# THE YEAR IN REVIEW 2014

## 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.

## ADMINISTRATIVE LAW

### *Denali Citizens Council v. State, Dep't of Natural Resources*

In *Denali Citizens Council v. State, Dep't of Natural Resources*,[1] the supreme court held that, although the Department of Natural Resources ("DNR") is required to consider the economic feasibility of a proposed exploration license, the DNR need not assess the feasibility of potential alternatives to the proposal.[2] The Denali Citizens Council ("Denali Citizens") recommended an alternative license and objected to the DNR's initial best interest finding ("BIF") and requested reconsideration of the final BIF, which was confirmed, before appealing to the superior court, which affirmed the final BIF.[3] On appeal, Denali Citizens argued that the DNR's consideration of the license did not adequately consider the potential economic feasibility of the Denali Citizens alternative.[4] The supreme court affirmed the lower court, reasoning that DNR's economic feasibility analysis need only reach the proposed plan and not alternatives raised by public comments.[5] The supreme court further reasoned that the economic feasibility of the plan as proposed does not depend on the feasibility of alternatives, rendering Denali Citizens argument irrelevant.[6] Affirming the lower court, the supreme court held that the DNR is only required to consider the economic feasibility of proposed exploration licenses, not alternatives to the proposal.[7]

### *Harris v. M-K Rivers*

In *Harris v. M-K Rivers*,[8] the supreme court held the Workers' Compensation Board ("Board") may impose penalties on an employer for bad faith controversion of an employee's claim for medical benefits, even when the employee has not presented the employer with a bill for treatments.[9] In 1976, Harris suffered work-related injuries that rendered him a paraplegic in need of extensive and continuing medical treatment.[10] In 2006, M-K Rivers, Harris's employer, controverted payments related to Harris's many medical conditions.[11] Harris challenged these controversions, and the Board ruled that several of them were in bad faith because M-K Rivers made them on the basis of insufficient evidence.[12] The Board imposed statutory penalties for these bad faith controversions.[13] M-K Rivers appealed this ruling to the Workers' Compensation Appeals Commission ("Commission"), which held that the penalties could not be imposed because Harris, never having purchased the treatments that were controverted, failed to present M-K Rivers with a bill; thus, the payment was never "due".[14] Harris appealed.[15] The supreme court reversed on this issue, holding that penalties may be imposed for bad faith controversions

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[1] 318 P.3d 380 (Alaska 2014).
[2] *Id.* at 386.
[3] *Id.* at 384–85.
[4] *Id.* at 386.
[5] *Id.*
[6] *Id.*
[7] *Id.*
[8] 325 P.3d 510 (Alaska 2014).
[9] *Id*. at 520–21.
[10] *Id*. at 512–13.
[11] *Id*. at 513.
[12] *Id*. at 514.
[13] *Id*. at 515.
[14] *Id*.
[15] *Id*. at 516.

of medical treatments that have been prescribed but not yet paid for.[16] The court reasoned that an employer would have an incentive to controvert medical treatments in bad faith if it only had to pay a penalty when presented with a bill from an employee, because the employee would likely be unable to afford the treatment in the first place due to the controversion.[17] Reversing the Commission's decision in part, the supreme court held the Workers' Compensation Board may impose penalties on an employer for bad faith controversion of an employee's claim for medical benefits, even when the employee has not presented the employer with a bill for treatments.[18]

***Dennis v. State, Dep't of Administration***

In *Dennis v. State, Dep't of Administration*[19], the supreme court held that verifications of breath test instrument calibration performed by the instrument's software are compliant with controlling regulation.[20] Dennis was arrested for driving under the influence of alcohol.[21] A breath test revealed that his breath alcohol concentration was over the legal limit; subsequently, his driver's license was revoked.[22] Dennis filed a motion to suppress the breath test result at a hearing to contest the revocation.[23] He argued that the verification of the instrument's calibration was not compliant with the applicable regulation. [24] The lower court rejected his motion to suppress the breath test result and affirmed the license revocation.[25] On appeal, Dennis argued that the verification of an instrument's calibration must be completed by the scientific director or by a qualified person designated by the scientific director,[26] and that allowing the verification to be completed by the instrument's software was not within regulation[27]. The supreme court affirmed the lower court's decision, reasoning that the scientific director ensures that the proper verification procedure is included in the instrument's software.[28] Further, the court noted that the verification reports generated by the instruments are reviewed by the scientific director before they are signed.[29] Affirming the lower court's decision, the supreme court held that the instrument calibration verification procedure used by the Department of Public Safety is compliant with regulation.[30]

***Alaska Community Action on Toxics v. Hartig***

In *Alaska Community Action on Toxics v. Hartig*,[31] the supreme court held that the public interest exception to the mootness doctrine will not apply when the same fact pattern is unlikely to occur again due to changes in the applicable regulations.[32] Alaska Community Action on Toxics

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[16] *Id*. at 521.
[17] *Id*. at 520.
[18] *Id*. at 521.
[19] 320 P.3d 1150 (Alaska 2014).
[20] *Id*. at 1152.
[21] *Id*. at 1150.
[22] *Id*.
[23] *Id*.
[24] *Id*.
[25] *Id*. at 1151.
[26] *Id*.
[27] *Id*.
[28] *Id*. at 1152.
[29] *Id*.
[30] *Id*.
[31] 321 P.3d 360 (Alaska 2014).
[32] *Id*. at 366–67.

("ACAT") and Alaska Survival brought suit against the State Department of Environmental Health ("the Department") for issuing a permit to the Alaska railroad corporation for the use of herbicides.[33] The public interest organizations alleged that the issuance of the permit violated public notice requirements and due process concerns.[34] The administrative law judge and the superior court affirmed the Department's issuance of the permit.[35] On appeal the public interest groups continued to challenge the permit's validity.[36] The supreme court held that the issues on appeal were moot and did not fall under the public interest exception.[37] The permit at issue had already expired and new regulations were set in place for issuance of the permits so the same fact pattern was unlikely to occur again.[38] Affirming the lower court, the supreme court held that the public interest exception to the mootness doctrine will not apply when the same fact pattern is unlikely to occur again due to changes in applicable regulations.[39]

***Municipality of Anchorage v. Holleman***

In *Municipality of Anchorage v. Holleman*,[40] the supreme court held a referendum application is properly viewed as legislative, rather than administrative, when it makes new law, is permanent and general, and provides a public purpose as well as the methods for accomplishing it.[41] The Anchorage Assembly ("Assembly") passed an ordinance that amended the Employee Relations chapter of the Anchorage Municipal Code.[42] Two citizen-sponsors filed a referendum application to repeal the ordinance.[43] The Municipality of Anchorage ("Municipality") rejected the application, reasoning it dealt with administrative rather than legislative matters.[44] The superior court granted summary judgment in favor of the citizen-sponsors and ordered the Municipality to accept the referendum application.[45] On appeal, the Municipality argued the application is barred because it fails to make new law and is impermanent, making it an administrative rather than legislative ordinance.[46] The supreme court affirmed the superior court's decision, reasoning that the ordinance is legislative because it makes new law that is both permanent and general and declares a public purpose while providing a method of accomplishing it.[47] The court further reasoned that a legislative ordinance will not become administrative merely because it contains administrative elements secondary to its primarily legislative purpose.[48] Affirming the superior court's decision, the supreme court held the citizen-sponsors' referendum application was properly viewed as legislative because it made new law, was permanent, and provided a public purpose as well as the methods of accomplishing it.[49]

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[33] *Id.* at 362.
[34] *Id.*
[35] *Id.* at 365.
[36] *Id.* at 366.
[37] *Id.*
[38] *Id.* at 368.
[39] *Id.* at 366–67.
[40] 321 P.3d 378 (Alaska 2014).
[41] *Id.* at 387.
[42] *Id.* at 380.
[43] *Id.* at 381.
[44] *Id.* at 380.
[45] *Id.* at 381.
[46] *Id.* at 385–87.
[47] *Id.* at 385–87.
[48] *Id.* at 387.
[49] *Id.* at 387.

***Davis Wright Tremane LLP v. State, Dep't of Administration***

In *Davis Wright Tremane LLP v. State, Dep't of Administration*,[50] the supreme court held that administrative agencies have the deferential discretion to forbid consideration bids for contracts submitted after the deadline for proposals.[51] A state agency issued a request for proposals for legal services, and a law firm submitted a proposal after the submission deadline.[52] Nonetheless, the agency awarded that law firm the contract, and a second law firm protested, alleging that the first firm's proposal was barred by relevant regulation because it was submitted late.[53] An administrative agency rescinded the contract award to the first firm, and denied the first firm's appeal, so the firm filed suit.[54] The lower court held that the administrative agency acted reasonably when it prohibited consideration of any late-filed proposal.[55] On appeal, the first firm argued that the administrative agency's strict interpretation of relevant agency guidelines regarding late-filed proposals is not reasonable or consistent with the statute because the regulation must be interpreted per a common law materiality standard.[56] The supreme court affirmed the lower court's decision, reasoning that because the administrative agency's interpretation is longstanding and entitled to particular deference, it must be reasonably interpreted to bar acceptance of late proposals.[57] Additionally, the common law materiality standard is not expressly adopted in the administrative agency's guidelines, nor is it harmonious with legislative intent.[58] Affirming the lower court's decision, the supreme court held that an administrative agency's strict interpretation of guidelines forbidding consideration of late-filed proposals for agency contracts is reasonable and consistent with applicable law.[59]

***Brandner v. Municipality of Anchorage***

In *Brandner v. Municipality of Anchorage*,[60] the supreme court held that an administrative board's misunderstanding of an appraiser's property estimate constitutes a fundamentally wrong principle of valuation.[61] Bradner requested Municipality of Anchorage assessor Munoz to value her property for the 2012 tax year.[62] Munoz concluded that Brandner's property was essentially worth $560,700, but that in light of repair work needed, $499,400 was a fair estimate of the property's value.[63] Brandner obtained an independent appraisal which valued the property for much less.[64] Seemingly accepting Munoz's appraisal, the Anchorage Municipal Board of Equalization adopted the base value of $576,000 but accepted Bradner's repair estimate of $140,000, concluding that the property was worth $427,000.[65] The superior court held that it was

[50] 342 P.3d 293 (Alaska 2014).
[51] *Id*. at 293.
[52] *Id*. at 296.
[53] *Id*.
[54] *Id*. at 298.
[55] *Id*.
[56] *Id*. at 301.
[57] *Id*. at 301–302.
[58] *Id*. at 302–303.
[59] *Id*. at 294
[60] 327 P.3d 200 (Alaska 2014).
[61] *Id*. at 202–03.
[62] *Id*. at 201.
[63] *Id*.
[64] *Id*.
[65] *Id*.

well within the Boards discretion to adopt the Municipality assessor's estimate of the property's value over Brandner's.[66] On appeal, Brandner argued that the Board the Municipality's adopted base value was arbitrary and had no basis in the record.[67] The supreme court reversed the lower court's decision, reasoning that the court had misunderstood Munoz's appraisal testimony in adopting $567,000 as the value of the land and that a final assessed value of $420,700 was more consistent with its expressed intent in relying on Munoz's appraisal.[68] An administrative property evaluation will be upheld except when there is a clear adoption of a fundamentally wrong principle of valuation or fraud.[69] Reversing the lower court's decision, the supreme court held that an administrative board's misunderstanding of an appraiser's property estimate constitutes a fundamentally wrong principle of valuation.[70]

***Brown v. Personnel Board for City of Kenai***

In *Brown v. Personnel Board for City of Kenai*[71], the supreme court held that the Personnel Board ("the Board"), in acting as an appellate tribunal, stated an adequate basis for a city employee's termination in concluding that the employee was terminated due to misconduct, without affirming whether the employee had committed acts of sexual harassment.[72] Brown, a city employee, appealed his termination of employment to the Board after being terminated by the city manager due to actions that constituted sexual harassment and misconduct.[73] The Board, in affirming the city manager's decision to terminate Brown, found that Brown was terminated not due to sexual harassment, but rather due to actions qualifying as misconduct.[74] On appeal, Brown argued that the Board had violated his due process rights and that there was no cause for his termination of employment, reasoning that the Board's decision indicated a rejection of the city manager's finding that Brown had engaged in sexual harassment.[75] The supreme court affirmed the Board's decision and found that the Board's statement affirming that Brown was terminated due to misconduct did not constitute an independent finding that Brown was innocent of sexual harassment.[76] The court further reasoned that the Board's disputed language, when viewed in context of the Board's conclusion that the city manager's determination was reasonable, was only an acknowledgement that the official cause for Brown's termination was misconduct.[77] Moreover, the supreme court reasoned that even if the Board's language did indicate that Brown was innocent of sexual harassment, there was substantial evidence supporting a finding that Brown's actions constituted misconduct warranting termination.[78] Affirming the lower court's decision, the supreme court held that the Board stated an adequate basis supporting the determination that the city employee was terminated due to misconduct warranting dismissal.[79]

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[66] *Id.* at 202.
[67] *Id.*
[68] *Id.* at 202–03.
[69] *Id.* at 202.
[70] *Id.* at 202–03.
[71] 327 P.3d 871 (Alaska 2014).
[72] *Id.* at 876.
[73] *Id.* at 874.
[74] *Id.*
[75] *Id.* at 875.
[76] *Id.*
[77] *Id.* at 876.
[78] *Id.*
[79] *Id.*

***Schlumberger Technology Corp. v. State, Dep't of Revenue***

In *Schlumberger Technology Corp. v. State, Dep't of Revenue*,[80] the supreme court held that the Alaska Net Income Tax Act (ANITA) does not incorporate by reference the Internal Revenue Code provision which addresses income reporting by foreign corporations.[81] Schlumberger Technology, a wholly owned subsidiary of the foreign corporation Schlumberger Limited, filed Alaska tax returns on behalf of Schlumberger Limited's domestic subsidiaries for the tax years 1998–2000.[82] In 2003, a Department of Revenue auditor determined that Schlumberger Technology should have included 20% of Schlumberger Limited's dividends received from foreign corporations in its apportionable income.[83] This audit adjustment stemmed from ANITA, which requires corporate taxpayers to exclude 80% of dividends received from foreign corporations.[84] Schlumberger Technology objected to the adjustment before an administrative judge then appealed to superior court,[85] referencing an Internal Revenue Code provision which requires the exclusion of all foreign dividend income received by a foreign corporation.[86] The superior court affirmed the administrative decision, holding that the foreign dividends paid to Schlumberger Limited should have been included in the taxable income under ANITA.[87] On appeal, Schlumberger Technology argued that because ANITA incorporated by reference the Internal Revenue Code's provision, the foreign dividends were not taxable.[88] The supreme court affirmed the superior court's decision, reasoning that the ANITA provision for calculating the taxable portion of foreign dividends earned by an Alaskan taxpayer was inconsistent the formula from the Internal Revenue Code.[89] The court further reasoned that the Internal Revenue code excludes certain foreign dividends received by a foreign corporation, while ANITA makes no distinction between foreign or domestic reporting corporations.[90] Affirming the superior court's decision, the supreme court held that ANITA does not incorporate by reference the Internal Revenue Code provision which addresses income reporting by foreign corporations.[91]

***Silver Bow Construction v. State***

In *Silver Bow Construction v. State*,[92] the supreme court held that varying from length requirements of requests for proposals does not render the response non-responsive and accepting responses exceeding the page limit does not violate the equal protection rights of competing bidders.[93] The Department of Administration, Division of General Services accepted a response to a request for proposals for renovating the Governor's House that exceeded the page limit by five pages, and a competing bidder sued, arguing the variance obligated the Division to reject the response.[94] The lower court upheld the Division's decision to accept the response.[95] On

[80] 331 P.3d 334 (Alaska 2014).
[81] *Id.* at 342.
[82] *Id.* at 335.
[83] *Id.* at 336.
[84] *Id.* at 339.
[85] *Id.* at 336.
[86] *Id.* at 339.
[87] *Id.* at 337.
[88] *Id.*
[89] *Id.* at 339.
[90] *Id.*
[91] *Id.* at 342.
[92] 330 P.3d 922 (Alaska 2014).
[93] *Id.* at 924, 926.
[94] *Id.* at 923.

appeal, the competing bidder argued that the greater number of pages provided an unfair advantage and violated their right to equal protection. The supreme court affirmed the lower court's decision, reasoning that the page number variance did not give the response any substantial advantage because the competing bidder actually submitted more words in fewer pages.[96] Additionally, no equal protection violation existed because the record lacks any evidence of disparate treatment, and both proposals included deficiencies.[97] Affirming the lower court's decision, the supreme court held that exceeding the page limit for proposals does not disqualify a response or violate the equal protection rights of competing bidders.[98]

***Blas v. State, Dep't of Labor & Workforce Development,***

In *Blas v. State, Dep't of Labor & Workforce Development*,[99] the supreme court held an agency can reasonably deny a claimant unemployment benefits when there is evidence of intent to defraud the agency's benefit system.[100] Blas collected unemployment benefits for several years through the Department of Labor and Workforce Development ("the Division").[101] In 2011 and 2012, Blas failed to report that (1) he received 13 weeks worth of benefits erroneously because he had also received work income;[102] and (2) he traveled to Idaho for reasons unconnected with applying to jobs.[103] The Division determined Blas committed fraud by failing to make these reports and denied him future benefits for one year.[104] The Appeals Tribunal, Commissioner, and superior court all affirmed the Division's determination.[105] On appeal, the supreme court affirmed, granting *Chevron* deference to the agency's factual findings regarding Blas's work and travel.[106] The court also held the statute required subjective intent to defraud before denying a claimant future benefits and that Blas had the requisite intent.[107] Affirming the agency and lower court decisions, the supreme court held that an agency can deny future unemployment benefits when there is evidence of an intent to defraud the agency's benefit system.[108]

***Harris v. M-K Rivers***

In *Harris v. M-K Rivers*,[109] the supreme court held the Workers' Compensation Board ("Board") may impose penalties on an employer for bad faith controversion of an employee's claim for medical benefits, even when the employee has not presented the employer with a bill for treatments.[110] In 1976, Harris suffered work-related injuries that rendered him a paraplegic in need of extensive and continuing medical treatment.[111] In 2006, M-K Rivers, Harris's employer,

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[95] *Id*.
[96] *Id*. at 925.
[97] *Id*. at 925–26.
[98] *Id*. at 924, 926.
[99] 331 P.3d 363 (Alaska 2014).
[100] *Id*. at 374–75.
[101] *Id*. at 366.
[102] *Id*. at 366–67.
[103] *Id*. at 368–69.
[104] *Id*. at 367, 369.
[105] *Id*. at 368–69.
[106] *Id*. at 370–71.
[107] *Id*. at 374.
[108] *Id*. at 374–75.
[109] 325 P.3d 510 (Alaska 2014).
[110] *Id*. at 520–21.
[111] *Id*. at 512–13.

controverted payments related to Harris's many medical conditions.[112] Harris challenged these controversions, and the Board ruled that several of them were in bad faith because M-K Rivers made them on the basis of insufficient evidence.[113] The Board imposed statutory penalties for these bad faith controversions.[114] M-K Rivers appealed this ruling to the Workers' Compensation Appeals Commission ("Commission"), which held that the penalties could not be imposed because Harris, never having purchased the treatments that were controverted, failed to present M-K Rivers with a bill; thus, the payment was never "due".[115] Harris appealed.[116] The supreme court reversed on this issue, holding that penalties may be imposed for bad faith controversions of medical treatments that have been prescribed but not yet paid for.[117] The court reasoned that an employer would have an incentive to controvert medical treatments in bad faith if it only had to pay a penalty when presented with a bill from an employee, because the employee would likely be unable to afford the treatment in the first place due to the controversion.[118] Reversing the Commission's decision in part, the supreme court held the Workers' Compensation Board may impose penalties on an employer for bad faith controversion of an employee's claim for medical benefits, even when the employee has not presented the employer with a bill for treatments.[119]

***Grundberg v. State Commission for Human Rights***

In *Grundberg v. State Commission for Human Rights*[120], the supreme court held that, per statutory authority, the Alaska State Commission for Human Rights ("the Commission") has the discretion to dismiss a complaint when the complainant files a second claim in court "based on the same facts," even when one complaint alleges new facts for other claims for relief.[121] Grundberg filed an employment discrimination complaint with the Commission for Human Rights after she was denied a promotion at work for reasons she believed had to do with her sex, age, and race.[122] The claim was initially dismissed but remanded for further proceedings.[123] While those proceedings were pending, Grundberg filed a civil complaint in superior court, alleging the facts contained in her complaint with the Commission as well as several new facts.[124] Accordingly, the Commission dismissed her complaint, per its statutory authority to do so whenever the complainant files a second claim in another forum based on the same facts.[125] Grundberg appealed the dismissal.[126] The lower court affirmed the dismissal.[127] On appeal, Grundberg argued that the shared facts in her two complaints served

[112] *Id*. at 513.
[113] *Id*. at 514.
[114] *Id*. at 515.
[115] *Id*.
[116] *Id.* at 516.
[117] *Id*. at 521.
[118] *Id*. at 520.
[119] *Id*. at 521.
[120] 333 P.3d 1 (Alaska 2014).
[121] *Id.* at 2.
[122] *Id.*
[123] *Id.*
[124] *Id.* at 2–3.
[125] *Id.* at 3.
[126] *Id.*
[127] *Id.*

merely as factual background in the claim she filed in civil court.[128] The supreme court affirmed the lower court's decision, reasoning that the same underlying facts were being used to make out the same claims for relief in both of Grundberg's complaints, and were not merely historical.[129] Further, the court noted that it was irrelevant that the second complaint contained new facts as well.[130] Affirming the lower court's decision, the supreme court held that the Commission may dismiss a complaint when it was been duplicated elsewhere based on the same facts, even if the duplication contains additional facts.[131]

***Adamson v. Municipality of Anchorage***

In *Adamson v. Municipality of Anchorage*,[132] the supreme court held that once the presumption of work-related causation is met, the Alaska Workers' Compensation Board should not allow the municipality to rebut the presumption through expert testimony.[133] After working as a firefighter for the Municipality of Anchorage for over thirty years, John Adamson retired in 2011 after being diagnosed with prostate cancer in August 2008.[134] Prostate cancer is presumed by statute to be work-related for certain firefighters, as long as they meet certain requirements.[135]The Alaska Workers' Compensation Board determined that Adamson did qualify for the presumption, and did not allow the municipality to present evidence through expert testimony that there is no known cause of prostate cancer to rebut the presumption.[136] The Workers' Compensation Appeals Commission agreed with the Board that Adamson met the presumption, but reversed the Board's decision to disallow expert testimony by the municipality.[137] On appeal, the municipality argues that the expert testimony could be enough to rebut the presumption of work-related causation for prostate cancer because it identifies that there is no known cause of prostate cancer.[138] The supreme court reversed in part, reasoning that the Commission erred in allowing the municipality to rebut the presumption through expert testimony because the rebuttal must be evidence that is personal to the claimant, not broad negations of the statute's basis.[139] Reversing the Commission in part, the supreme court held that a presumption of work-related cancer causation cannot be rebutted through expert testimony as long as the claimant meets the requirements of the presumption.[140]

***Garibay v. State, Dep't of Administration***

In *Garibay v. State, Dept. of Administration*,[141] the supreme court held that when there is probable cause for arrest, an investigative stop is not shocking police misconduct sufficient for the exclusionary rule to apply to license revocation proceedings.[142] Here, a seemingly drunk man

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[128] *Id.* at 4.
[129] *Id.* at 4–5.
[130] *Id.* at 5.
[131] *Id.*
[132] 333 P.3d 5 (Alaska 2014).
[133] *Id.* at 9.
[134] *Id.*
[135] *Id.*
[136] *Id.* at 9–10.
[137] *Id.* at 20.
[138] *Id.*
[139] *Id.* at 20.
[140] *Id.* at 22.
[141] 341 P.3d 446 (Alaska 2014).
[142] *Id.* at 449–50.

ran into and yelled at a woman in a grocery store, and she called the police after following him to the parking lot to see his license plate number.[143] Shortly afterwards, the police located his car in a nearby parking lot as an investigative stop.[144] Although they parked directly behind the car with their emergency lights activated, the man attempted to back out of the spot.[145] After knocking on the man's window, the police spoke with him and observed he was swaying, had bloodshot eyes, and smelled of alcohol.[146] The man was arrested for a DUI after he failed three field sobriety tests, and his license was subsequently revoked for 90 days.[147] Following a DMV administrative hearing, the superior court affirmed the revocation of his license and held that the legality of the stop was irrelevant in license revocation proceedings.[148] On appeal, the man argued that the investigative stop was illegal and the exclusionary rule should apply to his case.[149] The supreme court affirmed the superior court's decision, reasoning that the investigative stop was not shocking police misconduct because it was based on the earlier report from the woman at the grocery store.[150] The court further reasoned that after the investigative stop, there was probable cause for arrest due to the police's observations of the man's drunkenness.[151] Affirming the lower court's decision, the supreme court held when there is probable cause for arrest, an investigative stop is not shocking police misconduct sufficient for the exclusionary rule to apply to license revocation proceedings.[152]

***Ellingson v. Lloyd***

In *Ellingson v. Lloyd*,[153] the supreme court held that amendment to regulations promulgated by the Alaska Board of Game were invalid because they effectively confiscated lawfully owned domestic animals.[154] Charles Dorman, a bison farmer on Kodiak Island, owned more than 200 bison that he kept on land he acquired in two grazing leases from the State of Alaska.[155] Because portions of that land included tidal flats, there were areas that could not be fenced in and allowed bison to stray beyond the grazing lease onto the Wild Creek/Hidden Basin area of state land.[156] As a result, when the Board of Game amended regulations to allow the hunting of feral bison and defined feral bison as those not within the specific boundaries of a state grazing lease, Dorman's wayward bison became hunt-able under those amended regulations.[157] On appeal, the Board of Game argued that, pursuant to its authority to regulate domestic animals introduced into the wild that have become feral, its amendment to the definition of feral was reasonable and not arbitrary.[158] The supreme court reversed the lower court's decision, holding that the amended definition was arbitrary because they disregarded common law, dictionary and scientific

[143] *Id.* at 447–48.
[144] *Id.*
[145] *Id.*
[146] *Id.*
[147] *Id.*
[148] *Id.* at 448.
[149] *Id.*
[150] *Id.* at 450–451.
[151] *Id.*
[152] *Id.*
[153] 342 P.3d 825 (Alaska 2014).
[154] *Id.* at 826.
[155] *Id.* at 827.
[156] *Id.*
[157] *Id.* at 827–29.
[158] *Id.* at 830–31.

definitions of feral, and it disregarded previous inquiries into how the term should be defined.[159] The court also held that the new definition of feral conflicted with other statutes.[160] The supreme court reversed the lower court's decision, reasoning that statutes amending definition of feral and allowing the hunting of feral bison were invalid.[161]

[159] *Id.* at 831–32; *id.* at 832–833.
[160] *Id.* at 833.
[161] *Id.* at 833–34.

## ARBITRATION LAW

***State v. Public Safety Employees Association***

In *State v. Public Safety Employees Association*, the supreme court held that an arbitration award of reinstatement with back pay for an employee who has engaged in sexual misconduct does not violate an explicit, well-defined, and dominant public policy in Alaska.[162] In April 2009, an Alaska state trooper had consensual sex with a domestic violence victim the morning after he had been dispatched to the victim's house to address a disturbance with her husband.[163] The trooper was discharged from his position, and the Public Safety Employees Association subsequently filed a grievance with the State of Alaska.[164] The matter went to arbitration, and arbitrator ultimately decided to reinstate the trooper with back pay.[165] The superior court upheld the arbitrator's order of back pay, and reasoned that it would have enforced the trooper's reinstatement, but could not because his license had been revoked.[166] On appeal, the State argued that the arbitration award should be vacated in full as contrary to public policy.[167] The supreme court affirmed the superior court's decision, reasoning that no public policy required termination rather than suspension or other remedies for non-criminal sexual misconduct.[168] The court also reasoned that the public policy exception to the enforcement of arbitration awards must be considered in terms of the arbitrator's decision, not the conduct of the employee.[169] Affirming the superior court's decision, the supreme court held that an arbitration award of reinstatement with back pay for an employee who has engaged in sexual misconduct does not violate an explicit, well-defined, and dominant public policy in Alaska.[170]

[162] 323 P.3d 670, 676 (Alaska 2014).
[163] *Id.* at 672.
[164] *Id.*
[165] *Id.*
[166] *Id.*
[167] *Id.* at 675.
[168] *Id.* at 679–683.
[169] *Id.* at 677.
[170] *Id.* at 676.

## BUSINESS LAW

### *ConocoPhillips Alaska, Inc. v. Williams Alaska Petroleum, Inc.*

In *ConocoPhillips Alaska v. Williams Alaska Petroleum, Inc.*,[171] the supreme court held that reply correspondence only qualifies under the "dickered-for" terms exception to UCC § 2-207(1) contract acceptance when the terms differ significantly and materially from a sufficiently important term in the offer.[172] ConocoPhillips Alaska ("ConocoPhillips") contracted to provide Williams Alaska Petroleum ("Williams"), an oil refinery, with crude oil pursuant to an Exchange Agreement ("the Agreement").[173] Under the Agreement's adequate-assurances clause, ConocoPhillips demanded a payment of $31 million at a set interest rate.[174] After a series of phone calls and letters, Williams wired ConocoPhillips $31 million but demanded credit at a higher interest rate.[175] ConocoPhillips acknowledged receipt of the payment, but did not address the interest rate issue.[176] Williams claims it is owed $5 million from ConocoPhillips as the difference between the interest rates.[177] The trial court granted summary judgment for Williams, concluding that a contract was formed for the higher interest rate demanded by Williams under UCC § 2-207(1).[178] The supreme court affirmed the superior court, reasoning that the parties entered into a contract at the higher interest rate because Williams's reply correspondence requesting the higher interest rate did not qualify for a "dickered-for" terms exception to § 2-207(1).[179] The supreme court further reasoned that the negotiations and the behavior of the parties following negotiations showed that neither party found the open contract terms sufficiently important to continue negotiating, resulting in a contract under § 2-207(1).[180] Affirming the lower court's summary judgment ruling, the supreme court held that the "dickered-for" exception to UCC § 2-207(1) contract acceptance only applies when reply correspondence terms significantly and materially differ from a sufficiently important term in the offer.[181]

### *Girdwood Mining Co. v. Comsult LLC*

In *Girdwood Mining Co. v. Comsult LLC*,[182] the supreme court held that an issuer of securities is not barred by statute from seeking to void an illegal consulting contract.[183] Girdwood Mining Company ("Girdwood") hired Comsult LLC ("Comsult") to provide management services and raise capital.[184] When the business relationship went sour, the two companies agreed that Girdwood would compensate Comsult for services rendered.[185] Girdwood then sued Comsult,

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[171] 322 P.3d 114 (Alaska 2014).
[172] *Id.* at 129.
[173] *Id.* at 118.
[174] *Id.* at 119.
[175] *Id.* at 120.
[176] *Id.*
[177] *Id.*
[178] *Id.* at 121.
[179] *Id.* at 128–29.
[180] *Id.* at 130.
[181] *Id.* at 129.
[182] 329 P.3d 194 (Alaska 2014).
[183] *Id.* at 196.
[184] *Id.*
[185] *Id.*

seeking to void the agreement on the ground that it violated Alaska securities law.[186] The superior court granted summary judgment to Comsult, holding the suit barred by a statute precluding securities suits based on illegal contracts.[187] Girdwood appealed.[188] The supreme court reversed, holding Girdwood's suit was not barred by the statute.[189] The court reasoned that a suit is based on a contract only if it seeks relief on the basis of the contract's validity.[190] On the other hand, a suit such as Girdwood's is not based on a contract if it seeks to void an illegal contract, because the source of the claim lies in the common-law rules of illegal contracts, not in the contract itself.[191] Reversing the superior court's decision, the supreme court held that Alaska securities laws do not preclude an issuer of securities from seeking to void an illegal consulting contract.[192]

***Pederson v. Artic Slope Regional Corporation***

In *Pederson v. Artic Slope Regional Corp.*,[193] the supreme court held that a corporation may request a confidentiality agreement before granting a shareholder's document request when the agreement reasonably defines the scope of confidential information and contains provisions not unreasonably restrictive based on the shareholder's purpose and the corporation's confidentiality concerns.[194] Rodney Pederson, a shareholder of the Artic Slope Regional Corporation, requested information regarding the corporation's executive compensation structure.[195] In response, the corporation requested Pederson sign a confidentiality agreement for all information released applicable to both Pederson and anyone with whom he shared the information.[196] The trial court concluded that the corporation satisfied its statutory obligations by its response to Pederson's request for information and that the requested confidentiality agreement was reasonable because the corporation agreed to nearly all of Pederson's requests.[197] On appeal, Pederson argued that the trial court erred by interpreting the corporation's statutory requirements too narrowly and challenged the reasonableness of the corporation's confidentiality agreement.[198] The supreme court held that the trial court erred in determining that the statutory requirements of the corporation's disclosure did not include electronic information.[199] Additionally, the corporation's requested confidentiality agreement was unreasonably overbroad based on both its expansive scope and restrictive breadth of confidentiality protection.[200] Reversing the trial court's findings, the supreme court held that a corporation may request a confidentiality agreement before responding to a shareholder's demand for documents, but the agreement must be reasonable in

[186] *Id.*
[187] *Id.*
[188] *Id.* at 197.
[189] *Id.*
[190] *Id.*
[191] *Id.* at 197–98.
[192] *Id.* at 196.
[193] 331 P.3d 384 (Alaska 2014).
[194] *Id.* at 387.
[195] *Id.*
[196] *Id.*
[197] *Id.* at 392.
[198] *Id.* at 394.
[199] *Id.* at 395.
[200] *Id.* at 402.

classifying certain information as confidential and the breadth of protection for confidential information.[201]

[201] *Id.*

## CIVIL PROCEDURE

### *Sagers v. Sackinger*

In *Sagers v. Sackinger*,[202] the supreme court held the trial court does not abuse its discretion by refusing a request for a continuance due to illness when the court determines that the requesting party is exaggerating the severity of their symptoms and is capable of participating in the trial without serious risk to his or her well-being.[203] In an ongoing child custody case, the father requested what would have been his seventh continuance, this one due to his ongoing recovery from pneumonia.[204] Although the father provided a physician's assistant's testimony in support of his continuance, the physician's assistant retracted his own testimony upon learning that the father had been out biking the day before.[205] The trial court denied the father's request for an additional continuance.[206] On appeal, the father argued that the trial court committed reversible error in denying his request for a continuance because it ignored his symptoms in court and the testimony of the physician's assistant that he was recovering from pneumonia.[207] The supreme court affirmed the lower court, reasoning that it is the task of the trial court to make credibility determinations.[208] The supreme court further reasoned that the court below did not err because the judge made careful and repeated observations that the father's symptoms appeared to occur selectively, and that his demeanor did not suggest a severe illness.[209] Affirming the lower court's decision, the supreme court held that the trial court does not abuse its discretion by refusing a request for a continuance due to illness when the court determines that the requesting party is exaggerating their illness and does not actually require a continuance.[210]

### *Conitz v. State, Commission for Human Rights*

In *Conitz v. State, Commission for Human Rights*,[211] the supreme court held that an appeal is moot when the claims pursued on remand would be barred by res judicata.[212] In 2006, Conitz filed complaints with both the Alaska State Commission for Human Rights ("the Commission") and the federal Equal Employment Opportunity Commission ("EEOC") for alleged violations in 2004 and 2005.[213] Following the EEOC's decision not to act, Conitz sued the employer in federal court and the case was dismissed on the merits and affirmed by the Ninth Circuit.[214] Prior to the Ninth Circuit's affirmance, Conitz filed a second suit in federal court alleging violations in 2007 and 2008.[215] While the second suit was pending, the Commission found that Conitz's claims were untimely and without merit, and dismissed Conitz's case.[216] Conitz appealed the

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[202] 318 P.3d 860 (Alaska 2014).
[203] *Id.* at 864.
[204] *Id.* at 862.
[205] *Id.*
[206] *Id.*
[207] *Id.* at 864.
[208] *Id.*
[209] *Id.*
[210] *Id.* at 864–67.
[211] 325 P.3d 501 (Alaska 2014).
[212] *Id.* at 507–08.
[213] *Id.* at 504.
[214] *Id.*
[215] *Id.*
[216] *Id.*

Commission's decision to the state superior court.[217] While this appeal was pending, the federal district court ruled on Conitz's second federal suit, finding that res judicata precluded certain claims and ruling against Conitz on the merits of others.[218] The state superior court dismissed Conitz's appeal as moot, reasoning that all of his claims had been decided on the merits in his two federal suits, and thus even if the superior court reversed the Commission's decision and remanded the case, the doctrine of res judicata would prevent the Commission from reaching a different result.[219] On appeal, Conitz argued that the doctrine of res judicata did not apply to his case because the parties were not identical.[220] Affirming the lower court, the supreme court reasoned that the real party in interest is the complainant, not the Commission.[221] The court further reasoned that even if Conitz was not a party, he was in privity with the Commission and had control over the first case to reach final judgment.[222] Affirming the lower court's decision, the supreme court held that when a claim is barred by res judicata, an appeal is moot.[223]

***Szabo v. Municipality of Anchorage***

In *Szabo v. Municipality of Anchorage*,[224] the supreme court held that a motion for relief from judgment is not a substitute for a party failing to file a timely, direct appeal to a final judgment under Alaska Civil Rule 60(b).[225] In response to a complaint about a zoning violation against the Szabos, the Municipality of Anchorage ("Municipality") sent the Szabos a letter demanding they comply with the zoning code within 10 days or pay a fine.[226] After a series of noncompliance letters, an enforcement order, and cleanup plans proved unfruitful, the Municipality filed an action for abatement, injunctive relief, and civil penalties for the full sum of accrued fines.[227] The Szabos counterclaimed and the Municipality moved for summary judgment, which the superior court granted.[228] Having withheld judgment regarding the issue of fines, the court later held an evidentiary hearing and subsequently issued a supplemental order and final judgment requiring payment of $226,000 in fines.[229] Over a year later, the Szabos filed a motion for relief from judgment, arguing that under Alaska Civil Rule 60(b)(1) the evidentiary hearing had been an unfair surprise; under Rule 60(b)(4) the $250 daily fine violated procedural due process; and under Rule(b)(6) the judgment violated substantive due process.[230] The supreme court affirmed the superior court's holding that under Rule 60(b)(1) the Szabos' motion for relief was untimely because appeals must be entered within a year of judgment.[231] The supreme court additionally reasoned that a procedural due process claim, under Rule 60(b)(4), cannot provide relief in the absence of a timely appeal due to the interests of finality.[232] Lastly, the supreme court

[217] *Id.*
[218] *Id.*
[219] *Id.* at 505.
[220] *Id.* at 508.
[221] *Id.*
[222] *Id.* at 508–09.
[223] *Id.* at 507–08.
[224] 320 P.3d 809 (Alaska 2014).
[225] *Id.* at 810.
[226] *Id.*
[227] *Id.*
[228] *Id.* at 811–12.
[229] *Id.* at 812.
[230] *Id.*
[231] *Id.* at 814.
[232] *Id.*

determined that under Rule 60(b)(6), the Szabos' failure to make their excessive fines argument on direct appeal was fatal to the success of a motion for relief.[233] Affirming the lower court's decision, the supreme court held that, under Rule 60(b), a party failing to make a timely appeal, particularly in the absence of direct appeal on the final judgment, is not entitled to relief.[234]

***Rude v. Cook Inlet Region, Inc.***

In *Rude v. Cook Inlet Region, Inc.*,[235] the supreme court held the superior court does not err by granting summary judgment for a company when a candidate for the company's board of directors makes materially misleading statements in a proxy solicitation that would suggest improper corporate governance to a reasonable shareholder.[236] After being removed from the board-recommended slate of candidates, Rude, a director on the Cook Inlet Region, Inc. ("CIRI") board of directors, sent out a proxy solicitation to CIRI shareholders to gain support for his re-election.[237] Rude's proxy materials included statements concerning CIRI's election procedures, treatment of shareholders, and allegations that CIRI had sold significant landholdings.[238] CIRI then filed suit, alleging that Rude's statements were misleading.[239] The superior court determined that five statements in Rude's proxy solicitations were materially misleading as a matter of law.[240] On appeal, Rude argued that his proxy materials contained only true or aspirational statements.[241] The supreme court affirmed, reasoning that Rude's statements taken together would give a reasonable shareholder the false impression that CIRI was liquidating its landholdings and violating shareholders' rights.[242] The court further reasoned that these misleading statements were material because they would influence a reasonable shareholder's decision on how to vote.[243] Affirming the lower court's decision, the supreme court held that the superior court does not err by granting summary judgment for a company when a candidate for the company's board of directors makes materially misleading statements in a proxy solicitation that would suggest improper corporate governance to a reasonable shareholder.[244]

***Hawkins v. Attatayuk***

In *Hawkins v. Attatayuk*,[245] the supreme court held that Alaska state courts lack subject matter jurisdiction to adjudicate title issues concerning restricted townsite lots on federal land.[246] Harold Hawkins and Rosalind Attatayuk were married and lived together at a house on a federally owned townsite lot until Attatayuk moved to Nome in 1981.[247] The couple was legally divorced in 1988, and Hawkins retained the couple's home—continuing to live on the federally

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[233] *Id.* at 815.
[234] *Id.* at 810.
[235] 294 P.3d 76 (Alaska 2012).
[236] *Id.* at 98.
[237] *Id.* at 80.
[238] *Id.*
[239] *Id.* at 81.
[240] *Id.* at 94.
[241] *Id.* at 94.
[242] *Id.* at 96–98.
[243] *Id.*
[244] *Id.* at 98.
[245] 322 P.3d 891(Alaska 2014).
[246] *Id*. at 897.
[247] *Id*. at 893.

owned property thereafter.[248] In 1993, Attatayuk sought and was granted a restricted townsite deed for the property, certifying in her application that the property was not occupied by anyone other than her, despite knowing that the property had been awarded to Hawkins in the divorce.[249] The superior court rejected Hawkins' argument that the court lacked subject matter jurisdiction to decide the ownership dispute, entering a final judgment for Attatayuk and awarding her 18 months back rent and damages.[250] On appeal, Hawkins again argued that the superior court had lacked subject matter jurisdiction to adjudicate issues concerning restricted township lots.[251] The supreme court reversed the lower court's decision, reasoning that, while Congress conferred limited jurisdiction to Alaska over some cases concerning townsite lots,[252] 28 U.S.C. § 1360 did not confer jurisdiction to states to adjudicate the ownership or right to possession of Alaska Native townsite property.[253]

***Alsworth v. Seybert***

In *Alsworth v. Seybert*,[254] the supreme court held that when granting a preliminary injunction, courts must consider the injunction's interference with the defendant notwithstanding any alleged illegality of the defendant's actions.[255] Seybert and several other registered Borough voters brought suit against Alsworth and Anelon, two members of the Borough Assembly, for violating local and state conflict of interest laws and common law doctrine by participating in Assembly decisions from which they benefit directly.[256] Seybert also sought a preliminary injunction enjoining Alsworth and Anelon from, among many things, speaking in favor of Alaska's Pebble Mine and failing to declare conflicts of interest on related matters before the Borough Assembly.[257] The superior court applied the balance of hardships standard, holding that the balance of hardships weighed heavily in favor of granting the injunction because the injunction would require the defendants to comply with the law.[258] On appeal, Alsworth and Anelon argued that the superior court erred in applying the balance of hardships standard because there is no threat of irreparable harm and they were not adequately protected under the injunction.[259] The supreme court reversed the lower court's decision,[260] reasoning that it is improper to consider an injunction's harm to defendants under the assumption that the enjoined actions will ultimately be found to be illegal.[261] The proper inquiry is not whether the injunction merely orders a defendant to comply with the law, but instead whether, assuming the defendant will ultimately prevail, the injury which will result from the injunction can be indemnified by a bond or is relatively slight in comparison to the injury which the person seeking the injunction will suffer if the injunction is not granted.[262] Reversing the lower court's decision,[263] the supreme

[248] *Id*.
[249] *Id*.
[250] *Id*. at 894.
[251] *Id*.
[252] *Id*. at 895.
[253] *Id*. at 895-96.
[254] 323 P.3d 45 (Alaska 2014).
[255] *Id*. at 55.
[256] *Id*. at 50–51.
[257] *Id*. at 51.
[258] *Id*. at 52–53.
[259] *Id*. at 53.
[260] *Id*. at 58.
[261] *Id*. at 55.
[262] *Id*.

court held that when granting a preliminary injunction, courts must consider the injunction's interference with the defendant notwithstanding any alleged illegality of the defendant's actions.[264]

***In re Mark V.***

In *In re Mark V.*,[265] the supreme court held the collateral consequences exception to the mootness doctrine does not allow appellate review of an involuntary civil commitment when the committee has had several recent civil commitments and there is no evidence of a procedural defect in the commitment hearing.[266] The superior court ordered Mark V. committed to the Alaska Psychiatric Institute for thirty days after he exhibited bizarre behavior.[267] Mark had a history of mental illness and had been committed at least four times recently.[268] Mark appealed, but because he had been released by the time of his appeal, his claim was technically moot.[269] But Mark argued that the collateral consequences exception permitted appellate review of his moot claim.[270] The supreme court rejected Mark's collateral consequences claim, reasoning that Mark's four recent commitments made it highly unlikely that his latest commitment created any additional adverse consequences, that the mere possibility of collateral consequences from the latest commitment was not sufficient to justify appellate review, that there were no procedural defects in the commitment hearing, and that Mark's interests were safeguarded by a state law that allowed courts to expunge or seal records relating to civil commitment.[271] Rejecting Mark's appeal, the supreme court held the collateral consequences exception to the mootness doctrine does not allow appellate review of an involuntary civil commitment when the committee has had several recent civil commitments and there is no evidence of a procedural defect in the commitment hearing.[272]

***Patterson v. Cox***

In *Patterson v. Cox*,[273] the supreme court held that the failure to issue an order to show cause or a bench warrant in response to a motion to enforce a subpoena constitutes judicial error.[274] Patterson's SUV was struck from behind when he braked to avoid a stalled car in his lane.[275] He filed suit against Cox, the driver of the stalled car, and Ford Motor Company.[276] During the trial, Patterson sought to have Cox testify but she ignored the subpoena and never appeared.[277] Patterson approved of the court's suggestion to have her arrested, and was frustrated when the court decided not to issue a bench warrant.[278] Instead, the court gave a curative jury instruction,

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[263] *Id.* at 58.
[264] *Id.* at 55.
[265] 324 P.3d 840 (Alaska 2014).
[266] *Id.* at 842.
[267] *Id.* at 842–43.
[268] *Id.* at 842.
[269] *Id.* at 843.
[270] *Id.*
[271] *Id.* at 845.
[272] *Id.* at 842.
[273] 323 P.3d 1118 (Alaska 2014).
[274] *Id.* at 1121.
[275] *Id.* at 1119.
[276] *Id.* at 1120.
[277] *Id.*
[278] *Id.*

allowing the jury to consider Cox's absence as favorable evidence for Patterson.[279] The jury returned a verdict against Patterson.[280] On appeal of the lower court's decision, Patterson argued that the superior court should have issued a bench warrant to compel Cox to appear at trial and that the failure to do so was prejudicial.[281] The supreme court reversed the lower court's decision, reasoning that pro se litigants warranted relaxed procedural requirements.[282] The court further reasoned that the court should have treated Patterson's approval of its suggestion to arrest Cox as a proper motion to invoke the court's contempt power and enforce Cox's subpoena.[283] Reversing the lower court's decision, the supreme court held that in light of a motion to enforce a subpoena, a court's failure to issue an order to show cause or a bench warrant constitutes judicial error.[284]

***BP Pipelines, Inc. v. State, Dep't of Revenue***

In *BP Pipelines, Inc. v. State, Dep't of Revenue*,[285] the supreme court held that the superior court did not err in awarding attorneys' fees in an appeal in the form of a trial de novo pursuant to Civil Rules 82 and 79 instead of Appellate Rule 508.[286] Following initial trial de novo in superior court over the valuation of the Trans-Alaska Pipeline System for taxation purposes, the State Department and municipalities asserted their status as the prevailing party for collection of attorneys' fees under the Civil Rules.[287] The superior court agreed that the State Department and municipalities were prevailing parties over BP and the other owners of the pipeline, and calculated their attorneys' fee awards under the Civil Rules 82 and 79.[288] On appeal, BP and the other owners of the pipeline argued that the superior court had erred in applying the Civil Rules because the proceeding was an appeal from an administrative board's decision, and the fact that it occurred in superior court should not mean that the Civil Rules apply.[289] The supreme court affirmed the lower court's decision,[290] reasoning that the superior court did not err in applying the Civil Rules to calculate attorneys' fees because the Appellate Rules specify that in a trial de novo during an appeal from an administrative agency, the rules for procedure in the superior court should be followed.[291] The supreme court further reasoned that Civil Rule 82, upon which the superior court's attorneys' fees calculation relied, had been designated a rule of procedure by prior supreme court precedent.[292] Affirming the lower court's decision, the supreme court held that the superior court did not err in calculating attorneys' fees of the prevailing party under the Civil Rules in an administrative appeal that took the form of a trial de novo.[293]

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[279] *Id.*
[280] *Id.*
[281] *Id.* at 1121.
[282] *Id.*
[283] *Id.*
[284] *Id.*
[285] 327 P.3d 185 (Alaska 2014).
[286] *Id.* at 190.
[287] *Id.* at 188.
[288] *Id.* at 188–89.
[289] *Id.* at 190.
[290] *Id.* at 199.
[291] *Id.* at 190.
[292] *Id.*
[293] *Id.*

***Lane v. Ballot***

In *Lane v. Ballot*,[294] the supreme court held that the doctrine of collateral estoppel bars a defendant from relitigating the facts which form the basis of a jury verdict of "guilty but mentally ill" in a criminal case.[295] Annie Ballot filed a civil suit against Lennie Lane that alleged Lane severely beat and raped Ballot.[296] The complaint further alleged that Lane was criminally responsible for his actions.[297] The trial court granted Ballot's motion for summary judgment after defense counsel stipulated to the defendant's conviction for rape and assault on the grounds collateral estoppel barred relitigation of the facts which formed the basis for the conviction.[298] On appeal, Lane argued that the conviction of "guilty but mentally ill" was not subject to the doctrine of collateral estoppel and therefore the trial court improperly granted summary judgment.[299] By finding Lane "guilty but mentally ill" the jury concluded beyond a reasonable doubt that Lane knew or should have known he was beating and raping another person, even if he did not know that his actions were wrongful.[300] This conviction was sufficient to satisfy the elements of a number of different tort causes of action, including assault and battery and civil rape.[301] Affirming the trial court's grant of summary judgment, the supreme court held that a verdict of "guilty but mentally ill" has the same collateral estoppel effect as any other guilty verdict and therefore bars the defendant from relitigating the facts that formed the basis for the conviction on the issue of civil liability.[302]

***Heber v. Heber***

In *Heber v. Heber*,[303] the supreme court held that an inconsistency between an ex-spouse's statement in a dissolution petition and an ex-spouse's testimony at a custody hearing does not void a child custody modification judgment as based on fraud, misrepresentation, or misconduct.[304] Todd and Tamara Heber filed a petition to dissolve their marriage that stipulated that no domestic violence occurred during the marriage.[305] Months after the superior court granted the petition, Tamara testified at a custody modification hearing that Todd had engaged in domestic violence several times during their marriage, and as a result the judge awarded custody of the child to Tamara.[306] Todd moved to set aside the custody modification under Rule 60(b)(3), arguing Tamara engaged in misrepresentation when she testified that Todd had assaulted her.[307] The supreme court affirmed, holding Tamara's testimony at the custody hearing was not a misrepresentation.[308] The court reasoned that the contradiction between the dissolution petition and Tamara's testimony at trial did not demonstrate that the testimony constituted

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[294] 330 P.3d 338 (Alaska 2014).
[295] *Id.* at 341.
[296] *Id.* at 340.
[297] *Id.*
[298] *Id.* at 341.
[299] *Id.* at 343.
[300] *Id.* at 344.
[301] *Id.*
[302] *Id.* at 345.
[303] 330 P.3d 926 (2014).
[304] *Id.* at 928.
[305] *Id.*
[306] *Id.*
[307] *Id.* at 929.
[308] *Id.* at 932.

misrepresentation, because it was just as likely that the dissolution petition was inaccurate.[309] The inconsistency spoke to Tamara's credibility rather than establishing that she committed fraud at trial.[310] In addition, the court argued that some unfairness here was excusable because the goal in the custody modification context is simply to promote the best interests of children.[311] Affirming the superior court's decision, the supreme court held an inconsistency between an ex-spouse's statement in a dissolution petition and an ex-spouse's testimony at a custody hearing does not void the resulting child custody modification judgment as based on fraud, misrepresentation, or misconduct.[312]

***McCormick v. Chippewa, Inc.***

In *McCormick v. Chippewa, Inc.*[313], the supreme court held that it is an abuse of a court's discretion not to allow a party to conduct discovery before ruling on a summary judgment motion.[314] McCormick was injured while employed by Chippewa, Inc. ("Chippewa") and later filed suit against the company.[315] The parties settled, but were found to be in disagreement over the meaning of the settlement.[316] McCormick filed suit once more.[317] McCormick sought to conduct discovery, and requested additional time to do so under Rule 56(f), while Chippewa filed a motion to dismiss that was converted by the lower court into a motion for summary judgment.[318] The lower court denied McCormick's Rule 56(f) motion requesting time for discovery, denied the reconsideration of it as moot, and granted summary judgment to Chippewa.[319] On appeal, McCormick argued the lower court had abused its discretion by granting summary judgment to Chippewa without allowing him to conduct discovery by granting him more time under Rule 56(f).[320] The supreme court vacated the lower court's decision, reasoning that litigants have a right to pre-trial discovery, and that it is particularly important when a person faces summary judgment.[321] Further, the supreme court noted that Rule 56(f) exists to protect a party from a premature summary judgment, and that requests for continuances under it should normally be granted.[322] Vacating the lower court's decision, the supreme court held that a court abuses its discretion by denying a party the opportunity to conduct discovery before ruling on a summary judgment motion.[323]

***Moffitt v. Moffitt***

In *Moffitt v. Moffitt*,[324] the supreme court held that the defense of laches, not a statute of limitations, applies to an equitable claim for relief from a contract.[325] In 1998, Leonard and Betty

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[309] *Id.*
[310] *Id.*
[311] *Id.*
[312] *Id.* at 928.
[313] 330 P.3d 345.
[314] *Id.* at 347.
[315] *Id.*
[316] *Id.* at 347–48.
[317] *Id.* at 348.
[318] *Id.* at 349–50.
[319] *Id.* at 350–51.
[320] *Id.* at 351.
[321] *Id.*
[322] *Id.*
[323] *Id.* at 347.
[324] 2014 WL 3883426.

Moffitt signed a contract agreeing that (upon their deaths) the entirety of their family farm property would be sold to their son, Tracy Moffitt, and his wife Kathy Moffitt.[326] In 2005, Leonard and Betty's personal representative, their daughter Linda Moffitt, brought a civil suit against Tracy and Kathy seeking damages and rescission of the contract.[327] The superior court dismissed Linda's equitable claims on summary judgment because the statute of limitations had run before she filed the suit on behalf of Leonard and Betty Moffitt.[328] On appeal, Linda argued that the statute of limitations did not apply to her equitable claims.[329] The supreme court agreed, and reversed the lower court's decision.[330] The supreme court reasoned that although a statute of limitations cannot apply to equitable remedies, the doctrine of laches controls instead.[331] Reversing the summary judgment and remanding to the lower court for further factual determinations, the supreme court held that the doctrine of laches applies to any equitable claim, and a statute of limitations cannot.[332]

***Nautilus Marine Enterprises, Inc. v. Exxon Mobil Corp.***

In *Nautilus Marine Enterprises, Inc. v. Exxon Mobil Corp.*,[333] the supreme court held that an award of attorneys' fees should be based on local rates absent extraordinary circumstances.[334] In a declaratory judgment proceeding, the superior court interpreted a settlement agreement between Nautilus and Exxon related to the 1989 Exxon Valdez oil spill and decided that Exxon was the prevailing party as a result of misconduct by Nautilus's president.[335] As a result, Exxon motioned for attorneys' fees, and the superior court determined that Exxon's retention of O'Melveny & Meyers was reasonable and awarding fees for the firm based on its Los Angeles billing rates.[336] On appeal, Nautilus argued that the court should have adopted locality rule for attorneys fees, under which trial courts are required to award reimbursement based on the fees customarily charged in the locality of the case, as opposed to the more lenient reasonableness test.[337] The supreme court reversed the lower court's decision and adopted the locality rule, reasoning that to allow otherwise would deter Alaskans from seeking redress in the courts for bona fide disputes, particularly in light of how common attorneys' fee awards are in the state.[338] The supreme court further determined that departure from this general rule may be allowed, but only in extraordinary circumstances, such as when counsel with the necessary expertise or willingness to take one's case is not locally available.[339] Reversing the lower court's decision, the supreme court held that an award of attorneys' fees should be based on local rates absent extraordinary circumstances.[340]

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[325] *Id.* at *2.
[326] *Id.* at *1.
[327] *Id.*
[328] *Id.*
[329] *Id.* at *3.
[330] *Id.*
[331] *Id.* at *2.
[332] *Id.* at *3.
[333] 332 P.3d 554 (Alaska 2014).
[334] *Id.* at 559.
[335] *Id.* at 556.
[336] *Id.* at 557.
[337] *Id.* at 557–58.
[338] *Id.* at 559.
[339] *Id.*
[340] *Id.*

***In re Vernon H.***

In *In re Vernon H.*,[341] the supreme court held that ordinary civil rule of fee shifting rules do not apply in guardianship proceedings.[342] This case arose after Vernon H., an elderly man born in 1928, was hospitalized for medical testing and treatment for cancer.[343] Concerned with the management of Vernon's treatment and finances, and claiming Vernon was incapacitated, his son filed petitions for guardianship.[344] Vernon retained an attorney, moved to dismiss the petitions, and secured an expert doctor who concluded that Vernon was competent.[345] The son subsequently withdrew his petitions, and Vernon moved for full attorneys' fees and for costs related to the doctor's report.[346] Currently, the statutory scheme for fee shifting in guardianship cases requires that the petitioner initiated a proceeding that was malicious, frivolous, or without just cause.[347] The superior court denied the motion for attorney's fees and costs, holding that the son did not initiate the proceedings maliciously, frivolously, or without, and further holding that Vernon was not entitled to attorney's fees and costs under the separate civil rule.[348] On appeal, Vernon argued that the civil rule providing for attorney's fees and costs to the prevailing party applied to his proceeding.[349] The supreme court affirmed the superior court's decision, reasoning that the civil rule did not apply where other statutory schemes existed.[350] The court further reasoned that the application of the civil rule would impermissibly interfere with the unique character and purpose of guardianship proceedings.[351] Affirming the superior court's decision, the supreme court held that the civil rule which awards attorney's fees and costs to a prevailing party does not apply in guardianship proceedings.[352]

***Osborne v. State, Dep't of Corrections***

In *Osborne v. State, Dep't of Corrections*,[353] the supreme court held Department of Corrections (DOC) grievance decisions alleging violations of fundamental constitutional rights are not subject to review by the superior court.[354] Osborne filed a prisoner grievance with the DOC alleging that the DOC violated his constitutional rights by incorrectly calculating his sentence.[355] After the DOC denied his grievance, he appealed the decision to the superior court, which dismissed the appeal on the ground that the court lacked subject matter jurisdiction.[356] Osborne then appealed to the supreme court, arguing that DOC grievance decisions involving constitutional rights can be reviewed by the superior court where, as here, the DOC

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[341] 322 P.3d 565 (Alaska 2014).
[342] *Id.* at 577.
[343] *Id.* at 567.
[344] *Id.* at 569–70.
[345] *Id.* at 570.
[346] *Id.* at 571.
[347] *Id.* at 567.
[348] *Id.*
[349] *Id.* at 571.
[350] *Id.* at 577.
[351] *Id.*
[352] *Id.*
[353] 332 P.3d 1286 (Alaska 2014).
[354] *Id.* at 1287.
[355] *Id.*
[356] *Id.*

determinations were adjudicative and produced a factual record capable of appellate review.[357] The supreme court affirmed, holding that the superior court lacked subject matter jurisdiction to review DOC decisions because they were insufficiently adjudicative and did not produce a record capable of appellate review.[358] The court reasoned that DOC decisions lacked the hallmarks of adjudication, such as adverse presentation of facts and examination of witnesses, and that DOC decisions did not result in a factual record that could be reviewed on appeal.[359] Moreover, Osborne could have contested his sentence by an original application for post-conviction relief.[360] Affirming the superior court's decision, the supreme court held that DOC grievance decisions alleging violations of fundamental constitutional rights are not subject to review by the superior court.[361]

***Kunuk v. State, Dep't of Natural Resources***

In *Kunuk v. State, Dep't of Natural Resources*,[362] the supreme court held that it could not declare that the State has specific obligations to its inhabitants to reduce carbon dioxide emissions because such claims involve non-justiciable political questions.[363] Plaintiffs in the case were six Alaskan children, including Kunuk, who filed suit against the State for failing to protect the atmosphere from the effects of climate change and secure a future for Alaska's children.[364] Kunuk argued that such failure breached the State's public trust obligations under article VIII of the Alaska Constitution, and that the State has failed it's affirmative fiduciary obligation to protect and preserve the atmosphere.[365] The State moved to dismiss the complaint.[366] The superior court held that all the claims made in the complaint were non-justiciable political questions and granted the State's motion to dismiss.[367] On appeal, Kunuk argued the superior court erred in its dismissing the claims.[368] The supreme court affirmed the lower court's decision, reasoning that although some of Kunuk's claims did not fall under the political question doctrine, they nonetheless should have been dismissed on prudential grounds.[369] In light of the court's inability to determine what the state's obligations would entail, declaring that the atmosphere is a public trust resource that the State has failed to protect would not significantly advance the goals of declaratory relief, which is to afford relief from the controversy giving rise to the proceeding.[370] Affirming the lower court's decision, the supreme court held that it could not declare the State has specific obligations to its inhabitants to reduce carbon dioxide emissions because such claims involve non-justiciable political questions.[371]

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[357] *Id*. at 1287–88
[358] *Id*. at 1288.
[359] *Id*. at 1288–89.
[360] *Id*. at 1290.
[361] *Id*. at 1287.
[362] 335 P.3d 1088 (Alaska 2014).
[363] *Id*. at 1097.
[364] *Id*. at 1091.
[365] *Id*.
[366] *Id*.
[367] *Id*.
[368] *Id*. at 1091.
[369] *Id*. at 1100.
[370] *Id*. at 1101–02.
[371] *Id*. at 1097.

***Christensen v. Alaska Sales & Service, Inc.***

In *Christensen v. Alaska Sales & Service, Inc.*,[372] the supreme court held that in order to defeat a motion for summary judgment, the non-moving party need only establish that a material issue of fact exists, but the non-moving party does not need to demonstrate that she will ultimately prevail in the matter.[373] Christensen was in a car accident while driving a car purchased from Alaska Sales & Service; she suffered injuries to her head that resulted in ongoing issues with her speech, memory, and mobility.[374] After the accident, she took the Buick for repairs, where the shop identified that the seatbelt had been working properly.[375] Christensen eventually filed suit against Alaska Sales & Service because of the faulty seatbelts.[376] After discovery, the trial court granted Alaska Sales & Service's motion for summary judgment.[377] On appeal, Alaska Sales & Service argued that the correct summary judgment test required that a jury could find in the non-moving party's favor.[378] The supreme court reversed the lower court's decision, holding that the lower court had applied the incorrect summary judgment standard.[379] The supreme court reasoned that the actual test for summary judgment was not contingent on a judge deciding whether a jury could find for the non-moving party.[380] Rather, summary judgment motions should be decided for the non-moving party when there is a material issue of fact.[381] Moreover, that standard is only a reasonableness standard, dependent on more than unsupported assumptions but only such that a reasonable person could make inferences from the evidence presented in favor of the non-moving party.[382] The supreme court reversed the lower court's decision, reasoning that the lower court had applied the wrong standard for summary judgment and clarifying that to survive a summary judgment motion, the non-moving party need demonstrate only an issue of material fact.[383]

***State v. Leighton***

In *State v. Leighton*,[384] the court of appeals held that the Alaska Constitution does not require grand juries to be instructed that they have absolute discretion in refusing to return an indictment, where the State has produced the sufficient evidence to warrant an indictment.[385] Leighton was indicted on five counts of sexual abuse after the presiding judge instructed the grand jury that if the evidence satisfied the requisite standard, then the indictment "should" be endorsed a true bill.[386] Leighton moved to dismiss her indictment, arguing that the grand jury should have been informed of their unfettered discretion to refuse a proposed indictment.[387] The lower court found that the use of the word "should" instead of "may" in the grand jury instruction did not properly

[372] 335 P.3d 514 (Alaska 2014).
[373] *Id.* at 521.
[374] *Id.* at 516.
[375] *Id.*
[376] *Id.*
[377] *Id.*
[378] *Id.*
[379] *Id.*
[380] *Id.* at 520–521.
[381] *Id.*
[382] *Id.*
[383] *Id.*
[384] 336 P.3d 713 (Alaska Ct. App. 2014).
[385] *Id.* at 714.
[386] *Id.* at 714–15.
[387] *Id.* at 714.

reflect the absolute discretion awarded to the jury under the Alaska Constitution.[388] On petition for review, the court of appeals reversed the lower court's decision, reasoning that the lower court's decision was based on an incorrect interpretation of the Alaska Constitution.[389] The court of appeals found that the language in the constitution stating that the grand jury may return an indictment does not establish a legal test for when an indictment may be endorsed.[390] Further, the court of appeals reasoned that the word "may," as well as the word "should," does not refer to a grand jury's absolute discretion to refuse to return an indictment, but rather authorizes the grand jury to return an indictment based on sufficient evidence.[391] Reversing the lower court's decision, the court of appeals held that grand jurors do not have absolute discretion to refuse to return an indictment and that the superior court did not err in instructing the jurors that they "should" return an indictment if sufficient evidence has been presented.[392]

***Asa'carsarmiut Tribal Council v. Wheeler***

In *Asa'carsarmiut Tribal Council v. Wheeler*,[393] the supreme court held a tribal council lacks standing to appeal a custody modification order from which neither parent appeals.[394] Jeanette Myre, a member of the Asa'carsarmiut Tribe, had a son, J.W., with John Wheeler, who is not a member of the tribe.[395] In 2007, the Asa'carsarmiut Tribal Court awarded custody of J.W. to Myre.[396] In 2012, after Myre was arrested for child endangerment, Wheeler filed a motion for modification of the custody order in superior court.[397] The superior court, after allowing the tribal council to intervene to argue that the court lacked jurisdiction, determined that it had jurisdiction and granted custody to Wheeler.[398] Neither parent appealed this order, but the tribal council appealed on the ground that the superior court lacked jurisdiction.[399] The supreme court dismissed the appeal, holding that the tribal council lacked standing to appeal the custody order.[400] The court reasoned that the tribal council cited no precedent to support its argument that it had an interest in vindicating its sovereign authority by appealing a denial of a custody order from which neither parent appealed.[401] The court emphasized that neither parent contested the superior court's order, suggesting a lack of a real case or controversy between involved parties.[402] Dismissing the tribal council's appeal, the supreme court held a tribal council lacks standing to appeal a custody modification order from which neither parent appeals.[403]

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[388] *Id.* at 715.
[389] *Id.*
[390] *Id.*
[391] *Id.*
[392] *Id.* at 716.
[393] 337 P.3d 1182 (Alaska 2014).
[394] *Id.* at 1184.
[395] *Id.*
[396] *Id.*
[397] *Id.* at 1186.
[398] *Id.* at 1187.
[399] *Id.*
[400] *Id.* at 1188.
[401] *Id.* at 1189.
[402] *Id.* at 1191.
[403] *Id.* at 1184.

## CONSTITUTIONAL LAW

### *In re Daniel G.*

In *In re Daniel G.*,[404] the supreme court held an ex parte order authorizing a 72-hour psychiatric evaluation period following an individual's emergency detention does not violate due process because the statutory framework is appropriately protective of the individual's liberty interests without prolonging the emergency detention.[405] Daniel was detained by a police officer and transported to a psychiatric hospital after threatening suicide.[406] Daniel did not contest the validity of the initial detention.[407] Later that day, a magistrate judge issued an order authorizing a 72-hour evaluation period based on sworn allegations from medical personnel that Daniel was actively suicidal and likely to cause serious harm to himself.[408] The next day, Daniel filed a motion to vacate the order, arguing that the ex parte order violated due process because it lacked emergency justification.[409] On the same day that Daniel filed the motion, he was discharged from the hospital when the medical staff determined that he did not meet the requirements for commitment under AS 47.30.700.[410] Daniel appealed the trial court's denial of the motion to vacate as moot on due process grounds.[411] Although the appeal was technically moot, the supreme court found that the public interest exception to the mootness doctrine applied and concluded that the 72-hour evaluation order and evaluation procedures did not violate due process.[412] The court adopted the State's argument that an expedited ex parte order was more likely to lead to a prompt release when an individual does not meet commitment standards rather than a contested hearing with counsel.[413] Affirming the lower courts decision while remanding the case for correction of the title of the order issued, the supreme court held that the statutory requirements for an expeditious psychiatric evaluation by an ex parte order do not violate due process.[414]

### *State v. Schmidt*

In *State v. Schmidt*,[415] the supreme court held a municipal property tax exemption for senior citizens and disabled veterans that denies the full value of the exemption to same-sex couples violates the state's equal protection clause.[416] By statute, Alaska grants a $150,000 property tax exemption for a home owned and occupied by a senior citizen or a disabled veteran.[417] If the eligible person and her spouse live in the same residence, the exemption applies in full regardless of who holds title to the property.[418] However, if someone other than the eligible person's spouse lives in the home, the exemption applies only to the portion of the home occupied by the eligible

[404] 320 P.3d 262 (Alaska 2014).
[405] *Id.* at 270.
[406] *Id.* at 264.
[407] *Id.* at 269.
[408] *Id.* at 265.
[409] *Id.*
[410] *Id.*
[411] *Id.*
[412] *Id.* at 264.
[413] *Id.* at 273.
[414] *Id.*
[415] 323 P.3d 647 (Alaska 2014).
[416] *Id.* at 651.
[417] *Id.*
[418] *Id.* at 652.

person.[419] Three same-sex couples in committed, long-term relationships tried to obtain the exemption, but were denied the full value of the exemption because they were unable to marry under Alaska law.[420] They then sued the State of Alaska and the Municipality of Anchorage, arguing that the statute was unconstitutional.[421] The trial court granted summary judgment for the couples, holding the tax exemption unconstitutional.[422] The State and Municipality appealed, arguing that the statute was constitutional because it was not facially discriminatory and same-sex couples were not similarly situated to married couples.[423] The supreme court affirmed on this issue, holding the tax exemption violated the equal protection clause.[424] The court reasoned that the statute facially discriminated against same-sex couples because it denied the full exemption to unmarried couples, and same-sex couples cannot get married under Alaska law.[425] The court held that even under minimum scrutiny, the exemption violated the equal protection clause because there was no substantial relationship between the state's goals (administrative efficiency, promoting marriage, and cost control) and the statute.[426] Affirming the superior court's decision in part, the supreme court held a municipal property tax exemption for senior citizens and disabled veterans that denies the full value of the exemption to same-sex couples violates the state's equal protection clause.[427]

***Tweedy v. Matanuska–Susitna Borough Board of Adjustment and Appeals***

In *Tweedy v. Matanuska–Susitna Borough Board of Adjustment and Appeals*,[428] the supreme court held that a setback requirement as applied to a recently constructed addition to a home to which the requirement applies does not violate substantive due process or constitute a taking.[429] Tweedy build an addition to the lake house he leased, and later applied to purchase the house.[430] Because the house was less than 75 feet from the shoreline, the sale required an exemption from the Borough's setback requirement.[431] The Borough Planning Director determined the addition was unlawful and required removal before processing the sale.[432] The lower court affirmed the Planning Director's decision because the 75 foot setback applied to Tweedy's property when he constructed the addition, and thus he was not entitled to an exemption, and the ordinance does not violate substantive due process because it is reasonably related to a legitimate government purpose.[433] On appeal, Tweedy argued the setback requirement was improperly applied retroactively to his addition, thus violating substantive due process or constituted and unconstitutional taking.[434] The supreme court affirmed the lower court's decision, reasoning that the setback requirement was properly applied to his addition and thus the addition was unlawful

[419] *Id.*
[420] *Id.* at 653.
[421] *Id*. at 654.
[422] *Id.*
[423] *Id.*
[424] *Id.* at 669.
[425] *Id*. at 659.
[426] *Id.* at 663–64.
[427] *Id.* at 651.
[428] 332 P.3d 12 (Alaska 2014).
[429] *Id*. at 12.
[430] *Id*. at 13.
[431] *Id*.
[432] *Id*.
[433] *Id*. at 15–16.
[434] *Id*. at 16.

when built; thus, there was no takings or due process violation.[435] The setback provision was in place when Tweedy took possession of the property and because the code allows for nonconforming structures, the setback provision did not deprive Tweedy of any right or property interest and thus is constitutional.[436] Affirming the lower court's decision, the supreme court held that a setback requirement as applied to an addition built after the setback requirement was put in place is constitutional because it does not violate the property owner's substantive due process rights or constitute a taking.[437]

***Lake and Peninsula Borough Assembly v. Oberlatz***

In *Lake and Peninsula Borough Assembly v. Oberlatz*,[438] the supreme court held when a voter brings an action concerning a right that finds its source under the United States Constitution or the Constitution of the State of Alaska a constitutional claim has been made.[439] Several individuals maintained houses both inside the Lake and Peninsula Borough ("The Borough") and outside the Borough.[440] When the individuals voted their votes were disqualified because it was determined that they were not residents of the Borough.[441] The superior court found the individuals were residents of the Borough, however, the court found that they were not entitled to full attorneys' fees as allowed allows when bringing a constitutional claim, because the basic right to vote was never a questioned.[442] The superior court stated that because it was a voter residency requirement conferred by statute it was a conclusion of statutory law, not a constitutional case.[443] The supreme court stated that in determining whether something is a constitutional claim courts must look at the source of the right asserted not at the source of the rule of law.[444] The right to vote is derived from the Alaska Constitution and the statutory voter registration requirements limit the right, but they do not create it.[445] The supreme court held when a voter brings an action concerning a right that finds its source under the United States Constitution or the Constitution of the State of Alaska a constitutional claim has been made.

***Harris v. Millenium Hotel***

In *Harris v. Millenium Hotel*,[446] the supreme court held neither constitutionally- nor statutorily-defined distinctions between same-sex and heterosexual married couples preclude an equal protection challenge.[447] Harris filed a worker's compensation claim as her deceased, same-sex partner's "dependent/spouse" and Millenium, the employer, denied the benefit on the grounds that Harris was not a documented spouse.[448] On appeal to the Alaska Worker's Compensation Board ("Board"), Harris challenged the denial on equal protection grounds, arguing the marriage requirement under both Alaska's Marriage Amendment and the Worker's Compensation Act was

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[435] *Id*.
[436] *Id*. at 19.
[437] *Id*. at 12.
[438] 329 P.3d 214 (Alaska 2014).
[439] *Id.* at 226.
[440] *Id*. at 218.
[441] *Id*.
[442] *Id*. at 226
[443] *Id*.
[444] *Id*.
[445] *Id*.
[446] 330 P.3d 330 (Alaska 2014).
[447] *Id*. at 331.
[448] *Id*.

facially discriminatory towards a same-sex couple that could not legally marry in the state.[449] The Board declined to address the constitutional issues and so Harris appealed to the Alaska Worker's Compensation Appeals Commission, reasserting her equal protection claim.[450] The Commission affirmed the Board's reasoning that Harris was not entitled to death benefits because she did not qualify as a widow or widower under the Worker's Compensation Act.[451] On appeal from that decision, the supreme court reasoned the Marriage Amendment does not prohibit the State from offering the same benefits to same-sex and heterosexual couples.[452] Additionally, granting a benefit only to spouses was facially discriminatory[453] and, furthermore, heterosexual married couples are similarly situated to unmarried but committed same-sex couples.[454] Vacating the Commission's denial and remanding the case for a factual inquiry into whether Harris was essentially her partner's spouse at the time of death, the supreme court held denying same-sex couples access to death benefits under the Worker's Compensation Act could constitute a violation of equal protection.[455]

***Alaska Judicial Council v. Kruse***

In *Alaska Judicial Council v. Kruse*,[456] the supreme court held that the Alaska Judicial Council ("the Council") may disseminate information recarding judicial candidates, regardless of the proximity to the election. In 2010, the Council recommended that the electorate refrain from retaining a currently presiding district court judge.[457] Voters challenged the constitutionality of the statute empowering the Council to make such recommendations.[458] The lower court held that the statute is constitutional, but enjoined the Council from releasing new information regarding the judge within sixty days of the election.[459] On appeal, the Council argued that no limitations prohibiting the release of information in the sixty days before an election exist in the statute's plain language, and the legislature's primary objective for the statute was increasing the availability of information for voters to become informed.[460] The supreme court reversed the lower court, reasoning that the plain meaning of the statute and legislative history permit the Council to provide information to the public regarding elections within sixty days of the election.[461] The statute does not discuss the time frame in which information should be published, and longstanding practice indicates that the legislature interprets the statute as permitting the Council to provide the public with additional information within sixty days of elections.[462] Reversing the lower court's decision, the supreme court held that the statute is constitutional and does not limit the Council's dissemination of new information, including within sixty days of an election.[463]

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[449] *Id.* at 332.
[450] *Id.*
[451] *Id.*
[452] *Id.* at 333.
[453] *Id.* at 334.
[454] *Id.* at 334–35.
[455] *Id.* at 338.
[456] 331 P.3d 375 (Alaska 2014).
[457] *Id*. at 376.
[458] *Id*. at 377.
[459] *Id*.
[460] *Id*. at 382.
[461] *Id*. at 383.
[462] *Id*.
[463] *Id*. at 377.

***Siedentop v. State***

In *Siedentop v. State*,[464] the court of appeals held that a police officer sticking his foot across the threshold of a door to keep it from closing constitutes an entry for Fourth Amendment purposes.[465] On September 23, 2010, five police officers approached a residence in Fairbanks looking to serve an arrest warrant on a third party.[466] Siedentop opened the door of the house, and one of the officers put his foot across the threshold to keep the door from being closed again by Siedentop.[467] After noticing suspicious behavior by Siedentop, the officers asked if he had weapons on him.[468] Siedentop admitted he did, and two subsequent searches of his person discovered a hunting knife, a handgun, an extra magazine for the handgun, approximately $2000 in cash, powder cocaine, crack cocaine, and a digital scale.[469] The court of appeals reversed the lower court, noting that the Fourth Amendment draws a firm line at the entrance to the house, and that police may not cross the threshold of a home without a warrant.[470] Placing a foot across the threshold of the house to prevent Siedentop from closing the door was a violation of the Fourth Amendment.[471] The evidence against Siedentop was the fruit of an unlawful seizure, and the superior court should have suppressed it.[472] The court of appeal reversed the judgment of the superior court, holding that a foot across the threshold of a home was an entry for Fourth Amendment purposes.[473]

***State v. Finley***

In *State v. Finley*,[474] the court of appeals held that a witness is entitled to transactional immunity from criminal prosecution by the State of Alaska, but a witness is only entitled to use immunity from criminal prosecution in other American jurisdictions.[475] Finley was accused and charged for the delivery of heroin and Dickson was called to testify.[476] Dickson asserted his constitutional privilege against self-incrimination and the State granted Dickson transactional (i.e. complete) immunity from prosecution by the State of Alaska for any crimes relating to his testimony.[477] The trial court agreed with Dickson's argument that the Alaska constitution required that Dickson receive transactional immunity from the federal government.[478] The trial court reasoned that compelling Dickson's testimony would violate the Alaska Constitution if the testimony subjected Dickson to prosecution in another jurisdiction.[479] Reversing the decision of the trial court, the court of appeals held that a witness who receives a grant of immunity after refusing to testify is entitled to protection from prosecution in other jurisdictions, but the protection

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[464] 337 P.3d 1 (Alaska Ct. App. 2014).
[465] *Id.* at 2.
[466] *Id.*
[467] *Id.*
[468] *Id.*
[469] *Id.*
[470] *Id.*
[471] *Id.* at 3.
[472] *Id.* at 4.
[473] *Id.*
[474] 337 P.3d 527 (Alaska Ct. App. 2014).
[475] *Id.* at 529.
[476] *Id.*
[477] *Id.*
[478] *Id.* at 529–30.
[479] *Id.* at 529.

extended to other jurisdictions is not absolute.[480] The court of appeals reasoned that a grant of transactional immunity in the state and use immunity in other jurisdictions strikes the balance between protecting against self-incrimination and accommodating the interests of outside jurisdictions.[481] Thus, the court of appeals held that the Alaska Constitution requires that a compelled witness receive transactional immunity from prosecution for any violations of state criminal law, while the Fifth and Fourteenth Amendments of the United State Constitution require only that the witness receive use immunity for their testimony.[482]

***Brewer v. State***

In *Brewer v. State*[483], the supreme court held that the State is not automatically made immune to claims under Alaska's Takings Clause merely by the valid exercise its police powers, such as by firefighting.[484] In 2009, the Railbelt Complex wildfires engulfed 600,000 acres of the Alaska interior.[485] Firefighters acting under State authority set "burnout" fires on the properties of several landowners (the "Landowners") in order to deprive the oncoming Railbelt Complex fires of fuel.[486] The tactic was successful, and structures on the Landowners' properties escaped unharmed.[487] The Landowners filed suit against the State in 2010, claiming among other things that they were owed just compensation for the property the State had burned under Alaska's Takings Clause.[488] The lower court granted summary judgment to the State, finding that the property had been burned as a valid exercise of the State's police powers and was thus not compensable.[489] On appeal, the Landowners argued that their land had been burned for public use, which would qualify it as a taking.[490] The supreme court reversed the lower court's decision, reasoning that a valid exercise of the State's police power is sufficient to prove action taken for public benefit.[491] Further, the court reasoned that when a taking has occurred, it is non-compensable only if the State can show that it acted under the doctrine of necessity.[492] As no such finding of necessity had been made in the lower court, the supreme court remanded the case for further consideration on the issue.[493] Reversing the lower court's decision, the supreme court held that the State is not automatically immune from Takings Clause claims simply by showing that it validly exercised its police powers.[494]

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[480] *Id.* at 534.
[481] *Id.*
[482] *Id.*
[483] 341 P.3d 1107 (Alaska 2014).
[484] *Id.* at 1114.
[485] *Id.* at 1109.
[486] *Id.*
[487] *Id.*
[488] *Id.* at 1110.
[489] *Id.*
[490] *Id.* at 1111–12.
[491] *Id.* at 1114.
[492] *Id.*
[493] *Id.* at 1118.
[494] *Id.*

## CONTRACT LAW

***Zamarello v. Reges***

In *Zamarello v. Reges*,[495] the supreme court held a new trial is not granted when evidence exists supporting the jury's conclusions and an attorney's negligence results in no impact on the outcome of the case.[496] The parties, an attorney and client, disagreed regarding the subjective understanding of a fee agreement and who should receive what amount of money following a litigation settlement.[497] The client brought an action against his attorney for breach of contract, breach of fiduciary duty, misrepresentation, and negligence.[498] The lower court found the attorney did not breach a contract, did not breach fiduciary duties, and did not make a misrepresentation.[499] Although the lower court also found the attorney was negligent, the negligence caused the client no damage.[500] On appeal, the client argued that the lower court erred by issuing incorrect jury instructions regarding contract interpretation for the fee arrangement and by denying the client's motion for a new trial or judgment not withstanding the verdict.[501] The supreme court affirmed the lower court's decision, reasoning that the jury instructions were harmless because it was unclear which party drafted the contract, and not prejudicial to the client and sufficient evidence existed to find for the lawyer on each claim.[502] The error likely did not affect jurors' judgment and the evidence supporting the trial court's decision to deny a new trial was not lacking or unconvincing, thus rendering a new trial inappropriate.[503] Affirming the lower court's decision, the supreme court held that a new trial is not appropriate when evidence substantiates the jury's decisions and the attorney's negligence is harmless.[504]

[495] 321 P.3d 387 (Alaska 2014).
[496] *Id*. at 388.
[497] *Id*. at 390.
[498] *Id*. at 391.
[499] *Id*. at 392.
[500] *Id*.
[501] *Id*. at 389.
[502] *Id*.
[503] *Id*. at 393–96.
[504] *Id*. at 388.

## CRIMINAL LAW

***Patterson v. State***

In *Patterson v. State*,[505] the court of appeals held that registered sex offenders are required to disclose all email addresses at their annual or quarterly verifications, including those established before the email disclosure requirement went into effect.[506] Patterson, because of multiple convictions, was required to register as a sex offender continuously for life and to file quarterly verifications with the Department of Public Safety.[507] Since January 1, 2009, Patterson had also been required to disclose all email addresses.[508] Patterson was charged with second-degree failure to register as a sex offender when it was discovered that he had email addresses that had not been disclosed in his quarterly verifications.[509] His motion to dismiss was denied.[510] On appeal, Patterson argued that he was required only to disclose email addresses established or changed after the email disclosure requirement went into effect.[511] The court of appeals affirmed the lower court's decision, reasoning that uncodified sections of the statute made clear that the Legislature intended for sex offenders to disclose every email address.[512] The court further reasoned that Patterson was aware of the requirement to disclose emails established before 2009, and in fact did disclose a different preexisting email address.[513] Affirming the lower court's decision, the court of appeals held that sex offenders who registered prior to the email disclosure requirement must report all of their email addresses at their first annual or quarterly verification.[514]

***Johnson v. State***

In *Johnson v. State*,[515] the supreme court held that an unpreserved double-jeopardy claim is a claim of fundamental error that warrants full appellate review on the merits.[516] Johnson, who was convicted of two counts of first-degree sexual assault, kidnapping, and third degree assault, argued that his two sexual assault convictions should be merged into a single conviction as per the constitutional prohibition on double jeopardy.[517] The court of appeals held that Johnson forfeited his double-jeopardy argument because he did not raise it in superior court, and the superior court did not commit error by failing to merge the sexual assault counts sua sponte.[518] On appeal, Johnson argued that the court of appeals erred in denying his late-raised double-jeopardy argument full appellate review on the merits.[519] The Supreme Court reversed in part and affirmed in part, reasoning that a claim of a double jeopardy violation, even if not raised in trial court, may be raised for the first time on appeal and given full appellate consideration on the

[505] 323 P.3d 65 (Alaska Ct. App. 2014).
[506] *Id.* at 66.
[507] *Id.*
[508] *Id.*
[509] *Id.*
[510] *Id.*
[511] *Id.*
[512] *Id.* at 68.
[513] *Id.*
[514] *Id.* at 67–68.
[515] 328 P.3d 77 (Alaska 2014).
[516] *Id.* at 82.
[517] *Id.* at 80.
[518] *Id.* at 81.
[519] *Id.* at 79.

merits because if meritorious, the error would qualify as fundamental.[520] Fundamental errors are exempt from the general preservation rule, and double-jeopardy is a "bulwark" of the criminal justice system.[521] Reversing the lower court's decision in part, the supreme court held that double jeopardy claims are claims of fundamental error that may unconditionally be raised for the first time on appeal and reviewed on the merits.[522]

***Roth v. State***

In *Roth v. State*,[523] the court of appeals held that a trial court judge's erroneous jury instruction does not create cognizable grounds for appeal of a conviction when the defendant consented to the judge's erroneous instruction.[524] Robert Roth Jr. was tried and convicted of two counts of first-degree child endangerment for leaving his children with a person Roth knew was under a duty to register as a sex offender.[525] At trial, Roth argued his actions did not satisfy the statutory requirements of child endangerment because other adults were in the home with the children and the registered sex offender.[526] During deliberations, the jury asked the trial court to clarify what it meant to "leave" a child with another person pursuant to the statute.[527] After securing the agreement of the prosecutor and defense counsel as to the proposed clarification, the trial judge instructed the jury to "use reason and common sense" in determining the meaning of the statute.[528] Soon after, the jury returned with a guilty verdict.[529] On appeal, Roth argued that statute requires proof that the children were left *solely* with the registered sex offender and that the presence of non-sex offender individuals in the home meant that Roth was not guilty as a matter of law.[530] While finding that the trial judge's response to the jury was plainly erroneous, the court of appeals held that Roth's appeal failed because defense counsel encouraged the trial judge to give the erroneous instruction and therefore failed to preserve a claim for appeal.[531] The court of appeals reasoned that defense counsel consciously made a tactical decision to let the trial court erroneously instruct the jury to use their common sense in the hopes that the jury's common sense would lead to the conclusion that the presence of other adults did not satisfy the requirements of the statute.[532] Affirming the conviction, the court of appeals held that a trial judge's erroneous instruction in a criminal case does not create grounds for appeal when defense counsel consent to the trial judge's erroneous instruction.[533]

***Simants v. State***

In *Simants v. State*,[534] the court of appeals held that in sentencing for the sexual abuse of a minor in the second degree, the existence of an ongoing sexual relationship with the minor does not

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[520] *Id*. at 83.
[521] *Id*. at 85.
[522] *Id*. at 85.
[523] 329 P.3d 1023 (Alaska 2014).
[524] *Id.* at 1027.
[525] *Id.* at 1024.
[526] *Id*.
[527] *Id*.
[528] *Id.* at 1025.
[529] *Id*.
[530] *Id.* at 1024.
[531] *Id*. at 1027.
[532] *Id.* at 1026.
[533] *Id*. at 1027.
[534] 329 P.3d 1033 (Alaska 2014).

necessarily preclude the establishment of a mitigating factor under the statute.[535] Simants, a thirty-three year old woman, agreed to oversee seventeen-year-old R.H.'s delinquency case plan after R.H.'s mother moved out of town.[536] While R.H. was living in Simants's home, the two engaged in sexual intercourse.[537] At trial, the jury found that Simants's position as an overseer of R.H.'s case plan constituted a position of authority over R.H.[538] Accordingly, Simants was convicted of sexual abuse of a minor in the second degree.[539] At sentencing, Simants asked the court to impose a sentence below the presumptive range based on mitigating factors, including the fact that the conduct was among the least serious conduct included in the offense.[540] The court rejected this factor as applicable because the sexual relationship was an on-going event rather than a one-time occurrence.[541] On appeal, Simants argued that the superior court erred in rejecting the mitigating factor.[542] The court of appeals reversed the lower court's decision, reasoning that the superior court applied the wrong legal analyses in their rejection.[543] A finding that the intercourse occurred on multiple occasions was not sufficient by itself for the court to reject the proposed AS 12.55.155(d)(9) factor.[544] Reversing the lower court's decision, the court of appeals held that in sentencing for the sexual abuse of a minor in the second degree, the existence of an ongoing sexual relationship with a minor does not necessarily preclude the establishment of a mitigating factor.[545]

***Phillips v. State***

In *Phillips v. State*[546], the court of appeals held that a DUI conviction in Texas, which defines "under the influence" more broadly than Alaska does, may be used to show a person has been "previously convicted."[547] Though driving under the influence is typically a class A misdemeanor in Alaska, it is elevated to a class C felony if the driver has been "previously convicted" at least twice.[548] This may include convictions from another jurisdiction if the offense has "similar elements" to the Alaska statute.[549] After a breath test revealed Phillips to be driving in Alaska over the legal blood alcohol limit, he was indicted for felony DUI due to the fact that he already had two DUI convictions in Texas and California.[550] A jury trial found Phillips guilty of felony DUI.[551] On appeal, Phillips argued that the Texas statute under which he was convicted was not similar to Alaska's; therefore, his Texas conviction could not be used to convict him with a felony in Alaska.[552] The court of appeals affirmed the lower court's decision, reasoning

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[535] *Id.* at 1037.
[536] *Id.* at 1034.
[537] *Id.* at 1035.
[538] *Id.*
[539] *Id.*
[540] *Id.*
[541] *Id.* at 1037.
[542] *Id.* at 1034.
[543] *Id.*
[544] *Id.* at 1037.
[545] *Id.*
[546] 330 P.3d 941(Alaska 2014).
[547] *Id.* at 942.
[548] *Id.*
[549] *Id.*
[550] *Id.*
[551] *Id.*
[552] *Id.* at 943.

that the legislative history of Alaska's DUI statute revealed that the legislature intended for the similarity requirement to be interpreted broadly.[553] Further, the court of appeals noted that the broader reach of the Texas DUI statute applied only to a few unusual cases and that in practice the Texas statute functioned similarly to the Alaska statute.[554] Affirming the lower court's decision, the court of appeals held that a conviction for DUI in Texas could be used to establish a person as "previously convicted," regardless of the fact that Texas defines "under the influence" more broadly than Alaska.[555]

***Warlick v. State***

In *Warlick v. State*,[556] the court of appeals held that obtaining a state identification card using another person's name and identifying information meets the elements of second-degree forgery.[557] In 2006, Warlick applied for an identification card from the Division of Motor Vehicles ("DMV") using Jason Corgill's identifying information and name and was issued an identification card in Corgill's name but with Warlick's photograph.[558] When the State discovered the deception, Warlick was charged with second-degree forgery and fraudulent application for a state identification card.[559] Warlick pleaded guilty to the forgery charge in exchange for the State dismissing the fraudulent application charge.[560] Before sentencing, Warlick filed a motion that the facts of his case did not support a conviction for second-degree forgery, but the court denied the motion.[561] Warlick appealed that ruling.[562] For a charge of second-degree forgery, the State was required to prove that Warlick (1) acted with intent to defraud, (2) falsely made or completed a written instrument, and that (3) this written instrument was a public record.[563] Warlick argued that an application for a state identification card is a not a "public record."[564] A document is a public record if the application was (1) developed or received under law in connection with the transaction of official business by DMV and (2) the document was preserved by DMV as evidence of its organization, function, policies, decisions, procedures, operations, or other activities.[565] The court found that the application met both of these qualifications. Affirming the judgment of the superior court, the court held that a false application for a state identification card does meet the elements of second-degree forgery.[566]

***Young v. State***

In *Young v. State*,[567] the court of appeals held that the firing of a firearm from a car creates one count of Misconduct Involving Weapons in the First Degree regardless of the number of people

[553] *Id.*
[554] *Id.* at 944.
[555] *Id.* at 942.
[556] 330 P.3d 946 (Alaska Ct. App. 2014).
[557] *Id.* at 949.
[558] *Id.* at 947.
[559] *Id.* at 948.
[560] *Id.*
[561] *Id.*
[562] *Id.*
[563] *Id.*
[564] *Id.*
[565] *Id.* at 949.
[566] *Id.* at 951.
[567] 331 P.3d 1276 (2014).

endangered.[568] Young was a driver of a vehicle that began shooting at another vehicle in what the police attributed to a gang dispute.[569] Several individuals driving or walking by were put in danger by the shooting.[570] Young was charged with six counts of misconduct involving weapons, one count for each bystander that was endangered and another count covering the whole incident.[571] The court stated that while the Alaska assault statute allowed for multiple convictions from a single act that endangered multiple people, the statute was meant to punish the act of a drive by shooting, regardless of whether or not someone was injured.[572] The legislature did not view the statute as an extension of the assault statute, therefore it is improper to base the number of counts on the number of people endangered.[573] The court of appeals held that the firing of a firearm from a car creates one count of misconduct involving weapons regardless of the number of people endangered.[574]

***Fyfe v. State***

In *Fyfe v. State*,[575] the court of appeals held the state legislature did not intend to double the range of fines for felony driving under the influence in a traffic safety corridor by statute.[576] Fyfe was charged and convicted of felony driving under the influence.[577] In addition to imprisonment, the court imposed a $20,000 fine, which resulted from a doubling of the mandatory minimum fine based on the State's showing that the offense took place in a traffic safety corridor, pursuant to statute.[578] At sentencing, the trial court judge remarked that he would have imposed the minimum fine were the court not bound by the statutory doubling.[579] On appeal, Fyfe argued the $20,000 fine was illegal because the legislature intended the double-fine requirement to apply only to non-criminal traffic violations and not criminal offenses.[580] The court of appeals applied the sliding scale approach in statutory interpretation and held that the legislature did not intend the double-fine requirement of the statute to apply felony driving under the influence.[581] Rejecting the State's argument that the statutory language reflected the intent to apply to all motor vehicle and traffic offenses, the court of appeals found no direct references in the legislative history to doubling fines for criminal motor vehicle offenses.[582] Vacating the trial court's fine with an instruction to modify judgment to reflect the mandatory minimum, the court of appeals held that the statute does not double criminal penalties for felony driving under the influence in a traffic safety corridor.[583]

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[568] *Id.* at 1284.
[569] *Id.* at 1278.
[570] *Id.*
[571] *Id.* at 1278.
[572] *Id.* at 1284.
[573] *Id.*
[574] *Id.* at 1284.
[575] 334 P.3d 183 (Alaska Ct. App. 2014).
[576] *Id.* at 185.
[577] *Id.* at 184.
[578] *Id.*
[579] *Id.*
[580] *Id.* at 187.
[581] *Id.* at 186.
[582] *Id.* at 188.
[583] *Id.* at 189.

***Gamble v. State***

In *Gamble v. State*,[584] the court of appeals held that a minimum degree of understanding of the proceedings and an ability to participate in one's defense is sufficient for competency to stand trial.[585] Plaintiff was charged with violating a domestic violence protective order on two occasions.[586] Before trial, a forensic psychologist examined plaintiff and reported he was delusional and unable to rationally defend himself or consult with his attorney.[587] After conducting a ninety-day, court-ordered stay at the Alaska Psychiatric Institute, the psychologist found plaintiff's condition was sufficiently improved.[588] The trial court agreed, determining that the plaintiff was competent to stand trial because he understood the nature of the proceedings and the allegations made against him.[589] On appeal, plaintiff argued the trial court erred in determining that he was mentally competent to stand trial and should have deferred to his attorney's assertion that plaintiff was incompetent to aid in his own defense.[590] The court of appeals affirmed the lower court's decision, reasoning plaintiff's mental illness did not bar him from standing trial, as long as he was mentally aware enough to rationally participate.[591] It asserted that despite the attorney's objections and privileged position to make an assessment about competency, the ultimate decision was a product of the trial court's independent determination.[592] Affirming the lower court's decision, the court of appeals held a plaintiff is competent to stand trial when he understands the nature of the proceedings and can communicate rationally to the court and his attorney.[593]

***Morris v. State***

In *Morris v. State*,[594] the court of appeals held that the market value within the meaning of the theft statute is the amount at which the property changes hands between a willing buyer and willing seller aware of the pertinent facts.[595] Morris was convicted of second-degree theft of an item with a market value of greater than $500 for stealing a Canada Goose parka with a retail price of $660–$740.[596] On appeal, Morris argued that stolen property's wholesale price, not retail price, determines its "market value" because it is the amount the retailer paid to acquire the property.[597] The court of appeals affirmed the lower court's decision, reasoning that the retail price of a piece of property is *prima facie* evidence of its market value.[598] A product's market value not only includes the wholesale price paid by the retailer, but also the cost for promoting, packaging, and selling the product to the public.[599] Affirming the lower court's decision, the court of appeals held that the market value for purposes of the theft statute is the amount at

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[584] 334 P.3d 714 (Alaska Ct. App. 2014).
[585] *Id.* at 717.
[586] *Id.* at 715.
[587] *Id.*
[588] *Id.*
[589] *Id.* at 715–16.
[590] *Id.* at 717–18.
[591] *Id.* at 717.
[592] *Id.* at 718.
[593] *Id.* at 717.
[594] 334 P.3d 1244 (Alaska Ct. App. 2014).
[595] *Id*. at 1246.
[596] *Id*.
[597] *Id*. at 1246–47.
[598] *Id*. at 1246.
[599] *Id*. at 1248–49.

which the property passes from a willing seller to a willing buyer, neither of whom is under compulsion and has knowledge of relevant facts.[600]

***In the Matter of the Adoption of S.F.***

In *In the Matter of the Adoption of S.F.*,[601] the supreme court held that finding a biological father abandoned his child, thus negating consent requirements for adoption, is supported by evidence of lack of communication with the child or mother, disregarding parental obligations, and failing to provide monetary support.[602] S.F.'s mother's husband petitioned to adopt S.F.[603] The lower court accepted a standing master's report and recommendation, finding the biological father's consent unnecessary for the husband to adopt the child because the biological father abandoned S.F. for over six months, failed to provide care or support for over a year, and did not communicate with S.F. for over one year.[604] On appeal, the biological father argued he attempted to locate S.F. through Facebook and relatives, and was unaware of his obligation to pay child support.[605] The supreme court affirmed the lower court's decision, reasoning that sufficient evidence existed to support the finding of abandonment that annulled the consent requirement for adoption. The biological father knew how to contact S.F.'s mother, made minimal effort to contact S.F. or S.F.'s mother, failed to provide child support, and made no efforts to exercise his visitation rights.[606] Affirming the lower court's decision, the supreme court held a biological father's consent to his child's adoption is unnecessary when sufficient evidence supports a finding of abandonment.[607]

***Jackson v. State***

In *Jackson v. State*,[608] the court of appeals held that it is plain error not to instruct a jury on the need for unanimity when the State describes multiple instances of conduct at trial but does not specify which instance is the basis for the criminal charge.[609] Jackson was charged with the sexual assault of his long-term sexual partner, L.D.[610] At his trial, the State discussed three separate instances of sexual penetration that occurred within a single night and morning.[611] Jackson defended each instance on separate grounds.[612] The jury was not given any instruction on coming to unanimous agreement regarding what act of sexual penetration supported a conviction, if any.[613] Jackson was convicted of sexual assault.[614] On appeal, Jackson argued that the superior court should have instructed the jury on the need for unanimity on the sexual assault charge.[615] The court of appeals reversed the lower court's decision, reasoning that under the due

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[600] *Id*. at 1248.
[601] 340 P.3d 1045 (Alaska 2014).
[602] *Id*. at 1047–48.
[603] *Id*. at 1045–46.
[604] *Id*.
[605] *Id*. at 1046.
[606] *Id*. at 1048.
[607] *Id*.
[608] 324 P.3d 1254 (Alaska Ct. App. 2014).
[609] *Id.* at 1256.
[610] *Id.* at 1257.
[611] *Id.* at 1256–57.
[612] *Id.* at 1257.
[613] *Id.*
[614] *Id.*
[615] *Id.* at 1256.

process clause of the Alaska Constitution, a defendant has a right to have jurors who are in unanimous agreement regarding which act or acts the defendant committed.[616] Further, the court noted that such an error is not harmless when the defendant offers different defenses to the separate instances of conduct alleged by the State.[617] Reversing the lower court's decision, the court of appeals held that a court must instruct the jury on the need for unanimity when the State does not specify which act among those it describes is the basis of the charge.[618]

***Geisler v. State***

In *Geisler v. State*,[619] the court of appeals held that an officer standing directly outside of an individual's car and attempting to control the behavior of the individuals within the car constitutes a seizure, which if, unsupported by reasonable suspicion, is illegal.[620] Geisler, who was seen sitting in his car in the vicinity of a drug arrest, was arrested after a search of his car revealed heroin.[621] An undercover police officer was working with an informant to catch a drug dealer.[622] A while after the informant purchased the drugs, the dealer was arrested near an apartment building.[623] Suspecting that the dealer's supplier must be close, the officers approached Geisler's vehicle, which was outside of the building.[624] The officers, standing directly outside of the car, asked for identification and repeatedly instructed Geisler and another passenger not to move and to keep their hands on their laps.[625] Eventually, the officers searched Geisler and the car and found heroin.[626] During trial, Geisler filed a motion to suppress the evidence, but the motion was denied and Geisler was convicted.[627] On appeal, Geisler argued that the officers had illegally seized him.[628] The court of appeals reversed the lower court's decision, reasoning that the officers engaged in a "show of authority" that made the encounter a seizure.[629] The court further reasoned that the reasonable person would interpret the officer's presence, stance, and directives to stop moving as authoritative and mandatory commands.[630] Reversing the lower court's decision, the court of appeals held that a seizure occurs when the reasonable person would interpret an officer's conduct as prohibiting the person from freely leaving.[631]

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[616] *Id.* at 1257.
[617] *Id.* at 1260–61.
[618] *Id.* at 1256.
[619] 2014 WL 7345577 (Alaska Ct. App. 2014).
[620] *Id.* at *3.
[621] *Id.* at *1.
[622] *Id.*
[623] *Id.*
[624] *Id.*
[625] *Id.*
[626] *Id.* at *2.
[627] *Id.*
[628] *Id.*
[629] *Id.* at *2–3.
[630] *Id.* at *3.
[631] *Id.*

## CRIMINAL PROCEDURE

### *Welton v. State, Dep't of Corrections*

In *Welton v. State, Dep't of Corrections*,[632] the supreme court held a prisoner's administrative appeals from Department of Corrections ("DOC") grievance proceedings do not qualify for appellate review when there are insufficient paper records to create a record capable of appellate review.[633] Welton filed three appeals contesting the dismissal of her DOC administrative appeals due to lack of subject matter jurisdiction.[634] There is ordinarily no subject matter jurisdiction for a court to hear an administrative appeal of a DOC decision, but there is an exception if the party seeking an appeal demonstrates that (1) he or she alleged a violation of constitutional rights, (2) the proceeding was adjudicative in nature, and (3) there is a sufficient record capable of appellate review.[635] The lower court held that the DOC proceedings were not adjudicative in nature and that there was an insufficient record for appellate review. On appeal, Welton argued that the dismissal of her administrative appeals for lack of subject matter jurisdiction was erroneous.[636] The supreme court affirmed the lower court's decision, reasoning that DOC prisoner grievance proceedings do not produce records capable of review because there is no proceeding at which parties could present evidence, witnesses, or arguments.[637] The supreme court further reasoned that DOC grievance proceedings are not adjudicative in nature.[638] Affirming the lower court's decision, the supreme court held that DOC grievance proceedings do not qualify for appellate review because they are not adjudicative in nature and do not produce a record capable of administrative review.[639]

### *Leggett v. State*

In *Leggett v. State*,[640] the court of appeals held a trial judge can consider inadmissible testimony when assessing the admissibility of a defendant's confession or when determining whether a defendant's confession is sufficiently corroborated to satisfy Alaska's corpus delicti rule.[641] Mid-trial, a key witness withdrew by asserting his Fifth Amendment privilege, and a jury subsequently convicted Leggett of driving under the influence relying on the key witness's statements outside of court to satisfy Alaska's corpus delicti rule.[642] The District Court held that although the key witness's out-of-court statements were inadmissible hearsay, the court could rely on these hearsay statements to satisfy the corpus delicti rule and determine whether Leggett's prior admissions of driving under the influence to the police were corroborated by the witness's statements.[643] On appeal, Leggett argued that the court can consider only admissible testimony to corroborate testimony to satisfy the corpus delicti rule.[644] The court of appeals affirmed the lower court's decision, reasoning that judge's corpus delicti decision is a

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[632] 315 P.3d 1196 (Alaska 2014).
[633] *Id*. at 1199.
[634] *Id*. at 1196–97.
[635] *Id*.
[636] *Id*. at 1196–97.
[637] *Id*. at 1198.
[638] *Id*. at 1199.
[639] *Id*.
[640] 320 P.3d 311 (Alaska Ct. App. 2014).
[641] *Id*. at 312, 314–15.
[642] *Id*. at 313.
[643] *Id*.
[644] *Id*. at 314.

foundational evidentiary ruling and therefore governed by Alaska Evidence Rule 104.[645] Affirming the lower court's decision, the court of appeals held that a trial judge can consider a witness's inadmissible, out-of-court statements to satisfy Alaska's corpus delicti rule.[646]

***Barr v. State***

In *Barr v. State*,[647] the court of appeals held that improper allowance of a juror's question over objection in court may be found to be harmless beyond a reasonable doubt.[648] Barr was charged with physical and sexual assault of M.B.[649] At trial, a juror was allowed to ask the forensic nurse who examined M.B. whether M.B.'s case was one of the worst beatings he had seen from Northwest Alaska.[650] Barr objected, but was overruled by the court, which held that the question was relevant.[651] The nurse responded that it was a pretty bad case.[652] Subsequently, the jury convicted Barr of some of his charges.[653] On appeal, Barr argued that the superior court erred in allowing the question[654] and urged the court to adopt the approach of the Minnesota Supreme Court, which held that juror questioning during criminal trials was impermissible and required automatic reversal on appeal.[655] The court of appeals instead affirmed the lower court's decision, reasoning that there was no reasonable possibility that the evidence elicited by the juror question affected the jury's verdict.[656] Affirming the lower court's decision, the court of appeals held that improper allowance of a juror's question over objection in court may be found to be harmless beyond a reasonable doubt.[657]

***Maness v. Gordon***

In *Maness v. Gordon*,[658] the supreme court held that a claim based on repressed memory syndrome must be supported by expert testimony to invoke the discovery rule and toll the statute of limitations.[659] Maness alleged that the defendants had sexually assaulted him as a child in the 1970s and that he had forgotten the incidents due to repressed memory syndrome.[660] Nevertheless, Maness allegedly recovered his memory and discovered the incidents in 2007, and he filed a claim against the defendants shortly thereafter.[661] The lower court held that Maness's claims were barred by the statute of limitations and that he could not prove his repressed memory syndrome claim without expert testimony.[662] On appeal, Maness argued that the discovery rule tolled the statute of limitations until he recovered his memory and discovered the

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[645] *Id*.
[646] *Id*. at 315.
[647] 320 P.3d 816 (Alaska 2014).
[648] *Id*. at 821.
[649] *Id*. at 818.
[650] *Id*.
[651] *Id*.
[652] *Id*.
[653] *Id*.
[654] *Id*. at 817.
[655] *Id*. at 819–20.
[656] *Id*. at 820–21.
[657] *Id*. at 821.
[658] 325 P.3d 522 (Alaska 2014).
[659] *Id*. at 526.
[660] *Id*. at 524.
[661] *Id*.
[662] *Id*. at 524–525.

incidents.[663] The supreme court affirmed the lower court's decision, reasoning that his claim's need for expert testimony was supported by other courts and Alaska case law which require expert testimony to prove medical or legal malpractice.[664] The court also reasoned that Maness misapplied a case which held that expert testimony was not necessary for the claim of recovered memory of sexual abuse but also stated that expert testimony was necessary to toll the statute of limitations.[665] Affirming the lower court's decision, the supreme court held that requiring a claim based on repressed memory syndrome must be supported by expert testimony to invoke the discovery rule and toll the statute of limitations. [666]

***Mund v. State***

In *Mund v. State*,[667] the court of appeals held that felony defendants maintain their right to appeal their sentence under Appellate Rule 215 despite receiving a sentence within the applicable presumptive range, so long as the sentence exceeds two years and does not result from a plea bargain.[668] Mund was convicted of first-degree assault and sentenced within the applicable presumptive range.[669] On appeal, Mund argued that his sentence was excessive and that Appellate Rule 215 superseded the statutory prohibition against appeals of sentences within the applicable presumptive range, permitting the court of appeals to review his sentence.[670] The court of appeals affirmed the lower court's decision, and reasoned that since the Legislature failed to exercise its authority to amend Appellate Rule 215, the appellate rule supersedes the statute and continues to govern.[671] The court further reasoned that the statute is invalid because the Legislature did not intend to create two separate classes of appeals, and that the provisions of the statute were not severable.[672] Affirming the lower court's decision, the court of appeals held that felony defendants retain their right to appeal under Appellate Rule 215 even though their sentence falls within the applicable presumptive range.[673]

***Gou-Leonhardt v. State***

In *Gou-Leonhardt v. State*,[674] the Court of Appeals of Alaska held that the superior court could not unilaterally deviate from the terms laid out in a plea agreement even though the defendant completed a rehabilitating court wellness program.[675] After Gou-Leonhardt completed his time in the court-appointed wellness program, the superior court declined Gou-Leonhardt's motion to suspend imposition of his sentence so he could try to set aside his conviction upon completion of probation.[676] In the original plea agreement, both Gou-Leonhardt and the state agreed that Gou-Leonhardt would receive a sentence of 24 months in prison with all 24 months suspended and

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[663] *Id.* at 526.
[664] *Id.*
[665] *Id.*
[666] *Id.*
[667] 325 P.3d 535 (Alaska Ct. App. 2014).
[668] *Id.* at 538.
[669] *Id.* at 537.
[670] *Id.* at 537–538.
[671] *Id.* at 538.
[672] *Id.* at 547–48.
[673] *Id.* at 548.
[674] 323 P.3d 700 (Alaska 2014).
[675] *Id.* at 703.
[676] *Id.* at 701.

three years probation if he successfully completed the wellness program.[677] On appeal, Gou-Leonhardt argued that the language of the statutory framework for the wellness court program allowed the court to circumvent other laws and implement any sentence it might chose.[678] The court of appeals affirmed the lower court's decision,[679] reasoning that the superior court correctly denied Gou-Leonhardt's motion because the court was required to enforce the terms in the plea agreement, including the specific sentence.[680] The court of appeals further reasoned that if courts were allowed to unilaterally deviate from plea agreements post-treatment, the government might be less eager to enter into plea agreements that incorporate rehabilitating wellness treatments.[681] Affirming the lower court's decision, the court of appeals held that the court is required to enforce the terms of the plea agreement in a criminal proceeding, and cannot unilaterally deviate from the agreement upon the defendant's completion of a rehabilitating wellness program.[682]

***Charles v. State***

In *Charles v. State*,[683] the supreme court held that the Alaska Sex Offender Registration Act ("ASORA") not only did not apply retroactively, but also did not apply to cases that are not yet final or are on direct review.[684] Charles was convicted of a sex offense in the 1980s.[685] The Alaska Legislature enacted ASORA in 1994.[686] Because the statute was expressly retroactive, it required Charles to register as a sex offender.[687] In 2006, Charles was charged and convicted for misdemeanor failure to register as a sex offender, which was affirmed on appeal in 2007.[688] While the supreme court had previously held that ASORA could not be applied retroactively, the State argued that because Charles's case was not final at the time of that decision, ASORA should still be applied retroactively to him.[689] The supreme court held that applying ASORA retroactively in any case would violate the state constitution's ex post facto clause, and so overturned Charles's conviction.[690] Reasoning that similarly situated defendants should be treated the same, the supreme court held that ASORA could not be applied retroactively in any case.[691]

***Hannam v. State***

In *Hannam v. State*,[692] the court of appeals held a police officer's sworn affidavit containing extrinsic signs of driving under the influence provides an adequate factual basis for a guilty plea.[693] Hannam was pulled over and the trooper observed that Hannam had watery bloodshot eyes, slurred speech, bad physical coordination, and other extrinsic signs of being under the

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[677] *Id.*
[678] *Id.* at 702.
[679] *Id.* at 703.
[680] *Id.*
[681] *Id.*
[682] *Id.*
[683] 326 P.3d 978 (Alaska 2014).
[684] *Id.* at 982.
[685] *Id.* at 979.
[686] *Id.*
[687] *Id.* at 979–80.
[688] *Id.* at 980.
[689] *Id.*
[690] *Id.* at 985–86.
[691] *Id.* at 981.
[692] 327 P.3d 209 (Alaska Ct. App. 2014).
[693] *Id.* at 211.

influence of alcohol.[694] After failing a field sobriety test the trooper arrested Hannam for driving under the influence.[695] Hannam initially resisted taking a breath test, however, after some time he took two breath tests that showed an alcohol level of .000.[696] The district court judge found there was a factual basis for Hannam to enter a guilty plea.[697] Hannam appeals arguing that due to the breath test reading of .000 there was no factual basis for his guilty plea.[698] The court of appeals noted that the supreme court had found an adequate factual basis for a guilty plea to operating under the influence when a sworn statement by a police officer included extrinsic signs of being under the influence, including poor balance, weaving on the road and bloodshot eyes.[699] The court of appeals found that the supreme court decision controlled this decision and held a police officer's sworn affidavit containing extrinsic signs of driving under the influence provides an adequate factual basis for a guilty plea.[700]

***Anthony v. State***

In *Anthony v. State*,[701] the supreme court held that in a dispute over terms in a plea agreement, the court should look to principles of contract interpretation, not statutory construction, to settle the dispute.[702] In 2010, Anthony pleaded guilty to the charge of felony driving under the influence in exchange for admission into the State's Felony DUI Wellness Court.[703] Under the terms of the plea agreement, Anthony's sentence and fine would be suspended if he successfully completed the Wellness Court program.[704] The plea agreement specified that the superior court must discharge Anthony from the program if there was a judicial finding of probable cause that he drove a motor vehicle; however, the term "motor vehicle" was not defined.[705] In 2011, Anthony rode a motorized bicycle down a city avenue, where a Wellness Court probation officer saw him and asserted that Anthony had violated his plea agreement by driving a "motor vehicle."[706] Anthony argued that while he had been riding a bicycle with a running motor, the modified bicycle was not a "motor vehicle" under the plea agreement.[707] The superior court looked at the statutory definition of "motor vehicle" in Title 28, the motor vehicle code, and found that there was probable cause that the modified bicycle was a "motor vehicle," and that Anthony therefore must be discharged from the Wellness Court program.[708] The supreme court said that the superior court needed to address the parties' differing interpretations of the term "motor vehicle" to decide if the motorized bicycle fell under the correct legal interpretation of that term.[709] In so doing, the court should use principles of contract interpretation, not statutory

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[694] *Id.* at 210.
[695] *Id.*
[696] *Id.*
[697] *Id.* at 211.
[698] *Id.*
[699] *Id.* at 211.
[700] *Id.*
[701] 329 P.3d 1027 (Alaska 2014).
[702] *Id.* at 1031.
[703] *Id.* at 1029.
[704] *Id.*
[705] *Id.*
[706] *Id.*
[707] *Id.* at 1030.
[708] *Id.* at 1030–31.
[709] *Id.* at 1031.

construction, to settle the dispute over terms.[710] The court should look at the reasonable expectations of the parties at the time they entered the agreement.[711] Because the state has greater bargaining power during criminal plea agreements, the court is required to construe any ambiguity against the state.[712] Remanding the case to superior court to address the parties' reasonable expectations of what constituted a "motorized vehicle," the supreme court held that principles of contract interpretation govern disputes over terms in plea agreements, even though statutory interpretations can be an appropriate starting point for its analysis.[713]

***Wassilie v. State***

In *Wassilie v. State*,[714] the court of appeals held that an attorney has an obligation to initiate the appeal of an indigent defendant who wishes to appeal at the public's expense, even after the superior court has dismissed a petition for post-conviction relief and allowed the attorney to withdraw.[715] The attorney of Wassilie, an indigent defendant, filed a certificate of no arguable merit following a conviction, meaning that the defendant had no colorable claims to raise on appeal and that the judge should dismiss it.[716] After Wassilie failed to respond in opposition, the superior court dismissed his case.[717] Wassilie then sent a personal letter to the supreme court, which was considered a notice of appeal.[718] The court of appeals issued an order requesting the State, the Public Defender Agency, and the Office of Public Advocacy to file legal memoranda addressing the issues.[719] The court of appeals reasoned that since the decision to appeal must be made in a relatively short period following conviction, an attorney's duty to his client requires that even with withdrawal, a client's rights must be preserved.[720] The court further reasoned that since it is often impracticable for the defendant to find substitute counsel in such a short period of time, the withdrawing attorney must ascertain whether the defendant wishes to appeal, and if necessary, initiate the appeal.[721]The court of appeals concluded that attorneys are obligated to initiate the appeals process if desired by an indigent defendant at the public's expense, even after they have been allowed to withdraw.[722]

***Johnson v. State***

In *Johnson v. State*,[723] the court of appeals held that an attorney is not required to file a petition for sentence review when the defendant has entered into a plea agreement with a fixed sentence.[724] Johnson entered into a plea agreement in 2009 in which he plead guilty to sexual assault in the third degree in exchange for the state's dismissal of three other sexual counts.[725] He

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[710] *Id.*
[711] *Id.* at 1032.
[712] *Id.*
[713] *Id.*
[714] 331 P.3d 1285 (Alaska App. 2014).
[715] *Id.* at 1289.
[716] *Id.* at 1286.
[717] *Id.* at 1286–87.
[718] *Id.* at 1287.
[719] *Id.*
[720] *Id.* at 1288.
[721] *Id.*
[722] *Id.* at 1289.
[723] 334 P.3d 701 (Alaska App. 2014).
[724] *Id.* at 702.
[725] *Id.*

agreed to a sentence of 22 years with 10 years suspended and 12 years to serve.[726] Johnson argued that his attorney was required to file a petition for sentence review at his request.[727] His attorney failed to do so, and therefore Johnson alleges he suffered from ineffective assistance of counsel.[728] On appeal, the court differentiated previous cases from Johnson's case because Johnson's plea agreement included a set sentence, without any judicial discretion for the sentence.[729] A sentence review would be a repudiation of the entire plea agreement. Therefore, Johnson needed to seek rescission of the entire agreement.[730] Johnson did seek recession and his petition was denied.[731] His attorney was not required to file a sentence review because that would allow a defendant to seek enforcement of certain provisions of a plea agreement while rejecting others, such as sentence length.[732] The court of appeals held that an attorney is not required to file a petition for sentence review when the defendant has entered into a plea agreement with a fixed sentence. [733]

***Tickett v. State***

In *Tickett v. State*,[734] the court of appeals held that even if a trial court errs in precluding cross-examination of an expert through the use of a learned treatise, if the error is harmless, then the resulting sentence would still not be clearly mistaken.[735] After hitting two people and a team of sled dogs while a snow machine at sixty miles an hour, Tickett was convicted of manslaughter, first-degree assault, and driving under the influence.[736] At trial, the state offered expert testimony concerning the effects of cocaine and marijuana, including their effects when combined with alcohol, and establishing that Tickett's blood tested positive for all three substances at the time of the collision.[737] During cross-examination, Tickett attempted to question the state's expert using a learned treatise which provided that the combined effect of marijuana and alcohol actually lower the risk of causing an accident on the road.[738] When the state's expert denied recognizing the author or knowing anything about the treatise, Tickett was precluded from using the learned treatise during his cross-examination despite the testimony of other experts in the trial confirming the status of the treatise.[739] On appeal, Tickett argues that the inability to cross-examine one of the state's experts using the learned treatise rises to the level of constitutional error, and requires a reversal of his conviction.[740] The court of appeals affirmed Tickett's conviction, despite holding that the trial court erred in precluding him from cross-examining the state's expert on the learned treatise, reasoning that because Tickett was allowed to cross-examine other experts on the treatise and Tickett did not mention the testimony in his closing to the jury that this error probably did not rise to the level of constitutional dimension and was

[726] *Id.*
[727] *Id.*
[728] *Id.*
[729] *Id.* at 703.
[730] *Id.*
[731] *Id.* at 705.
[732] *Id.* at 704.
[733] *Id.* at 702.
[734] 334 P.3d 708 (Alaska Ct. App. 2014).
[735] *Id.* at 709.
[736] *Id.* at 710–11.
[737] *Id.*
[738] *Id.* at 712.
[739] *Id.* at 711.
[740] *Id.*at 712.

harmless beyond a reasonable doubt in any case.[741] Affirming Tickett's conviction despite the trial court's error in precluding Tickett from cross-examining the state's witness on a learned treatise, the court of appeals held that when taken in context of the trial as a whole, if the error is harmless, then the resulting sentence is not clearly mistaken.[742]

***Geisinger v. State***

In *Geisinger v. State*,[743] the court of appeals held that a criminal defendant has one year from the date the decision on appeal is final to file an application for post-conviction relief, regardless of whether the defendant appealed his conviction, his sentence, or both.[744] Geisinger was convicted and sentenced for a number of crimes following a fatal motor vehicle accident.[745] Geisinger appealed his sentence as excessive and his sentence was affirmed by the court of appeals.[746] Then, Geisinger filed for post-conviction relief, claiming ineffective assistance of counsel.[747] The trial court dismissed Geisinger's application for post-conviction relief, reasoning that the statute of limitation for post-conviction relief was not tolled by an appeal of only a criminal sentence.[748] Instead, the trial court ruled that a defendant must file for post-conviction relief within eighteen months of the date of entry of judgment in the criminal case.[749] Reversing the trial court's dismissal of Geisinger's application for post-conviction relief, the court of appeals held that a defendant has one year from the date of decision on appeal to file for post-conviction relief.[750] Accordingly, the court remanded Geisinger's post-conviction relief claim on the grounds that Geisinger timely filed following his appeal of his sentence.[751] Reasoning that a defendant's opportunity to file an application for post-conviction relief should not depend on whether a defendant appealed his conviction or his sentence, the court of appeals held that a defendant has one year from the date of final decision on appeal to apply for post-conviction relief.[752]

***Crawford v. State***

In *Crawford v. State*,[753] the court of appeals held that a trial judge does not abuse his discretion in making several evidentiary rulings that are unfavorable to a pro se litigant.[754] After waiving his right to an attorney in lieu of representing himself at trial, Keane-Alexander Crawford was convicted of second-degree murder for shooting and killing his sister's fiancé after the two men got into a physical altercation.[755] After deciding not to recuse himself as Crawford requested, the trial judge made several evidentiary rulings against Crawford, continually expressed his unhappiness with Crawford's decision to proceed as a pro se litigant, and denied Crawford's

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[741] *Id.* at 711.
[742] *Id.* at 709.
[743] 334 P.3d 1241 (Alaska Ct. App. 2014).
[744] *Id.* at 1242.
[745] *Id.* at 1241.
[746] *Id.*
[747] *Id.*
[748] *Id.* at 1242.
[749] *Id.* at 1242–43.
[750] *Id.* at 1244.
[751] *Id.*
[752] *Id.*
[753] 337 P.3d 4 (Alaska Ct. App. 2014).
[754] *Id.* at 42.
[755] *Id.* at 10.

request to use public funds to secure an expert witness in his defense.[756] On appeal, Crawford requested a new trial, arguing that a new trial was warranted due to the trial judge's mistaken evidentiary rulings, prejudice against him, and denial of his request to use public funds to obtain an expert witness.[757] The court of appeals affirmed the lower court's decision with respect to the trial judges rulings and decision not to recuse himself,[758] reasoning that most of the evidentiary rulings were not in error or were otherwise harmless, and that the trial judge's unhappiness with Crawford's choice to represent himself did not require recusal nor a new trial.[759] Affirming the lower court's decision, the court of appeals held that a trial judge does not abuse his discretion by making evidentiary rulings against a pro se litigant.[760]

***Anderson v. State***

In *Anderson v. State*,[761] the court of appeals held that a lower court has committed harmless error when it fails to instruct the jury that they cannot convict a defendant unless they unanimously agree on the particular conduct underlying that count if the State can show beyond a reasonable doubt that if the jury had been properly instructed they would have returned the same verdict.[762] Anderson was convicted of ten counts of second-degree sexual abuse of a minor, based on several instances of sexual contact with three different young girls.[763] The girls in question were unable to identify the dates of the individual acts of sexual conduct, and the indictment instead contained ranges of dates that were broad enough to potentially encompass two or more acts of sexual contact, leading to the possibility that the jury did not reach unanimous agreement about the criminal incident that was the basis for its guilty verdicts on each count.[764] Alaska law requires that jurors unanimously agree on the particular episode of criminal conduct that forms the basis for a guilty verdict, but the trial judge failed to instruct the jurors that, with respect to each count, they could not convict Anderson unless they unanimously agreed on the particular conduct underlying that count.[765] The court of appeals found that the trial judge had committed an obvious error, but that the error was ultimately harmless.[766] The State had the burden of showing that there was no reasonable possibility that the jury, if properly instructed, would have returned a different verdict.[767] The court of appeals reasoned that because at trial Anderson's defense was that all of the accusations against him were factually false and because the State's theory of the case was consistent as to each act of sexual contact, there was not a reasonable possibility that the jury might believe that the State had proved some of the acts of sexual contact but not others.[768] The courts of appeals affirmed Anderson's conviction, holding that a lower court has committed harmless error when it fails to instruct the jury that they cannot convict a defendant unless they unanimously agree on the particular conduct underlying that count if the

[756] *Id.* at 33, 37.
[757] *Id.* at 10.
[758] *Id.* at 30, 34.
[759] *Id.* at 30.
[760] *Id.*
[761] 337 P.3d 534 (Alaska Ct. App. 2014).
[762] *Id.* at 540.
[763] *Id.* at 535.
[764] *Id.*
[765] *Id.*
[766] *Id.* at 539.
[767] *Id.* at 540.
[768] *Id.* at 543.

State can show beyond a reasonable doubt that if the jury had been properly instructed they would have returned the same verdict.[769]

***Rae v. State***

In *Rae v. State*,[770] the court of appeals held that an indictment need not be dismissed when improper evidence may have been the decisive factor in one grand juror's decision to indict.[771] Rae was indicted by a grand jury based on evidence that he stole a truck and used it to crash into the side of a store to steal large amounts of beer,[772] including kegs and bottles of beer found in Rae's trailer pursuant to a search warrant.[773] At trial, one grand juror asked whether there was a way to know for sure that the kegs found in Rae's trailer were the actual kegs stolen.[774] In response, the state presented testimony that each of the store's kegs had a unique UPC code and that the UPC codes of the stolen kegs matched those found in Rae's trailer.[775] The grand jury subsequently returned a true bill on all counts.[776] Five months later, it was discovered that the search warrant application hearing related to the case had not been recorded, and as a result the superior court granted Rae's motion to suppress the evidence obtained pursuant to the search warrant at trial but denied Rae's motion to dismiss the indictment.[777] The superior court held that the remaining grand jury evidence was sufficient to support the indictment, and that the presentation of the search warrant evidence had not appreciably affected the grand jury's decision.[778] On appeal, Rae argued that his indictment was tainted by the introduction of the inadmissible evidence at the grand jury, and that the remaining evidence was insufficient to support the indictment.[779] The court of appeals affirmed the lower court's decision, reasoning that the evidence that a single grand juror may have been persuaded by the impermissible evidence does not apply to the remaining grand jurors, and as grand jury decides cases by majority vote, the whole grand jury need not have returned an indictment.[780] Furthermore, the inadmissible evidence was not presented at trial and still the trial jury returned guilty verdicts, demonstrating that the probative force of the remaining evidence was not weak.[781] Affirming the lower court's decision, the court of appeals held that an indictment need not be dismissed when improper evidence may have been the decisive factor in one grand juror's decision to indict.[782]

***Stiffarm v. State***

In *Stiffarm v. State*,[783] the court of appeals held that it is a violation of a criminal defendant's discovery rights for a trial court to deny requested discovery as unduly burdensome based solely

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[769] *Id.*
[770] 338 P.3d 961 (Alaska 2014).
[771] *Id.* at 964.
[772] *Id.* at 962.
[773] *Id.* at 963.
[774] *Id.*
[775] *Id.*
[776] *Id.*
[777] *Id.* at 964.
[778] *Id.*
[779] *Id.* at 962.
[780] *Id.* at 964.
[781] *Id.*
[782] *Id.*
[783] 339 P.3d 1021 (Alaska Ct. App. 2014).

on unsupported assertions that the requested information was confidential.[784] Anthony Stiffarm, an inmate at the Wildwood Correctional Center in Kenai, was charged with sexually assaulting a female tutor who worked in the facility in the stairwell.[785] Because the correction officers suspected Stiffarm, the victim was given a booking photo of Stiffarm only, and identified Stiffarm as the man who attacked her.[786] During discovery, Stiffarm filed a motion to compel the Department of Corrections to disclose a list of inmates with a similar appearance and build to Stiffarm so that the identification procedures could be questioned during trial.[787] The trial court denied the motion on the grounds that the Department of Corrections asserted that the booking photographs were confidential, and so Stiffarm's request would be unduly burdensome.[788] The court of appeals remanded the case to the superior court,[789] reasoning that the superior court erred in summarily denying the request for production based entirely on the Department of Corrections' unsupported assertions that the photographs and corresponding information was confidential.[790] Remanding the case for further consideration, the court of appeals held that for a trial court to summarily deny a discovery request as unduly burdensome based solely on assertions that the information requested is confidential is a violation of a criminal defendant's discovery rights.[791]

***Floyd v. State***

In *Floyd v. State*,[792] the court of appeals found that the public interest exception does not apply when an ex convict challenges the state's parole laws and the issue becomes moot because the convict is unconditionally released from his sentence.[793] Floyd filed a lawsuit claiming that Alaska's mandatory parole statute conflicted with its good time credit statutes.[794] Once Floyd reached the end of his mandatory parole period the issue became moot.[795] The superior court granted the state's motion to dismiss.[796] On appeal Mulling's argued that the public interest exception applied to the issue, and the motion to dismiss should not have been granted.[797] The court of appeals affirmed the lower court finding that other prisoners on mandatory parole longer than Floyd will be able to bring the claim in the future, therefore the issue did not fall within the public interest exception.[798] Affirming the lower court, the court of appeals found that the public interest exception does not apply when an ex convict challenges the state's parole laws and the issue becomes moot because the convict is unconditionally released from his sentence.[799]

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[784] *Id.* at 1026.
[785] *Id.* at 1023.
[786] *Id.*
[787] *Id.*
[788] *Id.* at 1025.
[789] *Id.* at 1026.
[790] *Id.*
[791] *Id.*
[792] 2014 WL 7345573, (Alaska Ct. App. 2014).
[793] *Id.* at *1.
[794] *Id.*
[795] *Id.*
[796] *Id.*
[797] *Id.*
[798] *Id.*
[799] *Id.*

***Daniels v. State***

In *Daniels v. State*,[800] the court of appeals held that unclear judicial writing regarding non-statutory mitigating factors used in sentencing determinations should be remanded to the lower court for clarification.[801] Early on New Year's Day 2012, Daniels, driving drunk, hit two pedestrians in a residential area of Anchorage, causing severe injuries, and attempted to flee the scene before crashing his truck.[802] Daniels pleaded guilty to driving under the influence and first-degree assault for knowingly engaging in conduct that resulted in serious physical injury under circumstances manifesting extreme indifference to the value of human life, with his sentencing left open.[803] Daniels requested that he be referred to a three-judge sentencing panel to consider a sentence below the presumptive range of seven to eleven years, but the sentencing judge denied this request.[804] A sentencing court must refer a case to the three-judge sentencing panel if the defendant proves a non-statutory mitigating factor with clear and convincing evidence, and the judge concludes that it would be manifestly unjust to fail to consider that non-statutory factor in imposing the defendant's sentence.[805] Daniels argued the non-statutory mitigating factor that he had extraordinary potential for rehabilitation.[806] The judge was required to determine if Daniels had established this non-statutory mitigating factor, and if so, whether it would be manifestly unjust to fail to consider the non-statutory mitigating factor in imposing his sentence.[807] Here, the judge's analysis was unclear. He stated that Daniels had great potential for rehabilitation, and expressed concern about putting him in prison for such a long time, yet ultimately found that Daniels's potential for rehabilitation was not so extraordinary that it warranted referral to the three-judge panel.[808] Daniels and the State differed in how to read the judge's remarks.[809] The court of appeals also could not determine whether the judge had found that Daniels had established extraordinary potential for rehabilitation, and if so, if the court considered if it would be manifestly unjust to fail to make an adjustment to the presumptive range based on this factor.[810] Remanding the case, the court of appeals held that the sentencing court should use clear language in its consideration of non-statutory mitigating factors in sentencing decisions.[811]

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[800] 339 P.3d 1027 (Alaska Ct. App. 2014).
[801] *Id.* at 1033.
[802] *Id.* at 1029.
[803] *Id.*
[804] *Id.* at 1030.
[805] *Id.*
[806] *Id.* at 1031.
[807] *Id.*
[808] *Id.* at 1032.
[809] *Id.*
[810] *Id.* at 1033.
[811] *Id.*

## ELECTION LAW

***Price v. Kenai Peninsula Borough***

In *Price v. Kenai Peninsula Borough*,[812] the supreme court held that an ordinance which applies to particular cities, but is of general, boroughwide interest and does not apply to a permanently closed class, is not local or special legislation.[813] Of the six cities within the Kenai Peninsula Borough in Alaska, four are general law cities, and two are home rule cities.[814] In 2008, the Borough Assembly adopted an ordinance which allowed general law cities in the Borough to tax nonprepared food items on a year round basis.[815] In 2010, Price, a citizen of the Borough, filed a referendum petition to repeal the ordinance.[816] The Borough Clerk rejected the application on the ground that the proposed referendum constituted local or special legislation, violative of Alaska law in allowing all Borough voters to vote on an issue that only impacted particular cities.[817] The superior court agreed and held that the proposed referendum was local or specific legislation, reasoning it lacked general boroughwide applicability because its substance and purpose was to take the power to tax groceries away from the general law cities.[818] On appeal, the Borough Clerk similarly argued that the ordinance was not a boroughwide concern because it would only impact the taxation scheme within the general law cities.[819] The supreme court reversed the superior court's decision, reasoning that the ordinance was of general concern to the entire borough because it applied to all borough residents who shopped in the general law cities.[820] The court also reasoned that class of general law cities in the borough could theoretically grow in the future.[821] Reversing the superior court's decision, the supreme court held that an ordinance which applies to particular cities, but is of general, boroughwide interest and does not apply to a permanently closed class, is not local or special legislation.[822]

[812] 331 P.3d 356 (Alaska 2014).
[813] *Id.* at 362.
[814] *Id.* at 358.
[815] *Id.*
[816] *Id.*
[817] *Id.*
[818] *Id.*at 360.
[819] *Id.*
[820] *Id.*at 362.
[821] *Id.*
[822] *Id.*

## EMPLOYMENT LAW

### *Coppe v. Bleicher*

In *Coppe v. Bleicher*,[823] the supreme court held that when the Alaska Workers' Compensation Board ("the Board") errs by failing to apply a presumption of compensability, such an error may be considered harmless if the Board undertakes an alternative, hypothetical analysis where they do apply the presumption and the evidence presented adequately overcomes the presumption.[824] Coppe filed a workers' compensation claim with the Board in 2005, two years after she had stopped working at the Bleichers' medical office.[825] Because of the late filing, the Board did not attach a presumption of compensability to Coppe's claim, but did do an alternative hypothetical analysis where the presumption did apply.[826] The Board denied her claim, and Coppe appealed to the Alaska Workers' Compensation Appeals Commission ("the Commission").[827] The Commission affirmed the Board's decision because any issue with the Board's decision not to apply the presumption analysis was moot because the Board had analyzed the evidence in two ways, one applying the presumption and one not applying it.[828] On appeal, Coppe argued that the Commission failed to apply the proper presumption of compensability to her claim.[829] The supreme court affirmed the Commission's decision, reasoning that while the Board did err in determining that the presumption analysis did not apply, the error was harmless because the Board used an alternative analysis in which it correctly applied the presumption of analysis.[830] In affirming the Commission's decision, the supreme court held that the failure to apply a presumption of compensability to a claim before the Board may be considered harmless if the Board undertakes an alternative, hypothetical analysis where they do apply the presumption and conclude that the evidence presented adequately overcomes the presumption.[831]

### *Louie v. BP Exploration Alaska, Inc.*

In *Louie v. BP Exploration Alaska, Inc.*,*[832]* supreme court held that the version of a statute governing workers' compensation in effect at the time of an employee's injury dictates the rate of compensation the employee is due.[833] Louie, an employee of BP Exploration Alaska, Inc., suffered a debilitating stroke while traveling for work.[834] At the time of his injury, workers' compensation law imposed a statutory maximum of $700 per week in benefits.[835] Within months of the injury, the statute in question was amended; the weekly maximum was abolished, and a variable rate was introduced in its place.[836] Louie filed a workers' compensation claim, requesting a compensation rate adjustment and Permanent Total Disability.[837] The Alaska

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[823] 318 P.3d 369 (Alaska 2014).
[824] *Id.* at 377.
[825] *Id.* at 372.
[826] *Id.* at 374–75.
[827] *Id.* at 375.
[828] *Id.* at 376.
[829] *Id.* at 371.
[830] *Id.*
[831] *Id.* at 380.
[832] 327 P.3d 204 (Alaska 2014).
[833] *Id.* at 204.
[834] *Id.*
[835] *Id.*
[836] *Id.*
[837] *Id.* at 205.

Workers' Compensation Appeals Commission ("the Commission") held that the statute as it existed at the time of the injury governed the rate of compensation, and denied the rate adjustment.[838] On appeal, Louie, argued that his date of disability should be used to calculate his benefits, as the use of the date of his injury did not fairly compensate him for lost wages.[839] The supreme court affirmed the Commission's decision, reasoning that the general rule is that the law in effect on the date of injury governs a workers' compensation claim.[840] Further, the court noted that there is authority to suggest that the law in place at the date of disability should be used to calculate benefits.[841] Affirming the Commission's decision, the supreme court held that the version of a statute in place on the date of an employee's injury governs a workers' compensation claim.[842]

***Humphrey v. Lowe's Home Improvement Warehouse, Inc.***

In *Humphrey v. Lowe's Home Improvement Warehouse, Inc.*,[843] the supreme court held that conflicting evidence is insufficient to overturn a decision of the Workers' Compensation Board so long as substantial evidence supports the decision.[844] Humphrey was injured while working at Lowe's Home Improvement Warehouse in Fairbanks.[845] Though he continually received medical care for his injury, Humphrey returned to work.[846] Several months later, Humphrey informed Lowe's that he was leaving his job due to personal reasons.[847] Humphrey subsequently filed a workers' compensation claim, seeking relief including medical benefits, temporary total disability benefits, and attorneys' fees.[848] The Workers' Compensation Board determined that Humphrey was entitled to medical benefits but not temporary total disability benefits because it found that Humphrey had voluntarily left his job at Lowe's for reasons unrelated to his injury.[849] Humphrey filed an appeal with Workers' Compensation Appeals Commission, who affirmed the finding.[850] On appeal to the supreme court, Humphrey argued that the Board's finding was based on inconsistent witness testimony and that the Board's decision should not have been accepted by the Workers' Compensation Appeals Commission without requiring the Board to explain such inconsistencies.[851] The supreme court affirmed the Commission's decision, reasoning that it had never required the Board to explain every inconsistency in the lay testimony it relies on.[852] Even if the testimony was inconsistent in some details, it substantially supported the position that Humphrey voluntarily quit.[853] Affirming the Workers' Compensation Appeals Commission's decision, the supreme court held that conflicting evidence is insufficient to

[838] *Id.*
[839] *Id.*
[840] *Id.* at 208.
[841] *Id.*
[842] *Id.* at 204.
[843] 337 P.3d 1174 (Alaska 2014).
[844] *Id.* at 1180–81.
[845] *Id.* at 1176.
[846] *Id.*
[847] *Id.*
[848] *Id.*
[849] *Id.* at 1177.
[850] *Id.*
[851] *Id.* at 1181.
[852] *Id.* at 1180–81.
[853] *Id.* at 1181.

overturn a decision of the Workers' Compensation Board so long as substantial evidence supports the decision.[854]

***Becker v. Fred Meyer Stores, Inc.***

In *Becker v. Fred Meyer Stores, Inc.*,[855] the supreme court held a detailed work manual without express language stating that the policy is not legally binding leads to a triable question of fact.[856] Becker worked as a loss prevention manager at Fred Meyer for 17 years.[857] While attempting to arrest an individual, who had attempted theft, Becker grabbed the individuals phone and threw it on the roof.[858] Becker was terminated due to the incident.[859] The superior court granted a summary motion judgment in favor of Fred Meyer stating that the employment agreement was terminable at will.[860] On appeal, Becker argues that the loss prevention work manual was part of the work contract.[861] Becker states that the work manual would make a reasonable person believe that only a violation of six listed procedures could result in immediate termination.[862] Therefore, his termination, which he argues did not violate any of the listed procedures, was a breach of contract.[863] Reversing the lower court, the supreme court held that whether the manual was part of the employment contract was a triable issue of fact, reasoning that this case fell between the situation where a manual plainly states that employers may deviate from the manual and the situation where the manual is so specific as to suggest an exhaustive list.[864] Therefore, the supreme court reversed the summary judgment ruling and held a detailed work manual without express language stating the policy is not legally binding leads to a triable question of fact.[865]

***Moody v. Royal Wolf Lodge***

In *Moody v. Royal Wolf Lodge*,[866] the supreme court held that employees qualify as professional employees exempt from overtime pay under the Alaska Wage and Hour Act (AWHA) if their primary duty requires specialized intellectual instruction as a standard prerequisite for entrance into the profession.[867] Moody, a pilot employed by Royal Wolf Lodge, brought action against the Lodge for unpaid overtime wages under AHWA.[868] The Lodge argued Moody was a professional employee exempt from AWHA.[869] The superior court held that Moody was an exempt professional employee under AWHA and was not entitled to overtime pay. On appeal, Moody argued his primary duties lacked the advanced knowledge obtained through prolonged, specialized institutional instruction required for classification as a professional employee.[870] The

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[854] *Id.* at 1180–81.
[855] 335 P.3d 1110 (Alaska 2014).
[856] *Id.* at 1115.
[857] *Id.* at 1111.
[858] *Id.* at 1112.
[859] *Id.*
[860] *Id.* at 1111.
[861] *Id.* at 1113.
[862] *Id.*
[863] *Id.*
[864] *Id.* at 1115.
[865] *Id.* at 1111.
[866] 339 P.3d 636 (Alaska 2014).
[867] *Id.* at 642.
[868] *Id.* at 638.
[869] *Id.*
[870] *Id.* at 642.

supreme court reversed the lower court's decision, reasoning that in 2005, the Alaska Legislature amended AWHA to adopt the federal definition of "professional employee," which differed from the four-part test applied in the superior court.[871] The new definition requires professional employees' primary duties to require advanced knowledge acquired through prolonged, specialized, intellectual instruction.[872] Moody's credentials as a pilot, including passing written and oral tests regarding FAA rules and a certain amount of flying experience, do not involve "specialized intellectual instruction" as required for professional employee status under AWHA.[873] Reversing the lower court's decision, the supreme court held that determining whether an employee qualifies as "professional employees" exempt from overtime pay under AHWA requires determining whether an employee's primary duties require specialized instruction and academic training as a prerequisite for entering the profession.[874]

***Resurrection Bay Auto Parts, Inc. v. Alder***

In *Resurrection Bay Auto Parts, Inc. v. Alder*,[875] the supreme court held an employer must provide evidence on all four requirements of an overtime exemption for the court to reverse a lower court.[876] Alder filed suit against his employer Mullings and Resurrection Bay alleging that Mullings had violated the overtime laws.[877] It is undisputed that Alder worked overtime hours, however Mullings claims Alder was exempt from overtime payment because he was an executive employee.[878] The superior court found Mullings only proved one of the four requirements and concluded that Alder was not an exempt overtime employee.[879] On appeal, Mullings' argument was based on proving one of the four requirements, that one of Alder's primary duties was management.[880] The supreme court affirmed the lower court finding that even if Mullings met that one requirement, he clearly failed in one of the other requirements and he needed to prevail on all four.[881] Without any evidence in the record to support each of the four requirements the superior court could not reach a different conclusion.[882] Affirming the lower court the supreme court held an employer must provide evidence on all four requirements for an overtime exemption for the court to reverse a lower court.[883]

***State, Division of Workers' Compensation v. Titan Enterprises, LLC***

In *State, Division of Workers' Compensation v. Titan*,[884] the supreme court held that successful non-claimants in a worker's compensation claim are entitled to attorneys' fees.[885] Christianson, the owner of several businesses, collectively referred to as Titan, failed to carry workers'

[871] *Id*. at 639.
[872] *Id*.
[873] *Id*. at 641–42.
[874] *Id*.
[875] 338 P.3d 305 (Alaska 2014).
[876] *Id.* at 310.
[877] *Id.* at 307.
[878] *Id.*
[879] *Id.* at 309.
[880] *Id.*
[881] *Id.* at 310.
[882] *Id.*
[883] *Id.*
[884] 338 P.3d 316 (Alaska 2014).
[885] *Id.* at 320.

compensation insurance as required by Alaska law.[886] The Division of Workers' Compensation ("the Division") investigated Titan and found Titan to be in violation of the statute.[887] Accordingly, Titan was fined more than $6 million.[888] Titan appealed to the Alaska Workers' Compensation Appeals Commission ("the Commission") and the Commission reversed part of the basis for the fine, while still affirming the Division's argument that the corporate veil had been pierced.[889] Titan then requested, and was awarded by the Commission, attorneys' fees as the successful party on appeal.[890] On review of the Commission's decision, the Division argued that the statute should be construed to prohibit attorneys' fees where the successful party is an employer who has been fined for failing to insure, rather than a claimant.[891] The supreme court agreed with the Commission's decision in part, reasoning that the language of the statute does not limit attorneys' fees only to successful claimants, but successful parties.[892] The court further reasoned that it is not the court's role to rewrite statutes, even if it appears the legislature made a mistake in drafting.[893] Reversing the Commission's decision, the supreme court held that attorneys' fees in appeals to the Commission are not restricted to successful claimant.[894]

[886] *Id.* at 317.
[887] *Id.* at 318.
[888] *Id.* at 319.
[889] *Id.*
[890] *Id.* at 319–20.
[891] *Id.* at 321.
[892] *Id.*
[893] *Id.*
[894] *Id.*

## ETHICS

### *McAlpine v. Priddle*

In *McApline v. Priddle,*[895] the supreme court held that an arbitration decision carried out under Alaska's Revised Uniform Arbitration Act concerning an attorney's fee dispute is only reviewable in instances of (1) fraud, (2) evident partiality by the arbitrators, (3) refusal to consider material evidence, (4) abuse of power, (5) a prior agreement not to arbitrate, or (6) lack of proper notice.[896] McAlpine paid Priddle $75,000 to represent her boyfriend in federal criminal proceedings.[897] Duarte's case did not go to trial, and McAlpine argued that the contract she signed required full payment only if the case went to trial and required experts.[898] At arbitration Priddle presented a contract allegedly signed by McApline acknowledging that the fee was nonrefundable.[899] The arbitration panel concluded that the fee was reasonable.[900] On appeal, McAlpine argued that the arbitrators failed to assess the reasonableness of the attorney's fee properly and did not assign proper weight to the evidence, as well as that Priddle misled his client and presented forged evidence to the panel.[901] The supreme court confirmed the arbitration panel's decision, reasoning that McAlpine's arguments did not satisfy any of the grounds for judicial review of an arbitration decision.[902] Upon determining that only the fraud factor was even potentially met, the supreme court concluded that the arbitration panel's finding regarding the alleged fraud was not reviewable because it was a factual finding.[903] Confirming the arbitration panel's decision, the supreme court held that an arbitration decision carried out under Alaska's Revised Uniform Arbitration Act concerning an attorney's fee dispute is only reviewable in instances of (1) fraud, (2) evident partiality by the arbitrators, (3) refusal to consider material evidence, (4) abuse of power, (5) a prior agreement not to arbitrate, or (6) lack of proper notice.[904]

### *In re Estelle*

In *In re Estelle***,** the supreme court held that suspension is an appropriate sanction for judges who have recklessly violated ethical duties in the code of judicial conduct.[905] Here, a district court judge signed pay affidavits which stated that no matters had been pending for more than six months,[906] when in fact three of his cases had been pending for more than six months without a decision.[907] Because the judge's judicial assistant would draw attention to matters pending close to six months by highlighting them in pink and putting them in the judge's chair, he knew that each of the cases needed a decision.[908] The commission of judicial conduct found the judge's

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[895] 321 P.3d 345 (Alaska 2014).
[896] *Id*. at 346.
[897] *Id*. at 346.
[898] *Id*.
[899] *Id*. at 347.
[900] *Id*.
[901] *Id*. at 359.
[902] *Id*. at 357–58.
[903] *Id*. at 359.
[904] *Id*. at 346.
[905] 336 P.3d 692, 693 (Alaska 2014).
[906] *Id*. at 695.
[907] *Id*. at 696.
[908] *Id*.

signing of inaccurate pay affidavits to be reckless,[909] held there was clear and convincing evidence that the his behavior violated the code of judicial conduct,[910] and recommended that he be suspended without pay for 45 days.[911] In his answer to the commission's recommendation, the judge admitted that he violated the code of judicial conduct.[912] The supreme court ultimately adopted the recommendation, following the commission's reasoning that because the standard sanction for negligence was suspension and the his reckless behavior rose above mere negligence, suspension without pay for 45 days was an appropriate sanction.[913] The court further reasoned that the judge's misconduct had been established by clear and convincing evidence.[914] Adopting the commission's recommendation, the supreme court held that suspension is an appropriate sanction for judges who have recklessly violated ethical duties in the code of judicial conduct.[915]

***In re Miles***

In *In re Miles*,[916] the supreme court held that disbarment is an appropriate sanction for an attorney who misappropriated the funds of a deceased client and subsequently hides the misappropriation by means of deception while providing legal services to the personal representative of estate of the deceased client.[917] Miles helped her client open two bank accounts and after the client died, Miles moved money from one account into Miles' personal bank account.[918] Although the deceased client did not have a will, Miles argued that her client intended to gift the money to Miles.[919] The Area Hearing Committee ("Committee") found that Miles had committed a criminal act of theft, misappropriation, or wrongful conversation.[920] The Alaska Bar Association's Disciplinary Board ("Board") adopted the Committee's findings and recommended disbarment.[921] Adopting the Board's recommendation of disbarment, the supreme court found that Miles committed the criminal act of theft, misappropriation, or wrongful conversation because at the time Miles transferred her client's funds to her personal account, she knew that the funds had not been conveyed to her.[922] The supreme court further reasoned that disbarment was an appropriate sanction because the mitigating factor of Miles' cooperativeness in disciplinary proceedings was outweighed by her dishonesty, refusal to acknowledge wrongdoing, and indifference to making restitution.[923] Thus, the supreme court held that disbarment is an appropriate sanction when a lawyer's serious criminal conduct includes misappropriation or theft and that conduct is not mitigated by other factors.[924]

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[909] *Id.* at 698.
[910] *Id.* at 692.
[911] *Id.*
[912] *Id.* at 692.
[913] *Id.* at 698.
[914] *Id.* at 693.
[915] *Id.*
[916] 339 P.3d 1009 (Alaska 2014).
[917] *Id.* at 1010.
[918] *Id.* at 1011.
[919] *Id.* at 1013.
[920] *Id.* at 1017.
[921] *Id.*
[922] *Id.* at 1020.
[923] *Id.*
[924] *Id.*

## FAMILY LAW

### *Stephanie W. v. Maxwell V.*

In *Stephanie W. v. Maxwell V.*,[925] the supreme court held that, in a custody hearing, one parent's good faith allegations concerning the other parent's behavior must not be held against the reporting parent in determining the continuing-relationship factor where those allegations are based on supporting evidence.[926] The mother reported that the father was manufacturing methamphetamines in the presence of the child, but presented almost no evidence in support of such an allegation.[927] The lower court determined that this allegation, without credible evidence, demonstrated that the continuing-relationship determination favored granting custody to the father because it showed a tendency by the mother to assume the worst in the father.[928] The superior court granted primary physical custody to the father and joint legal custody to both parents.[929] On appeal, the mother argued that the superior court had abused its discretion by holding her good faith allegation against her.[930] The supreme court affirmed the lower court's decision, reasoning that the superior court did not abuse its discretion in considering the mother's unfounded allegations relevant to the continuing-relationship determination.[931] The court further reasoned that the unfounded allegation that the father was manufacturing methamphetamines in the presence of the child evidenced a proclivity to assume the worst in the father.[932] Affirming the lower court's decision, the supreme court held that that the superior court does not abuse its discretion in considering unfounded allegations by one parent against the other in determining that the continuing-relationship factor favored the father.[933]

### *Simone H. v. State, Dep't of Health & Social Services*

In *Simone H. v. State, Dep't of Health & Social Services*,[934] the supreme court held that it is within a trial court's discretion to deny disclosure of the child's psychotherapy records where the court reviews the content and nature of the records.[935] The parent requested the lower court grant her access to records of her child's communications with his psychotherapist for use in her child's Child in Need of Aid ("CINA") proceeding.[936] The trial court reviewed the records of the child's psychotherapy sessions and did not find the information the parent sought to uncover, or any other need for disclosure that outweighed the child's interest in privacy.[937] Thus, the trial court denied the parent's request for disclosure, finding that such disclosure of the child's confidential communications would constitute an invasion of his privacy causing the child undue stress and compromising his therapeutic relationship with his counselor.[938] On appeal, the parent argued that records of the child's psychotherapy sessions should be released for her use, as the

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[925] 319 P.3d 219 (Alaska 2014).
[926] *Id.* at 229.
[927] *Id.* at 230.
[928] *Id.*
[929] *Id.* at 221.
[930] *Id.* at 229.
[931] *Id.* at 230.
[932] *Id.*
[933] *Id*.
[934] 320 P.3d 284 (Alaska 2014).
[935] *Id.*
[936] *Id.* at 289.
[937] *Id.* at 289–90
[938] Id. at 289.

records might document the child's struggles with his foster family.[939] The parent also argued that there was no evidence suggesting the child would be detrimentally affected by disclosure of his communications with his psychotherapist.[940] The supreme court affirmed the lower court after reviewing the child's psychotherapy records and confirming that the records did not contain the evidence that the parent sought to uncover regarding the child's relationship with his foster family.[941] Moreover, the supreme court determined that the trial court rightfully considered the informed recommendation of the child's guardian ad litem, which detailed the harmful effects the release of the records could have on the child.[942] Affirming the lower court's decision, the supreme court held that the lower court did not abuse its discretion in denying the parent's request to disclose the child's confidential psychotherapy records, where the lower court properly considered all relevant factors in in rendering its decision.[943]

***James R. v. Kylie R.***

In *James R. v. Kylie R.*,[944] the supreme court held that during a child custody hearing one parent's unfounded concerns about the other parent's caretaking ability can be evidence of an unwillingness to foster an on-going relationship between the child and the non-custodial parent.[945] After finding both parents' caretaking abilities adequate, the superior court granted custody to Kylie because she showed more willingness to foster an on-going relationship between the child and James.[946] During the child custody hearing, James repeatedly drew the worst possible inferences about Kylie's parental conduct based on inconclusive evidence of neglect.[947] On appeal, James argued that the superior court had erred by prompting him to report concerns about the mother's parenting skills and then holding those statements against James in determining the continuing-relationship factor.[948] The supreme court affirmed the lower court's decision,[949] reasoning that the superior court did not abuse its discretion because its decision constituted a valid determination of James's credibility as a witness in court.[950] The supreme court further reasoned that the lower court's on-going relationship inquiry could be informed not only by direct testimony, but also by a parent's own actions and attitudes during the court proceedings.[951] Affirming the lower court's decision, the supreme court held that unwillingness to foster an on-going relationship can be demonstrated by a parent's unfounded concerns about the other parent's caretaking ability during a court proceeding.[952]

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[939] *Id.*
[940] *Id.*
[941] *Id.*
[942] *Id.*
[943] *Id.*
[944] 320 P.3d 273 (Alaska 2014).
[945] *Id.* at 280–81.
[946] *Id.* at 277–78.
[947] *Id.* at 276–78.
[948] *Id.* at 281.
[949] *Id.* at 283.
[950] *Id.* at 281–83.
[951] *Id.* at 283.
[952] *Id.* at 280–81.

***Limeres v. Limeres***

In *Limeres v. Limeres*,[953] the supreme court held that when a superior court makes a determination in favor of supervised visits in a child custody case based on the parent's failure to complete court-ordered batterers' classes, an erroneous finding of fact that there is a history of domestic violence is harmless error.[954] Amy and Rene Limeres were married and had three children together before they separated in 2011.[955] The superior court granted Amy's request for a long-term protective order in 2011 after Rene threatened to shoot her and repeatedly violated a no-contact order.[956] The court also ordered Rene to complete a batterers' intervention program and determined that all of Rene's visitation with the children be supervised.[957] The couple officially divorced in 2012.[958] In determining that Rene's visitation with the children must be supervised, the superior court made a finding of fact that Rene had "a substantial and pronounced history of domestic violence."[959] The supreme court affirmed the lower court despite the error, reasoning that this finding was erroneous because the finding referenced only one incident, and a history of perpetrating domestic violence requires more than one instance of domestic violence,[960] but ultimately the error was harmless because the superior court based its determination for supervised visitation on Rene's failure to complete the court-ordered batterers' classes.[961] The supreme court affirmed the superior court's determination, holding that if a superior court erroneously finds a history of domestic violence, that finding is harmless error if the court bases its determination for supervised visits on the parent's failure to complete court-ordered batterers' classes.[962]

***Molly O v. State, Dep't of Health & Social Services***

In *Molly O vs. State, Dep't of Health & Social Services*,[963] the supreme court held once children's parents have informed the Office of Children's Services ("OCS") that they do not want their children placed with grandparents, any claim by the grandparents of Indian custodianship under the Indian Child Welfare Act ("ICWA") is terminated.[964] Jessica and Aaron R. have three children, who for purposes of the ICWA are Indian children.[965] Jessica, Aaron and the children lived with the grandparents for most of the children's lives until the parents lost custody of their children to OCS in 2011.[966] OCS placed the children with the grandparents initially, but the parents later expressed to OCS that they no longer trusted the grandparents to care for their children.[967] Subsequently, OCS warned the grandparents that the conditions in their home were unsuitable to raise the children, and despite remedying some of those concerns, OCS

[953] 320 P.3d 291 (Alaska 2014).
[954] *Id.* at 300–01.
[955] *Id.* at 295.
[956] *Id.*
[957] *Id.*
[958] *Id.*
[959] *Id.* at 299.
[960] *Id.*
[961] *Id.* at 300.
[962] *Id.* at 301.
[963] 320 P.3d 303 (Alaska 2014).
[964] *Id.* at 309–10.
[965] *Id.* at 305.
[966] *Id.* at 305–06.
[967] *Id.* at 306.

removed the children from the grandparents' care later in 2011.[968] On appeal, the grandparents argued that they had never had their status as an Indian custodian of the children under the ICWA revoked, and thus that OCS's failure to provide them with notice at the time the children were removed from their custody deprived them of due process.[969] The supreme court affirmed the lower court's decision, reasoning that OCS was the custodian of the children once they were removed from their parents care, and that while OCS placed them with the grandparents, that did not create Indian custodian status for them. Moreover, once the parents informed OCS that they did not want their children in the grandparents' care it effectively revoked their Indian custodian status.[970] Affirming the lower court's decision, the supreme court held that the actions of the parents can terminate the grandmother's Indian custodianship of the children and the rights of custody associated with Indian custodian status.[971]

***Rowan B., Sr. v. State, Dep't of Health & Social Services***

In *Rowan B., Sr. v. State, Dep't of Health & Social Services*[972], the supreme court held that a denial of a parent's request to access to information in a Child In Need of Aid ("CINA") proceeding constitutes legal error where the trial court relies only on exceptions to disclosures under the Public Records Act and fails to review the discovery request under the Civil Rules.[973] The parent in *Rowan B., Sr.* moved the court to order law enforcement to produce documents about the children in question for use in preparation for the children's CINA proceeding.[974] Relying on exclusions under the Alaska Public Records Act, law enforcement opposed the motion and indicated that such records were protected.[975] While law enforcement expressed openness to providing the court with some records for in camera review, the trial court failed to conduct such review and denied the parent's motion, citing the Alaska Public Records Act.[976] On appeal, the State argued that the trial court did not abuse its discretion in denying the parent's motion, as the parent had not shown that the error harmed his case in any way.[977] The supreme court reversed the lower court's decision, reasoning that the lower court's reliance on the exceptions in the Alaska Public Records Act without analyzing the parent's requests under the Civil Rules constituted legal error.[978] The supreme court further reasoned that as part of the discovery process, the requesting party may obtain relevant documents from parties who may possesses such information under the Civil Rules, with consideration to certain exclusions that may exist under the Public Records Act.[979] Reversing the lower court's decision, the supreme court remanded the case and held that failure to analyze whether the parent's need for such disclosure outweighs law enforcement's interest in preserving the confidentiality of the information constitutes legal error.[980]

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[968] *Id.* at 306–07.
[969] *Id.* at 308.
[970] *Id.* at 308–09.
[971] *Id.* at 309.
[972] 320 P.3d 1152 (Alaska 2014).
[973] *Id.* at 1157.
[974] *Id.* at 1154.
[975] *Id.* at 1154–55.
[976] *Id.*
[977] *Id.* at 1156.
[978] *Id.* at 1157.
[979] *Id.* at 1156–57.
[980] *Id.* at 1157.

***Sandberg v. Sandberg***

In *Sandberg v. Sandberg*,[981] the supreme court held that there must be clear evidence of a movant's mistake or inadvertence in order for a Rule 60(b)(1) motion to vacate a settlement agreement to be granted.[982] In divorce proceedings against David Sandberg, Brianna Sandberg assisted in drafting and then signed a settlement agreement in which David received the couple's home and Brianna received a portion of David's 401K.[983] Five months after the divorce, Brianna submitted a Rule 60(b)(1) motion to vacate the agreement under the claim that she was suffering from poor health when she signed the agreement, did not comprehend what she was signing, and that she was unable to hold out for inequitable division of property.[984] The superior court granted the motion under a finding that Brianna had a mistaken belief that the parties' marital home was David's separate property; because of this, the court determined that the settlement agreement did not equally divide the assets and debts of the marriage.[985] On appeal, David argued that Brianna's agreement to the property settlement was voluntary and fair and that the court erred in its property valuation.[986] The supreme court reversed the lower court's decision,[987] reasoning that there was no evidence in the record that Brianna believed the house belonged only to David at the time of the settlement.[988] Thus, the lower court's determination that Brianna was entitled to relief was based on an erroneous factual finding and therefore invalid.[989] Reversing the lower court's decision, the supreme court held that there must be clear evidence of a movant's mistake or inadvertence in order for a Rule 60(b)(1) motion to vacate a settlement agreement to be granted.[990]

***Emma D. v. State, Dep't of Health & Social Services***

In *Emma D. v. State, Dep't of Health & Social Services*[991], the supreme court held that the Office of Children's Services ("OCS") makes reasonable efforts to reunify a parent with her child, when OCS provides disability service referrals for the parent, assists the parent in finding housing, and attempts to contact the parent on numerous occasions to evaluate the parent's progress and remind the parent of upcoming appointments, despite the parent's lack of response.[992] OCS worked to create a case plan with the parent in *Emma D.*, which included referrals to two mental health service providers, a referral to a housing service, and a bus pass to assist with transportation.[993] Over a period of fourteen months, the parent's contact with the referred mental service providers and OCS caseworker were sporadic, as the parent missed two-thirds of her scheduled visits with her child and more than half of her scheduled visits with her OCS caseworker.[994] On appeal, the parent argued that the lower court erred in finding that OCS made reasonable efforts to reunify the parent with her child, as OCS did not adequately consider her

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[981] 322 P.3d 879 (Alaska 2014).
[982] *Id.* at 888–89.
[983] *Id.* at 883–84.
[984] *Id.* at 884.
[985] *Id.* at 885.
[986] *Id.*
[987] *Id.* at 889.
[988] *Id.* at 888.
[989] *Id.*
[990] *Id.* at 888–89.
[991] 322 P.3d 842 (Alaska 2014).
[992] *Id.* at 851–52.
[993] *Id.* at 846.
[994] *Id.* at 847.

disabilities including bipolar disorder and potential fetal alcohol spectrum disorder.[995] The supreme court affirmed the lower court's decision, reasoning that OCS did take into account the parent's disability when the OCS caseworker referred the parent to several mental health service providers, coordinated with those providers in order to assist the parent in her engagement with them, and provided the parent with transportation to assist her in receiving mental health services.[996] The court further reasoned that OCS made more than reasonable efforts to reunify the parent with her child as the OCS caseworker made numerous attempts to communicate with the parent, intervened to maintain the parent's visitation rights despite the parent's failure to attend the majority of her scheduled visits, and even attempted to find the parent at a homeless shelter after unsuccessfully attempting to contact the parent over telephone.[997] Affirming the lower court's decision, the supreme court held that OCS made reasonable efforts to reunify a parent with her child when the OCS caseworker refers the parent to several mental health service providers and housing services and consistently attempts to contact the parent regarding the parent's case plan and upcoming appointments despite the parent's unwillingness to engage in treatment or services.[998]

***Kollander v. Kollander***

In *Kollander v. Kollander*,[999] the supreme court held the doctrine of laches is appropriate where prejudice results when a former spouse unreasonably and unjustifiably delays bringing a claim to modify a pension division and the delay results in loss of evidentiary materials.[1000] Ms. Kollander sought to modify a pension division in a qualified domestic relations order originally entered by the superior court in 1992.[1001] The lower court held that the doctrine of laches barred her claim because Mr. Kollander was "irrevocably prejudiced" due to Ms. Kollander's unexplained and unjustified delay in seeking to modify her pension division and the expected loss of evidentiary materials over the years.[1002] On appeal, Ms. Kollander argued she was reasonably diligent in pursuing her remedy, Mr. Kollander failed to demonstrate prejudice, and the lower court abused its discretion in applying the doctrine of laches because Mr. Kollander amended his qualified domestic relations order in 2001.[1003] The supreme court affirmed the lower court's decision, reasoning that the lower court did not clearly err in finding unreasonable delay and did not abuse its discretion in applying the doctrine of laches because Ms. Kollander accepted regular payments and did not commence action for years following Mr. Kollander's final payment.[1004] Additionally, an evidentiary issue existed regarding Ms. Kollander's communications with other parties and missing attorney files could potentially prejudice Mr. Kollander.[1005] Affirming the lower court's decision, the supreme court held that the doctrine of

[995] *Id.* at 850.
[996] *Id.* at 851–52.
[997] *Id.* at 852.
[998] *Id.*
[999] 322 P.3d 897 (Alaska 2014).
[1000] *Id*. at 897, 905.
[1001] *Id*. at 899.
[1002] *Id*. at 902.
[1003] *Id*. at 903.
[1004] *Id*. at 905.
[1005] *Id*. at 905.

laches is appropriate when a former spouse unreasonably delays bringing a claim to modify a pension division, which results in prejudice due to lost evidence.[1006]

***Boulds v. Nielsen***

In *Boulds v. Nielsen*[1007], the supreme court held that a union pension may be considered a domestic partnership asset subject to division with a cohabitant, and that such a division is not inconsistent with federal law.[1008] Boulds and Nielsen were an unmarried couple that cohabitated for 16 years, during which time they shared a residence and raised children together.[1009] During this time, Boulds accumulated several employment benefits, one of which was a union pension.[1010] The lower court determined that this union pension was a domestic partnership asset, and was therefore subject to division.[1011] On appeal, Boulds argued that the union pension could not be divisible with a cohabitant under the Employee Retirement Income Security Act ("ERISA") because cohabitants cannot hold marital property, and Nielsen does not fall into an enumerated category of allowable recipients.[1012] The supreme court affirmed the lower court's decision, adopting the Ninth Circuit's reasoning that, as federal law does not define "marital property right" or "other dependent," state law definitions should control.[1013] The supreme court reasoned that Alaska law provides for the property division of cohabitants in a way similar to a marital division.[1014] Additionally, the supreme court noted that Nielsen qualified as an "other dependent" due to the fact that Boulds had claimed Nielsen as a dependent on his taxes and because they shared a residence.[1015]Affirming the lower court's decision, the supreme court held that a union pension is divisible with a cohabitant as a domestic partnership asset consistent with federal law.[1016]

***Yelena R. v. George R.***

In *Yelena R v. George R*,[1017] the supreme court held that the superior court has jurisdiction in a child custody determination if the state was home to the child six months prior to the proceeding even if the child is not currently within the state as long as one of the parents remains in the state. Yelena and George were married in October 2000 after Yelena became pregnant with their first child.[1018] Over the course of their relationship—they were divorced in 2004 but lived together and had a relationship on and off until 2011—both husband and wife accused the other of various incidents of physical abuse.[1019] The abuse culminated in 2011 when Yelena accused George of sexually assaulting her.[1020] After being denied a permanent restraining order, Yelena left Alaska with the children and reported the sexual assault to George's employer—the Coast

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[1006] *Id*. at 897.
[1007] 323 P.3d 58 (Alaska 2014).
[1008] *Id.* at 60.
[1009] *Id.*
[1010] *Id.*
[1011] *Id.*
[1012] *Id.*
[1013] *Id.* at 62–63
[1014] *Id.*
[1015] *Id.* at 63.
[1016] *Id.* at 60.
[1017] 326 P.3d 989 (Alaska 2014).
[1018] *Id.* at 993.
[1019] *Id.*
[1020] *Id.* at 994.

Guard—in Boston.[1021] The Coast Guard issued a Military Protective Order against George, held a probable cause hearing on court-martial charges, and ultimately dismissed charges against George.[1022] In Massachusetts, Yelena was granted a court order giving her sole custody of the children and permanently restraining George from contacting her, while George sought at the same time to register orders issued in 2004 and 2011 granting shared custody.[1023] The superior court granted a final judgment granting primary physical and sole legal custody to George and ordering supervised visitation to Yelena.[1024] On appeal, Yelena argued that Alaska lacked jurisdiction and that the trial court abused its discretion.[1025] The supreme court affirmed the lower court's holding, stating that Alaska had jurisdiction under the Uniform Child Custody and Jurisdiction Enforcement Act—which allows a state to make a child custody determination if that state was home to the child six months before the proceeding but is not presently in that state while one of the parents still is—and did not abuse its discretion in fact finding or making legal conclusions.[1026] Affirming the lower court's decision, the Supreme Court held that the superior court has jurisdiction in a child custody case where the child no longer resides within the state as long as the child did reside within the state within the past six months and one parent remains within the state.[1027]

***Frackman v. Enzor***

In *Frackman v. Enzor*,[1028] the supreme court held that new evidence supporting a previous argument for custody constitutes a material change in circumstances such that the court may reconsider a custody arrangement.[1029] After their divorce, father Enzor and mother Frackman initially shared joint physical custody of their two children.[1030] The superior court granted the father's motion to modify the custody arrangement, and reopened a full investigation, after new evidence became available regarding the mother's treatment of the children.[1031] The father had continually moved for reconsideration by accusing the mother of being an alcoholic and suffering from mental illness, but the court had previously declined to reevaluate the arrangement.[1032] After the mother failed to complete court-ordered alcohol testing, and was diagnosed with several mental disorders, the court changed the custody arrangement—granting primary custody of the children to the father and only allowing the mother to see her children on supervised visits.[1033] On appeal, the mother argued that the superior court was not justified in reopening the investigation into the custody arrangement and that the court did not make enough specific findings to support their alternative arrangement.[1034] The supreme court affirmed the lower court's decision,[1035] reasoning that the superior court did not abuse its discretion because

[1021] *Id.*
[1022] *Id.*
[1023] *Id.*
[1024] *Id.* at 996.
[1025] *Id.* at 996–97.
[1026] *Id.* at 997.
[1027] *Id.* at 1003.
[1028] 327 P.3d 878 (Alaska 2014).
[1029] *Id.* at 882.
[1030] *Id.* at 879–80.
[1031] *Id.* at 880.
[1032] *Id.*
[1033] *Id.* at 880–81.
[1034] *Id.* at 884.
[1035] *Id.* at 885.

new evidence of the mother's lack of caretaking ability counted as a material change in circumstances warranting reevaluation of the custody arrangement.[1036] Affirming the lower court's decision, the supreme court held that a court may consider new evidence of an accusation's merit a material change in circumstances for the purposes of reopening and reevaluating a child custody arrangement.[1037]

***Kristina B. v. Edward B.***

In *Kristina B v. Edward B.*,[1038] the supreme court held that the lower court has broad discretion in assigning weight to the statutory factors, but cannot ignore a factor altogether.[1039] Edward and Kristina began living together in 2006, were married in 2007 and had a son in 2008.[1040] They separated in 2010, with both sides citing, among other reasons, Edward's history of domestic violence, Kristina's substance abuse and Kristina's Crohn's disease.[1041] On appeal, Kristina argued that a party who has a history of domestic violence cannot be awarded custody and that the court failed to weigh Edward's past domestic violence in awarding him custody.[1042] The supreme court affirmed the lower court's decision, reasoning that the superior court had not been clearly erroneous in its findings regarding Edward and Kristina's respective incidents of domestic violence.[1043] Affirming the lower court's decision, the supreme court held that the lower court has broad discretion in assigning weight to the statutory custody factors.[1044]

***Grace L. v. State, Dep't of Health & Social Services***

In *Grace L. v. State, Dept of Health & Social Services*[1045], the supreme court held that the Office of Child Services ("OCS") made reasonable and active efforts to prevent the breakup of the family when referring the parent to a psychiatrist in order to participate in a psychiatric evaluation and discuss medication.[1046] In a Child in Need of Aid ("CINA") hearing, OCS requested that the court order the parent to undergo a psychiatric evaluation to discuss medication, which the parent subsequently agreed to attend.[1047] During the evaluation the parent articulated that she was not seeking medication to treat any psychiatric conditions.[1048] Shortly thereafter OCS referred the parent to psychologist in order to evaluate whether the parent's mental illness impeded her ability to act as an appropriate parent.[1049] The psychologist recommended the parent be referred to a psychiatrist for a medication review, unaware that the parent had already had such a review at the encouragement of OCS.[1050] The lower court found that OCS had made active and reasonable efforts to provide the parent with services designed to

[1036] *Id.* at 879.
[1037] *Id.* at 883–85.
[1038] 329 P.3d 202 (Alaska 2014).
[1039] *Id.* at 204.
[1040] *Id.*
[1041] *Id.* at 205–06.
[1042] *Id.* at 207–08, 209–11.
[1043] *Id.*
[1044] *Id.* at 202.
[1045] 329 P.3d 980 (Alaska 2014).
[1046] *Id.* at 985.
[1047] *Id.* at 986.
[1048] *Id.*
[1049] *Id.* at 983.
[1050] *Id.* at 986.

reunify the family, including referring the parent to counseling.[1051] On appeal, the parent argued that OCS had failed to make active and reasonable reunification efforts by failing to implement her psychologist's recommendation that she be referred for a psychiatric medication review.[1052] The supreme court reasoned that OCS had already provided the parent with reasonable efforts to encourage her to undergo a psychiatric medication review at an earlier date, which the parent participated in prior to her psychological evaluation.[1053] The supreme court affirmed the lower court's decision, holding that OCS had satisfied their duty to make reasonable and active efforts to reunify the family by referring the parent to psychiatrist to undergo a psychiatrist medication review.[1054]

***Richter v. Richter***

In *Richter v. Richter*,[1055] the supreme court held that a loan taken out during a marriage was presumptively marital debt.[1056] Shelly and Matthew Richter were married in California in January 2010.[1057] They are both helicopter pilots who frequently traveled during their marriage because of their work.[1058] When they were married, Mrs. Richter had over $100,000 in debt from student loans.[1059] Mr. Richter's mother lent the couple $100,000, which they ultimately used to pay off Mrs. Richter's loans.[1060] On appeal, Mr. Richter argued that the loan was not marital debt.[1061] He contended that the loan was separate property belonging entirely to Mrs. Richter.[1062] He argued Mr. Richter's mother transferred the money to Mrs. Richter's bank account, the transfer was in Mrs. Richter's name, for the purpose of paying off Mrs. Richter's independent loan debt, and that the loan was not marital because the couple was separated at the time it was granted.[1063] The supreme court affirmed the lower court's decision, reasoning that the loan had been originally intended for an investment into commercial property which would have been made by both husband and wife, and that while the couple had discussed separating at the time of the loan, the parties had not yet separated.[1064]

***In the Matter of Candace A.***

In *In the Matter of Candace A.*,[1065] the supreme court held that a social worker with expertise beyond normal social worker credentials qualified as an expert witness under the Indian Child Welfare Act (ICWA).[1066] In Candace's Child in Need of Aid (CINA) hearing, the Office of Children's Services (OCS) proposed two social workers to testify as "qualified expert witnesses" under ICWA, in order to demonstrate that continued parental custody was likely to result in

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[1051] *Id.* at 985.
[1052] *Id.*
[1053] *Id.* at 986.
[1054] *Id.* at 987
[1055] 330 P.3d 934 (Alaska 2014).
[1056] *Id.* at 936.
[1057] *Id.*
[1058] *Id.*
[1059] *Id.*
[1060] *Id.*
[1061] *Id.* at 938.
[1062] *Id.* at 938–39.
[1063] *Id.* at 939.
[1064] *Id.*
[1065] 332 P3d 578 (Alaska 2014).
[1066] *Id.* at 585–86.

serious emotional or physical damage to the child.[1067] The federal Bureau of Indian Affairs (BIA) guidelines define a qualified expert witness as a professional person having substantial education in the area of his or her specialty.[1068] The lower court found that the two social workers did not qualify as expert witnesses because they were not professionals and because they lacked knowledge of relevant tribal customs.[1069] On review, the supreme court vacated the lower court's decision, reasoning that the two social workers proposed by OCS qualified as expert witnesses under the ICWA, because social work contained all the earmarks of a profession.[1070] The supreme court further reasoned that Alaska's case law has strongly implied that social workers may be qualified experts if they contain expertise beyond normal social worker qualifications.[1071] Because the social workers' experience included regular exposure to cases and issues central to the child's case and lengthy work history in a variety of institutional and agency settings, the supreme court found that both social workers could serve as qualified witnesses under ICWA.[1072] Vacating the lower court's decision, the supreme court held a social worker is a professional qualifying as an expert witness under ICWA and federal BIA guidelines and may testify in a Native child's CINA proceeding.[1073]

***Houston v. Wolpert***

In *Houston v. Wolpert*,[1074] the supreme court held that the superior court had broad discretion in determining the best interests of a child in a custody modification.[1075] Gary Houston and Meredith Wolpert divorced in 2010 and agreed that Wolpert would have primary custody of their daughter and that Houston would have open and liberal visitation rights.[1076] However, Wolpert only allowed Houston one weekend overnight visit per month.[1077] Houston filed a motion to modify custody in 2012, seeking primary physical and sole legal custody of their daughter.[1078] A family court master determined that Wolpert should retain primary custody because she had a better history of providing the child with continuity and a stable home.[1079] The superior court agreed that Wolpert was better able to provide the child with stability and was better able to meet her needs, and held that Wolpert would continue to have primary custody.[1080] The supreme court only overturns a superior court's custody and visitation determinations when the records show that the controlling findings of fact are clearly erroneous or the court abused its discretion.[1081] Because the court did not find that the superior court had made clearly erroneous findings of fact or abused its discretion, the supreme court affirmed the superior court's determination regarding Wolpert's child custody.[1082]

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[1067] *Id.* at 582.
[1068] *Id.* at 583.
[1069] Id. at 582.
[1070] *Id.* at 585.
[1071] *Id.*
[1072] *Id.* at 586.
[1073] *Id.*
[1074] 332 P.3d 1279 (Alaska 2014).
[1075] *Id.* at 1283.
[1076] *Id.* at 1281.
[1077] *Id.*
[1078] *Id.* at 1281–82.
[1079] *Id.* at 1282.
[1080] *Id.*
[1081] *Id.*
[1082] *Id.* at 1286.

***Graham R. v. Jane S.***

In *Graham R. v. Jane S.*,[1083] the supreme court held a motion to modify custody based on a claim of domestic violence was not barred by res judicata or collateral estoppel, where both parties declined to litigate issues of child custody and domestic violence in a prior domestic violence proceeding.[1084] In the proceeding, Graham R. and Jane S. stipulated to a long-term protective order regarding custody of their child, and the parties expressly declined to make findings of domestic violence or child custody.[1085] Jane S. subsequently filed and was granted a motion to modify the existing custody order in superior court, based on a change of circumstances arising out of a claim of domestic violence.[1086] On appeal, Graham R. argued that the lower court erred in failing to preclude Jane S.'s domestic violence claim, based on principals of res judicata or collateral estoppel.[1087] The supreme court held that fundamental differences between a domestic violence proceeding and a custody hearing allows an exception to the principle of res judicata, as the purpose of the parties' domestic violence hearing was not to address the issue of child custody, but rather to establish a long-term protective order.[1088] Further, the supreme court reasoned that while collateral estoppel may prevent relitigation of domestic violence issues already raised and adjudicated, both Graham R. and Jane S. repeatedly declined to make findings of domestic violence or litigate issues of custody in the domestic violence hearing.[1089] Affirming the lower court's decision, the supreme court held that a motion for modification of custody is not barred by res judicata or collateral estoppel, where fundamental differences exist between domestic violence and child custody proceedings, and where neither domestic violence nor child custody were actually litigated in the domestic violence proceeding.[1090]

***Kyte v. Stallings***

In *Kyte v. Stallings*,[1091] the supreme court held that an agency notice constitutes a final order when the notice clearly indicates both that the decision is final and that an appeal must be filed within 30 days.[1092] Kyte sought a review and modification of his child support obligations with the Child Support Services Division (CSSD).[1093] A few months later, Kyte received a document from CSSD, captioned in bold letters: "Notice of Denial of Modification Review," and including the instructions for an appeal.[1094] Three years later, Kyte filed a motion in superior court to modify his child support obligation, seeking both prospective and retroactive modification.[1095] The superior court denied his motion for retroactive modification. [1096] On appeal, Kyte argued that the notice from CSSD denying his modification was not a final, appealable order, and thus

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[1083] 334 P.3d 688 (Alaska 2014).
[1084] *Id.* at 693–94.
[1085] *Id.* at 691.
[1086] *Id.*
[1087] *Id.* at 691–92.
[1088] *Id.* at 692–93.
[1089] *Id.* at 693–94.
[1090] *Id.*
[1091] 334 P.3d 697 (Alaska 2014).
[1092] *Id.* at 699.
[1093] *Id.* at 698.
[1094] *Id.*
[1095] *Id.*
[1096] *Id.*

his file remained open and allowed for retroactive modification.[1097] The supreme court affirmed the lower court's decision, reasoning that while form is important, the real question is whether the substance and effect communicates that the notice is final.[1098] The court further reasoned that taken as a whole, a reasonable reader would understand the agency's notice to be a final order.[1099] Affirming the lower court's decision, the supreme court held that an agency notice that makes apparent both its final nature and instructions on how to appeal satisfies the requirements of a final and appealable order.[1100]

***Jamie H. v. State, Dep't of Health & Social Services***

In *Jamie H. v. State, Dep't of Health & Social Services*,[1101] the supreme court held that one parent could have his parental rights terminated even if the other parent did not have her parental rights terminated if the child was not in the custody of the parent who retained parental rights and it did not appear that the child would ever return to the custody of the parent who retained parental rights.[1102] Ian was one of several children of Jamie and Anna.[1103] Jamie and Anna both have mental health issues, addiction issues, and extensive criminal histories, and their relationship was chaotic and physically abusive.[1104] Ian was diagnosed with attention deficit hyperactivity disorder with complex emotional trauma, probable chronic post-traumatic stress disorder relative to a disruptive chaotic home environment and exposure to domestic violence and drug and alcohol use, and probable brain damage, and Ian's issues were compounded by a lack of care at home.[1105] After various encounters and failed interventions with the Office of Children's Services (OCS), Ian and the other children were removed from Jamie and Anna's house and put into foster homes in 2011.[1106] Since Ian was taken into OCS custody he had basically no contact with his father but had had a few productive visits with his mother.[1107] OCS filed a petition to terminate Jamie's parental rights of Ian but not Anna's.[1108] The lower court held that Jamie's parental rights should be terminated.[1109] On appeal, Jamie argued that his parental rights should not have been terminated because the lower court did not put in place a specific permanency plan for Ian and did not terminate Anna's parental rights, even though Ian remained in therapeutic foster care.[1110] The supreme court affirmed the lower court's decision, reasoning that there was no chance that Ian could become a "half-orphan" because he was not in Anna's custody at the time of the trial, had an indefinite stay in a therapeutic foster home, and was unlikely to ever be placed with Anna by OCS because of her parenting history.[1111] Affirming the lower court's decision, the supreme court held that parental rights of one parent but not the other

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[1097] *Id*. at 699.
[1098] *Id*. at 700.
[1099] *Id*.
[1100] *Id*. at 697.
[1101] 336 P.3d 1253 (Alaska 2014).
[1102] *Id*. at 1257–58.
[1103] *Id*. at 1254.
[1104] *Id*.
[1105] *Id*.
[1106] *Id*. at 1255.
[1107] *Id*.
[1108] *Id*.
[1109] *Id*. at 1256.
[1110] *Id*.
[1111] *Id*. at 1256–57.

parent could be terminated if there were no chance that the child would be returned to the custody of the parent who retained parental rights.[1112]

***Dodge v. Sturdevant***

In *Dodge v. Sturdevant*,[1113] the supreme court held the superior court has the authority to order a custodial parent to file an IRS form waiving a federal income tax exemption for one child.[1114] As part of their divorce proceeding, Karlee Dodge and Frank Sturdevant agreed that Dodge would have physical custody of their two children, but that each parent would claim a dependency exemption for one child.[1115] The superior court then ordered Dodge to file IRS Form 8332, which would waive her dependency exemption, so that Sturdevant could file his exemption.[1116] Dodge refused, filing a motion to stay the order, which the superior court denied.[1117] Dodge appealed, arguing that the language of Form 8332 showed that the custodial parent must sign the form voluntarily.[1118] The supreme court affirmed, holding the superior court had the authority to force Dodge to sign the waiver.[1119] The court reasoned that nothing in the language of Form 8332, the tax code and regulations, or case law suggested that a court could not order a custodial parent to sign Form 8332.[1120] Moreover, the court cited policy considerations, such as the tax benefits that flowed to families when the custodial parent transferred exemptions to the higher-income noncustodial parent.[1121] Affirming the superior court, the supreme court held the superior court has the authority to order a custodial parent to file an IRS form waiving a federal income tax exemption for one child.[1122]

***Riggs v. Coonradt***

In *Riggs v. Coonradt*[1123], the supreme court held that a total breakdown in communication between parents is a substantial change in circumstances that serves as a sufficient basis to modify custody, even when the motion to modify is based on other grounds.[1124] Riggs and Coonradt were a twice-married and twice-divorced couple with three minor children.[1125] They initially shared physical and legal custody; however, after the second divorce their parental relationship deteriorated.[1126] Coonradt moved for primary physical and sole legal custody of the children in 2011, citing Riggs' exposure of the children to substance abuse and violence as the reason for his request.[1127] The lower court granted Coonradt primary physical and sole legal custody, finding that a complete breakdown of communication between the parents had occurred

[1112] *Id.* at 1258.
[1113] 335 P.3d 510 (Alaska 2014).
[1114] *Id.* at 510.
[1115] *Id.*
[1116] *Id.*
[1117] *Id.*
[1118] *Id.*
[1119] *Id.* at 512.
[1120] *Id.* at 511–12.
[1121] *Id.* at 513.
[1122] *Id.* at 510.
[1123] 335 P.3d 1103 (Alaska 2014).
[1124] *Id.* at 1106–07
[1125] *Id.* at 1105.
[1126] *Id.*
[1127] *Id.*

and that placement of the children with their father was in their best interests.[1128] On appeal, Riggs argued that Coonradt had not demonstrated a substantial change in circumstances that would warrant a modification of custody, noting that his motion to modify was based on allegations of violence and substance abuse that the court had not found substantiated.[1129] The supreme court affirmed the lower court's decision, reasoning that the decision had been based instead on the court's finding that Riggs and Coonradt were unable to communicate.[1130] Further, the supreme court noted that while neither parent had raised lack of communication as a basis for modification, precedent existed for the court to modify custody based on that ground of its own initiative.[1131] Affirming the lower court's decision, the supreme court held that modification of a custody order based on a breakdown of parental communication is appropriate even when not raised in the motion to modify.[1132]

***Chloe W. v. State, Dep't of Health & Social Services***

In *Chloe W. v. State, Dep't of Health & Social Services*,[1133] the supreme court held Alaska Native parental rights are appropriately terminated when it is established by clear and convincing evidence that a child is in conditions that put it at substantial risk of harm, the parent has not remedied the conditions within a reasonable period of time, and active but unsuccessful efforts have been made to preserve the Alaska Native family.[1134] Plaintiff was a young Alaska Native mother who suffered from anxiety and depression and was prescribed pills to combat her symptoms.[1135] She exhibited severe emotional instability and, after the Office of Children's Services (OCS) determined she was unable to effectively take care of her son, her son was placed in foster care.[1136] Plaintiff communicated her desire to improve her life and resume custody of her son, but a psychologist reported she remained unable to effectively care for her son.[1137] The superior court held the child's best interests were best served by terminating parental rights and giving the child a stable environment in which to grow up.[1138] On appeal, plaintiff argued the superior court erred by finding plaintiff had not remedied the conduct that put her son at risk and that OCS had not taken active efforts to avoid breaking up the family.[1139] The supreme court affirmed the lower court's decision, reasoning plaintiff had relapsed into drug use which put her son at substantial risk of harm, and OCS had met its active efforts burden in numerous respects.[1140] Furthermore, the court found it was not in the child's best interests to be returned to plaintiff's care.[1141] Affirming the lower court's decision, the supreme court held termination of parental rights is appropriate when the child is at risk of substantial harm if it remains in parental custody.[1142]

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[1128] *Id.* at 1105–06.
[1129] *Id.* at 1106.
[1130] *Id.*
[1131] *Id.* at 1106–07.
[1132] *Id.* at 1107.
[1133] 336 P.3d 1258 (Alaska 2014).
[1134] *Id.* at 1264.
[1135] *Id.* at 1261.
[1136] *Id.* at 1262.
[1137] *Id.* at 1263.
[1138] *Id.*
[1139] *Id.* at 1261.
[1140] *Id.* at 1265, 1269.
[1141] *Id.* at 1271.
[1142] *Id.*

***Green v. Parks***

In *Green v. Parks*,[1143] the supreme court held that a custody order restricting a parent's alcohol consumption must be founded on specific evidence demonstrating that use of alcohol directly affects the well-being of the child.[1144] Green and Parks both petitioned the lower court for custody of their child.[1145] The lower court granted Parks custody of the child and provided Green with approximately fifteen days of visitation per year, provided that Green refrain from consuming alcohol both while visiting the child and in the eight hours immediately preceding such visitation.[1146] Green appealed, arguing that the lower court lacked substantial evidence regarding the issue of alcohol abuse, and that the visitation order placed a negative stigma upon him.[1147] On appeal, the supreme court found that a custody order must be supported by evidence suggesting that the lower court properly considered the best interests of the child.[1148] Further, the supreme court reasoned that findings of fact must demonstrate that a parent's use of alcohol directly affects the emotional or physical well-being of a child.[1149] Because there was no evidence suggesting Green's alcohol use directly affected the child, the supreme found that the lower court abused its discretion in restricting Green's alcohol consumption.[1150] Remanding the case for further findings of fact, the supreme court held that specific evidence must be provided to support a custody award prohibiting a parent from consuming alcohol prior to and during visitation.[1151]

***Ebert v. Bruce L.***

In *Ebert v. Bruce L.*,[1152] the supreme court held that an adoption of a child may not proceed without the consent of a noncustodial father if the father was justified in failing to support the child.[1153] A married couple attempted to adopt a child despite the biological father's refusal to consent.[1154] While the child lived with the adoptive couple, the biological father visited the child but did not pay any child support for over a year.[1155] At trial, the couple argued that the father's consent was unnecessary under an exception to the consent requirement for noncustodial parents who unjustifiably fail to support the child for at least one year.[1156] The father presented evidence that his failure to pay child support resulted from his indigence and was therefore justifiable.[1157] The superior court denied the adoption petition, finding that the adoptive couple had not proven that the father's lack of support for the child was unjustifiable.[1158] The adoptive couple appealed.[1159] The supreme court affirmed, holding that the superior court did not clearly err in

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[1143] 338 P.3d 312 (Alaska 2014).
[1144] *Id.* at 315–16.
[1145] *Id.* at 313.
[1146] *Id.* at 314.
[1147] *Id.* at 315.
[1148] *Id.*
[1149] *Id.* at 315–16.
[1150] *Id.*
[1151] *Id.*
[1152] 340 P.3d 1048 (Alaska 2014).
[1153] *Id.* at 1050.
[1154] *Id.*
[1155] *Id.* at 1051.
[1156] *Id.* at 1050.
[1157] *Id.* at 1055.
[1158] *Id.*
[1159] *Id.* at 1053.

finding the father's failure to support the child justifiable.[1160] The supreme court reasoned that the father's failure to pay child support was justifiable because the father remained indigent despite his efforts to find a job and receive an education.[1161] Affirming the superior court, the supreme court held an adoption of a child may not proceed without the consent of a noncustodial father if the father was justified in failing to support the child.[1162]

[1160] *Id.* at 1055.
[1161] *Id.*
[1162] *Id.* at 1048.

## HEALTH LAW

### *In re Necessity for the Hospitalization of Gabriel C.*

In *In re Necessity for the Hospitalization of Gabriel C.*,[1163] the supreme court held that if a court issues an ex parte order authorizing hospitalization for a full mental evaluation, and the order requires the person's transportation to another facility for evaluation, the seventy-two hour deadline for the evaluation does not begin until the person arrives at the new facility.[1164] Gabriel C. was taken into protective custody on February 20, 2011, after his family reported to the police that he was not taking his psychiatric medication and was displaying erratic and threatening behavior.[1165] A committing magistrate signed an ex parte order that authorized a transfer from Central Peninsula Hospital to Alaska Psychiatric Institute, stating that a full mental evaluation must be completed within seventy-two hours of Gabriel's arrival at the new facility.[1166] On appeal, Gabriel C. argued that the time for the evaluation period begins immediately after the court issues an order authorizing an evaluation.[1167] The supreme court affirmed the lower court, reasoning that that interpretation is not consistent with the language of the statute.[1168] Affirming the superior court's decision, the supreme court held that if an ex parte order authorizes transportation of a person to another facility for evaluation, the seventy-two hour period for the evaluation begins when the person arrives at the new facility.[1169]

### *Hendricks-Pearce v. State, Dep't of Corrections*

In *Hendricks-Pearce v. State, Dep't of Corrections*,[1170] the supreme court held that prisoners who are or were in the custody of the Department of Corrections ("DOC") are responsible for the costs of all medical care received while in DOC custody.[1171] Dewell Pearce was a prisoner from 1994 to 2008.[1172] He sued the State for medical malpractice and was awarded a judgment of $369,277.88 in 2008, from which the State withheld $140,847 for medical expenses that Pearce had been provided by the State while in its custody.[1173] The superior court found that in AS 33.30.028(a), the statute concerning a prisoner's liability for medical costs incurred while in DOC custody, the distinction between "provided" medical care and medical care "made available" does not release the prisoner from responsibility for medical care costs.[1174] On appeal, Pearce argued that AS 33.30.028(a) and (b) only make a prisoner liable for medical services "provided," not for outside medical treatments which are "made available" to prisoners.[1175] The supreme court affirmed the lower court's holding requiring a prisoner to be liable for the cost of medical care both "provided" and "made available."[1176] The court rejected the argument

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[1163] 324 P.3d 835 (Alaska 2014).
[1164] *Id.* at 837–38.
[1165] *Id.* at 836.
[1166] *Id.*
[1167] *Id.* at 837.
[1168] *Id.*
[1169] *Id.* at 837–38.
[1170] 323 P.3d 30 (Alaska 2014).
[1171] *Id.* at 38.
[1172] *Id.* at 33.
[1173] *Id.*
[1174] *Id.* at 35.
[1175] *Id.* at 36.
[1176] *Id.* at 38.

that such a reading creates redundancies within the statute,[1177] and demonstrated that both the plain meaning of AS 33.30.028(a) and the statute's legislative history show an intent to take full advantage of prisoners' available resources for payment.[1178] Affirming the lower court's decision, the supreme court held that AS 33.30.02 requires a prisoner to be liable for the costs from all medical services provided and made available to the prisoner.[1179]

***Pletcher v. State***

In *Pletcher v. State*,[1180] the supreme court held that an employee of a federally funded residential substance abuse treatment facility who alerts police that a person drove away from the facility while intoxicated does not violate federal law or disclose confidential patient identifying information.[1181] John Pletcher IV was a former patient at a federally funded alcohol abuse treatment center.[1182] After his discharge, Pletcher returned to the center, while intoxicated, and drove away when confronted about his sobriety.[1183] An employee then contacted police and, without identifying Pletcher by name or disclosing his relationship to the facility, alerted the officer about a possibly drunk driver.[1184] On appeal, Pletcher argued that his statutorily protected confidentiality rights had been violated because the center employee disclosed information to the police that could identify Pletcher as a drug or alcohol treatment patient.[1185] The supreme court affirmed the lower court's decision, holding that the mere identification of a drunk driver, without further clarifying information, does not satisfy the criteria for confidential information.[1186] The court reasoned that information provided to police did not directly identify Pletcher as a treatment patient, nor was it obtained for the purpose of treating Mr. Pletcher.[1187] The supreme court affirmed the lower court's decision, reasoning that the information conveyed to police about Pletcher's drunk driving was neither protected nor confidential.[1188] The supreme court held an employee of a federally funded residential substance abuse treatment facility who alerts police that a person drove away from the facility while intoxicated does not violate federal law or disclose confidential patient identifying information.[1189]

[1177] *Id.* at 36.
[1178] *Id.* at 37.
[1179] *Id.* at 38.
[1180] 338 P.3d 953 (Alaska 2014).
[1181] *Id.* at 954.
[1182] *Id.*
[1183] *Id.* at 954–55.
[1184] *Id.* at 955.
[1185] *Id.* at 957.
[1186] *Id.* at 957–58.
[1187] *Id.*
[1188] *Id.* at 961.
[1189] *Id.* at 954.

## IMMIGRATION LAW

### *Villars v. Villars*

In *Villars v. Villars*,[1190] the supreme court held that the support obligations of an immigrant's sponsor can be offset by resources received by the immigrant even when provided by international family members while the immigrant is outside of the United States.[1191] Richard and Olga Villars were married in Ukraine in 2004.[1192] Richard, a U.S. citizen, signed a federal form agreeing to support Olga and her daughter in the U.S. at 125% of the applicable federal poverty rate.[1193] The two divorced and engaged in litigation for several years regarding Richard's support obligation.[1194] At one point following the divorce, Richard claimed Olga spent several months with relatives in Ukraine.[1195] After orders from the lower court regarding Richard's support obligation for 2010, the parties continued to dispute later years of support.[1196] On the latest appeal of the lower court's decision, Richard argued that the superior court erred in calculating his obligations by not including potential offsets, particularly for time that Olga spent back in Ukraine and was supported by her family.[1197] The supreme court reversed the lower court's decision, reasoning that the purpose of the support obligation from an immigrant's sponsor is to prevent the immigrant from becoming dependent on the state, and in doing so, the sponsor is required to pay only the difference between the immigrant's resources and the poverty line.[1198] The court further reasoned that although the relevant statutes and case law were silent, the court was to adopt the rule of law most persuasive in light of precedent, reason, and policy.[1199] In reversing the lower court's decision, the supreme court held that it was only logical that the sponsor's support obligation should be reduced if the immigrant receives alternate support from other sources, including family members abroad, so long as that support meets the federal definition of income.[1200]

[1190] 336 P.3d 701 (Alaska 2014).
[1191] *Id.* at 712.
[1192] *Id.* at 702.
[1193] *Id.*
[1194] *Id.*
[1195] *Id.* at 711.
[1196] *Id.* at 702.
[1197] *Id.* at 711.
[1198] *Id.* at 712.
[1199] *Id.* at 709.
[1200] *Id.* at 712.

## INSURANCE LAW

***Lockwood v. Geico General Insurance Co***.

In *Lockwood v. Geico General Insurance Co*[1201], the supreme court held that a genuine issue of material fact exists as to the reasonableness of the insurer's delay of payment where the insurer delayed payment due to unsubstantiated doubts of the insured's medical claims without making any attempt verify those claims.[1202] Lockwood sought payment from Geico for medical costs due to injuries sustained in an automobile collision at the fault of an uninsured driver after exhausting her medical payments coverage.[1203] Geico did not pay for Lockwood's medical bills, and instead initially offered to settle Lockwood's claim for $750, the amount of her childcare expenses.[1204] Furthermore, Geico delayed payment because Lockwood's medical bills seemed high, but did not request for an independent medical examination until almost three years after the accident.[1205] The lower court granted Geico's motion for summary judgment.[1206] On appeal, the supreme court found that a genuine issue of material fact existed as to Geico's reasonableness in delaying payment due to Geico's failure to specifically advise Lockwood of its concerns regarding Lockwood's medical condition and Geico's failure to request additional medical information or an independent medical examination from Lockwood.[1207] Furthermore, the supreme court reasoned that Geico's proposal of a settlement of $750 to cover Lockwood's childcare expenses and subsequent denials to attempt to reach a settlement further indicate that a genuine issue of material fact exists as to the reasonableness of Geico's delay of payment.[1208] The supreme court reversed the lower court's hearing, holding that a genuine issue of material fact exists as to the reasonableness of the insurer's delay of payment where the insurer delayed payment due to unsubstantiated doubts of the insured's medical claims without making any attempt verify those claims.[1209]

[1201] 323 P.3d 691 (Alaska 2014).
[1202] *Id.* at 698–99.
[1203] *Id.* at 693–94.
[1204] *Id.* at 698.
[1205] *Id.*
[1206] *Id.* at 696.
[1207] *Id.* at 698.
[1208] *Id.*
[1209] *Id.*

***Healy Lake Village v. Mt. McKinley Bank***

In *Healy Lake Village v. Mt. McKinley Bank*[1210], the supreme court held that issues of tribal self-governance fall outside of State court subject matter jurisdiction.[1211] A dispute arose between two groups of Tribe members concerning the validity of tribal council election results.[1212] The group that believed itself the newly-elected representatives of the Tribe ("the Fifer Group") sought access to the Tribe's bank accounts, held with Mt. McKinley Bank.[1213] Due to conflicting claims of the two groups, the Bank refused to freeze the Tribe's accounts at the Fifer Group's request.[1214] The Fifer Group then filed a petition for declaratory relief against the Bank.[1215] The lower court dismissed the claim for want of subject matter jurisdiction, believing the central issue of the case to be a question of who properly controlled the Tribe, the determination of which was an internal question retained in the Tribe's inherent sovereign power.[1216] On appeal, the Fifer Group argued that the case was about the Bank's failure to comply with its obligation to grant account access to new Tribe officials, and not an issue of tribal self-governance.[1217] The supreme court affirmed the lower court's decision, reasoning that determining the Bank's obligations would require a determination of who properly led the Tribe.[1218] Further, the court reasoned that the State had no interest in determining the outcome of the tribal leadership dispute; therefore, the issue was reserved to the Tribe.[1219] Affirming the lower court's decision, the supreme court held that State courts have no subject matter jurisdiction over issues of tribal self-governance, which properly fall within a Tribe's inherent sovereign power.[1220]

***Simmonds v. Parks***

In *Simmonds v. Parks*,[1221] the supreme court held that a tribal court judgment that terminated parental rights is awarded full faith and credit in a superior court under the Indian Child Welfare Act.[1222] Bessie Stearman, members of the Native Village of Minto and the Native Village of Stevens respectively, had their parental rights to their daughter terminated after three hearings in the Minto Tribal Court, establishing that they exhibited substance abuse, domestic violence, and frequent arrests.[1223] The parents did not appeal the decision to the Minto Tribal appellate court, but instead filed a complaint with the superior court requesting physical custody of their daughter.[1224] The parents argued that the Native Village of Minto is not a federally recognized tribe, so the superior court should disregard the Minto Tribal Court's judgment.[1225] The superior

[1210] 322 P.3d 866 (Alaska 2014).
[1211] *Id.* at 867.
[1212] *Id.* at 867–68.
[1213] *Id.* at 869.
[1214] *Id.*
[1215] *Id.*
[1216] *Id.* at 870.
[1217] *Id.* at 873.
[1218] *Id.*
[1219] *Id.* at 875.
[1220] *Id.* at 867.
[1221] 329 P.3d 995 (Alaska 2014).
[1222] *Id.* at 1022.
[1223] *Id.* at 999–1002.
[1224] *Id.* at 1004.
[1225] *Id.*

court denied the motion to dismiss the parents' complaint, and found that the father was denied minimum due process in the Minto Tribal Court proceedings under both the constitutions of Alaska and the United States.[1226] The supreme court reversed the superior court's judgment, and remanded for dismissal of the suit.[1227] The supreme court reasoned that the Minto Tribal Court's decision to terminate parental rights is entitled to full faith and credit under the Indian Child Welfare Act because the parents failed to exhaust tribal court remedies before collaterally attacking the decision in state court.[1228] Reversing the lower court's decision, the supreme court held that tribal court judgments are entitled to full faith and credit in superior court under the Indian Child Welfare Act.[1229]

***Native Village of Tununak v. State, Dep't of Health & Social Services***

In *Native Village of Tununak v. State, Dep't of Health & Social Services*[1230], the supreme court held that, while there is a preference for an Alaska Native to adopt an Alaska Native child under the Indian Child Welfare Act (ICWA), the Alaska Native must formally file for adoption of the child for the preference to apply.[1231] Dawn, an Alaska Native child, was placed in foster care with a non-Native family when her relatives and Tribe stipulated that there was good cause for her to be there instead of with an Alaska Native relative or Tribe member.[1232] When Dawn's birth-mother's parental rights were later terminated, her non-Native foster family sought to formally adopt her.[1233] Dawn's Tribe opposed the adoption, seeking that the girl be placed with her grandmother.[1234] However, the grandmother did not formally apply to adopt Dawn.[1235] The lower court granted the adoption.[1236] On appeal, the Tribe argued that there must be good cause to deviate from the Native preference placement standard of ICWA, and that such cause no longer existed in Dawn's case.[1237] The supreme court affirmed the lower court's decision, reasoning that the Supreme Court of the United States recently interpreted the ICWA to mean that an Alaska Native adoption preference may only apply if a preference-eligible party formally applies for adoption.[1238] Further, the Court noted that merely expressing interest in adoption without going through a more formal process was not sufficient to satisfy the Supreme Court's interpretation.[1239] Affirming the lower court's decision, the supreme court held that the ICWA's preference for adoption of an Alaska Native child by an Alaska Native party attaches only if that party attempts to formally adopt the child.[1240]

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[1226] *Id.* at 999.
[1227] *Id.* at 1022.
[1228] *Id.*
[1229] *Id.* at 1022.
[1230] 334 P.3d 165 (Alaska 2014).
[1231] *Id.* at 167–68.
[1232] *Id.* at 168.
[1233] *Id.* at 169.
[1234] *Id.*
[1235] *Id.* at 171.
[1236] *Id.* at 170.
[1237] *Id.* at 172.
[1238] *Id.* at 173.
[1239] *Id.* at 177.
[1240] *Id.* at 167–68.

## PROPERTY LAW

### *BP Pipelines (Alaska) Inc. v. State*

In *BP Pipelines (Alaska) Inc. v. State*[1241], the supreme court held that it is appropriate to use the "use value" standard in assessing the "full and true value" of property.[1242] The Department of Revenue assessed TAPS in 2006, and the superior court determined that it had permissively used the "use value" method in making its assessment.[1243] On appeal, the Owners of TAPS argued that per statutory interpretation, the "full and true value" of the pipeline could only be assessed using the fair market value method.[1244] The supreme court affirmed the lower court's decision, reasoning that no universal definition of "full and true value" exists, and that legislative history does not support the Owners' argument.[1245] Further, the court found the superior court's reasoning regarding the appropriateness of the "use value" method to assess TAPS to be sound.[1246] The supreme court determined that the value of TAPS streamed primarily from its use in transporting oil from the North Slope reserves, and that it was both a limited-market and special-purpose property.[1247] Because of these unchallenged facts, the court reasoned that there was no market on which to base a fair market assessment, and that assessing the pipeline based on its tariff income would not capture the true value of TAPS.[1248] The court held that the "use value" method is an appropriate means of assessing the "full and true" value of property.[1249]

### *Shumway v. Betty Black Living Trust*

In *Shumway v. Betty Black Living Trust*,[1250] the supreme court held that incarceration outside the state of Alaska may be weighed as a factor against Alaska residency for purposes of the homestead exemption.[1251] Black was awarded injunctive and monetary relief against Shumway for his violation of a small island's protective covenants.[1252] The superior court denied Shumway's attempt to claim a homestead exemption for his small house on the island, and allowed Black's estate to execute on Shumway's island property.[1253] Shumway was incarcerated on the date of levy, and will remain incarcerated for approximately eight years.[1254] On appeal, Shumway argued that the superior court erred in reasoning that his involuntary incarceration meant that he was not a resident of Alaska at the time of levy.[1255] The supreme court affirmed the lower court's decision,[1256] reasoning that the superior court did not clearly err because it correctly weighed Shumway's out-of-state incarceration as a factor in determining that he was

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[1241] 325 P.3d 478 (Alaska 2014).
[1242] *Id.* at 486.
[1243] *Id.* at 482.
[1244] *Id.* at 482.
[1245] *Id.* at 484.
[1246] *Id.* at 486.
[1247] *Id.* at 485.
[1248] *Id.*
[1249] *Id.*
[1250] 321 P.3d 372 (Alaska 2014).
[1251] *Id.* at 378.
[1252] *Id.* at 374.
[1253] *Id.* at 376–78.
[1254] *Id.* at 376.
[1255] *Id.* at 378.
[1256] *Id.*

not a resident of Alaska at the time of levy.[1257] The supreme court further reasoned that although Shumway could show intent to maintain a permanent home in Alaska upon his release, his physical presence was dependent on circumstances beyond his control.[1258] Affirming the lower court's decision, the supreme court held that out-of-state incarceration may be weighed as a factor against Alaska residency for purposes of claiming a homestead exemption.[1259]

***Espeland v. OneWest Bank, FSB***

In *Espeland v. OneWest Bank, FSB*,[1260] the supreme court held that the identity of a banking lender has no legal bearing on the legitimacy of a loan when that loan is transferred between various lenders.[1261] Petitioners Mac and Peggy Espeland took out a loan to refinance their home.[1262] Soon after, a financial institution purchased the loan from the lender and securitized the loan.[1263] After the Espelands defaulted on their loan in 2008, their home was sold in a non-judicial foreclosure.[1264] The Espelands brought suit, alleging that the foreclosure was invalidated by defects in the chain of title because the Deed of Trust was notarized after the document's internal reference date and because the identity of the original lender was unclear.[1265] The trial court entered summary judgment against the Espelands and concluded that no defect in the chain of title prevented foreclosure against the Espelands.[1266] On appeal, the Espelands argued pro se that the lower court erred in entering summary judgment for the banks because a genuine issue of material fact existed as to the conflicting notary dates as well as the lender's true identity.[1267] The supreme court affirmed the lower court's summary judgment ruling, concluding that no chain of title defect created any genuine issue of material fact.[1268] The court further reasoned that the date of the notary created no genuine issue of material fact because a document may be notarized after it is signed.[1269] While the rights to the loan changed hands many times, the supreme court found that Alaska law does not require the identity of the lender to be revealed in order to effectuate a valid loan transfer.[1270] Affirming the lower court's summary judgment ruling, the supreme court held that a lendee's knowledge of a lender's identity has no legal bearing on the legitimacy of a loan.[1271]

***Purcella v. Olive Kathryn Purcella Trust***

In *Purcella v. Olive Kathryn Purcella Trust*,[1272] the supreme court held the right to reform an irrevocable trust is impermissible where the settlor has failed to establish, by clear and convincing evidence, that either the trust did not conform to original intent, "unanticipated

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[1257] *Id.*
[1258] *Id.* at 377–78.
[1259] *Id.* at 378.
[1260] 323 P.3d 2 (Alaska 2014).
[1261] *Id.* at 10.
[1262] *Id.* at 4.
[1263] *Id.*
[1264] *Id.* at 7.
[1265] *Id.* at 10.
[1266] *Id.* at 7.
[1267] *Id.* at 10.
[1268] *Id.* at 13.
[1269] *Id.* at 10.
[1270] *Id.*
[1271] *Id.*
[1272] 325 P.3d 987 (Alaska 2014).

circumstances" substantially affected the furtherance of that intent, or the trust was created as a product of undue influence.[1273] Purcella, an elderly widow and the mother of five sons, owned the majority of shares in a family corporation.[1274] Upon discovering that one of her sons aggressively and consistently demanded large sums of money from Purcella, her daughter-in-law recommended she create an irrevocable trust to protect her wealth.[1275] Purcella agreed and executed the trust.[1276] Two years later, Purcella filed suit to reform the trust, alleging it did not conform to her original intentions and that she had not anticipated losing control over her money.[1277] The superior court held Purcella had not established, by clear and convincing evidence, that she had not intended to create an irrevocable trust or that she had not understood the terms.[1278] On appeal, Purcella argued the superior court relied on clearly erroneous factual findings.[1279] The supreme court affirmed the superior court's decision, reasoning there was ample evidence the attorneys clearly explained the terms of the trust and a misunderstanding of future legal effects does not constitute "unanticipated circumstances."[1280] Furthermore, the court determined the record lacked clear and convincing evidence that either Purcella's family or attorneys exerted undue influence on her into creating the trust.[1281] Affirming the superior court's decision, the supreme court held there is no right to reform an irrevocable trust absent clear and convincing evidence the settlor did not intend to create such a trust or was the victim of undue influence.[1282]

***AAA Valley Gravel, Inc. v. Totaro***

In *AAA Valley Gravel, Inc. v. Totaro,*[1283] the supreme court held that oral property assignments are legally effective and intent can be confirmed by testimony at trial.[1284] Totaro brought suit against AAA Valley Gravel Inc. ("AAA") for overriding royalty payments allegedly due.[1285] AAA states that when it bought the property from the original owner they were no longer bound by the sublease and had no obligation to pay royalties.[1286] Under the sublease Palmquist had been given half of the royalties in order to fulfill a debt, while Totaro continued to hold the other half.[1287] Palmquist has expressed his intentions to have that half transferred back to Totaro, giving Totaro a right to 100% of the royalties.[1288] The trial court found that AAA was bound by the sublease and continues to have an obligation to pay royalties.[1289] However, the court found that Totaro was only entitled to half of the royalties.[1290] The court stated that because Palmquist

[1273] *Id.* at 991.
[1274] *Id.* at 988.
[1275] *Id.* at 989.
[1276] *Id.*
[1277] *Id.* at 990–91.
[1278] *Id.* at 991.
[1279] *Id.* at 992.
[1280] *Id.* at 992–93.
[1281] *Id.* at 993–94.
[1282] *Id.* at 988.
[1283] 219 P.3d 153 (Alaska 2009).
[1284] *Id.* at 167.
[1285] *Id.* at 158.
[1286] *Id.*
[1287] *Id.*
[1288] *Id.* at 167.
[1289] *Id.* at 158.
[1290] *Id.*

was not a party in the suit they could not make any determinations that impacted his property rights.[1291] On appeal Totaro challenges the conclusion that absent a pre-trial arrangement with Palmquist she is only entitled to half of the royalties.[1292] The supreme court reversed the lower court, reasoning that because Palmquist orally conveyed his property interests to Totaro and reaffirmed his intent by oral testimony at trial no outside arrangement was needed for the court to rule on his property rights.[1293] The final judgment was vacated and the case was remanded for considerations on the contract claim.[1294] Reversing the courts holding as to what portion of the royalties were owed to Totaro, the supreme court held that oral property assignments are legally effective and intent can be confirmed by testimony at trial.[1295]

***Tweedy v. Matanuska-Susitna Borough Board of Adjustment and Appeals***

In *Tweedy v. Matanuska-Susitna Borough Board of Adjustment and Appeals,*[1296] the supreme court held a Matanuska-Susitna shoreline setback requirement applies to a structural addition to a home if the addition was constructed after the enactment of the requirement.[1297] Clifton Tweedy began renting property built in 1968 and owned by the Matanuska-Susitna Borough on Big Lake in May 1988.[1298] This property was 17.6 feet from the shoreline.[1299] In 1987, the Borough had enacted an ordinance prohibiting structures closer than 75 feet from the high water mark of the lake, but exempting nonconforming property constructed prior before January 1, 1987.[1300] Soon after leasing the property, Tweedy built an external stairwell on the north side of the house.[1301] When he attempted to purchase the property in 2010, the Borough told him that the stairwell did not comply with the setback requirement and must be removed.[1302] Tweedy appealed this decision to the superior court, arguing that the ordinance applied only to the process of subdividing property, not to property that has already been subdivided.[1303] The superior court affirmed.[1304] Tweedy then appealed to the supreme court, which affirmed, holding that the zoning ordinance applied to Tweedy's stairwell.[1305] The court reasoned that the ordinance, properly construed, applied to both preexisting subdivisions such as Tweedy's and properties in the process of being subdivided.[1306] In addition, this interpretation of the ordinance fit the stated purposes of the law, which included the promotion of health and welfare.[1307] Affirming the superior court's decision, the supreme court held a Matanuska-Susitna shoreline setback

[1291] *Id.* at 165–166.
[1292] *Id.* at 159.
[1293] *Id.* at 167.
[1294] *Id.* at 168.
[1295] *Id.* at 167.
[1296] 332 P.3d 12 (Alaska 2014).
[1297] *Id*. at 14.
[1298] *Id*.
[1299] *Id*.
[1300] *Id*.
[1301] *Id*. at 15.
[1302] *Id*.
[1303] *Id*.
[1304] *Id*.
[1305] *Id*. at 16.
[1306] *Id*. at 16–8.
[1307] *Id*. at 18.

requirement applies to a structural addition to a home if the addition was constructed after the enactment of the requirement.[1308]

***Young v. Kelly***

In *Young v. Kelly*,[1309] the supreme court held work added to the value of individual fishing quotas ("IFQ"s) prior to the ending of a marriage are not marital property if the marriage ends before the IFQ program began.[1310] Anna Young fished with her husband David Kelly on his boat during their marriage, contributing to one of David's highest-yielding years.[1311] David's annual landings from 1984 to 1990, including the year he fished with Anna, were used to determine the amount of halibut shares allocated to him under the IFQ program.[1312] When the IFQ program was established, after their divorce, David and Anna decided to avoid litigation of Anna's property rights to the IFQ shares and agreed that David would give her money when she needed it.[1313] David stopped paying Anna and Anna filed a lawsuit to determine her property rights.[1314] The superior court granted summary judgment concluding that IFQ shares were not martial property.[1315] Anna appealed noting that in some circumstances, such as with pension benefits, property vested after a marriage ends can be marital property if it is deferred compensation.[1316] The court noted that, unlike with pension benefits, at the time of their marriage neither party expected any benefit from an IFQ program.[1317] Therefore, Anna's premarital work did not increase the value of an asset because the asset did not exist until the IFQ program was implemented.[1318] The supreme court held work added to the value of IFQs prior to the ending of a marriage are not marital property if the marriage ends before the IFQ program began. [1319]

***Alaska Trustee, LLC v. Bachmeier***

In *Alaska Trustee, LLC v. Bachmeier*[1320], the supreme court held that all reasonable foreclosure costs can be included in borrower's reinstatement amount.[1321] Bachmeier defaulted on her payment obligations on a loan against her home and Alaska Trustee initiated a non-judicial foreclosure on the property.[1322] Bachmeier requested a reinstatement quote in order to make a payment to stop the foreclosure process, and Alaska Trustee responded with a quote including foreclosure costs that were not attorneys' fees or court costs.[1323] Bachmeier paid the reinstatement amount under protest and brought suit against Alaska Trustee, arguing that Alaska Trustee violated the foreclosure statute by including foreclosure costs in the reinstatement quote

[1308] *Id*. at 14.
[1309] 334 P.3d 153 (Alaska 2014).
[1310] *Id.* at 160.
[1311] *Id.* at 154.
[1312] *Id.*
[1313] *Id.*
[1314] *Id.*
[1315] *Id.*
[1316] *Id.* at 159.
[1317] *Id.*
[1318] *Id.*
[1319] *Id.* at 160.
[1320] 332 P.3d 1 (Alaska 2014).
[1321] *Id.* at 4.
[1322] *Id.* at 1.
[1323] *Id.*

that were not limited to attorneys' fees or court costs.[1324] The lower court granted partial summary judgment in favor of Bachmeier, finding that it was a violation of the foreclosure statute for Alaska Trustee to include fees on a borrower's reinstatement amount that are not attorneys' fees.[1325] On appeal, the supreme court reversed the lower court's ruling, finding that costs of non-judicial foreclosure other than attorneys' fees and court costs may be included in the reinstatement amount as necessary to return the party to its "status quo ante."[1326] The supreme court further reasoned that absence of express allowance for all non-judicial foreclosure costs to be included in the reinstatement amount in Bachmeier's deed of trust is irrelevant, because the foreclosure statute provides that the beneficiary has a right to be returned to its "status quo ante."[1327] Reversing the lower court's decision, the supreme court held that the foreclosure statute does not limit the borrower's reinstatement amount to attorneys' fees and court costs and allows for the inclusion of all reasonable foreclosure costs in the reinstatement amount.[1328]

***Lee v. Konrad***

In *Lee v. Konrad*,[1329] the supreme court held a property lot's boundary line has been established by acquiescence where adjoining owners have mutually recognized it and consent to trespass is an affirmative defense that invalidates a continuing trespass claim.[1330] Plaintiff owned a property lot and conducted a survey to determine the boundary line against the adjacent lot.[1331] Several owners of the adjacent lot agreed with plaintiff that the boundary line was correctly established and so plaintiff erected fence poles to demarcate the lots.[1332] Plaintiff later deposited excavation fill along the boundary line and the current adjacent property owner affirmatively disavowed any complaint or issue.[1333] Defendant bought the adjacent property, conducted a land survey, and claimed plaintiff's boundary line was incorrect.[1334] The superior court held (1) defendant's survey correctly determined the boundary line and (2) plaintiff's fill encroachment constituted a continuing trespass.[1335] The court ordered plaintiff to remove the fill material, erect a barrier to prevent future encroachment, and pay attorneys fees.[1336] On appeal, plaintiff argued the lower court selected the incorrect boundary line and improperly applied a new standard of adverse possession.[1337] The supreme court reversed the lower court's decision as to the boundary line, concluding that where property is reasonably marked and adjoining owners mutually recognize the boundary, the line has been established by acquiescence.[1338] As to the trespass claim, the supreme court reversed in part, reasoning that although additional encroachment by the fill material after defendant bought the lot constituted a trespass,[1339] the previous owner's consent to

[1324] *Id.* at 2.
[1325] *Id.*
[1326] *Id.* at 4.
[1327] *Id.*
[1328] *Id.*
[1329] 337 P.3d 510 (Alaska 2014).
[1330] *Id.* at 526.
[1331] *Id.* at 514.
[1332] *Id.*
[1333] *Id.*
[1334] *Id.* at 515.
[1335] *Id.* at 516–17.
[1336] *Id.* at 513.
[1337] *Id.* at 518.
[1338] *Id.* at 520.
[1339] *Id.* at 524.

the encroachment was an affirmative defense to that prior trespass so there could be no continuing trespass claim.[1340] Reversing the lower court's decision in part, the supreme court held a new property owner's claims against the adjacent property owner's actions are limited by prior owners' express consent to those actions.

***Briggs v. City of Palmer***

In *Briggs v. City of Palmer*,[1341] the supreme court held that Alaska law permits property owners to testify about their property's value before and after an alleged taking.[1342] In 1989 Ray Briggs purchased two parcels of land from the Small Business Administration.[1343] Those parcels abut Palmer Airport, the noise from which led Briggs to sue for inverse condemnation.[1344] Briggs alleged that the noise interfered with the use and enjoyment of his property, such that the disturbance rendered the property without any use. On appeal, Palmer argued Briggs's testimony ought not be admitted as evidence of the diminution of his property's value.[1345] Palmer argued that only expert testimony is admissible as evidence of a change in property value for inverse condemnation claims.[1346] The supreme court reversed the lower court's decision, holding that under Alaska law Briggs can testify as to the value of his property before the alleged taking took place and then the value after the taking.[1347] Noting developing case law, the court emphasized that property owners have a right to testify not just about the value before damage, but also after.[1348] The supreme court reversed the lower court's order granting summary judgment, holding that a party is entitled to testify as to the value of her property both before and after an alleged taking.[1349]

***Farmer v. Alaska USA Title Agency, Inc.***

In *Farmer v. Alaska USA Title Agency, Inc.*,[1350] the supreme court held that failure to provide re-notice after postponement of a nonjudicial foreclosure does not violate equity or the Alaska Constitution.[1351] Here, a family purchased a lodge from the plaintiff then defaulted on the mortgage when, lacking insurance, they fell five months behind on payments and failed to pay real estate or room taxes.[1352] The plaintiff subsequently commenced nonjudicial foreclosure proceedings, and the foreclosure sale was postponed six times from its initial date.[1353] For the initial foreclosure sale date, the family had received a notice of default and a notice of sale by mail and personal service, but for each of the postponements there was simply a public announcement on the sale dates.[1354] The superior court held that the foreclosure sale was

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[1340] *Id.* at 523.
[1341] 333 P.3d 746 (Alaska 2014).
[1342] *Id.* at 747.
[1343] *Id.*
[1344] *Id.*
[1345] *Id.* at 748.
[1346] *Id.*
[1347] *Id.*
[1348] *Id.*
[1349] *Id.*
[1350] 336 P.3d 160 (Alaska 2014).
[1351] *Id.* at 163–164.
[1352] *Id.* at 161.
[1353] *Id.*
[1354] *Id.*

properly conducted and properly postponed.[1355] On appeal, the family argued that actual notice of the postponements was necessary under equity and procedural due process.[1356] The supreme court affirmed the lower court's decision, reasoning that equity did not require actual notice because it would impose a significant burden on a routine transaction and because the family was willingly inattentive.[1357] The court also reasoned that the public announcement provided sufficient notice and thus did not violate procedural due process.[1358] Affirming the superior court's decision, the supreme court held that failure to provide re-notice after postponement of a nonjudicial foreclosure does not violate equity or the Alaska Constitution.[1359]

***Chung v. Rora Park***

In *Chung v. Rora Park*,[1360] the supreme court held the general rule of recovery in a trespass action does not apply if recovery is disproportionate to the loss in property value and there is no personal reason to restore the land.[1361] Chung ("Lessee") commenced excavation for a foundation of the new house he intended to build on the property Rora Park ("Landowner") leased to him.[1362] During excavation, the workers cleared around fifty trees from Landowner's property and the Lessee failed to explain why.[1363] The superior court held the Lessee's workers trespassed on Landowner's property and awarded damages equal to the cost of restoring the trees on the property.[1364] On appeal, Lessee argued the damages award was inappropriate because the property value did not diminish.[1365] The supreme court reversed the lower court's decision, reasoning Landowner did not personally value the land and so damages to restore the trees she did not value constituted a windfall.[1366] Reversing the lower court's decision, the supreme court held a landowner must demonstrate diminished property value or a personal attachment to property in order to receive recovery damages for trespass.[1367]

[1355] *Id.* at 162.
[1356] *Id.* at 163–64.
[1357] *Id.* at 163.
[1358] *Id.* at 164.
[1359] *Id.* at 163–164.
[1360] 339 P.3d 351 (Alaska 2014).
[1361] *Id.* at 351.
[1362] *Id.*
[1363] *Id.* at 352.
[1364] *Id.* at 351.
[1365] *Id.* at 353.
[1366] *Id.* at 353–54.
[1367] *Id.* at 353.

## TORT LAW

### *Regner v. Northstar Volunteer Fire Dep't*

In *Regner v. Northstar Volunteer Fire Dep't*,[1368] the supreme court held that on summary judgment for a negligence claim along with a discretionary immunity claim the court must address all of the decisions challenged when granting discretionary immunity and the moving party must ask for summary judgment on the negligence issue for the decisions the court does not address.[1369] Regner brought suit against the fire departments and several employees who responded to the fire at his motor home.[1370] Regner used a fire torch in an attempt to warm frozen pipes causing a fire.[1371] The firemen put out the fire in the house first before preceding to the fire in the well house despite the fact that Regner insisted they precede the well house immediately.[1372] Regner alleges this negligently caused additional damage to his motor home while the fire department states this was the safest way to put out the fire.[1373] The superior court granted summary judgment on the discretionary issue and on the issue of negligence because Regner did not offer evidence of negligence to rebut that all firefighting activity was done in accordance with firefighting practices.[1374] On appeal Regner challenges the conclusion that he failed to make a sufficient showing of negligence.[1375] The supreme court reversed the lower court, reasoning that because the fire department did not move for summary judgment on the negligence claim the defendants did not meet their burden for summary judgment and Regner was not put on notice to produce sufficient evidence on the negligence claim.[1376] Additionally, because the superior court did not address all of the decisions challenged when granting summary judgment on the immunity claim those decisions were not barred in the negligence claim.[1377] Reversing the summary judgment on Regner's negligence claim, the supreme court held that on summary judgment for a negligence claim along with a discretionary immunity claim the court must address all of the decisions challenged when granting discretionary immunity and the moving party must ask for summary judgment on the negligence issue for the decisions the court does not address.[1378]

### *Steward v. State*

In *Steward v. State*,[1379] the supreme court held that the State's decision not to reinstall a guardrail along a highway shoulder, made in a design study and approval documents, entitled the State to discretionary immunity.[1380] In August 2005, after colliding with another vehicle, a woman drowned when her car slid off Richardson Highway then entered and submerged in the Tanana River.[1381] There was no guardrail between the highway and the riverbank at the time of the

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[1368] 323 P.3d 16 (Alaska 2014).
[1369] *Id.* at 23.
[1370] *Id.* at 17.
[1371] *Id.* at 18–19.
[1372] *Id.* at 19–20.
[1373] *Id.* at 19.
[1374] *Id.* at 20.
[1375] *Id.*
[1376] *Id.* at 21.
[1377] *Id.* at 23.
[1378] *Id.*
[1379] 322 P.3d 860 (Alaska 2014).
[1380] *Id.* at 864.
[1381] *Id.* at 862.

accident.[1382] Based a design study which determined there was an adequate clear zone separating the highway shoulder and the riverbank, the Alaska Department of Transportation and Public Facilities had removed and decided not to reinstall the previously existing guardrail in 1994.[1383] The lower court held that the decision not to reinstall the guardrail retained the State's discretionary immunity in tort cases.[1384] On appeal, the woman's estate and surviving spouse argued that the State's decision not to reinstall the guardrail was an operational act and thus not a discretionary function.[1385] The supreme court affirmed the lower court's decision, reasoning that the design study and approval documents leading to the State's decision were part of the planning stage and thus entitled the State to discretionary immunity.[1386] Affirming the lower court's decision, the supreme court held that the State's decision not to reinstall a guardrail along a highway shoulder, made in a design study and approval documents, entitled the State to discretionary immunity.[1387]

***Mattox v. State, Dep't of Corrections***

In *Mattox v. State, Dep't of Corrections*,[1388] the supreme court held that the Department of Corrections' ("DOC") duty to protect inmates in its care from reasonably foreseeable harm includes assaults by other inmates.[1389] While incarcerated by the DOC, Mattox, a white man, shared a cell with Aaron, a black man.[1390] Mattox alleged that he reported racially motivated threats made by Aaron and Aaron's friends, to correctional officers and requested to be moved to a different module in the facility.[1391] Some time after Mattox allegedly reported the threats, Wilkerson, who was a friend of Aaron, punched Mattox in the face, causing multiple fractures and requiring hospitalization and surgery for the injuries.[1392] After his release from prison, Mattox filed suit, alleging that the DOC failed to protect him after Mattox put the DOC on notice of the threat to his personal safety.[1393] The trial court entered summary judgment for the DOC, concluding that Mattox failed to raise any genuine issue of material fact on the question of whether the DOC breached its duty to protect him from any reasonably foreseeable harm because Mattox's reports of threats were too general to put the DOC on notice.[1394] On appeal, the DOC contended that inmate attacks are only reasonably foreseeable when the prison officials act with deliberate indifference to the inmate's communication of specific, immediate, and identifiable danger.[1395] The supreme court reversed the lower court's summary judgment ruling, concluding that assaults by other inmates fall within the DOC's duty to protect inmates from reasonably foreseeable harm.[1396] The supreme court determined that Mattox's alleged reports of threats, requests to be transferred, and identification of his potential attackers raised a genuine issue of

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[1382] *Id.*
[1383] *Id.*
[1384] *Id.*
[1385] *Id.* at 864.
[1386] *Id.*
[1387] *Id.*
[1388] 323 P.3d 23 (Alaska 2014).
[1389] *Id.* at 28.
[1390] *Id.* at 25.
[1391] *Id.*
[1392] *Id.*
[1393] *Id.*
[1394] *Id.*
[1395] *Id.* at 27.
[1396] *Id.* at 26.

material fact as to whether the attack was reasonably foreseeable.[1397] Reversing the lower court's summary judgment ruling and remanding the case, the supreme court held that the DOC's duty to protect its inmates may include assaults by fellow inmates when those attacks are reasonably foreseeable.[1398]

***Pralle v. Milwicz***

In *Pralle v. Milwicz*,[1399] the supreme court held it will not overturn a jury verdict when the record shows there is sufficient evidence to support the verdict.[1400] The defendant ("Milwicz") negligently rear-ended the plaintiff ("Pralle")'s car, after which Pralle filed suit for personal injury.[1401] The jury found there was sufficient evidence that, although Milwicz was negligent, her negligence was not a substantial factor in Pralle's injury because two prior car accidents had caused Pralle documented injury.[1402] The superior court thus held for Milwicz.[1403] On appeal, the plaintiff argued (1) the jury did not spend adequate time considering the available evidence and (2) the jury ignored the medical testimony that Milwicz caused injury.[1404] The supreme court affirmed the superior court, reasoning (1) the amount of time a jury spends deliberating is inconsequential if it has carefully examined the evidence and (2) the jury reasonably concluded the doctor's testimony did not necessarily yield a finding of causation.[1405] The court also held the superior court did not abuse its discretion in denying challenges against jurors who agreed to set aside personal opinions about the facts of the case.[1406] Affirming the superior court's decision, the supreme court held if there is sufficient evidence supporting a jury's finding, the court will not overturn the jury's verdict and lower court's judgment.[1407]

***Achman v. State***

In *Achman v. State*,[1408] the supreme court held that the Department of Corrections ("DOC") has no heightened duty to take additional steps to prevent an inmate from attempting suicide when that inmates suicidal ideation is not reasonably foreseeable to the DOC.[1409] Charles Kemp attempted suicide while in administrative segregation at Anchorage Correctional Complex.[1410] Kemp survived, but suffered a serious brain injury.[1411] Kemp's mother, Marjorie Achman, brought suit on behalf of Kemp against the State of Alaska alleging negligence against the DOC for failing to protect Kemp from self-harm.[1412] The trial court entered summary judgment for the DOC, concluding that Achman failed to raise any genuine issue of material fact on the question of whether the DOC breached its duty to protect Kemp from reasonably foreseeable harm,

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[1397] *Id.* at 29.
[1398] *Id.* at 28.
[1399] 324 P.3d 286 (Alaska 2014).
[1400] *Id.* at
[1401] *Id.* at 287.
[1402] *Id.* at 288.
[1403] *Id.*
[1404] *Id.* at 288–89.
[1405] *Id.* at 289.
[1406] *Id.* at 291.
[1407] *Id.* at 290.
[1408] 323 P.3d 1123 (Alaska 2014).
[1409] *Id.* at 1127.
[1410] *Id.* at 1125.
[1411] *Id.*
[1412] *Id.* at 1126.

including self-harm.[1413] On appeal, Achman argued that Kemp's medical records before incarceration and his possession of certain books while incarcerated raise a genuine dispute of material fact as to the foreseeability of Kemp's suicide attempt.[1414] The supreme court affirmed the lower court's summary judgment ruling, concluding that Kemp's suicide attempt was not reasonably foreseeable.[1415] The supreme court determined that neither Kemp's previous medical records, which the DOC did not have access to, nor his possession of certain books, including the Bible, were sufficient to make Kemp's suicide attempt reasonably foreseeable.[1416] Affirming the lower court's summary judgment ruling, the supreme court held that the DOC has no heightened duty to protect inmates from attempted suicide when that inmate's suicidal ideation is not reasonably foreseeable.[1417]

***Conley v. Alaska Communications Systems Holdings, Inc.***

In *Conley v. Alaska Communications Systems Holdings, Inc.*,[1418] the supreme court held that a superior court does not abuse its discretion when it allows evidence for permissible purposes that is then used in trial for impermissible purposes if the opposing party fails to object to the use of evidence in that way or request a limiting instruction.[1419] Conley was a tractor-trailer driver who was injured while making a delivery to another company.[1420] Conley sued Alaska Communications Systems Holdings, Inc. ("ACS") for negligence.[1421] Before trial, Conley filed a motion in limine to exclude evidence of his prior work incidents and write-ups, arguing that that evidence would be used impermissibly for propensity.[1422] The trial court denied the motion without comment, presumably because ACS demonstrated that the evidence was relevant to non-propensity purposes.[1423] At no time during the trial did Conley object the ACS's use of the evidence or request a limiting instruction that the evidence not be used for propensity purposes.[1424] On appeal, Conley argued that the superior court abused its discretion by allowing the evidence of his prior work incidents to come in since that evidence was used for propensity purposes at trial, and that he had no obligation to object because the motion in limine to preclude the evidence had been denied.[1425] On review, the supreme court held that each piece of disputed evidence could reasonably be seen to have some permissible relevance and that the probative value of the evidence was not outweighed by the danger of unfair prejudice.[1426] Affirming the superior court's decision, the supreme court held that the superior court does not abuse its discretion when it allows evidence for permissible purposes that is then used in trial for impermissible purposes if the opposing party fails to preserve its objection.[1427]

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[1413] *Id.* at 1127.
[1414] *Id.*
[1415] *Id.*
[1416] *Id.* at 1127–28.
[1417] *Id.* at 1127.
[1418] 323 P.3d 1131 (Alaska 2014).
[1419] *Id.* at 1139.
[1420] *Id.* at 1133–34.
[1421] *Id.* at 1134.
[1422] *Id.*
[1423] *Id.* at 1138.
[1424] *Id.* at 1134.
[1425] *Id.* at 1136.
[1426] *Id.* at 1137–38.
[1427] *Id.* at 1139.

***Pouzanova v. Morton***

In *Pouzanova v. Morton*,[1428] the supreme court held that testimony which provides evidence for multiple arguments must be given context for its relevance and must be more probative than prejudicial to be admissible.[1429] After she drove past a stop sign and was broad-sided by another vehicle, the defendant driver in a tort action did not contest liability for the accident, but disputed the extent of the plaintiff driver's injuries.[1430] During trial, the district court allowed testimony for the plaintiff's claimed damages for loss of enjoyment of life, which included evidence of the plaintiff's domestic violence, particularly an alleged incident where the plaintiff threatened her husband with a hammer.[1431] Acting as an intermediate court of appeal, the superior court found the district court made reversible error,[1432] reasoning that evidence of the hammer incident should have been excluded as it was not given enough context to make it relevant and it was more prejudicial than probative.[1433] On appeal, the defendant argued that the plaintiff's ability to hold a hammer was proof of her recovery from injuries from the accident, and thus was admissible as evidence.[1434] The supreme court affirmed the superior court's decision, reasoning that the testimony was too vague, given the presence of additional evidence of domestic violence, for jurors to make that connection.[1435] The court also reasoned that the testimony was unfairly prejudicial because the point of domestic violence in the plaintiff's marriage had been made repeatedly throughout trial.[1436] Affirming the superior court's decision, the supreme court held that testimony which provides evidence for multiple arguments must be given context for its relevance and must be more probative than prejudicial to be admissible.[1437]

***State, Dep't of Health and Social Services v. Mullins***

In *State, Dep't of Health and Social Services v. Mullins*[1438] the supreme court held a jury verdict that allocates the majority of fault to a negligent tortfeasor when both the negligent and intentional tortfeasor are responsible is unreasonable.[1439] Upon receiving a report that 8-year old Alecia and 6-year old Shayna Mullins ("the girls") were abused by their mother, the Office of Children's Services ("OCS") took the girls into custody and placed them in the care of their grandparents ("the Mullins").[1440] Three years later, the girls reported that their grandfather had sexually abused them for years.[1441] The counselor who had been working with them during that time noticed patterns of behavior that were symptomatic of sexual abuse, but testified she never suspected abuse occurred.[1442] Following the girl's report, the grandmother became abusive and the girls were finally placed in different care.[1443] The girls filed a complaint against OCS, for

[1428] 327 P.2d 865 (Alaska 2014).
[1429] *Id.* at 870.
[1430] *Id.* at 866–67.
[1431] *Id.* at 867.
[1432] *Id.*
[1433] *Id.* at 870.
[1434] *Id.*
[1435] *Id.* at 870–71.
[1436] *Id.* at 871.
[1437] *Id.* at 870.
[1438] 328 P.3d 1038 (Alaska 2014).
[1439] *Id.* at 1042.
[1440] *Id.* at 1039.
[1441] *Id.*
[1442] *Id.*
[1443] *Id.* at 1039–40.

failure to protect them from harm, and the Mullins, for assault and battery.[1444] The jury returned a verdict that OCS's negligence was a substantial factor in causing the harm to the girls and the Mullins' conduct did not cause harm to either of the girls.[1445] The jury allocated 95% of the fault to OCS and 5% to the abusive mother, and none to the Mullins.[1446] OCS moved for a judgment notwithstanding the verdict or a new trial, which the superior court denied.[1447] On appeal, OCS argued the superior court should have granted a new trial because the jury's allocation of fault was irrational.[1448] The supreme court reversed the superior court's decision, reasoning the jury verdict was irrational because OCS could not reasonably be held liable for the acts of the other tortfeasors, and it was an abuse of discretion not to grant the motion for a new trial.[1449] The Mullins could not be deemed zero percent responsible for the intentional abuse they inflicted on the girls.[1450] Reversing the superior court's decision, the supreme court held allocation of fault and damages cannot be excessively attributed to a negligent tortfeasor over an intentional tortfeasor.[1451]

***Donahue v. Ledgends, Inc.***

In *Donahue v. Legends, Inc.*,[1452] the supreme court held that the Unfair Trade Practices and Consumer Protection Act ("UTPA") does not apply to personal injury claims.[1453] Donahue was injured when, at the suggestion of an instructor, she dropped from a bouldering wall during a class at the Alaska Rock Gym, owned by Ledgends, Inc.[1454] Donahue signed a waiver of liability prior to the class,[1455] but sued the Rock Gym for negligence and for violating UTPA, contending that the Rock Gym's advertisements misleadingly advertised the gym as a safe place.[1456] The Rock Gym moved to dismiss the UTPA claims on grounds that the act does not apply to personal injury claims.[1457] The superior court granted the Rock Gym's motion for summary judgment.[1458] On appeal, Donahue argued that, although the UTPA covers the loss of money or property as a result of bad practices related to consumer goods and services, given that the court had not yet decided whether the statute includes personal injury claims, damages for personal injury should be recoverable.[1459] The supreme court affirmed the lower court's decision, reasoning that there is nothing in the UTPA's legislative history to support Donahue's contention that the Act covered liability for personal injury and would supplant negligence as the basis for such liability.[1460] The incongruities between the elements of common law personal injury claims and the UTPA were too significant for the court to assume, without clear legislative direction,

[1444] *Id.* at 1040.
[1445] *Id.* at 1040–41.
[1446] *Id.* at 1041.
[1447] *Id.*
[1448] *Id.*
[1449] *Id.* at 1042.
[1450] *Id.*
[1451] *Id.*
[1452] 331 P.3d 342 (Alaska 2014).
[1453] *Id.* at 353.
[1454] *Id.* at 345.
[1455] *Id.* at 344.
[1456] *Id.* at 346.
[1457] *Id.*
[1458] *Id.*
[1459] *Id.* at 353.
[1460] *Id.*

that the legislature intended the act to provide an alternative vehicle for personal injury suits.[1461] Affirming the lower court's decision, the supreme court held that the UTPA does not apply to personal injury claims.[1462]

***Greene v. Tinker***

In *Greene v. Tinker*,[1463] the supreme court held that the superior court did not err in finding that Greene did not have an absolute defense to defamation under the First Amendment and the Alaska Constitution.[1464] Beverly Tinker was an employee at Pilot Station Health Clinic, a facility at which Karen Greene was a patient.[1465] Greene and Tinker are distant cousins, and their families have negative history.[1466] In 2007, Tinker improperly accessed Greene's medical records.[1467] Four years later, in 2011, while pregnant and attending the clinic, Greene accused Tinker again of improperly accessing her medical files when Greene became aware that Tinker knew of Greene's pregnancy, despite substantial steps by Greene to prevent Tinker from finding out its details.[1468] Greene accused Tinker of improperly sharing information from the file—that Greene was pregnant—with a clerical employee at the clinic.[1469] In truth, Greene had told a mutual acquaintance of Tinker, who in turn told Tinker's sister who told Tinker.[1470] Tinker was fired from the clinic after Greene's accusation.[1471] On appeal, Greene argued she had an absolute defense to a defamation claim under the First Amendment right to free speech and the Alaska Constitution.[1472] The supreme court affirmed the lower court's decision, because under well-established United States Supreme Court precedent Greene was entitled to at most conditional privilege when making a defamatory statement, and that here she was not even entitled to that.[1473] The supreme court also affirmed that the Alaska Constitution does not provide an absolute protection of defamatory speech, but only a similar conditional privilege which did not attach here.[1474] The supreme court affirmed the lower court's decision, reasoning that under Supreme Court and Alaska precedent there is no total protection from defamation claims.[1475]

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[1461] *Id.*
[1462] *Id.*
[1463] 332 P.3d 21 (Alaska 2014).
[1464] *Id.* at 24.
[1465] *Id.* at 25.
[1466] *Id.*
[1467] *Id.*
[1468] *Id.*
[1469] *Id.*
[1470] *Id.*
[1471] *Id.*
[1472] *Id.* at 32–35.
[1473] *Id.*
[1474] *Id.* at 35 – 36.
[1475] *Id.* at 32–36.