14, 2010, when he was arrested.[702] Under the discovery rule, the statute of limitations does not rule until the claimant discovers, or reasonably should have discovered, all the essential elements for his cause of action.[703] However, Richardson does not explain how his alleged mental disorder is an essential part of his claim, nor does he point to any other elements of the claim that remained undiscovered after his July 14th arrest.[704] Affirming the lower court's decision, the supreme court held that a cause of action accrues when a party knows or should know that he has a claim.[705]

Rogers v. State

In *Rogers v. State*,[706] the court of appeals held that the state has the burden to prove that a police officer conducting a search before impounding a vehicle was conducting a valid vehicle inventory search and not looking for evidence instead.[707] In April 2007, two police officers detained Kyle Rogers for driving without a valid license or insurance and decided to impound his car.[708] One officer searched Rogers' car allegedly to take inventory of its contents and found cocaine inside.[709] The officer obtained a search warrant four days later, but found no additional drug evidence.[710] The lower court upheld the validity of the search and Rogers was convicted of a drug offense.[711] On appeal, Rogers challenged his conviction by arguing that it was illegal for the officer to search his car without a warrant.[712] The court of appeals ruled that the state failed to meet its burden to establish that the warrantless search of Rogers' car was authorized as a routine inventory search preceding impoundment.[713] The court of appeals found that the facts suggested the officer was looking for evidence of criminal activity rather than simply taking inventory of the car's contents.[714] Reversing the lower court's decision, the court of appeals held that the state has the burden to prove that a police officer conducting a search before impounding a vehicle was conducting a valid vehicle inventory search and not looking for evidence instead.[715]

Saepharn v. State

In *Saepharn v. State*, the court of appeals held that an officer's pat-down search did not exceed lawful limits when there was probable cause to believe the target was in possession of a

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[699] *Id.* at 83.
[700] *Id.*
[701] *Id.* at 86.
[702] *Id.* at 85.
[703] *Id.*
[704] *Id.* at 86.
[705] *Id.* at 85.
[706] 355 P.3d 1248 (Alaska Ct. App. 2015).
[707] *Id.* at 1250.
[708] *Id.* at 1249.
[709] *Id.*
[710] *Id*. at 1250.
[711] *Id.* at 1249.
[712] *Id.*
[713] *Id.*
[714] *Id.* at 1251.
[715] *Id*. at 1250.

controlled substance.[716] The defendant was charged with fourth-degree controlled substance misconduct after police searched him for weapons and instead felt and removed a bag of methamphetamine from his pocket.[717] The defendant challenged the officer's authority to remove the bag since it did not reasonably appear to be a weapon and moved to suppress this evidence.[718] Finding the defendant's short were thin enough to feel its contents, the superior court denied the motion.[719] Affirming the lower court, the court of appeals noted that, while a pat-down search is generally limited to what is necessary to discover weapons, contraband may be seized if it is discovered.[720] The court reasoned that the surrounding circumstances gave the officer reason to suspect drug possession and the plain feel provided probable cause for further investigation into the baggie's contents.[721] The court of appeals held that an officer's pat-down search did not exceed lawful limits when there was probable cause to believe the target was in possession of a controlled substance.[722]

State v. Pete

In *State v. Pete*,[723] the supreme court held that the State's pursuance of a felony indictment against a defendant already charged with a misdemeanor for the same crime did not give rise to a presumption of prosecutorial vindictiveness, where such indictment was brought after the defendant's assertion of his right to trial to the misdemeanor charge.[724] On November 30th, the State initially charged William Quiciq Pete with misdemeanor assault of his girlfriend.[725] At an arraignment three months later, the prosecutor informed Pete that the State would seek to indict him for felony third-degree assault, but the State did not immediately take the new charges to the grand jury.[726] At a trial conference call for the misdemeanor charges, Pete's public defender informed the State that he intended the case to proceed to trial.[727] Two days later, the State filed felony charges against the defendant.[728] Pete moved to dismiss the indictment for vindictive prosecution, arguing that the State only brought the felony charges as retaliation for asserting his right to trial.[729] The superior court ruled that the facts supported a presumption of prosecutorial vindictiveness, because the State had failed to file the felony charges until after Pete indicated his intention to go to trial on the misdemeanor charge.[730] Moreover, the superior court denied the State the opportunity to present evidence that rebutted the presumption of prosecutorial vindictiveness.[731] On appeal, the supreme court reversed the lower court's ruling of a presumption of vindictiveness and remanded the case to allow Pete to bear the burden of proving

[716] 355 P.3d 593, 596 (Alaska Ct. App. 2015).
[717] *Id.* at 593.
[718] *Id.* at 595.
[719] *Id.*
[720] *Id.*
[721] *Id.* at 596.
[722] *Id.*
[723] 351 P.3d 346 (Alaska, 2015).
[724] *Id.* at 351.
[725] *Id.* at 346–47.
[726] *Id.* at 347.
[727] *Id.* at 348.
[728] *Id.*
[729] *Id.*
[730] *Id.*
[731] *Id.*

prosecutorial vindictiveness, reasoning that no presumption attaches to decisions increasing the severity of criminal charges already made by the State before the initial indictment.[732]

State v. Stidston

In *State v. Stidston*,[733] the Court of Appeals held Alaska's rape shield law contains a general good cause exception to the statutory pretrial deadline for making a request to offer evidence of the complaining witness's sexual history.[734] Stidston was charged with sexually assaulting the victim, but failed to present evidence of the victim's sexual history by the statutory deadline.[735] Stidston argued the statute is unconstitutional because the only statutory exception of good cause for extending the deadline would be if the defendant discovered the relevant information after the statutory deadline had passed, which would infringe on his right against self-incrimination.[736] The Court of Appeals disagreed, because the statute's reference to "good cause" created a general exception even through trial, of which discovering relevant information after the deadline passes is merely one example.[737] The legislative history of the act also made clear that Senators voiced concerns that a rigid pretrial deadline could unconstitutionally infringe on defendants' rights, and that the amendment was intended to allow extension if the deadline proved unreasonable.[738] Reversing the lower court's decision, the Court of Appeals holds that Alaska's rape shield law contains a general good cause exception to the statutory pretrial deadline for making a request to offer evidence of the complaining witness's sexual history, and is constitutional.[739]

Waterman v. State

In *Waterman v. State*,[740] the supreme court held that the legislature is constitutionally empowered to determine the standard of care applicable to criminally negligent homicide and need not vary the standard according to a defendant's age.[741] Waterman was charged of criminally negligent homicide at age 16 for failing to take any reasonable steps to warn or alert her mother or the police about a plot to kill her mother.[742] At trial, Waterman sought a modified jury instruction altering the standard of care applicable to her conduct using expert evidence that the prefrontal cortex of the brain continues to develop until age 25.[743] The trial judge denied this instruction, finding that the legislature had deliberately chosen a single standard of care, and was constitutionally empowered to make that choice.[744] On appeal, Waterman argued again that a different standard of care applied to her conduct based on her youth, relying on a previous decision where the court tailored the extreme indifference standard in a juvenile case to consider a minor's age, and the corresponding expert evidence presented at trial.[745] The supreme court

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[732] *Id*. at 349–51.
[733] 343 P.3d 911 (Alaska Ct. App. 2015).
[734] *Id.* at 913.
[735] *Id.* at 912.
[736] *Id.*
[737] *Id.* at 913.
[738] *Id.*
[739] *Id.* at 913–14.
[740] 342 P.3d 1261 (Alaska 2015).
[741] *Id.* at 1263.
[742] *Id.* at 1264.
[743] *Id.*
[744] *Id.*
[745] *Id.* at 1265.

affirmed the trial court's denial of a different standard of care, reasoning that Waterman was prosecuted as a adult, not a juvenile, and therefore the precedent she cited did not apply.[746] The supreme court cited prior decisions supporting the legislature's ability to define crimes and concluded that the legislature intended to apply adult criminal prosecution laws to juveniles prosecuted for felonies.[747] Finally, the court reasoned that the scientific evidence, which did not apply to all individuals under age 25,[748] did not require the legislature to alter its objective definition of negligence.[749] Affirming the lower court's decision, the supreme court held that the legislature's use of a single standard of care applicable to criminal negligence is constitutional.[750]

[746] *Id.* at 1266.
[747] *Id.*
[748] *Id.* at 1268–69.
[749] *Id.* at 1269.
[750] *Id.* at 1271.

ELECTION LAW

Lieutenant Governor of State v. Alaska Fisheries Conservation Alliance, Inc.

In *Lieutenant Governor of State v. Alaska Fisheries Conservation Alliance, Inc.*,[751] the supreme court held that a ballot initiative is prohibited where it appropriates a public asset, by producing a give-away program or restricting the ability of the legislature to allocate such assets.[752] Alaska Fisheries Conservation Alliance, Inc., a nonprofit, proposed a ballot initiative that would bar commercial set nets in non-subsistence areas.[753] The Department of Laws found that the proposed initiative was improper for ballot certification because, although it discussed only one subject that was properly stated in the title and included a properly formed enacting clause, the initiative constituted an appropriation, from minority users, commercial set netters, to majority users, personal use fishers.[754] The Lieutenant Governor accordingly declined to certify.[755] The superior court awarded summary judgment to Alaska Fisheries Conservation Alliance, ordering the Lieutenant Governor to certify the initiative, which was not a prohibited appropriation.[756] On appeal, the supreme court used a two part test to determine whether the ballot initiative created or repealed an appropriation, which the Alaska Constitution prohibits in article XI, section 7.[757] The supreme court found, to be an appropriation, the initiative (1) must pertain to a public asset and (2) must appropriate that asset, which occurs where the core objectives are impacted, namely where an initiative amounts to a give-away program or restricts the legislature's power to allocate state assets as needed.[758] Both core objectives were violated here, causing an appropriation of an asset: (1) a give-away program existed where the initiative caused an asset to be fully reallocated from a discrete user group and also likely would result in gains for other user groups, and (2) the legislature's allocation authority was restricted by a constraint on a discrete user group.[759] Reversing the lower court, the supreme court held that appropriating a public asset either through a give-away program or a restriction on legislative ability to allocate that asset constitutes an improper use of a ballot initiative.[760]

RBG Bush Planes, LLC v. Alaska Public Offices Commission

In *RBG Bush Planes, LLC v. Alaska Public Offices Commission*,[761] the supreme court held that a Commission decision to fine a corporation which engaged in illegal corporate contributions can be appropriate when the fine serves the legislature's intentions.[762] The Alaska Public Offices Commission investigated complaints about RBG Bush Planes, LLC, a corporation, and then filed a complaint that the corporation had violated Alaska state election law.[763] Specifically, the Commission alleged that the corporation made illegal contributions to candidates when,

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[751] 363 P.3d 105 (Alaska 2015).
[752] *Id.* at 111–12.
[753] *Id.* at 106.
[754] *Id.* at 106–07.
[755] *Id.*
[756] *Id.* at 107.
[757] *Id.* at 108.
[758] *Id.* at 108–09.
[759] *Id.* at 111–12.
[760] *Id.*
[761] 361 P.3d 886 (Alaska 2015).
[762] *Id.* at 896.
[763] *Id.* at 888.

following several chartered flights, two candidates were charged only for a portion of the fuel costs associated with their flights.[764] After testimony regarding market airfare rates at a Commission hearing, the Commission determined that it was unreasonable to charge fuel-only rates, and gave the corporation a large fine to convey the need for deterrence.[765] On appeal, the superior court affirmed the determinations of the Commission, and denied the corporation's motion to supplement.[766] Then the supreme court, after supporting the Commission's determination that the corporation made an illegal corporate contribution, stated that the fine imposed for that violation was not unconstitutionally excessive.[767] Specifically, the fine met the intention of the underlying law, was reasonably related to the corporation's offense, and the 20:1 ratio did not constitute an innate violation.[768] Affirming the superior court, the supreme court held that fines are not unconstitutionally excessive when supported by the legislature's purposes in enactment.[769]

[764] *Id.*
[765] *Id.* at 889–90.
[766] *Id.* at 891.
[767] *Id.* at 894.
[768] *Id.* at 895–97.
[769] *Id.* at 896.

EMPLOYMENT LAW

Municipality of Anchorage v. Stenseth

In *Municipality of Anchorage v. Stenseth*,[770] the supreme court held that equitable estoppel prevents an employer from avoiding an employee settlement agreement by later denying the authority of its agents to settle the case.[771] In 1996, Lee Stenseth entered into a compromise and release agreement with his employer, the Municipality of Anchorage ("Municipality"), after being injured at work.[772] Stenseth later served time in prison for selling narcotics he acquired through his work-related injury.[773] Shortly after Stenseth was released from prison, the Municipality filed a petition seeking reimbursement for the benefits given to Stenseth and the parties' attorneys reached a $30,000 settlement.[774] The Municipality claimed that the settlement was void because its attorneys did not have the authority to make large settlements without approval, but the Alaska Workers' Compensation Board ("Board") ruled that the settlement was enforceable.[775] The Alaska Workers' Compensation Appeals Commission ("Commission") agreed with the Board's findings and held that equitable estoppel applied.[776] The Municipality appealed, arguing that settlement procedure was violated and its agents acted without authority.[777] The supreme court affirmed the Commission's decision, reasoning that equitable estoppel prevents the Municipality from declaring a settlement void because its attorneys misunderstood their authority.[778] The supreme court found that Stenseth reasonably relied on the settlement and had been prejudiced by the Municipality's attempt to avoid the settlement.[779] The supreme court also noted that the public policy of settling disputes weighs in favor of estoppel.[780] Affirming the Commission's decision, the supreme court held that equitable estoppel prevents an employer from avoiding an employee settlement agreement by later denying the authority of its agents to settle the case.[781]

Rodriguez v. State, Commission for Human Rights

In *Rodriguez v. State, Commission for Human Rights*,[782] the supreme court held that a complainant alleging race-based employment discrimination fails to rebut an employer's legitimate non-discriminatory hiring decisions by responding only that such decisions were in retaliation for reporting harassment due to complaint's sexual orientation.[783] Rodriguez, a gay Hispanic man, was furloughed by his employer, Delta Airlines, following a record of poor work attendance, a record which he claimed was caused by the lasting stress of another employee harassing him due to his sexual orientation.[784] Rodriguez had earlier reported the harassment to

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[770] 361 P.3d 898 (Alaska 2015).
[771] *Id*. at 908–09.
[772] *Id*. at 901.
[773] *Id*.
[774] *Id*. at 901–02.
[775] *Id*. at 902–04.
[776] *Id*. at 904.
[777] *Id*. at 903–04.
[778] *Id*. at 908–09.
[779] *Id*.
[780] *Id*. at 909.
[781] *Id*. at 908–09.
[782] 354 P.3d 380 (Alaska 2012).
[783] *Id.* at 388.
[784] *Id.* at 383.

Delta, the latter proceeding to terminate the harasser.[785] Rodriguez's position was later filled by a less-senior Caucasian employee who in the past had maintained perfect attendance.[786] Rodriguez subsequently filed a complaint with the Alaska State Commission for Human Rights, alleging employment discrimination based on his race.[787] On appeal, the supreme court affirmed the lower court's dismissal of Rodriguez's complaint, reasoning that the state statute barring certain types of employment discrimination does not include discrimination based on a complainant's sexual orientation; and that in evaluating discrimination claims the court uses a three-step burden-shifting framework.[788] At step one, Rodriguez had established a prima facie case of race-based discrimination by showing that Delta hired of a less-senior Caucasian employee over Rodriguez, a Hispanic man; but when Delta countered at step two by articulating non-discriminatory reasons for its hiring decision (relative work attendance), Rodriguez rebutted at step three only by asserting that he was in fact not rehired in retaliation for reporting the earlier sexual orientation harassment.[789] In resorting solely to rebuttals concerning sexual orientation and retaliation, the court reasoned, Rodriguez neglected to establish a reasonable possibility of *race*-based discrimination.[790] Affirming the lower court's opinion, the supreme court held that a complainant alleging race-based employment discrimination fails to rebut an employer's legitimate non-discriminatory hiring decisions by a showing that such decisions were in retaliation for reporting harassment due to complaint's sexual orientation.[791]

[785] *Id.*
[786] *Id.* at 384.
[787] *Id.* at 382.
[788] *Id.* at 386–88.
[789] *Id.* at 383.
[790] *Id.* at 388.
[791] *Id.*

Cook Inlet Fisherman's Fund v. State

In *Cook Inlet Fisherman's Fund v. State*,[792] the supreme court held decisions made by the Commissioner of the Alaska Department of Fish and Game ("Department") in 2013 regarding the Upper Cook Inlet fishery, limiting time for and later closing the fishery to set net fishing, did not amount to fishery mismanagement.[793] In 2013, the Upper Cook commercial fishing season saw both a strong sockeye salmon run and the weakest Kenai River king salmon run on record.[794] Sockeye salmon are targeted by both set and drift netters in the Upper Cook, but set netters accidentally caught more king salmon than drift netters.[795] In June 2013, in an effort to increase the king salmon run while controlling the sockeye run, the Commissioner began limiting the amount of time set netters were permitted to fish the Upper Cook by adding fewer than the customary number of extra fishing periods.[796] On July 28, 2013, the Commissioner closed the set net fishery for the season[797] Cook Inlet Fisherman's Fund (CIFF) sued the Department on July 17, 2013, and sought a preliminary injunction compelling the opening of additional set net fishing time periods.[798] CIFF argued that, under a sockeye salmon management plan adopted by the Department, the Commissioner was required to allow 51 hours of extra fishing periods when the Kenai River sockeye run was strong.[799] The superior court denied CIFF's injunction request, refusing to second-guess the Commissioner's discretionary use of emergency authority, and reasoning that the Commissioner could not be required to provide discretionary fishing periods.[800] The supreme court affirmed the superior court's decision, ruling that the Commissioner's actions fell within the permitted range of discretion.[801] The supreme court held decisions made by the Commissioner in 2013 regarding the Upper Cook Inlet fishery, limiting time for and later closing the fishery to set net fishing, did not amount to fishery mismanagement.[802]

[792] 357 P.3d 789 (Alaska 2015).
[793] *Id.* at 791.
[794] *Id.*
[795] *Id.* at 792.
[796] *Id.* at 793.
[797] *Id.* at 794.
[798] *Id.*
[799] *Id.*
[800] *Id.* at 796.
[801] *Id.* at 799.
[802] *Id.* at 791.

ETHICS

In the Disciplinary Matter Involving Deborah Ivy

In *In the Disciplinary Matter Involving Deborah Ivy*,[803] the supreme court held that the Alaska Rules of Professional Conduct 3.3 and 3.4 were intended to govern attorneys when they are acting as advocates and not in their personal capacities.[804] Ivy, an attorney by profession, brought multiple sexual assault claims against Kyzer, and falsified statements she made when testifying in court.[805] The Alaska Rules of Professional Conduct prohibit an attorney from falsifying information or evidence in to a tribunal.[806] On appeal from the Hearing Committee and Board of Governors' decision to disbar Ivy, Ivy argued that the rules are limited to a lawyer's conduct when representing a client.[807] The supreme court agreed, reasoning that the Alaska Rules were modeled after the Model Rules set forth by the ABA, to which the commentary, as a guide to interpretation of the Model Rules, has been interpreted to mean that the rule is limited to a lawyer's conduct in a representational capacity before a court, and not to personal conduct.[808] Reversing the Hearing Committee and Board of Governors' decision, the supreme held that the Alaska Rules of Professional Conduct 3.3 and 3.4 were intended to govern attorneys when they are acting as advocates and not in their personal capacities.[809]

McGee v. Alaska Bar Ass'n

In *McGee v. Alaska Bar Ass'n*,[810] the supreme court held that the Bar Counsel did not err in determining that a formal investigation of an ethics grievance was unwarranted, where the Counsel considered relevant evidence from prior reports, and reasonably concluded that a formal investigation would be unlikely to bring forth new material facts relevant to the grievance.[811] McGee filed a grievance with the Alaska Bar Association, alleging that an attorney in the Office of Public Advocacy had violated a variety of rules dealing with an attorney's duties to his client.[812] Specifically, McGee alleged that the attorney had wrongfully continued using a private criminal defense investigator where the contracting process was corrupt.[813] The Department of Law subsequently ruled that the contracting process had been unduly restrictive, but declined to open a formal investigation on the grounds that there were no intentional procurement violations.[814] On appeal, McGee argued that the Bar Counsel had used a clear and convincing standard of presenting evidence, which was the incorrect standard for the grievance process.[815] The supreme court affirmed the Bar Counsel's decision, holding that McGee had misinterpreted the Counsel's ruling.[816] The supreme court found that the Counsel had considered the evidence from prior reports regarding the matter in the Department of Administration, as well

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[803] 350 P.3d 758 (Alaska 2015).
[804] *Id.* at 765.
[805] *Id.* at 759–61.
[806] *Id.*at 762.
[807] *Id.* at 762–63.
[808] *Id.* at 763.
[809] *Id.* at 765.
[810] 353 P.3d 350 (Alaska 2015).
[811] *Id.* at 354.
[812] *Id.* at 353.
[813] *Id.* at 352.
[814] *Id.* at 353.
[815] *Id*. at 354.
[816] *Id*.

as the Department of Law, and that the Counsel could have reasonably determined that a formal investigation would have not only wasted time and resources, but would also have likely failed to bring forth any new relevant new material facts to the case.[817] Because the Counsel had the discretion to close grievances when they believed them to be unwarranted, and because its decision was not arbitrary or capricious, the supreme court saw no breakdown in the grievance process.[818] Affirming the Bar Counsel's decision, the supreme court held that the Bar Counsel did not err in determining that a formal investigation of an ethics grievance was unwarranted, where it considered relevant evidence from prior reports, and reasonably concludes that a formal investigation would be unlikely to bring forth new material facts relevant to the grievance.[819]

[817] *Id.*
[818] *Id.*
[819] *Id.* at 354.

Sanders v. State

In *Sanders v. State*,[820] the supreme court held that the lower court improperly excluded evidence on a phone recording given by an unavailable declarant where the recording met the basic circumstantial guarantees of trustworthiness.[821] On trial for murder, Sanders sought to admit a recording of a phone call to the police placed by a woman who died prior to trial and was thus not available for testimony.[822] On the recording, the woman told the officer of her personal knowledge that the two victims shot by Sanders had been conspiring to assault and rob him.[823] The trial court excluded the recording on the grounds that there was no guarantee of trustworthiness.[824] Sanders was then convicted of murder on all counts.[825] The court of appeals affirmed the exclusion of the recording and found it did not unfairly limit Sanders' defense.[826] On appeal, Sanders contended the exclusion was reversible error and that the recording was admissible under Alaska Rules of Evidence 803(3) and 804(b)(5).[827] The supreme court reasoned that the lower courts misinterpreted the woman's statements on the recording.[828] In doing so, the lower courts had also subjected the recording to an overly demanding test for trustworthiness given the later death of the declarant.[829] The court then found that the woman had met at least five factors arguing in favor of her trustworthiness.[830] She exhibited no reason to speak insincerely given her relationship to the parties and spontaneously sought out the detective in his capacity as the principal investigator.[831] She also would have known false statements would lead to liability and knew she was being recorded.[832] Finally, she demonstrated clear first-hand knowledge of the circumstances that could be corroborated.[833] The supreme court, reviewing de novo, found the recording met the basic circumstantial guarantees of trustworthiness.[834]

[820] 2015 WL 5917057 (Alaska Oct. 9, 2015).
[821] *Id.* at *1.
[822] *Id.* at *3
[823] *Id.* at *2.
[824] *Id.* at *4.
[825] *Id.* at *5.
[826] *Id.*
[827] *Id.* at *6.
[828] *Id.* at *8.
[829] *Id.* at *10.
[830] *Id*. at *13.
[831] *Id.* at *13–14.
[832] *Id.* at *14–15.
[833] *Id.* at *15.
[834] *Id.* at *15.

FAMILY LAW

Andrea C. v. Marcus K.

In *Andrea C. v. Marcus K.*,[835] the supreme court discussed a superior court's broad discretion in not applying collateral estoppel and in weighing best interest factors in custody disputes, in the context of specific facts.[836] Andrea filed a child custody modification request based on her impending relocation.[837] The superior court awarded Marcus primary physical and sole legal custody of two minor children, finding him to be the more emotionally stable and consistent parent for the children.[838] Andrea appealed on the grounds that the lower court erred in giving no weight to her domestic violence allegations against Marcus, and did not give the proper weight to each best interest factor.[839] The supreme court held that even though Marcus may possibly have had a past history of domestic violence, there were no current concerns, and the original protective order against his him was merely for violating a no-contact order, not for proven domestic violence, and it was within the superior court's discretion to not to apply non-mutual offensive collateral estoppel on the domestic violence issue.[840] Furthermore, while the superior court cannot assign disproportionate weight to particular best interest factors while ignoring others, it has considerable discretion in determining the importance of each statutory factor in a given case.[841] In this case, stability for the children seemed particularly important due to expert testimony.[842] Thus, the supreme court affirmed and held that the superior court did not abuse its discretion to not give weight to Andrea's domestic violence allegations and to weigh the children's stability as heavily as it did.[843]

Caroline J. v. Theodore J.

In *Caroline J. v. Theodore J.*,[844] the supreme court held that a lower court did not abuse its discretion in awarding a mother and father joint custody of three children when the court thoroughly considered the father's history of domestic violence, as well as the mother's attempts at parental alienation.[845] In 2012, after being married for eight years and having three children, the wife alleged that the husband had hit her over the head with a pot, and asked for a protective order.[846] In addition to granting the protective order, the superior court awarded interim custody to the mother.[847] Upon reaching the custody trial, the superior court considered a variety of testimonies which stated that the father had some history of domestic abuse, but also that the mother had been purposely keeping the children away from reunification counseling.[848] In the end, the superior court ordered that upon the father's completion of a domestic violence

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[835] 355 P.3d 521 (Alaska 2015).
[836] *See generally id.*
[837] *Id.* at 524.
[838] *Id.* at 524–25.
[839] *Id.* at 525.
[840] *Id.* at 527–28.
[841] *Id.* at 528.
[842] *Id.* at 529.
[843] *Id.* at 526–30.
[844] 354 P.3d 1085 (Alaska 2015).
[845] *Id.* at 1092.
[846] *Id.* at 1087.
[847] *Id.*
[848] *Id.* at 1088.

intervention program, joint legal custody would take place.[849] On appeal, the mother argued that the superior court abused its discretion when considering the best interests of the children.[850] The supreme court affirmed the superior court's decision, reasoning that the father had overcome a rebuttable presumption against joint physical custody, and that the mother's attempts at parental alienation were compelling.[851] The supreme court reasoned that the father had overcome a rebuttable presumption against joint custody because of his participation in an intervention program, and because there was evidence that the best interests of the children required the father's participation as a custodial parent.[852] Additionally, the fact that the mother had willfully attempted to damage the relationship between the father and the children weighed heavily in a finding for joint custody.[853] Affirming the superior court's decision, the supreme court held that the lower court did not abuse its discretion in awarding the mother and father joint custody of three children because the court thoroughly considered the father's history of domestic violence, as well as the mother's attempts at parental alienation.[854]

Diana P. v. State

In *Diana P. v. State*,[855] the supreme court held that, under the Indian Child Welfare Act (ICWA), when the basis for termination of parental rights is culturally neutral, the substantial-harm requirement can be met by a combination of lay testimony and other evidence that the parent's conduct is harmful to the child, as well as expert testimony that the conduct is likely to continue.[856] Diana P's four young children were adjudicated children in need of aid in March 2013, and the trial court terminated Diana's parental rights in the summer of 2014.[857] Evidence introduced at trial showed Diana had struggled with mental illness and substance abuse, particularly alcohol use, since she was a teenager.[858] Lay witnesses testified that Diana was not a good parent when she was drinking, and that when one of Diana's children was four years old, the child became the caregiver for her younger siblings.[859] Two experts in the diagnosis and treatment of substance abuse testified on behalf of the Office of Children's Services (OCS) at trial.[860] In the opinion of both experts, Diana was in danger of relapsing unless she entered an intensive substance-abuse program and received therapy.[861] The trial court terminated Diana's parental rights under ICWA, holding that ICWA's requirements are met even when expert witnesses are only qualified to testify regarding one prong of the ICWA substantial-harm requirement, with the second prong being proved through lay testimony and other evidence.[862] On appeal, Diana argued the trial court erred in finding that OCS proved beyond a reasonable doubt that placing the children in Diana's custody would likely cause them serious

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[849] *Id.* at 1089.
[850] *Id.* at 1091.
[851] *Id.* at 1092.
[852] *Id.* at 1090.
[853] *Id.* at 1092.
[854] *Id.*
[855] 354 P.3d 541 (Alaska, 2015).
[856] *Id.* at 547.
[857] *Id.* at 542.
[858] *Id.* at 543.
[859] *Id.*
[860] *Id.* at 544.
[861] *Id.* at 544–45.
[862] *Id.* at 545.

harm.[863] The supreme court affirmed the trial court's decision, reasoning that, while ICWA requires that evidence supporting termination of parental rights include expert testimony, it does not require that expert testimony provide the sole basis for the determination.[864] Affirming the trial court's decision, the supreme court held that, under ICWA, when the basis for termination of parental rights is culturally neutral, the substantial-harm requirement can be met by a combination of lay testimony and other evidence that the parent's conduct is harmful to the child, as well as expert testimony that the conduct is likely to continue.[865]

Elk v. McBride

In *Elk v. McBride*, the supreme court held that, in regards to child custody decisions, a court cannot hold prior litigation conduct against a party, unless it can substantiate that the party was not acting in good faith.[866] Red Elk, a resident of the Fort Peck Indian Reservation in Montana, filed two separate petitions for emergency custody in the Fort Peck Tribal Court against Laura McBride, an Alaska resident with whom Red Elk has a daughter.[867] The two petitions made various allegations of abuse and neglect, which were dismissed on the basis of jurisdiction and venue.[868] When McBride filed a custody complaint in Alaska, the superior court considered Elk's "false or exaggerated claims of abuse" in awarding primary custody to McBride and arranging a tiered visitation system.[869] On appeal, the supreme court reversed and remanded the visitation schedule,[870] finding that neither Tribal Court nor the Alaska superior court had assessed the merits of the allegations.[871] While noting that unsupported allegations may suggest an unwillingness to foster a child's relationship with a co-parent,[872] the supreme court reasoned that the court could not make such assumptions about the parent's fitness without substantiation.[873] Reversing the lower court, the supreme court held that, in regards to child custody decisions, a court cannot hold prior litigation conduct against a party, unless it can substantiate that the party was not acting in good faith.[874]

Engstrom v. Engstrom

In *Engstrom v. Engstrom*,[875] the supreme court held that a father's income-producing businesses and the cost of childcare does not justify an unequal distribution of property in a divorce settlement.[876] Andrew and Becky Engstrom were married in 1998.[877] During the marriage Andrew worked for the two businesses he owns and Becky was a schoolteacher.[878] The

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[863] *Id.* at 546.
[864] *Id.* at 547.
[865] *Id.*
[866] 344 P.3d 818, 824 (Alaska 2015).
[867] *Id.* at 820.
[868] *Id.* at 820–21.
[869] *Id.* at 821.
[870] *Id.* at 826.
[871] *Id.* at 825–26.
[872] *Id.* at 825.
[873] *Id.* at 826.
[874] *Id.* at 824.
[875] 350 P.3d 766 (Alaska 2015).
[876] *Id.* at 772.
[877] *Id.* at 768.
[878] *Id.*

Engstroms had a child together in 2003, before separating in 2010.[879] In the divorce proceedings, the superior court divided the marital property pursuant to AS 25.24.160(a)(4), whereby 58.4 percent of the marital property was allocated to Becky and 41.6 percent was allocated to Andy.[880] The court justified this division on two grounds: Andy was receiving income producing properties through the businesses he owned and Becky would likely be taking care and custody of their child for the foreseeable future.[881] On appeal, the supreme court found that such a distribution of marital property constituted an abuse of discretion, because the superior court reduced one party's share of the marital estate on the grounds that he was allocated income-producing property, when in fact these properties only allowed that party to reap an income on par with the other party's salary.[882] Moreover, the superior court further reasoned that consideration of one spouse's role as the primary childcare provider constituted an abuse of direction, because the superior court did not make a finding about whether the mandated child support was inadequate to meet the child's needs.[883] Reversing the division of marital property and remanding the case for further proceedings, the supreme court found that a father's income-producing businesses and the cost of childcare to the other party in the proceeding does not justify an unequal distribution of property in a divorce settlement.[884]

Faye H. v. James B.

In *Faye H. v. James B.*,[885] the supreme court held that the superior court failed to make sufficient findings regarding whether a father's domestic violence triggers the rebuttable presumption that a parent with a history of domestic violence should not be awarded sole or joint physical custody under Alaska Statute 25.24.150(g).[886] Faye H. and James B. began a relationship in late 2009, and had one child together.[887] They separated shortly thereafter.[888] The trial court ordered an equal physical custody arrangement and granted Faye's motion for a long-term protective order.[889] James then filed a complaint seeking sole legal and primary physical custody of the child.[890] The superior court determined that an equal physical custody arrangement was in the child's best interests and awarded legal custody to Faye.[891] The court stated that the domestic violence perpetrated by James was not to a degree and frequency to trigger 25.24.150(g).[892] Faye appeals this decision arguing that the superior court should have applied the presumption of 25.24.150(g) in light of James' repeated physical and verbal attacks against her.[893] The supreme court found that the superior court erroneously focused on whether the abuse was continuous, which is not relevant under the statutory definition.[894] This improper focus does not allow the

[879] *Id.*
[880] *Id.* at 769.
[881] *Id.*
[882] *Id.* at 774.
[883] *Id.*
[884] *Id.* at 775.
[885] 348 P.3d 876, 876 (Alaska 2015).
[886] *Id.* at 876.
[887] *Id.*
[888] *Id.* at 877.
[889] *Id.*
[890] *Id.*
[891] *Id.*
[892] *Id.*
[893] *Id.* at 878.
[894] *Id.* at 880.

supreme court to evaluate the court's ultimate conclusion that James lacked a history of perpetrating domestic violence.[895] Therefore, the supreme court remanded the case to the superior court, holding that it failed to make sufficient findings regarding whether a father's domestic violence triggers the statutory rebuttable presumption.[896]

Guerrero v. Guerrero

In *Guerrero v. Guerrero*, the supreme court held that military benefits consisting entirely of disability retirement pay and disability benefits are not a divisible marital asset but are a factor in determining equitable division of marital property.[897] A wife and husband dissolved their marriage and agreed to divide the marital home and husband's military retirement benefits.[898] As a result of injuries sustained during combat, the husband retired prematurely with benefits consisting entirely of retirement disability and disability pay.[899] When the wife moved for the husband to directly pay her, the superior court determined that federal law proscribed the division of disability retirement and disability pay.[900] Affirming the superior court, the supreme court found that the husband's military pay could not be divided.[901] However, the court concluded that this change destroyed a fundamental, underlying assumption of the parties' dissolution agreement and ordered a re-opening and modification of the dissolution agreement to reflect the parties' current financial situations.[902] The supreme court held that military benefits consisting entirely of disability retirement pay and disability benefits are a factor in determining equitable division of marital property, despite not being a divisible marital asset.[903]

Hope P. v. Flynn G.

In *Hope P. v. Flynn G.*,[904] the supreme court held that context can establish that a parent who pursues training for a career change is not unreasonably underemployed for purposes of calculating child support.[905] Flynn G., a divorced father of two children, left his job as a telecommunications technician in 2012 and began an approximately five-year training program to become an electrician.[906] Flynn's former wife Hope argued that the lower court should impute income to Flynn for child support purposes because he voluntarily became unreasonably underemployed when he decided to switch careers.[907] The lower court ruled that Flynn's planned career shift was not unreasonable based on the circumstances.[908] On appeal, Hope argued that income should be imputed to Flynn for child support purposes.[909] The supreme court affirmed the lower court, reasoning that evidence showed Flynn's plan to change careers was not

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[895] *Id.*
[896] *Id.* at 882.
[897] 362 P.3d 432, 445 (Alaska 2015).
[898] *Id.* at 433.
[899] *Id.* at 435.
[900] *Id.* at 437.
[901] *Id.* at 442.
[902] *Id.* at 445.
[903] *Id.*
[904] 355 P.3d 559 (Alaska 2015).
[905] *Id.* at 567.
[906] *Id.* at 561–62.
[907] *Id.* at 562–63.
[908] *Id.* at 563.
[909] *Id.* at 564.

motivated by any bad faith desire to avoid paying child support.[910] The court said that the lower court weighed appropriate factors, such as whether Flynn's reduced income would financially burden his children or former spouse.[911] The court said that evidence showed Flynn's earnings could increase once he completed the training program.[912] Affirming the lower court's decision, the supreme court held that context can establish that a parent who pursues training for a career change is not unreasonably underemployed for purposes of calculating child support.[913]

Horne v. Touhakis

In *Horne v. Touhakis*,[914] the supreme court held that the lower court's lack of factual findings in determining imputed income were insufficient for appellate review of the decision.[915] Horne and Touhakis were involved in an extended romantic relationship, during which Touhakis adopted a child.[916] After the relationship terminated, Horne received visitation rights and was required to pay child support.[917] After sustaining financial losses from failed entrepreneurial adventures, Horne requested to have his child support reduced.[918] Horne agreed to have income imputed to him, and estimated he was capable of earning about $40,000 per year.[919] Without detailing why, the lower court rejected this estimate as too low and, instead, imputed an income of $83,200.[920] On appeal, Horne argued that the lower court used insufficient factual findings to double his imputed income.[921] The supreme court vacated the lower court's decision, holding that it could not affirm the imputed income determination due to the lack of findings.[922] Without examining specific types or availability of jobs, the lower court could not adequately determine that Horne underestimated his earning potential.[923] Vacating the lower court's decision, the supreme court held that the lower court's lack of factual findings in determining imputed income were insufficient for appellate review of the decision.[924]

Matthew P. v. Gail S.

In *Matthew P. v. Gail S.*,[925] the supreme court held that the superior court's evaluation of a child's emotional needs, as well as the willingness and ability of each parent to facilitate and encourage a close and continuing relationship between the other parent and the child, as factors in determining whether shared physical custody was in a child's best interest, was not an abuse of discretion.[926] Following the child's parents' divorce, the two parents shared physical custody

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[910] *Id.* at 567.
[911] *Id.* at 567–68.
[912] *Id.* at 567.
[913] *Id*.
[914] 356 P.3d 280 (Alaska 2015).
[915] *Id.*
[916] *Id*. at 281
[917] *Id*.
[918] *Id*.
[919] *Id*.
[920] *Id*.
[921] *Id.* at 282.
[922] *Id.*
[923] *Id*. at 284.
[924] *Id.* at 280.
[925] 354 P.3d 1044 (Alaska 2015).
[926] *Id.* at 1046.

of their daughter.[927] When the superior court found that the father committed an incident of domestic violence, it concluded it was in the child's best interests that the mother be awarded primary physical custody, with the father being only permitted supervised visitation and unmonitored phone calls.[928] The father moved to modify custody to allow more contact with the child, but instead the court found no material change in circumstances, and in fact found that tightening the restrictions on the father's interactions with the child were in her best interests, and the father appealed.[929] The supreme court held that the superior court's evaluation of the child's emotional needs was not an abuse of discretion, its assessment of each parent's willingness to foster a relationship between the child and the other parent was reasonable, and it adequately articulated a plan through which the father could achieve unsupervised visitation.[930] Thus, the supreme court affirmed and held that the superior court did not abuse its discretion in weighing each factor and determining that continuing restrictions on visitation were appropriate.[931]

Moore v. Moore

In *Moore v. Moore*,[932] the supreme court held that a trial court acts within its discretion in declining to restrict international visitation to Hague Convention signatory nations, as long as it considers the relevant factors in its custody decision.[933] In a divorce proceeding between the Moores, the trial court granted sole legal and primary physical custody to the mother, while awarding the father unrestricted visitation, including visitation to foreign countries.[934] On appeal, the mother argued that the trial court abused its discretion in granting unrestricted international visitation because Micronesia, the proposed country of travel, is not a signatory to the Hague Convention and because the father had demonstrated a propensity to disobey the law and a risk of absconding with the child.[935] The supreme court affirmed the lower court's decision, reasoning that the trial court properly considered the relevant factors in making its custody determination, including the risk of non-return and the reason for the visit.[936] The supreme court further reasoned that no Alaskan law restricts international travel as part of custody visitation, and no evidence substantiated the mother's subjective fear that the father would abscond with the child.[937] Affirming the trial court's decision, the supreme court held that a trial court does not abuse its discretion in granting a parent unrestricted international visitation when it considers relevant factors including the risk of non-return and the reason for the visitation.[938]

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[927] *Id.*
[928] *Id.*
[929] *Id.*
[930] *Id.* at 1049–51.
[931] *Id.* at 1046.
[932] 349 P.3d 1076 (Alaska 2015).
[933] *Id.* at 1085.
[934] *Id.* at 1078–80.
[935] *Id.* at 1081–84.
[936] *Id.* at 1081.
[937] *Id.* at 1081–84.
[938] *Id.* at 1085.

Norris v. Norris

In *Norris v. Norris*,[939] the supreme court held a child custody action was properly dismissed for lack of subject matter jurisdiction under the Uniform Child Custody Jurisdiction and Enforcement Act ("UCCJEA"),[940] when another custody action involving the same dispute had already been initiated in a different state, and the other state properly exercised jurisdiction under the UCCJEA.[941] Richard and Brianna Norris, a married couple, moved from Alaska to Mississippi with their one-year-old son Grant in July 2012.[942] In October 2012, Richard filed for divorce in Mississippi, and both Richard and Brianna signed a temporary joint custody agreement barring both parents from traveling more than 100 miles with Grant without the consent of the other parent.[943] In December 2012, Briana violated the custody agreement, took Grant with her to Fairbanks, and filed for divorce in Alaska.[944] In January 2014, the superior court in Fairbanks dismissed the case for lack of subject matter jurisdiction.[945] The supreme court ruled that the superior court properly dismissed the case, noting that, under the UCCJEA, a state can only make a child custody determination if another state has not already done so, or if another state did not properly exercise jurisdiction at the time it issued its custody order.[946] Since Richard had already filed his action in Mississippi at the time Briana filed her action in Alaska, Alaska could only exercise jurisdiction if Mississippi did not have jurisdiction when the action was filed.[947] The supreme court determined that Mississippi properly exercised jurisdiction under the UCCJEA.[948] As a result, the supreme court held the child custody action was properly dismissed for lack of subject matter jurisdiction under the UCCJEA because another child custody action involving the same dispute had already been initiated in a different state, and because the other state properly exercised jurisdiction under the UCCJEA.[949]

Payton S. v. State, Dept. of Health and Social Services

In *Payton S. v. State, Dept. of Health and Social Services*, the supreme court held the lack of proper notice at the adjudication and disposition stage did not affect the outcome of a child custody case.[950] The Office of Children's Services took custody of two Alaska Native children because of their parents' substance abuse and neglect.[951] Alaska's Child in Need of Aid ("CINA") rules require that parents of Alaska Native children receive notice at least ten days before an adjudication hearing.[952] Here, the parents were not served with a copy of the petition until the day of the adjudication and disposition hearing.[953] The trial court terminated parental rights in 2014,[954] and the parents appealed, arguing that the failure of notice in the proceedings

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[939] 345 P.3d 924 (Alaska 2015).
[940] Alaska stat. ann. § 25.30.300 (West 2015).
[941] *Simmons*, 345 P.3d at 931.
[942] *Id.* at 926.
[943] *Id.*
[944] *Id.*
[945] *Id.* at 927.
[946] *Id.* at 928.
[947] *Id.*
[948] *Id.* at 931.
[949] *Id.*
[950] 349 P.3d 162, 164 (Alaska 2015).
[951] *Id.*
[952] *Id.* at 168.
[953] *Id.* at 164.
[954] *Id.* at 167.

violated due process.[955] The supreme court held that while the failure of notice in CINA proceedings may violate due process, parties claiming a due process violation must establish that they likely would have achieved a more favorable outcome with proper notice.[956] The court reasoned that there was merely the theoretical possibility of prejudice, which is not enough to find a violation of due process.[957] Further, any prejudice caused by the lack of notice was remedied during the course of the multiple subsequent proceedings and had no likely impact on the outcome of the case.[958] The parents had counsel at every subsequent step and had multiple years between the adjudication and termination proceedings.[959] The supreme court affirmed the order terminating parental rights, finding that the failure of notice did not violate the parents' due process rights, as it did not affect the outcome of the case.[960]

Remy M. v. State, Department of Health & Social Services

In *Remy M. v. Dept. of Health & Social Services*,[961] the supreme court held that a trial court did not violate a father's right to due process when it failed to tell him that he had a right to testify and allowed his attorney to waive his right to testify.[962] In 2014, the Office of Children's Services petitioned to terminate the parental rights of two parents with a history of alcohol and domestic abuse.[963] While the father was present for most of the trial, on the third day he was absent due to a substance abuse assessment.[964] During and after the testimony, the trial court offered counsel for the father multiple opportunities to consult with her client, but his attorney told them she did not plan on calling him as a witness because of his anxiety issues.[965] The court eventually ruled that the child was in need of aid due to physical harm, neglect and the parents' substance abuse, and subsequently terminated both parents' rights to the child.[966] On appeal, the father argued that the trial court violated his right to due process since it failed to tell him that he had a right to testify and allowed his attorney to waive his right to testify in his absence.[967] The supreme court affirmed the district court's decision, reasoning that that there was no evidence that the father wanted to testify, nor that his lawyer acted against his wishes.[968] The supreme court stated that the father had plenty of time to express his desire to testify, even after the termination order, yet he never did so.[969] The court also stated that there was no evidence of ineffectiveness on the part of his attorney.[970] As such, the court chose not to address whether parents in civil cases have the same rights as criminal defendants, as relating to substantive due process rights.[971] Affirming the district court's decision, the supreme court held that a trial court

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[955] *Id.* at 164.
[956] *Id.* at 168.
[957] *Id.* at 169.
[958] *Id.*
[959] *Id.* at 168–69.
[960] *Id.* at 169.
[961] 356 P.3d 285 (Alaska 2015).
[962] *Id.* at 289.
[963] *Id.* at 286.
[964] *Id.* at 287.
[965] *Id.* at 287-288.
[966] *Id.* at 288.
[967] *Id.*
[968] *Id.* at 289-290.
[969] *Id.* at 289.
[970] *Id.* at 290.
[971] *Id.* at 289.

did not violate a father's right to due process, even though it failed to tell him that he had a right to testify, and allowed his attorney to waive his right to testify.[972]

Ross v. Bauman

In *Ross v. Bauman*,[973] the supreme court held that a third party seeking court-ordered visitation with a child must prove by clear and convincing evidence that it is detrimental to the child to limit visitation with the third party to what the child's otherwise fit parents have determined to be reasonable.[974] Bauman petitioned for grandparent visitation after a series of disputes between him and the parents of his grandchildren.[975] Despite finding the parents to be fit and their visitation restrictions not unreasonable, the superior court issued a visitation order, concluding that visitation with Bauman was in the children's best interests and that such an order was necessary to ensure he actually visits his grandchildren.[976] On appeal, the supreme court vacated the lower court's order, reasoning that the legal standard applied by the lower court ignored reasonable parental preferences,[977] thereby violating the parents' due process rights to make decisions regarding the care, custody, and control of their children.[978] The supreme court found that the appropriate standard drawn from past cases is that court-ordered visitation contrary to the parent's preferences must be proven by clear and convincing evidence to be in the child's best interest.[979] In light of this standard, the superior court's own findings that the parents were fit and their visitation restrictions were not unreasonable precluded a visitation order.[980] Vacating the visitation order and dismissing Bauman's petition for grandparent visitation, the supreme court held that a third party seeking court-ordered visitation with a child must prove by clear and convincing evidence that limiting visitation with the third party to that which the child's otherwise fit parents have determined to be reasonable would be detrimental to the child.[981]

Rowan B. v. State

In *Rowan B. v. State,*[982] the supreme court held a father seeking to delay proceedings to terminate his parental rights pending appeal of his criminal convictions for physically and sexually abusing his daughters, fails to establish good cause to warrant a continuance.[983] In 2012, Rowan B.'s adult stepdaughter reported to the Office of Child Services (OCS) that Rowan had physically and sexually abused her over a period of time, and expressed her concern that Rowan was sexually abusing his biological daughter as well.[984] In June 2012, OCS filed an emergency custody petition and removed Rowan's three minor children.[985] In January and February of 2013, the superior court adjudicated Rowan's three children as Children In Need of Aid based on Rowan's

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[972] *Id*.
[973] 353 P.3d 816 (Alaska 2015).
[974] *Id.* at 828–29.
[975] *Id.* at 818.
[976] *Id.* at 829.
[977] *Id.*
[978] *Id.* at 823.
[979] *Id.* at 827.
[980] *Id.* at 831.
[981] *Id.* at 828–29.
[982] 361 P.3d 910 (Alaska 2015).
[983] *Id.* at 910.
[984] *Id.* at 911.
[985] *Id.*

physical and sexual abuse.[986] After the CINA adjudication, Rowan was convicted in a separate criminal proceeding of twenty-nine counts of sexually abusing a minor.[987] In April 2014, OCS petitioned to terminate Rowan's parental rights, and Rowan requested that those proceedings be delayed while he appealed his criminal convictions, arguing that, if the appeal resulted in the reversal of his convictions it could affect the outcome of the proceedings, and would not prejudice the children.[988] The superior court denied Rowan's continuance request, reasoning that granting a continuance would delay permanency for the children, and because the court based its decision on independent evidence of sexual abuse, and not Rowan's convictions alone.[989] The supreme court affirmed the superior court's decision, ruling that the superior court did not abuse its discretion when it refused to continue the termination trial, since delaying permanency was not in the children's' best interests.[990] Affirming the superior court's decision, the supreme court held a father seeking to delay proceedings to terminate his parental rights pending appeal of his criminal convictions for physically and sexually abusing his daughters, fails to establish good cause to warrant a continuance.[991]

Ruppe v. Ruppe

In *Ruppe v. Ruppe*,[992] the supreme court held that a father who had potentially overpaid his child support obligations during divorce proceedings was not able to credit it to his post-divorce obligations, because he himself had proposed to provide higher than normal payments.[993] In December 2012, after being married for fifteen years and having a child and permanent guardianship over two more children, Terry and Terri Ruppe became separated.[994] The superior court granted the divorce in July 2013, after the court had already granted Terri primary physical custody of the children.[995] During the intervening period, Terry paid interim support obligations to Terri of around $4,500 a month, per a court order.[996] The superior court, however, found that this payment amount was erroneous, and determined that Terry's payments should have been around $2,000 less a month, giving him credit against future obligations totaling nearly $15,000.[997] On appeal, Terri argued that the superior court erred by granting Terry the credit against future obligations.[998] The supreme court overturned the superior court's decision, stating that Terry did not overpay because he had previously proposed a compromise offering to pay the higher amount.[999] The supreme court reasoned that while the formula for child support contained within Civil Rule 90.3, is a starting point, the formula was not dispositive.[1000] The court further reasoned that even if there was overpayment involved, such payments should not be offset except in exceptional circumstances, which were absent here as Terry had suggested the higher

[986] *Id.*
[987] *Id.*
[988] *Id.*
[989] *Id.* at 912.
[990] *Id.* at 915.
[991] *Id.* at 910.
[992] 358 P.3d 1284 (Alaska 2015).
[993] *Id.* at 1292.
[994] *Id.* at 1287.
[995] *Id.* at 1288.
[996] *Id*.
[997] *Id.*
[998] *Id.* at 1290.
[999] *Id.* at 1292.
[1000] *Id.*

payment amount during testimony.[1001] Overturning the lower court's decision, the supreme court held that a father who had potentially overpaid his child support obligations during divorce proceedings was not able to credit it to his post-divorce obligations, because he himself had proposed to provide higher than normal payments.[1002]

Sarah D. v. John D.

In *Sarah D. v. John D.*, the supreme court held that domestic violence must be considered in custody hearings where one party has ever intended to place the other in fear of imminent harm.[1003] The mother and father separated after their daughter turned three.[1004] In divorce and custody proceedings, both parties made claims of abuse against one another.[1005] The lower court conceded that the testimony presented evidence of some injury.[1006] However, because neither had ever been placed in fear of assault, it classified only one incident, involving the mother's arrest, as domestic violence.[1007] It thus awarded full legal custody to the father and shared physical custody to both parents.[1008] On appeal, the mother argued that the custody decision was erroneous, because the court had failed to account for the father's domestic violence.[1009] The supreme court vacated and remanded the lower court's custody decision, reasoning that the lower court should have elicited more information from the mother to determine which incidents were abusive.[1010] It also noted that the test for finding domestic violence was whether either party intended to place the other in fear of imminent harm, not whether either was actually placed in such fear.[1011] Vacating and remanding the lower court's decision, the supreme court held that domestic violence must be considered in custody hearings where one party has ever intended to place the other in fear of imminent harm.[1012]

Shirley M. v. State, Dep't of Health & Social Services

In *Shirley M. v. State, Dep't of Health & Social Services*,[1013] the supreme court held that the Office of Children's Services ("OCS") was permitted to deviate from the statutory priority list for child custody, in light of clear and convincing evidence that the child's great-grandmother was incapable of meeting the needs of the child.[1014] OCS removed the child from her mother's custody after several instances involving drugs, prostitution, and theft.[1015] While in temporary foster care, it was determined that the child had a number of significant physical and mental disabilities, including severe tremors, delayed fine motor skill development, and symptoms of post-traumatic stress disorder.[1016] The child's condition left her unable to feed and dress herself

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[1001] *Id.*
[1002] *Id.* at 1292.
[1003] 352 P.3d 419, 434 (Alaska 2015).
[1004] *Id.* at 423.
[1005] *Id.* at 431–433.
[1006] *Id.* at 433.
[1007] *Id.* at 434.
[1008] *Id.* at 424.
[1009] *Id.* at 425.
[1010] *Id.* at 434.
[1011] *Id.*
[1012] *Id.*
[1013] 342 P.3d 1233 (Alaska 2015).
[1014] *Id*. at 1244–45.
[1015] *Id.* at 1235, 1237.
[1016] *Id*. at 1237.

and she required special education and weekly therapy.[1017] The child's foster parent, who had a master's degree in public health and worked as a nurse for people with disabilities, worked with the child at home on speech and occupational therapy.[1018] The child's mother petitioned OCS to have the child placed in the custody of her great-grandmother.[1019] OCS determined that great-grandmother was unfit to have custody of th0e child, due to her inability to meet the child's special needs and her inability to acknowledge that the child's biological mother has a drug addiction and is in need of psychological treatment.[1020] Declining to address the question of whether a great-grandmother is considered in the statutory definition of adult family member, the court held that OCS's decision was proper, in light of the clear and convincing evidence that the child's placement with her foster parent was in her best interest.[1021] The court reasoned that the great-grandmother could not properly care for the child due to her inability to demonstrate that she could meet the child's special needs, and due to the fact that the child's mother had previously lived at the great-grandmother's home and could possibly to return to live there.[1022] Affirming the lower court's decision, the supreme court determined that the clear and convincing evidence in the record permitted OCS to deviate from the statutory priority list for child custody and place the child in her foster parent's care.[1023]

Snider v. Snider

In *Snider v. Snider*,[1024] the supreme court held that a party to a divorce proceeding is allowed to reopen evidence if he reasonably believed at trial that there would be an opportunity to present evidence at a later time.[1025] In 2013, Michele Snider informed her husband, Thad Snider, that she wanted to leave Alaska and get a divorce.[1026] Thad and Michele's divorce proceeding began in October 2013 and Thad moved for a continuance in mid-December 2013, claiming that he was underprepared without a trial brief or witness list.[1027] The superior court never denied the continuance, but did state on December 24, 2013 that the trial would conclude at the end of the day.[1028] Thad was confused about the timeline of the case and filed affidavits from his father and brother in January 2014, which were excluded when Michele's motion to strike the affidavits was granted.[1029] The superior court denied Thad's motion for reconsideration and granted Michele primary physical custody of their son.[1030] Thad appealed, arguing that the superior court led him to believe he could present additional evidence after December 24 and that his father and brother should be allowed to testify.[1031] The supreme court reversed the lower court's decision, reasoning that the superior court abused its discretion by failing to reopen important evidence

[1017] *Id.* at 1238.
[1018] *Id*.
[1019] *Id.*
[1020] *Id*. at 1239.
[1021] *Id.* at 1244–45.
[1022] *Id.* at 1245.
[1023] *Id.*
[1024] 357 P.3d 1180 (Alaska 2015).
[1025] *Id*. at 1182, 1185–87.
[1026] *Id*. at 1182.
[1027] *Id*. at 1183.
[1028] *Id*. at 1183–85.
[1029] *Id*.
[1030] *Id*. at 1184.
[1031] *Id*. at 1184–85.

that a party believed he could present.[1032] The court noted that the superior court's instructions were unclear and it was not clarified that evidence was to close on December 24 until that day's proceedings were already underway.[1033] The court vacated the superior court's decisions and remanded for further proceedings.[1034] Reversing the lower court's decision, the supreme court held a party to a divorce proceeding is allowed to reopen evidence if he reasonably believed at trial that there would be an opportunity to present evidence at a later time.[1035]

Susan M. v. Paul H.

In *Susan M. v. Paul H.*,[1036] the supreme court held that unilateral denial of custodial visitation on the basis of repeated custody violations meets the standard of "just cause."[1037] The parties are the divorced parents of four children.[1038] Paul was granted sole custody and Susan was granted supervised visitation; however, Susan retained custodial rights while Paul worked rotations on the North Slope.[1039] During one of these rotations, Paul discovered that Susan had taken the children out of Alaska and that they were living in other states.[1040] Susan alleged her actions were in response to Paul abusing the children.[1041] After their return, Susan was charged with custodial interference and a custody investigation found recommended Paul retain custody.[1042] Paul then unilaterally denied Susan's visitation rights.[1043] The superior court denied Susan's motion for sanctions as a result of the denied visits.[1044] On appeal, Susan argued the superior court erred in holding that Paul's reasons for denying visitation did not meet the standard of just cause.[1045] The supreme court reasoned that a parent acts with just cause when the denial of visitation is based in good faith and is a reasonable judgment based on the best interests of the children.[1046] However, the court strongly condemned parental resort to self-help in the form of a unilateral denial.[1047] Reviewing for abuse of discretion, the supreme court affirmed the lower court's conclusion that evidence of Susan's repeated violations of supervision requirements supported Paul's denial and provided just cause.[1048]

Sylvia L. v. State, Department of Health & Social Services

In *Sylvia L. v. State, Department of Health & Social Services*,[1049] the supreme court held that the state could take children away from a parent when a state agency did its best to keep the family together in light of the parent's unwillingness to engage with state social workers and follow

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[1032] *Id*. at 1185–87.
[1033] *Id*. at 1187.
[1034] *Id*. at 1191.
[1035] *Id*. at 1182, 1185–87.
[1036] 362 P.3d 460 (Alaska 2015).
[1037] *Id.* at 466.
[1038] *Id.* at 461.
[1039] *Id*.
[1040] *Id.*
[1041] *Id.*
[1042] *Id.* at 462.
[1043] *Id.*
[1044] *Id.* at 463.
[1045] *Id*. at 464.
[1046] *Id*. at 465.
[1047] *Id.* at 467.
[1048] *Id.* at 466.
[1049] 343 P.3d 425 (Alaska 2015).

their advice.[1050] The Department of Health & Social Services, Office of Children's Services ("OCS") sought to end the parental rights of Sylvia L. ("Sylvia") to three children after she failed to communicate with OCS for several months and declined to follow the agency's recommendations that she seek treatment for mental health and drug abuse problems.[1051] OCS made medical referrals for Sylvia's mental health and drug abuse, and the agency tried to contact her many times when she failed to follow through on obtaining treatment.[1052] On appeal, Sylvia argued that OCS did not make reasonable efforts to keep her united with her two non-Indian children and did not make active efforts, as required by federal statute, to keep her united with her Indian child.[1053] The supreme court affirmed the lower court's decision, reasoning that OCS made sufficient efforts given the circumstances to keep all three children with their mother by attempting to assist the mother with her health for years.[1054] The court further reasoned that OCS efforts to help Sylvia were not required to be flawless, but could be evaluated based on Sylvia's unwillingness to engage with OCS and accept its parenting advice.[1055] Affirming the lower court's decision, the supreme court held that the state could take children away from a parent when a state agency did its best to keep the family together in light of the parent's unwillingness to engage with state social workers and follow their advice.[1056]

Theresa L. v. State, Department of Health and Social Services

In *Theresa L. v. State, Department of Health and Social Services*, the supreme court held that the statutory language and legislative history of AS 47.10.011(8)(A) requires clear and convincing evidence of a significant or severe problem in functioning or behavior to find a child suffers a mental injury.[1057] The Office of Children Services petitioned to terminate a mother's rights to her children alleging that they were in need of aid due to mental injury.[1058] The lower court decided that OCS had shown by clear and convincing evidence that the children were in need of aid due to one of the children's diagnosis of post-traumatic stress disorder, alleged "boundary issues," and general "behavior."[1059] On appeal, the Department of Health and Social Services argued that specific examples of behavior, including one of the children licking his mother's face during a family therapy session, support the conclusion that the children had substantial impairments by a preponderance of the evidence.[1060] The supreme court reversed the lower court's decision, reasoning that, under the proper standard of clear and convincing evidence, the behavioral instances did not rise to the level of a significant or severe problem in functioning or behavior as the statute requires.[1061] The plain meaning indicates that mental injury must be serious, and the legislative history indicates an intent to narrow the circumstances in which mental injury applied.[1062] Reversing the lower court's decision, the supreme court held that the Office of

[1050] *Id.* at 433.
[1051] *Id.* at 429.
[1052] *Id.* at 433.
[1053] *Id.* at 431.
[1054] *Id.* at 433.
[1055] *Id.* at 432.
[1056] *Id.* at 425.
[1057] 353 P.3d 831, 844 (Alaska 2015)
[1058] *Id.* at 834.
[1059] *Id.* at 836–37.
[1060] *Id.* at 841–42.
[1061] *Id.* at 844.
[1062] *Id.* at 840.

Children Services requires clear and convincing evidence of a significant or severe problem to determine a child suffers a mental injury under the statute.[1063]

Wells v. Barile

In *Wells v. Barile*,[1064] the supreme court held that it may be proper to grant child support after a significant modification in custody, even if the moving party did not request it.[1065] After a divorce, Wells and Barile agreed to share physical custody of their son equally.[1066] Wells later remarried and had two children with her second husband, before divorcing him as well.[1067] After her this divorce, the court granted the second husband full custody of the two children from that marriage, citing Wells' self-harm, substance abuse, and leaving the children unattended.[1068] Barile then motioned for full custody of his son, arguing a substantial change in circumstances.[1069] The court granted his motion and, ordered Wells pay Barile child support, without Barile requesting it.[1070] On appeal, Wells argued that the lower court relied on improper evidence to find a substantial change in circumstances and that the it abused its discretion by ordering unrequested child support payments.[1071] The supreme court held that the lower court's review of evidence was sufficient and that such a significant medication in the physical custody schedule warranted a new child support determination.[1072] Affirming the lower court's ruling, the supreme court held that it may be proper to grant child support after a significant modification in custody, even if the moving party did not request it.[1073]

Wilson v. State

In *Wilson v. State*,[1074] the supreme court held that the superior court's findings that a elderly woman was incapacitated, unable to take care of her medical conditions, and unable to afford her house due to her family's misuse of her funds, and thus required partial public guardianship and a public conservator, was supported by substantial evidence and not clearly erroneous.[1075] Helen, an elderly woman, lived in her own house but became unable to manage her medications, nutrition, and finances independently, due to delirium, age-related cognitive decline, and other physical and mental issues.[1076] Her son and grandson lived in the house with her but did not help her manage her health or finances, and impeded the assistant services assigned to aid Helen.[1077] Helen continued to support her son and grandson with often excessive payments, but the master found that Helen will be unable to afford care if she did not sell her home.[1078] The superior court appointed a partial public guardian and full conservator on the grounds that Helen

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[1063] *Id.* at 844.
[1064] 358 P.3d 583 (Alaska 2015).
[1065] *Id.* at 589.
[1066] *Id*. at 585.
[1067] *Id*.
[1068] *Id*. at 586.
[1069] *Id*.
[1070] *Id*. at 586–87.
[1071] *Id.* at 588–89.
[1072] *Id*.
[1073] *Id.* at 583.
[1074] 355 P.3d 549 (Alaska 2015).
[1075] *Id.* at 558–59.
[1076] *Id.* at 550–51.
[1077] *Id.* at 551–52.
[1078] *Id.* at 553–55.

was unable to provide the essential requirements for her own physical health without assistance, and could not manage her property effectively, and Helen appealed.[1079] The supreme court held that it is proper for expert witnesses to consider inadmissible information when formulating expert opinions, that the experts determined Helen needed this assistance to manage her health, and that there was no evidence that Helen's misdiagnoses and prescribed medication caused her condition.[1080] The supreme court further reasoned that the elderly woman needed a conservator because she would be unable to move back into her home if her sons did not pay rent or comply with her personal care assistants.[1081] Thus, the supreme court affirmed and held that the superior court's findings were not clearly erroneous, because there was substantial evidence that Helen would not be able to take care of her medical conditions and must sell the house in order to afford her treatment, since her sons had been misappropriating her funds.[1082]

[1079] *Id.* at 558–59.
[1080] *Id.* at 556–57.
[1081] *Id.* at 558–59.
[1082] *Id.*

HEALTH LAW

Brandner v. Bateman

In *Brandner v. Bateman*,[1083] the supreme court held that participants in medical review proceedings are immune if their actions (1) occur after reasonable efforts to ascertain the facts, (2) are reasonably believed to be necessary, and (3) are not motivated by malice.[1084] In 2010, the Alaska State Medical Board ordered Dr. Michael Brandner to submit to psychiatric and medical evaluations upon receiving a report that he threatened a state employee.[1085] Brandner was found fit to practice and returned to work, but his continued erratic behavior concerned the Medical Staff Executive Committee ("Committee"), so they also ordered him to undergo an evaluation.[1086] Once the Committee learned that the Alaska State Medical Board had already ordered Brandner to be evaluated, which he never reported, the Committee voted to terminate Brandner.[1087] A hearing panel, consisting of Dr. Bateman, Dr. Christensen, and Dr. Olivas, agreed with the Committee's decision.[1088] Brandner sued the doctors on the hearing panel and the superior court ruled that the doctors are immune because they properly participated in a review proceeding.[1089] On appeal, Brandner argued that the doctors acted improperly and his termination was not warranted.[1090] The supreme court affirmed the lower court's decision, reasoning that the doctors are immune because they made a reasonable effort to ascertain the facts, reasonably believed their actions were necessary, and were not motivated by malice.[1091] The court noted that the doctors on the hearing panel made a comprehensive fact-finding effort, which included a full evidentiary hearing and written report, relied on a reasonable interpretation of hospital policy, and acted with no indication of ill will.[1092] Affirming the lower court's decision, the supreme court held that participants in medical review proceedings are immune if their actions (1) occur after reasonable efforts to ascertain the facts, (2) are reasonably believed to be necessary, (3) and are not motivated by malice.[1093]

Hagen v. Strombel

In *Hagen v. Strombel*,[1094] the supreme court held a plaintiff must present expert testimony to establish the standard of care in a medical negligence suit in order for there to be a genuine issue of material fact as to the appropriate standard of care.[1095] Cardiologists performed pacemaker surgery on Mr. Hagen and ordered an x-ray; a radiologist who viewed the x-rays noted a potential nodule in Mr. Hagen's lung, and recommended follow-up x-rays.[1096] However, Mr. Hagen was never informed of the radiologist's recommendations, and Mr. Hagen died from lung

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[1083] 349 P.3d 1068 (Alaska 2015).
[1084] *Id*. at 1073–76.
[1085] *Id*. at 1069.
[1086] *Id*. at 1069–70.
[1087] *Id*. at 1070.
[1088] *Id*. at 1071.
[1089] *Id*. at 1071–72.
[1090] *Id*. at 1072–73.
[1091] *Id*. at 1073–76.
[1092] *Id*. at 1075–76.
[1093] Id. at 1073–76.
[1094] 353 P.3d 799 (Alaska 2015).
[1095] *Id.* at 804.
[1096] *Id.* at 800.

cancer two years later.[1097] Mrs. Hagen alleged the cardiologists' failure to relay the radiologist's recommendation resulted in a lost chance of survival for Mr. Hagen.[1098] The superior court granted summary judgment to the cardiologists on the grounds that expert testimony from a board-certified cardiologist was required to establish the standard of care, and Mrs. Hagen did not present it.[1099] On appeal, Mrs. Hagen argues that there is a genuine issue of material fact as to whether the cardiologist who ordered the x-ray later received the radiologist's report. Affirming the lower court's opinion, the supreme court reasoned that this issue is not material to the superior court's decision regarding the necessity of expert testimony to establish the standard of care.[1100] Affirming the lower court's opinion, the supreme court held that expert testimony is necessary to establish the standard of care in a medical negligence suit.[1101]

[1097] *Id.*
[1098] *Id.* at 800–01.
[1099] *Id.* at 801.
[1100] *Id.*
[1101] *Id.*

INSURANCE LAW

Devine v. Great Divide Insurance Co.

In *Devine v. Great Divide Insurance Co.*,[1102] the supreme court held that a commercial general liability insurance policy's employee exclusion applies when an injury occurs during employment.[1103] Generally, employers may purchase three types of non-overlapping insurance: general commercial liability, workers' compensation, and employers' liability.[1104] Chatari, a business owner, had general commercial liability insurance, but not workers' compensation insurance.[1105] Following a personal injury action against Chatari by Devine, a volunteer employee, Great Divide Insurance Co. sought a declaratory judgment stating that no coverage applied due to the employee exclusion provision in Chatari's policy, which applies to injuries during the course of employment.[1106] The lower court granted summary judgment for Great Divide, because the injury occurred during and in the course of the injured employee's work, and therefore triggered exclusion under Chatari's policy.[1107] On appeal, Devine alleged the attack leading to his injury did not arise out of his work and should not fall under the exclusion.[1108] The supreme court affirmed the lower court's decision, reasoning that the an insurance policy is evaluated using the reasonable expectations doctrine, and therefore, commercial general liability insurance policies exclude liability when an injury arises out of and in the course of employment, as defined per workers' compensation law.[1109] The court further reasoned that where an employer has foreknowledge of an attack but does not warn, as Chatari did, he has engendered, exacerbated, or facilitated the attack as a matter of law, thereby designating the injury as one occurring during employment and triggering the general commercial liability insurance's exclusion.[1110] Affirming the lower court's decision, the supreme court held that personal injuries arising under and in the course of employment trigger the employee exclusion of commercial general liability insurance policies.[1111]

[1102] 350 P.3d 782 (Alaska 2015).
[1103] *Id.* at 784.
[1104] *Id.* at 787.
[1105] *Id.* at 784, 788.
[1106] *Id.* at 785.
[1107] *Id.*
[1108] *Id.* at 790–91.
[1109] *Id.* at 786–87.
[1110] *Id.* at 792.
[1111] *Id.* at 784.

Alaska Fish & Wildlife Conservation Fund v. State

In *Alaska Fish & Wildlife Conservation Fund v. State*,[1112] the supreme court held that regulations establishing different systems of subsistence hunting for communities and individuals are valid because the State can lawfully distinguish between different subsistence use patterns.[1113] In 2006, the Alaska Board of Game made extensive findings about the Copper Basin Community Hunt Area, including that some Alaskans, including the Ahtna Athabascan communities in the area, rely on a community-based pattern of subsistence hunting.[1114] The Board promulgated new regulations that bifurcated subsistence hunting into community hunts and individual hunts, with more favorable rules for the community-based subsistence hunting.[1115] The Alaska Fish and Wildlife Conservation Fund challenged these regulations, but the Superior Court held that the regulations were within the Board's statutory power and did not violate the Alaska constitution.[1116] The Fund appealed, arguing that the regulations violate the Administrative Procedure Act, the subsistence hunting statutes, and the equal access clauses of the Alaska constitution.[1117] The supreme court affirmed the lower court's decision, ruling the regulations are lawful and there is a constitutionally valid distinction between subsistence hunting patterns.[1118] The court reasoned that the regulations do not violate the equal access clauses of the Alaska constitution because all Alaskans are eligible to receive a community harvest permit so long as they join a subsistence hunting group.[1119] The court also noted that the plain language of Alaska fish and game statutes grants the Board the authority to differentiate between subsistence uses and issue community permits.[1120] Further, the court found the subsistence hunting regulations do not violate the Administrative Procedure Act because the Board's amendments to the regulations were properly noticed.[1121] Affirming the lower court's decision, the supreme court held that regulations establishing different systems of subsistence hunting for communities and individuals are valid because the State can lawfully distinguish between different subsistence use patterns.[1122]

[1112] 347 P.3d 97 (Alaska 2015).
[1113] *Id*. at 100.
[1114] *Id*.
[1115] *Id*. at 101.
[1116] *Id*.
[1117] *Id*.
[1118] *Id*. at 100.
[1119] *Id*. at 103.
[1120] *Id*. at 104.
[1121] *Id*. at 108.
[1122] *Id*. at 100.

PROPERTY LAW

Alaskasland.com, LLC v. Cross

In *Alaskasland.com, LLC v. Cross*,[1123] the supreme court held that a state law tort claim for misappropriation of advertising efforts is preempted by federal copyright law.[1124] Alaskaland, the developer of a subdivision, sued realtor Kevin Cross after Cross used photographs from Alaskaland's website in a listing advertising property for sale.[1125] In 2012, Alaskaland sued Cross for misappropriation of its advertising.4[1126] The lower court found that the misappropriation tort claim had not been recognized under state law, but even if it were Alaskaland's claim would fail because it did not satisfy the required elements of the tort.[1127] On appeal, Alaskaland argued that the supreme court should recognize the common law misappropriation tort because Cross exploited Alaskaland's advertising efforts when he used its photographs.[1128] The supreme court affirmed the lower court on different grounds, reasoning that even if Alaska did recognize the common law misappropriation tort Alaskaland's claim would be preempted by federal copyright law.[1129] The court said that Alaskaland's argument that Cross had taken advantage of its advertising efforts was the kind of problem the federal Copyright Act was meant to address.[1130] The court said that Alaskaland should have pursued an injunction under the Copyright Act to stop Cross from using its photographs without permission.[1131] Affirming the lower court's decision, the supreme court held that a state tort claim for misappropriation of advertising efforts is preempted by federal copyright law.[1132]

Baker v. Ryan Air, Inc.

In *Baker v. Ryan Air, Inc.*,[1133] the supreme court held that despite a contract's anti-waiver provision, a sublessor may waive his right to object to a sublessee's renovations first by having prior knowledge of the renovations and later by expressly approving them.[1134] Ryan Air made renovations to the airport lot it subleased from Baker.[1135] In keeping with the terms of their contract, Ryan Air first obtained the necessary permit for renovations from the state Department of Transportation, which Baker then expressly approved in an email to the Department.[1136] Although Ryan Air's plans ultimately exceeded those specified by the permit, Baker knew about the full scope of the project more than two years before his emailed approval.[1137] Subsequently, Baker claimed breach of contract against Ryan Air because he never consented to the renovations and because the project exceeded the scope of the

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[1123] 357 P.3d 805 (Alaska 2015).
[1124] *Id.* at 815.
[1125] *Id.* at 809.
[1126] *Id.*
[1127] *Id.* at 810.
[1128] *Id.* at 813–15.
[1129] *Id.* at 815.
[1130] *Id.* at 814.
[1131] *Id.* at 815.
[1132] *Id.*
[1133] 345 P.3d 101 (Alaska 2015).
[1134] *Id.* at 108.
[1135] *Id.* at 102–04.
[1136] *Id.* at 107.
[1137] *Id.* at 108.

permit.[1138] Further, Baker argued that an anti-waiver provision in the sublease agreement, stating that the failure of a party to object to a breach of the contract does not waive the right to do so in the future, meant his acquiescence to Ryan Air's alleged breach did not constitute a waiver.[1139] The supreme court, noting that its goal in interpreting a contract is to give effect to the reasonable expectations of the parties, rejected Baker's claim on two grounds.[1140] First, the court reasoned that Baker's explicit approval of the renovations in his email amounted to a waiver, citing precedent upholding waiver of contractual rights even under contracts with more stringent anti-waiver language.[1141] Second, the court reasoned that though Ryan Air's exceeding of the approved permit may have implied Baker lacked knowledge of the other party's full intent, Baker's testimony indicated that he knew the full scope of the project two years before he authorized it.[1142] Affirming the lower court's decision, the supreme court held that, notwithstanding a contract's anti-waiver provision, a sublessor may waive his right to object to a sublessee's renovations by having prior knowledge of the renovations and by expressly approving them.[1143]

Castle Properties, Inc. v. Wasilla Lake Church of the Nazarene

In *Castle Properties, Inc. v. Wasilla Lake Church of the Nazarene*, the court held that a party having right of first refusal to purchase a property receives adequate notice of the terms of an offer when he is aware of the material facts.[1144] Castle Properties purchased interests in land, including the right of first refusal to purchase adjoining property belonging to Wasilla Lake Church ("the Church").[1145] The Church entered negotiations with the City of Wasilla to exchange their property for a different parcel of land.[1146] Castle was notified of this exchange through a city ordinance, but the Church rejected its inquiries into the exact terms, such as exact acreage.[1147] Knowing from the ordinance which lands were involved, Castle made what it deemed an "equivalent" cash offer.[1148] When the Church refused to accept, Castle brought suit seeking specific performance of its right of first refusal, claiming it did not receive adequate notice of the City's offer to enable it to make an equivalent offer.[1149] On appeal, the supreme court reasoned that Castle had enough information from the ordinance to know that its offer was far below the value of the exchange property.[1150] It reasoned that knowing the exact acreage would not have changed the outcome, because the acreage was actually less than supposed.[1151] It also noted that other specific terms, such as allocation of closing costs, were not material to price.[1152] Affirming the superior court, the supreme court held that a party having right of first

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[1138] *Id.* at 107.
[1139] *Id.*
[1140] *Id.* at 106.
[1141] *Id.* at 107.
[1142] *Id.* at 108.
[1143] *Id.*
[1144] 347 P.3d 990, 996 (Alaska 2015).
[1145] *Id.* at 992.
[1146] *Id.*
[1147] *Id.*
[1148] *Id.* at 993.
[1149] *Id.*
[1150] *Id.* at 996.
[1151] *Id.*
[1152] *Id.* at 995–6.

refusal to purchase a property receives adequate notice of the terms of an offer when he is aware of the material facts.[1153]

Luker v. Sykes

In *Luker v. Sykes*, the supreme court held that a federally granted right of way cannot exist over lands reserved for private uses at the time their survey section lines are created.[1154] Landowners purchased land previously owned by their neighbor.[1155] They disputed whether there was a right of way over a section of the property used as a road.[1156] The neighbor argued that there was a federally-granted right of way pursuant to federal law because a public highway had been created before the land was granted for private use.[1157] The superior court noted that the time of private entry as determined by government recognition of survey section lines was critical. It found that the original owner did not officially acquire a right to homestead the land until after the road was created and, therefore, held there was a federally-granted right of way.[1158] Reversing, the supreme court noted that the actual initial entry of the property owner creates survey section lines, so long as entry on the property is later validated.[1159] The court reasoned the original owner had filed his first entry onto the property before a road was created on the property, although his entry was not validated until after.[1160] Reversing the lower court, the supreme court held that a federally granted right of way can not exist over land reserved for private uses at the time their survey section lines are created.[1161]

State, Department of Revenue v. BP Pipelines (Alaska) Inc.

In *State, Department of Revenue v. BP Pipelines (Alaska) Inc.*,[1162] the supreme court held the application of a "use value" standard is not improper for assessing oil and gas property for tax purposes.[1163] The Trans-Alaska Pipeline System ("TAPS") is an 800-mile-long oil pipeline that connects northern Alaskan oil reserves to a shipping terminal in the southern city of Valdez.[1164] Under state law, municipalities may raise and collect taxes on oil and gas property, but the Department of Revenue has the power to assess the value of that property.[1165] A party may appeal the Department of Revenue's assessment to the State Assessment Review Board, and the Board's decision is appealable to the superior court.[1166] All the parties appealed various aspects of the superior court's assessment of TAPS' value for 2007, 2008, and 2009.[1167] On appeal, TAPS owners argued that the value of TAPS for tax assessment purposes must be based only on the tariff income it generates, not based on a "use value" standard.[1168] The supreme court

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[1153] *Id.* at 996.
[1154] 357 P.3d 1191, 1198 (Alaska 2015).
[1155] *Id.* at 1194.
[1156] *Id.*
[1157] *Id.* at 1196.
[1158] *Id.* at 1196–97.
[1159] *Id.* at 1197.
[1160] *Id.* at 1197–98.
[1161] *Id.* at 1198.
[1162] 354 P.3d 1053, 1059 (Alaska 2015).
[1163] *Id.* at 1059.
[1164] *Id.* at 1056.
[1165] *Id.*
[1166] *Id.*
[1167] *Id.* at 1058.
[1168] *Id.* at 1060.

affirmed the superior court's decision to value TAPS based on the "use value" standard, reasoning that there is no authority supporting the position that the assessment must be based on tariff income generated.[1169] The court further reasoned that there was no market for TAPS as a stand-alone investment based on its tariff income, and that it was specifically designed for its particular use of moving oil.[1170] Thus, nothing is fundamentally wrong with using the "use value" principle here.[1171] Affirming the lower court's decision, the supreme court held the application of a "use value" standard for tax assessment purposes is not improper to value a pipeline with the highest use of transporting oil to the market.[1172]

Tagaban v. City of Pelican

In *Tagaban v. City of Pelican*,[1173] the supreme court held that the City was not required to give notice of foreclosure to lienholders of a property.[1174] Tagaban won a judgment against the Kake Tribal Corporation in 1998 which was recorded as a lien on tribal property within the City of Pelican.[1175] Ownership later shifted to a management company, and the lien was extended.[1176] In 2010, without direct notice to Tagaban, the City foreclosed on the property for delinquency in property taxes.[1177] Tagaban challenged the lack of notice to lienholders and the constitutionality of the state foreclosure statutes.[1178] The superior court granted summary judgment to the City because the lien expired after ten years according to statute.[1179] On appeal, Tagaban contended the lien extension was valid and again challenged the lack of notice.[1180] The supreme court held that the state foreclosure statutes only require notice to property owners, not lienholders.[1181] The court further reasoned that the statute does not violate due process rights of lienholders because the statute provides a means to request foreclosure notice to protect minor property interests.[1182] Tagaban did not pursue this process.[1183] Tagaban's interest was also not reasonably ascertainable because he did not adequately record his lien extension.[1184] The supreme court affirmed the superior court holding that the City was not required to give notice of foreclosure to lienholders.[1185]

[1169] The "use value" standard bases the amount on the economic value of its continued use in transporting reserves to market. *Id.*
[1170] *Id.*
[1171] *Id.*
[1172] *Id.*
[1173] 158 P.3d 571 (Alaska 2015).
[1174] *Id.* at 574.
[1175] *Id.*
[1176] *Id.*
[1177] *Id.*
[1178] *Id.* at 575.
[1179] *Id.*
[1180] *Id.*
[1181] *Id.* at 576.
[1182] *Id.* at 579.
[1183] *Id.* at 581.
[1184] *Id.* at 576.
[1185] *Id.* at 583.

Brandner v. Pease

In *Brandner v. Pease*,[1186] the supreme court held that evidence on how a treatment affects patients in general is insufficient to establish causation in medical malpractice suits if it fails to show how the specific patient might have been affected.[1187] After undergoing emergency heart surgery in 2009, Michael Brandner sued his anesthesiologist Robert Pease for failure to use a properly functioning transesophageal echo probe during surgery.[1188] Brandner said he suffered short-term memory loss and other injuries from the anesthesia during surgery, and he cited an expert's statement that using the probe generally produced better outcomes for patients.[1189] The lower court excluded the testimony of Brandner's expert and granted summary judgment for Pease.[1190] On appeal, Brandner argued that his expert's testimony should allow him to withstand summary judgment.[1191] The supreme court affirmed the lower court, reasoning that Brandner's expert never testified that the failure to use a working probe caused any of Brandner's injuries.[1192] The court said that evidence showing patients typically do better if they receive a certain treatment is insufficient to establish causation.[1193] The court ruled that Brandner's expert needed to provide specific details, such as by explaining what percentage of patients have better outcomes when a probe is used, to show how Brandner in particular might have been affected.[1194] Affirming the lower court's decision, the supreme court held that evidence on how a treatment affects patients in general is insufficient to establish causation in medical malpractice suits if it fails to show how the specific patient might have been affected.[1195]

City of Hooper Bay v. Bunyan

In *City of Hooper Bay v. Bunyan*,[1196] the supreme court held that jury instructions in a wrongful death action cannot preclude the jury from allocating fault between parties.[1197] On July 28, 2011, Louis Bunyan hanged himself with his sweatpants drawstring while in the custody of the Hooper Bay Police Department ("HBPD").[1198] Earlier that day, the HBPD arrested Bunyan after he became intoxicated and fought with family members.[1199] Bunyan had scars on his arms that indicated self-harm and began to yell and hit his cell wall.[1200] One of the arresting officers testified that he did not find any information about Bunyan in the HBPD records, even though the HBPD records documented four separate incidents in which Bunyan had threatened suicide.[1201] Bunyan's mother filed a wrongful death action against the City of Hooper Bay

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[1186] 361 P.3d 915 (Alaska 2015).
[1187] *Id.* at 921–22.
[1188] *Id.* at 921.
[1189] *Id.* at 918–19.
[1190] *Id.* at 920.
[1191] *Id.* at 921.
[1192] *Id*.
[1193] *Id.*
[1194] *Id.* at 815.
[1195] *Id*. at 921–22.
[1196] 359 P.3d 972 (Alaska 2015).
[1197] *Id*. at 974, 984.
[1198] *Id*. at 974.
[1199] *Id*. at 974–75.
[1200] *Id*. at 975.
[1201] *Id*.

("City") and the superior court ruled that the City was negligent, entering a $1,078,233 judgment.[1202] The City appealed, arguing that the jury was not properly instructed on the possibility of allocating fault between Bunyan and the City.[1203] The supreme court reversed the lower court's decision, reasoning that the jury instructions were erroneous because they effectively precluded the jury from allocating fault between Bunyan and the City.[1204] The court noted that Alaska law requires apportionment of damages where more than one person is at fault and the jury instructions foreclosed the possibility of allocating fault between the parties.[1205] The court vacated the judgment against the City.[1206] Reversing the lower court's decision, the supreme court held that jury instructions in a wrongful death action cannot preclude the jury from allocating fault between parties.[1207]

Foondle v. O'Brien

In *Foondle v. O'Brien*, the supreme court held that the greater culpability of criminal conduct supersedes subsequent attorney negligence, and a showing of actual innocence is required for a malpractice claim.[1208] Foondle was convicted for felony driving under the influence as he had twice been convicted of DUI in the previous ten years.[1209] Foondle filed multiple petitions for post-conviction relief and discharged his attorneys.[1210] Ultimately, the superior court set aside Foondle's felony DUI conviction because of issues with the plea agreement from one of the previous convictions.[1211] Foondle subsequently claimed negligence against the attorneys for their failure to investigate the previous conviction.[1212] The superior court dismissed his complaint.[1213] The supreme court affirmed, holding that civil recovery should not be a way for criminal defendants to shift responsibility for the consequences of their criminal acts.[1214] The court reasoned that significant public policy rationales limit the ability of criminals to recover from their defense attorneys for professional malpractice.[1215] Affirming the lower court's decision, the supreme court found that proof of actual innocence is required to allow a convicted felon to recover from their attorney on a professional malpractice claim.[1216]

Hunter v. Phillip Morris USA, Inc.

In *Hunter v. Phillip Morris USA, Inc.*,[1217] the supreme court held the lower court failed to properly apply the "weight of the evidence" standard when it ruled on a motion for a new trial and remanded for renewed consideration of the motion.[1218] After Benjamin Francis died of lung

[1202] *Id*. at 975, 977.
[1203] *Id*. at 978.
[1204] *Id*. at 984.
[1205] *Id*. at 984–85.
[1206] *Id*. at 985.
[1207] *Id*. at 974, 984.
[1208] 346 P.3d 970, 974–75 (Alaska 2015).
[1209] *Id.* at 972–73.
[1210] *Id.* at 972.
[1211] *Id.*
[1212] *Id.*
[1213] *Id.* at 973.
[1214] *Id.*
[1215] *Id.*
[1216] *Id.* at 973–74.
[1217] 364 P.3d 439 (Alaska 2015).
[1218] *Id.* at 441.

cancer, Dolores Hunter filed a wrongful death action against Phillip Morris.[1219] The superior court granted Phillip Morris' motion in limine to preclude Hunter from referencing findings of facts and conclusion from a prior federal lawsuit against Phillip Morris.[1220] At the conclusion of the trial, the jury found that, while Phillip Morris made false or misleading statements about its product, Francis had not heard those statements and, therefore, ruled in favor of Phillip Morris.[1221] The superior court subsequently granted Hunter's motion for a new trial and then reversed its own decision, denying the new trial after reconsidering the proper standard for the motion.[1222] On appeal, Hunter argued that the lower court erred when it deviated from the "weight of evidence" standard and reversed its decision to grant a new trial.[1223] The supreme court held that the "weight of evidence" standard was the proper metric to determine whether a new trial is necessary in the interests of justice.[1224] Reversing the lower court's ruling, the supreme court held that the "weight of the evidence" is the proper standard when ruling on a motion for a new trial and remanded the case for renewed consideration of the motion.[1225]

Miller v. State, Dep't of Envtl. Conservation

In *Miller v. State, Dep't of Envtl. Conservation*,[1226] the supreme court held that a claim is barred by state sovereign immunity when a claimant alleges only misrepresentation, rather than negligence.[1227] Four years after the Department of Environmental Conservation (DEP) certified an area as safe for shellfish farming, Miller was granted an application to open an oyster farm.[1228] After several years of production, dozens of people became sick after eating Miller's oysters and he was forced to close the farm.[1229] Miller filed a complaint against DEP, claiming DEP conducted its survey of the area negligently and his reliance on their representation was the proximate cause of his loses.[1230] The lower court granted summary judgment on behalf of DEP, holding that Miller only presented a misrepresentation claim, which is barred by state sovereign immunity.[1231] On appeal, Miller argued that he submitted sufficient evidence of negligence, which is not barred by state sovereign immunity.[1232] The supreme court affirmed the lower court's decision, holding it need not determine if Miller submitted sufficient evidence of negligence since neither his original nor his amended complaints alleged anything other than detrimental reliance on DEP's misrepresentation.[1233] Though Miller cited several cases of negligence that included misrepresentations, the court distinguished those cases as ones where the misrepresentations were collateral to an independent negligence claim, rather than at the heart of the claim.[1234] Affirming the lower court's decision, the supreme court held that a claim is

[1219] *Id*.
[1220] *Id*. at 441–42.
[1221] *Id*. at 443.
[1222] *Id*.at 443–46.
[1223] *Id.* at 447.
[1224] *Id*. at 447–48.
[1225] *Id.* at 454.
[1226] 353 P.3d 346 (Alaska 2015).
[1227] *Id*. at 347.
[1228] *Id*.
[1229] *Id*.
[1230] *Id*.
[1231] *Id*.
[1232] *Id.* at 348.
[1233] *Id.*
[1234] *Id*. at 349.

barred by state sovereign immunity when a claimant alleges only misrepresentation, rather than negligence.[1235]

Oakley Enterprises, LLC v. NPI, LLC

In *Oakley Enterprises, LLC v. NPI, LLC*,[1236] the supreme court held that a jury's finding of avoidable consequences was not apportionment and, therefore, that the lower court did not err in ordering contribution.[1237] Whitney leased wood chipping equipment from NPI, and Friesen and Oakley permitted him to keep the equipment on their property.[1238] After diesel spills from the equipment were discovered, Whitney abandoned most of the equipment on the property.[1239] Friesen and Oakley sued NPI for damages from the spill.[1240] The jury found Friesen could have avoided all or part of the spill and reduced his award by 20 percent, according to the doctrine of avoidable consequences.[1241] The court then employed contribution to equitably allocate the damages and allocated 48 percent of the fault to Friesen.[1242] On appeal, Friesen argued that the jury's finding of avoidable consequences apportioned harm and, therefore, contribution was unnecessary.[1243] The supreme court affirmed the lower court's ruling, reasoning that the jury was specifically instructed, both by the court and by counsel in closing arguments, that it was not apportioning fault.[1244] Affirming the lower court's decision, the supreme court held that a jury's finding of avoidable consequences was not apportionment and, therefore, the that lower court did not err in ordering contribution.[1245]

[1235] *Id.*
[1236] 354 P.3d 1073 (Alaska 2015).
[1237] *Id.* at 1082.
[1238] *Id*. at 1076.
[1239] *Id*.
[1240] *Id*.
[1241] *Id*. at 1077.
[1242] *Id*. at 1077–78.
[1243] *Id.* at 1078.
[1244] *Id.* at 1081.
[1245] *Id.* at 1082.

In Re Estate of Bavilla

In Re Estate of Bavilla,[1246] the supreme court held the superior court abused its discretion in denying a motion to amend an application for informal probate where none of the exceptions to Alaska Civil Rule 15(a) applied and where there was no statutory bar precluding the superior court from converting the informal probate hearing to a formal proceeding.[1247] Etta Bavilla applied for informal probate of her mother's 1987 will.[1248] The mother, Offenesia Bavilla, executed a new will in 2006, and the new will eliminated Etta Bavilla from any inheritance.[1249] Etta Bavilla's application was left open pending further filings.[1250] In November 2012, Etta Bavilla subsequently filed a motion to declare the 2006 will invalid.[1251] Her application for informal probate of her mother's will was denied at a hearing for the November 2012 motion.[1252] Thereafter, Etta Bavilla asked for leave to file an amended pleading contesting the 2006 will.[1253] Her motion to amend was also denied.[1254] She appealed, arguing that the superior court erred in denying her motion to amend and in not investigating her claim of wrongdoing in the crafting of the 2006 will.[1255] The supreme court held that the superior court should have allowed Etta Bavilla to amend her application for informal probate of the 1987 will to contest the 2006 will.[1256] The court reasoned that under Alaska Civil Rule 15(a), leave to amend should be freely given because none of the exceptions to the rule applied.[1257] There is no statutory bar preventing the superior court from converting an informal probate hearing to a formal one.[1258] Thus, the court reasoned that it was unclear why the lower court prohibited Etta Bavilla from contesting the validity of the will as part of a probate proceeding.[1259] The supreme court reversed and remanded to the superior court, allowing Etta Bavilla to amend her filing to contest the 2006 will.[1260]

[1246] 343 P.3d 905 (Alaska 2015).
[1247] *Id.* at 908–909.
[1248] *Id.* at 906.
[1249] *Id.*
[1250] *Id.*
[1251] *Id.*
[1252] *Id.* at 907.
[1253] *Id.* at 907.
[1254] *Id.*
[1255] *Id.* at 908.
[1256] *Id.* at 908.
[1257] *Id.*
[1258] *Id.* at 909.
[1259] *Id.*
[1260] *Id.* at 911.