THE YEAR IN REVIEW 2016

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

Vandenberg v. State, Department of Health & Social Services.

In *Vandenberg v. State, Department of Health & Social Services*,[1] the supreme court held that administrators erred in applying only one job description to a reemployment benefit claim where the applicant's actual job was more physically strenuous than that job's description provided.[2] After sustaining a work-related injury, Vandenberg applied for reemployment benefits.[3] In compiling the reemployment benefit claim, the independent rehabilitation specialist assigned to the case determined that no single job description accurately characterized Vandenberg's position and advocated for listing two descriptions instead, a medium strength and a more sedentary job.[4] Relying on case law, the Alaska Workers' Compensation Board, however, disagreed, deciding only the sedentary job described the demands of Vandenberg's position, thereby making her ineligible for benefits.[5] The supreme court, however, sided with Vandenberg, reasoning that the administrators read the law too narrowly.[6] Rather, the court held that the state could be permitted to select multiple job descriptions if warranted by consideration of the tasks and duties of the applicant's job.[7] Upon such consideration of the tasks and duties of Vandenberg's job, the court agreed that her job was significantly different from the one selected by the administrators.[8] Reversing and remanding the administrators' decisions, the supreme court held that two job descriptions could be used to describe an applicant's job if just one cannot properly describe the job's tasks and duties.[9]

Botson v. Municipality of Anchorage

In *Botson v. Municipality of Anchorage*,[10] the supreme court held that, in order for the results of a breath alcohol test to be admissible as evidence, the officer administering the test need only substantially, and not strictly, comply with the test-related procedures prescribed by the Department of Public Safety, so long as the test's results are still accurate.[11] While driving, Botson was pulled over by a police officer, who administered a breath alcohol test and found Botson's blood alcohol content to be high.[12] After the test had been administered, the testing device returned an error code after the officer mishandled it while performing a post-test procedure.[13] At trial, Botson filed a motion to suppress the test at his trial, arguing that a test is only valid where administered in compliance with all the prescribed guidelines.[14] The trial court

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[1] 371 P.3d 602 (Alaska 2016).
[2] *See id*. at 603–04.
[3] *Id.* at 603.
[4] *Id*. at 604.
[5] *Id*. at 603.
[6] *Id.* at 608.
[7] *Id.*
[8] *See id.* at 608–09.
[9] *See id.*
[10] 367 P.3d 17 (Alaska 2012).
[11] *Id*. at 23–25.
[12] *Id*. at 18.
[13] *Id*. at 19.
[14] *Id*.

denied Botson's motion, holding that the Anchorage Municipal Code required compliance only with procedures codified therein, of which the procedure the officer had been performing when he mishandled the device was not one.[15] The supreme court found no error in the denial of Botson's motion to suppress,[16] though it also held that breath alcohol tests must be administered in compliance with all of the prescribed procedures, not just those in the Municipal Code.[17] The supreme court managed to reach the same result as the trial court by pointing to a precedent case in which it had held that substantial, rather than strict, compliance is adequate in order for a breath alcohol test to be admissible as evidence, so long as the finder of fact has found the test's results to be accurate.[18] Affirming the superior court, the supreme court held that, where it has been found that a test has been properly and accurately performed, substantial compliance with the Department of Public Safety's procedures for administering a test, rather than strict compliance, is adequate in order for the test to be admissible as evidence.[19]

City of Valdez v. State

In *City of Valdez v. State*,[20] the supreme court of Alaska held that the State Assessment Review Board has exclusive jurisdiction over all appeals from the Department of Revenue's assessments of oil and gas property taxability and tax valuation.[21] The Alaska legislature established a statewide regime for the assessment of oil and gas property for tax purposes.[22] The Alaska Department of Revenue (the "Department") manages these tax assessments, determining if the property is taxable and, if so, the taxable value.[23] Three municipalities, partial owners of the Trans-Alaska Pipeline System (TAPS), appealed a tax assessment issued by the Department of Revenue.[24] The appeal was bifurcated so that the tax valuation assessment was appealed to the State Assessment Review Board (SARB) and the taxability assessment was appealed to the Department.[25] The Department dismissed the taxability appeal for lack of jurisdiction after finding issues of valuation.[26] The municipalities, through a jointly filed stipulation with the State, requested that the dismissal be the final administrative decision of the Department for further appeal to the superior court.[27] The municipalities argue that the Department does not have the authority to decide taxability appeals,[28] while the State argues that SARB should not have exclusive jurisdiction over appeals on tax valuation assessments conducted by the Department and the Department's interpretation should be given deference.[29] On appeal, the supreme court

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[15] *Id*. at 20.
[16] *Id*. at 25.
[17] *Id*. at 23.
[18] *Id*. at 24.
[19] *Id.*
[20] 372 P.3d 240 (Alaska 2016).
[21] *Id.* at 243.
[22] *Id.*
[23] *Id.*
[24] *Id.* at 245
[25] *Id.*
[26] *Id.*
[27] *Id.*
[28] *Id.*
[29] *Id.* at 247, 248, 253.

reasoned that the legislature did not intend to create a bifurcated appeals process and that the SARB was created as the single entity to hear oil and gas property appeals.[30] The court also reasoned that several prior SARB decisions gave weight to the fact that SARB's jurisdiction encompassed taxability assessment appeals.[31] The court further noted that only SARB could meet the approximate three-month timeline that the legislature set for appeals of assessments and that the process of taxability appeals before Revenue can take years for a final judgment.[32] Reversing the lower court, the supreme court held that the legislature intended SARB to have exclusive jurisdiction over appeals regarding oil and gas property taxability and tax valuation assessments.[33]

Huit v. Ashwater Burns, Inc.

In *Huit v. Ashwater Burns, Inc.*,[34] the supreme court held when a superior court remands a case to an administrative agency decisions are not final if they contemplate further proceedings,[35] and the Alaska's worker compensation statute requires employers to provide substantial evidence an employees' injuries are not work-related to rebut the presumption the employee's injury is compensable.[36] Joseph Huit, an employee of Ashwater Burns, was scratched while working.[37] Subsequently, Huit developed a medical condition warranting hospitalization.[38] After hospitalization, Huit received conflicting medical opinions as to whether the endocarditis resulted from the scratch.[39] The Alaska's Worker's Compensation Board found that Huit's injury was presumed compensable because Ashwater identified no alternate cause to rebut medical professionals concessions that Huit's scratch could have caused his infection.[40] Ashwater then appealed to Alaska's Worker's Compensation Commission, which decided the Board erred in requiring substantial evidence of alternate causes, as opposed to evidence employment did not substantially cause the injury.[41] Overruling the Commission, the supreme court determined decisions are not final while litigants can still submit evidence that may alter the decision.[42] While the court considered that the Commission was created for the purpose of expediency, it declared that litigants could appeal decisions that raise important issues of law.[43] After justifying granting the appeal, the court reversed the Commission's finding that Ashwater had rebutted the presumption that Huit's injury was compensable.[44] The court determined that Ashwater was required to prove Huit's employment did not give rise to his infection, either by showing the

[30] *Id.* at 253–54.
[31] *Id.* at 254–55.
[32] *Id.* at 255.
[33] *Id.* at 256.
[34] 372 P.3d 904 (Alaska 2016).
[35] *Id.* at 914–16.
[36] *Id.* at 919.
[37] *Id.* at 908.
[38] *Id.* at 908–09.
[39] *Id.* at 909–10.
[40] *Id.* at 910–11.
[41] *Id.* at 911–12.
[42] *Id.* at 914.
[43] *Id.* at 916.
[44] *Id*.

scratch was not a possible cause of injury or by identifying another possible cause.[45] Reversing the Commission, the supreme court held administrative agency decisions are not final if they contemplate further proceedings,[46] and employers must provide substantial evidence that employees' injuries are not work related in order to rebut the presumption that employees' injuries are compensable under Alaska's worker compensation statute.[47]

Hudson v. Citibank NA

In *Hudson v. Citibank NA*,[48] the supreme court held that litigating debt-action claims does not waive the right to arbitrate under the Unfair Trade Practices and Consumer Protection Act (UTPA) and the issue of state-wide injunctive relief depends on the language of the arbitration agreement.[49] In 1999, Hudson opened a Citibank credit card that included an arbitration clause.[50] In 2010, Hudson fell behind on her payments and Citibank, represented by Alaska Law Offices, filed a collection action in district court.[51] Citibank was ordered a default judgment that included attorney's fees.[52] Hudson filed a class-action complaint against Citibank alleging a violation of UTPA by asking for attorney's fees in excess of the "reasonable" fee allowed.[53] In response, Citibank moved to compel arbitration.[54] The supreme court held that waiver of the right to arbitrate under the UTPA is an issue of federal law[55] and Citibank did not waive this right by litigating its debt collection and asking for attorney fees.[56] The supreme court also held that the issue of state-wide injunctive relief is an issue of interpretation of the arbitration clause which is a question for the arbitrator and remanded this issue.[57] Affirming the superior court, the supreme court held that the decision to litigate a debt action does not constitute of as a waiver and that the issue of state-wide injunctive relief should be decided by the arbitrator interpreting the arbitration clause.[58]

Eder v. M-K Rivers

In *Eder v. M-K Rivers*,[59] the supreme court held that state regulations do not prohibit the Alaska Worker's Compensation Commission from waiving copying costs for indigent litigants.[60] Eder was injured while working construction for M-K Rivers in 1975 and received temporary total

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[45] *Id.* at 919–20.
[46] *Id.* at 914–916.
[47] *Id.* at 919.
[48] 387 P.3d 42 (Alaska 2016).
[49] *Id*. at 46.
[50] *Id.* at 44.
[51] *Id*. at 44–45.
[52] *Id*. at 45.
[53] *Id*.
[54] *Id*.
[55] *Id*. at 46.
[56] *Id*. at 49–50.
[57] *Id*. at 53.
[58] *Id*.
[59] 382 P.3d 1137 (Alaska 2016).
[60] 1142

disability.[61] In 2012, Eder renewed his claim, this time seeking permanent total disability.[62] In doing so, Eder requested, and was granted, three extensions for filing his opening brief.[63] The delay, he asserted, was caused by not being able to access the entire record of his claim because he was homeless.[64] M-K Rivers argued that the Commission's ultimate decision to dismiss the matter, after the first three extensions, was within its discretion because regulatory rules, particularly 8 AAC 45.030(c), require appellants to pay for preparation of the record on appeal.[65] The supreme court court disagreed, concluding that nothing in the rules fairly suggests that the Commission is precluded from waiving the fee and granting indigent litigants free copies.[66] Accordingly, the supreme court remanded because the dismissal of Eder's claim was without good cause.[67] The supreme court thus held that the Alaska Worker's Compensation Commission may waive the costs of copying records for indigent litigants.[68]

BUSINESS LAW

Bingman v. City of Dillingham

In *Bingman v. City of Dillingham*,[69] the supreme court held that an offeror cannot deny the offeree the option of rejecting an offer with silence by stipulating in the offer that silence constitutes acceptance.[70] Bingman did not pay property taxes for multiple years on parcels of land that he owned in the City of Dillingham.[71] The City then obtained a foreclosure judgment against Bingman.[72] Bingman then sent a promissory note and security agreement to the City promising to pay the back taxes over twenty years.[73] The security agreement stated that retention of the promissory note, silence, or failure to send a confirmed rejection of Bingman's offer to his California address within a two week period would constitute acceptance of the promissory note to prevent foreclosure.[74] The City sent a letter of rejection to Bingman's Alaska address, but they did not return the promissory note.[75] The supreme court held that Bingman could not enforce a contract against the City because there had been no meeting of the minds and that a failure to terminate the power to accept could not be construed as acceptance.[76] The supreme court also reasoned that an offeror cannot require a notification of rejection rather than a notification of

[61] *Id.*at 1138.
[62] *Id*.
[63] *Id*. at 1140.
[64] *Id*.
[65] *Id*. at 1141.
[66] *Id*. at 1141–42.
[67] *Id*. at 1143.
[68] *Id*.
[69] 376 P. 3d 1245 (Alaska 2016).
[70] *Id*. at 1248.
[71] *Id.* at 1246.
[72] *Id.*
[73] *Id.*
[74] *Id.*
[75] *Id.*
[76] *Id.* at 1247.

acceptance to form a valid contract.[77] The supreme court affirmed, holding that an offeror cannot take away the option of rejection by silence.[78]

CIVIL PROCEDURE

In re Petition for Approval of a Minor Settlement T.V.

In re Petition for Approval of a Minor Settlement T.V.,[79] the supreme court held that in settlement proceedings, the superior court does not have jurisdiction over non-parties.[80] In 2012, T.V., a minor, was left paralyzed when he was hit by a car.[81] The superior court approved a petition which placed the proceeds of the insurance settlements into a special needs trust for the benefit of T.V.[82] Although the proceeds were correctly deposited in the Arc of Anchorage's pooled trust, the father of T.V., Jack, became displeased with the care and management of the settlement money.[83] Jack filed a motion in the probate case asking for the Arc of Anchorage to return all the funds.[84] The court denied Jack's motion concluding the Arc of Anchorage was not a party in the minor's settlement cases.[85] On appeal, the supreme court considered whether the superior court was correct in denying Jack's motion.[86] The court noted that Jack's motion was an attempt to state a claim against the Arc of Anchorage and his requested relief was for the Arc to give back the settlement money even though the Arc was never a party in the probate case.[87] The supreme court determined that because the Arc of Anchorage was not a party in the minor's probate case, the superior court did not have jurisdiction over the Arc of Anchorage and correctly denied the motion.[88] Affirming the lower court, the supreme court held in settlement proceedings, the superior court does not have jurisdiction over non-parties.[89]

State v. Andreanoff

In *State v. Andreanoff*,[90] the court of appeals held a court's sua sponte dismissal of charges is similar to a dismissal by motion of the defendant, and, under Alaska Criminal Rule 45, the time for trial begins anew when a defendant is served with refiled charges.[91] Rule 45 requires that a defendant is tried within 120 days from the date of his or her charges,[92] including if the charges

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[77] *Id*. at 1248.
[78] *Id.*
[79] 371 P.3d 599 (Alaska 2016).
[80] *Id*. at 602.
[81] *Id*. at 599.
[82] *Id*. at 600.
[83] *Id*.
[84] *Id*.
[85] *Id*.
[86] *Id*. at 601.
[87] *Id*.
[88] *Id*. at 602.
[89] *Id*.
[90] 370 P.3d 1112 (Alaska Ct. App. 2016).
[91] *Id.* at 1116.
[92] *Id.* at 1113.

are dismissed by the prosecution.[93] However, if charges are dismissed by a motion of the defendant, the time for trial runs anew from the date refiled charges are served.[94] At arraignment, the court dismissed the charges for lack of probable cause, because the prosecutor failed to include sworn testimony from the arresting officer.[95] The State refiled the charges a week later, but it took more than two months for the State to serve Andreanoff.[96] Because Rule 45 is silent regarding what occurs when a court dismisses the charges sua sponte,[97] Andreanoff's attorney argued that the court should treat a court's sua sponte dismissal of charges as if it were a dismissal by the prosecution and that, therefore, the charges were close to expiring.[98] The district court agreed and ruled that the 120 days for trial time ran from the service date of the original charges.[99] Reversing the district court's decision, the court of appeals reasoned that a court's sua sponte dismissal of criminal charges benefits the defendant and should function similarly to a dismissal by the defendant's motion.[100] The court further reasoned that when a court acts on its own motion it is most likely because the defendant is unrepresented, as was the case with Andreanoff.[101] The court noted, if Andreanoff had been represented at the time, it is likely that his counsel would have moved to dismiss the charges for lack of probable cause on the same ground the court dismissed them.[102] Reversing the district court's decision, the court of appeals held that Rule 45 time begins anew when a defendant is served with refiled charges when a court dismisses the initial charges sua sponte, and it should be treated similarly to a dismissal by motion of the defendant.[103]

Seybert v. Alsworth

In *Seybert v. Alsworth*,[104] the supreme court held that AS 39.50, a conflict of interest law governing the conduct of public officials, does not require citizens to exhaust the statute's administrative remedies before filing suit in civil court.[105] Seybert, along with four other voters from Lake and Peninsula Borough, brought a private action against Alsworth, the borough's mayor, and an assemblywoman for several alleged conflict of interest violations, including three under AS 39.50.[106] That law contains both a citizen suit provision, under AS 39.50.100, and also an administrative remedy under AS. 39.50.055.[107] In superior court, Alsworth moved for summary judgment on the grounds that Seybert was required by the exhaustion doctrine to

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[93] *Id.*
[94] *Id.*
[95] *Id.*
[96] *Id.* at 1114.
[97] *Id.*
[98] *Id.*
[99] *Id.*
[100] *Id.*
[101] *Id.* at 1115.
[102] *Id.* at 1116.
[103] *Id.*
[104] 367 P.3d 32 (Alaska 2016)
[105] *Id*. at 38.
[106] *Id*. at 34.
[107] *Id*. at 36.

exhaust the administrative remedies but had failed to do so.[108] The superior court agreed, granting summary judgment and staying the proceeding until the Alaska Public Offices Commission (APOC) conducted a review.[109] The supreme court, however, reversed, reasoning that although the exhaustion doctrine generally applies where a statute provides an administrative remedy, AS 39.50's plain text and legislative history both indicated that exhaustion of its administrative remedy was not required precedent to a private cause of action, but rather that citizens had a choice between parallel remedies.[110] The court further reasoned that exhaustion was not required because a civil suit neither deprived citizens of the ability to file a complaint with APOC, deprived courts of the ability to provide a remedy, nor presented issues of judicial competence or jurisdiction.[111] The supreme court also rejected the contention that the superior court had discretion to stay the proceedings by virtue of the doctrine of primary jurisdiction, finding that none of the factors usually considered in applying that doctrine applied in this instance.[112] Reversing the superior court, the supreme court held that exhaustion of administrative remedies is not a prerequisite for a private action under AS 39.50.[113]

Timothy G. v. State, Dept. of Health & Social Services

In *Timothy G. v. State, Dept. of Health & Social Services*,[114] the supreme court held that a plaintiff must prove a disability by a preponderance of evidence in order to have a statute of limitations tolled.[115] A stepson filed suit against the Office of Children's Services (OCS) in order to recover for the OCS's failure to act on reports that had been filed with it relating to a period in which the stepson had been abused by his stepfather.[116] OCS moved to dismiss the claims against it, arguing the two year statute of limitations on the stepson's claims had passed.[117] The stepson responded by arguing that he had been left mentally incompetent by the years of abuse, and, therefore, the statute of limitations had been tolled.[118] The superior court arranged an evidentiary hearing to resolve the issue.[119] After hearing testimony regarding the stepson's mental health, the court granted OCS's motion, finding that the stepson was not mentally incompetent.[120] Interpreting the court's motion as one for summary judgment, the stepson appealed, arguing that the motion should have been denied if he had presented "more than a scintilla of evidence" to support his claim.[121] Looking to a precedent case, the supreme court noted that a claim of mental incompetency was a question of fact that must be supported by a preponderance of evidence and determined that the superior court had followed the correct procedure in holding an evidentiary

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[108] *Id*. at 35.
[109] *Id*.
[110] *Id*. at 37
[111] *Id*. at 38.
[112] *Id*. at 39–41.
[113] *Id*. at 41.
[114] 372 P.3d 235 (Alaska 2016).
[115] *Id.* at 239.
[116] *Id.* at 236.
[117] *Id.*
[118] *Id.*
[119] *Id.* at 237.
[120] *Id.*
[121] *Id.* at 236.

hearing.[122] Affirming the superior court, the supreme court held that the correct standard requires the party claiming that the statute of limitations was tolled due to a disability to prove that disability by a preponderance of evidence.[123]

Jerry B. v. Sally B.

In *Jerry B. v. Sally B.*,[124] the supreme court held that, where a criminal conviction has been entered into evidence in a civil suit, the convicted party may be collaterally estopped from relitigating issues decided in the criminal case.[125] A husband was arrested following allegations that he had sexually abused his daughter.[126] His wife initiated divorce proceedings and he later pled guilty to one count of indecent exposure.[127] After the divorce proceedings ended in a court decision that heavily favored the wife,[128] the husband appealed, arguing that the court had improperly relied on his indecent exposure conviction in reaching its decision.[129] Based on its precedent, the supreme court held that a party in a civil proceeding is collaterally estopped from relitigating issues relating to a criminal conviction, enabling the court to rely on the conviction as conclusive evidence that the crime did occur, so long as the conviction is for a serious criminal offense, the party has had a full and fair hearing, and the issue on which the court's judgment is based (in this case, whether or not the crime occurred) was necessarily decided in the criminal proceeding.[130] The court held that all of these criteria were met in this case, and, therefore, collateral estoppel was appropriate, because indecent exposure is a felony, the husband had been represented by counsel during the proceedings, and the elements of the crime of indecent exposure allowed the court to infer the nature of the abuse to which the husband had subjected his daughter in the manner in which it did.[131] Affirming this element of the lower court's decision, the supreme court held that a criminal conviction may collaterally estop a party to a civil suit from relitigating issues relating to the crime, such as whether or not the crime occurred.[132]

Sellers v. Kurdilla

In *Sellers v. Kurdilla*,[133] the supreme court held when the plaintiff is mistaken about the identity of the defendant, the complaint can be amended to add defendants, regardless of whether the plaintiff was on inquiry notice of the mistake, so long as there is an identity of interest between the original named defendant and amended defendant.[134] In 2010, Sellers was rear-ended by a

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[122] *Id.* at 239.
[123] *Id.*
[124] 377 P.3d 916.
[125] *Id.* at 926–27.
[126] *Id.* at 921.
[127] *Id.* at 921–22.
[128] *See id.* at 923–24.
[129] *Id.* at 925.
[130] *Id.* at 926.
[131] *Id.* at 927.
[132] *Id.* at 926–27.
[133] 377 P.3d 1 (Alaska 2016).
[134] *Id.* at 7–8, 10, 13–14.

vehicle containing Kurdilla and Stroud.[135] Kurdilla identified himself as the driver to Sellers and gave her his insurance information.[136] Subsequently, Sellers' attorney received several correspondences from State Farm separately and alternatively naming Stroud four times and Kurdilla eleven times as "Our Insured."[137] In 2012, Sellers initiated a lawsuit naming Kurdilla as the defendant, but later amended the complaint to add Stroud as a defendant.[138] The district court granted Stroud's motion to dismiss, and on trial the jury returned a defense verdict for Kurdilla.[139] On appeal, the superior court found Sellers had abandoned arguments premised on Stroud and State Farm's identity of interest.[140] On subsequent appeal, the supreme court noted Alaska law allows parties to add defendants through an amendment that "relate[s] back" to the original claim, including when the amended defendant(s) has an identity of interest with the original.[141] The court then noted, even where a plaintiff is on inquiry notice there may be multiple possible defendants, relation back is nonetheless allowed in the event of an actual mistake of the defendant's identity or role.[142] The court then found the claim that the amended defendant shared an identity of interest had not been abandoned, because it left open the possibility that the interest was imputed through the insurer.[143] Ultimately, the court found Stroud did share an identity of interest with State Farm.[144] Reversing the superior court, the supreme court held when the plaintiff is mistaken about the identity of the defendant, the complaint can be amended to add defendants, regardless of whether the plaintiff was on inquiry notice of the mistake, so long as there is an identity of interest between the original named defendant and amended defendant.[145]

Cornelison v. TIG Ins.

In *Cornelison v. TIG Ins.*,[146] the supreme court held that an abuse of process claim will fail unless there is an alleged ulterior purpose.[147] Floyd Cornelison was declared permanently and totally disabled by the Alaska Workers' Compensation Board after he hurt his back at work in 1996.[148] In 2007, Cornelison's employer's workers' compensation insurer, TIG Insurance, began investigating Cornelison's claim to show the benefits being paid to Cornelison were excessive.[149] TIG hired an investigator who subsequently produced video evidence showing Cornelison in a way that supported a reduction of benefits.[150] Cornelison claimed the videos were edited and the

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[135] *Id.* at 4.
[136] *Id.*
[137] *Id.* at 5
[138] *Id.*
[139] *Id.* at 5–6.
[140] *Id.* at 6.
[141] *Id.* at 7–8.
[142] *Id.* at 9–10.
[143] *Id.* at 13.
[144] *Id.* at 14.
[145] *Id.* at 7–8, 10, 13–14.
[146] 376 P.3d 1255 (Alaska 2016).
[147] *Id*. at 1268.
[148] *Id*. at 1262.
[149] *Id*.
[150] *Id*.

investigator was using the edited evidence to bolster his own business.[151] After TIG filed a petition asking the Board to terminate Cornelison's benefits, Cornelison separately filed a claim alleging an abuse of process by defendant, which was dismissed on summary judgement by the superior court.[152] Cornelison claimed the superior court improperly dismissed his abuse of process claims because of the alleged manipulation of the evidence and the defendant's failure to comply with Board regulations for filing the petition to terminate benefits.[153] The court first articulated abuse of process as the misuse of a legal process against another primarily to accomplish a purpose for which it was not designed.[154] The court noted two necessary elements: an ulterior purpose and a willful act that is not proper in regular conduct of the proceedings.[155] The court concluded in this case that the defendant did not have an ulterior purpose because the claim did not put pressure on Cornelison to perform or to refrain from performing an action for a purpose independent of the legal process, for example, there is no evidence Cornelison was being extorted by the defendant using the legal process as a threat.[156] Agreeing with the superior court, the supreme court held that an abuse of process claim will fail unless there is an alleged ulterior purpose.[157]

Johnson v. State, Department of Corrections

In *Johnson v. State, Department of Corrections*,[158] the supreme court held that prisoners seeking judicial review of disciplinary decisions must allege specific facts in their statements of points of appeal.[159] While at the Goose Creek Correctional Center, Johnson was adjudged in a disciplinary proceeding to have possessed contraband.[160] After his internal appeal was denied, Johnson appealed to superior court.[161] His statement of points on appeal merely stated that the Department of Corrections had violated his due process rights and thereby prejudiced his right to a fair adjudication, as the relevant statute prescribes.[162] The statement did not, however, allege any specific facts supporting this contention, as the relevant statute also facially requires.[163] Over Johnson's argument that his statement of points on appeal was sufficient to provide notice to both the court and the State of the basis of his appeal when viewed in conjunction with the record, the supreme court affirmed the superior court's dismissal.[164] It agreed with the State that permitting such generic statements to satisfy the statute would open the floodgates to meritless *pro forma* notices of appeal, and that the law's specific facts requirement was consistent with

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[151] *Id*.
[152] *Id*. at 1266.
[153] *Id*. at 1267–68.
[154] *Id*. at 1268.
[155] *Id*.
[156] *Id*.
[157] *Id*.
[158] 380 P.3d 653 (Alaska 2016).
[159] *Id*. at 656.
[160] *Id*. at 654.
[161] *Id.*
[162] *Id.*
[163] *Id.*
[164] *Id*. at 656.

both the statute's plain text and its legislative history.[165] The supreme court thus held that prisoners appealing prison disciplinary decisions must allege specific facts establishing a violation of constitutional rights that prejudiced the right to fair adjudication in their statements of points of appeal.[166]

Windel v. Carnahan

In *Windel v. Carnahan*,[167] the supreme court held that when considering whether a litigant has "beaten" an offer of judgment, it is proper to exclude remediation costs not actually undertaken by the offeror and also that the cost of remediation to be considered is that which is quoted at the time of final judgment.[168] Windel contested the superior court's award of attorney's fees on remand of an earlier appeal,[169] alleging that the superior court had erred in its analysis of Alaska Civil Rule 68, which addresses attorney's fees in cases involving offers of judgment.[170] Two matters were predominantly at issue: First, Windel argued that it was improper for the superior court to consider a part of the remediation that Carnahan had not paid for himself, a fact which was advantageous to Carnahan in comparing the outcome of the case with an offer of judgment Carnahan made in 2006, a year after the Windels filed suit.[171] Second, Windel argued that it was improper for the superior court not to account for the fact that the ultimate cost of remediation was greater than that initially proposed by Carnahan because of delays caused by the appeal, a determination that also favored Carnahan in comparing the outcome of the case with his 2006 offer of judgment.[172] The supreme court rejected both of these arguments.[173] As to the former, it decided that to exclude remediation costs made by third parties from consideration would penalize offerors and discourage settlements, contrary to the purpose of Rule 68.[174] The supreme court also rejected the argument that the matter should be remanded again to determine the ultimate cost incurred by Carnahan, holding instead that the proper cost to be considered was that at the time of final judgment because a contrary ruling would also undercut the purpose of Rule 68 and result in needlessly delaying and prolonging litigation.[175] Therefore, the supreme court held that exclusion of remediation costs undertaken by third parties and the exclusion of additional costs caused by the delay of appeal should not be considered in making determinations of whether a litigant has "beaten" an offer of judgment.[176]

Long v. Arnold

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[165] *Id.* at 656–57.
[166] *Id.* at 656.
[167] 379 P.3d 971 (Alaska 2016).
[168] *See id.* at 977–79.
[169] *Windel v. Mat–Su Title Ins. Agency, Inc. (Windel I)*, 305 P.3d 264 (Alaska 2013).
[170] 379 P.3d at 976–77.
[171] *See id.* at 977–78.
[172] *See id.* at 978–79.
[173] *See id.* at 977.
[174] *Id.* at 978.
[175] *Id.* at 979.
[176] *See id.* at 977–79.

In *Long v. Arnold*,[177] the supreme court held jury instructions on the substantial factor test of causation are proper when they distinguish between substantial and trivial acts.[178] In July 2012, Arnold cut off Long while driving, forcing her off the road.[179] Although Long was moving at ten miles-per-hour and did not collide with Arnold or roadside objects, she claimed she was sore on a flight two days later.[180] The lower court subsequently instructed the jury negligence is a "substantial factor" in causing harm where it is a but for cause of harm and where it is not "remote or trivial" in causing the harm.[181] Long challenges this jury instruction.[182] On appeal, the supreme court noted that the "remote or trivial" language in the jury instruction was supported by Alaska law, which distinguishes between substantial factors and events so insignificant they are not ordinarily considered causes.[183] Furthermore, the court found the jury instruction clearly articulated Long's burden of proof in the case, because it properly asked the jury to evaluate the interrelation of negligence and harm.[184] Moreover, the court found the special verdict form including the words "substantial factor" was not erroneous, because it was not likely to cause the jury to miscarry justice.[185] The court then found that the lower court was not required to issue a multiple cause instruction because the jury instruction contained a proper instruction of the law.[186] Upholding the lower court, the supreme court held jury instructions on the substantial factor test of causation are proper when they distinguish between substantial and trivial acts.[187]

Small v. Sayre

In *Small v. Sayre*,[188] the supreme court held that litigants waive appellate review of jury verdicts when they fail to properly challenge the verdicts before the trial court.[189] The Smalls brought suit after a car accident with the defendant.[190] Before the verdict, defense counsel told the judge and the Smalls' attorney that the verdict would be inconsistent if it awarded damages for medical expenses without awarding damages for pain and suffering.[191] The Smalls' attorney asked whether the opposite situation, in which the jury awarded damages for pain and suffering but not for medical expenses, would be inconsistent.[192] The judge and defense counsel answered negatively.[193] The jury later awarded damages to the Smalls for pain and suffering but not

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[177] 386 P.3d 1217 (Alaska 2016).
[178] *Id.* at 1221–22.
[179] *Id.* at 1219.
[180] *Id.*
[181] *Id.*
[182] *Id.*
[183] *Id.* at 1221.
[184] *Id.*
[185] *Id.* at 1222.
[186] *Id.*
[187] *Id.* at 1221–22.
[188] 384 P.3d 785 (Alaska 2016).
[189] *Id.* at 787.
[190] *Id.* at 787–88.
[191] *Id.* at 788–89.
[192] *Id.* at 789.
[193] *Id.*

medical expenses.[194] On appeal, the Smalls argue that the discussion with the judge preserved the verdict's consistency as an issue for review.[195] However, the supreme court reasoned that the conversation that occurred before the verdict concerned only a hypothetical possibility and was not a challenge to the actual verdict.[196] The supreme court explained that to properly challenge the inconsistency of the verdict, the Smalls needed to request a ruling from the trial court after the verdict was returned.[197] Affirming the jury verdicts, the supreme court held that the plaintiffs had waived appellate review by failing to object to the verdicts before the trial court.[198]

CONSTITUTIONAL LAW

Richards v. University of Alaska

In *Richards v. University of Alaska*,[199] the supreme court held that a university's dismissal procedures do not violate due process when the university gives the student prior notice and conducts a careful and deliberate review process.[200] Richards, a Ph.D. student at the University of Alaska Fairbanks (UAF), plagiarized a course paper and was required to write a remediation paper explaining why her paper was plagiarized.[201] Richards submitted her remediation paper, but the faculty determined that the paper did not meet the assignment requirements as Richards did not acknowledge that her behavior constituted plagiarism.[202] This instance, combined with other instances where Richards demonstrated a failure to receive criticism, led the faculty to conclude at its annual student review meeting that Richards not continue in the program.[203] After giving Richards notice and an opportunity to resign, the Governance Committee began the process of removal as outlined in the Ph.D. Student Handbook.[204] Richards exhausted all the hearings and appeals available to her in the Handbook, then appealed UAF's decision to the superior court, which affirmed her dismissal from the program.[205] Richards appealed to the supreme court, arguing that she did not receive due process from UAF.[206] The supreme court had previously held that academic dismissals satisfy due process when the student is given prior notice of the possibility of dismissal and when the decision was "careful and deliberate."[207] Applying this standard, the supreme court found that Richards had received far more consideration than due process required.[208] The court noted that Richards was given notice on several occasions that her behavior, if left unchanged, could jeopardize her place in the

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[194] *See id.* at 787–88.
[195] *Id.* at 788.
[196] *Id.* at 789.
[197] *Id.*
[198] *Id.* at 787.
[199] 370 P.3d 603 (Alaska 2016).
[200] *Id*. at 616.
[201] *Id*. at 606.
[202] *Id*. at 607.
[203] *Id*.
[204] *Id*.
[205] *Id*.
[206] *Id*. at 609.
[207] *Id*. at 615.
[208] *Id*.

program.[209] Furthermore, the court found that dismissal process was careful and deliberate, involving multiple meetings and a two-day hearing.[210] Affirming the lower court's decision, the supreme court ruled that a university does not violate a student's due process by dismissing them from a program after giving prior notice and conducting a careful and deliberate review process.[211]

State v. Ketchikan Gateway Borough

In *State v. Ketchikan Gateway Borough*,[212] the supreme court held that the existing local school funding formula did not violate the state constitution.[213] The school funding formula requires local borough and city governments to contribute funding to maintain and operate local schools based on the district's adjusted average daily membership and the statewide base student allocation.[214] The Ketchikan Gateway Borough claimed that the local contribution statute violated the dedicated funds clause of the Alaska Constitution by earmarking funds for a specific purpose.[215] The superior court agreed, determining that the contribution constituted the proceeds of a state tax or license and thus violated dedicated funds clause.[216] However, the court held that the funds did not violate the appropriations or governor's veto clauses because the funds did not enter the state treasury.[217] Reversing the superior court, the supreme court held that the school funding formula did not violate the dedicated funds clause because the contribution was an iteration of a longstanding cooperative program that predated statehood and legislative history suggested that the delegates did not intend for required local contributions to such programs to be included in the term "state tax or license."[218] However, the supreme court upheld the superior court's ruling that the school funding formula did not violate the appropriations and governor's veto clauses, reasoning the funds were local money rather than state money and the funds did not enter the state treasury.[219] By partially reversing and partially upholding the superior court's decision, the supreme court held that the school funding formula did not violate the dedicated funds clause or the appropriations or governor's veto clauses.[220]

Moore v. State

In *Moore v. State*,[221] the court of appeals held that reasonable suspicion does not allow police to keep a defendant's luggage overnight and ship it elsewhere for further investigation.[222] Police seized Moore's luggage at the Dillingham airport based on tips that he was carrying

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[209] *Id*.
[210] *Id*.
[211] *Id*. at 616.
[212] 366 P.3d 86 (Alaska 2016).
[213] *Id.* at 87.
[214] *Id.* at 88.
[215] *Id.* at 89.
[216] *Id.*
[217] *Id.*
[218] *Id*. at 91.
[219] *Id.* at 101.
[220] *Id.*
[221] 372 P.3d 922 (Alaska Ct. App. 2016).
[222] *Id.* at 926, 928.

marijuana.[223] After a magistrate judge in Dillingham denied an application for a search warrant, police kept the luggage overnight and shipped it to Anchorage to be sniffed by a drug dog.[224] The drug dog alerted to the luggage, and police applied for, and received, a search warrant in Anchorage.[225] Moore was convicted of fourth-degree controlled substance misconduct.[226] On appeal, the court of appeals applied the multi-factor test from *Peschel v. State*[227] to evaluate the reasonableness of the seizure.[228] The court reasoned that the first two factors, the length of detention and whether the traveler was forced to continue his journey without luggage, weighed in favor of Moore.[229] The State argued that the remaining factors, whether the police gave the traveler an adequate explanation and whether the police pursued the investigation diligently and in the least intrusive means possible, weighed against Moore because the police informed him that they would send the luggage to Anchorage, which they had to because there were no drug dogs in Dillingham.[230] But the court reasoned that reasonable suspicion did not justify holding the luggage for over twenty-four hours and sending it to Anchorage.[231] The State then argued that it actually had probable cause, but the court rejected this argument on the ground that the magistrate judge had properly denied a search warrant.[232] Reversing Moore's conviction, the court of appeals held that police violate a defendant's constitutional rights when they hold the defendant's luggage overnight and ship it elsewhere for further investigation based only on reasonable suspicion.[233]

Planned Parenthood of the Great Northwest v. State

In *Planned Parenthood of the Great Northwest v. State*,[234] the supreme court held that a state law requiring healthcare providers to notify the parents of minors seeking abortions was not narrowly tailored enough to pass strict scrutiny, given the particular state interests served by the law.[235] In 2010, voters approved an amendment to Alaskan law that, among other things, required that healthcare providers notify the parents of minors seeking abortions and also imposed a forty-eight-hour waiting period after notification.[236] Planned Parenthood sought to enjoin the enforcement of the law on the grounds that it violated the right to privacy and the equal protection guarantee enshrined in the state constitution.[237] The superior court held that the law did not violate equal protection, because minors seeking abortions and minors carrying

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[223] *Id.* at 923.
[224] *Id.* at 923–24.
[225] *Id.* at 924.
[226] *Id.*
[227] 770 P.2d 1144 (Alaska Ct. App. 1989).
[228] *Moore*, 372 P.3d at 925.
[229] *Id.*
[230] *Id.* at 925–26.
[231] *Id.* at 926.
[232] *Id.* at 926–28.
[233] *Id.* at 926, 928.
[234] 375 P.3d 1122 (Alaska 2016).
[235] *Id.* at 1142–43.
[236] *Id.* at 1130.
[237] *Id.* at 1131.

pregnancies to term are not similarly situated, nor did the law violate the right to privacy.[238] The supreme court began its equal protection analysis by determining that the right to seek an abortion is a fundamental right that may only be encumbered when the encumbrance serves a compelling state interest, and the law is narrowly tailored so that it serves the interest without being over- or under-inclusive.[239] It then considered the two interests that, according to the state, motivated the law: "aiding parents to fulfill their parental responsibilities" and "protecting minors from their immaturity."[240] While the court recognized that both of these interests were compelling,[241] it held that the notification requirement was not narrowly tailored.[242] It reasoned that the state's interest in helping parents fulfill their responsibilities and protecting the health of minors applied equally to all classes of pregnant minors, making the law under-inclusive and therefore making the unequal treatment of minors seeking abortions and minors carrying pregnancies to term unjustifiable.[243] Having decided that the law violated the constitution's equal protection guarantee, the court did not feel the need to address the issue of the right to privacy.[244] Holding that the law was not so narrowly tailored as to survive the strict scrutiny given to laws that abridge fundamental rights, the supreme court reversed the superior court's judgment and held the law unconstitutional insofar as it violated the constitutional guarantee to equal protection.[245]

Thomas v. State

In *Thomas v. State*,[246] the court of appeals held that defendants who are represented by an attorney may not exercise their co-counsel status to contravene their attorney's tactical or strategic decisions.[247] In 2010, Thomas was charged with murder and, because he was indigent, the Office of Public Advocacy was appointed to represent him.[248] Thomas had a contentious relationship with his court-appointed attorney and asked the superior court to grant him co-counsel status.[249] Specifically, Thomas and his attorney disagreed about trial strategy, how the case should be investigated, and which pre-trial motions to file.[250] Granting Thomas' motion, the superior court believed that Thomas had a right to participate as co-counsel if these disagreements were unresolvable.[251] As co-counsel, Thomas filed numerous pre-trial motions asking the superior court to order the Office of Public Advocacy to pay for additional investigations, expert witnesses, and scientific testing.[252] The superior court denied his request;

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[238] *Id.* at 1132.
[239] *Id.* at 1137–38.
[240] *Id.* at 1138.
[241] *Id.* at 1139.
[242] *Id.* at 1143.
[243] *Id.* at 1142–43.
[244] *Id.* at 1145.
[245] *Id.*
[246] 382 P.3d 1206 (Alaska Ct. App. 2016).
[247] *Id.* at 1208, 09.
[248] *Id.* at 1207.
[249] *Id.*
[250] *Id.* at 1208.
[251] *Id.*
[252] *Id.*

Thomas appealed, and argued that the superior court was required to hold an ex parte hearing to allow him to freely and openly explain his reasons for wanting these additional resources.[253] Rejecting Thomas' argument, the court of appeals held that although the right to counsel and self–representation are constitutionally protected, co-counsel status should only be allowed if defense counsel and defendant can work together and present a coherent defense.[254] Since Thomas' co-counsel request should have been denied in the first place and his various pre-trial motions were used to attack, instead of supplement, his attorney's trial strategy, Thomas' pre-trial motions constituted an improper use of his co-counsel status.[255] Affirming the lower court's decision to reject Thomas' pre-trial motions, the court of appeals held that defendants who are represented by an attorney may not exercise their co-counsel status to attack their attorney's tactical and strategic decisions.[256]

State v. Borowski

In *State v. Borowski*,[257] the court of appeals narrowed the intent required to uphold a second-degree harassment charge as the intent to harass or annoy in making a communication the speaker knows will be interpreted as a threat to inflict harm.[258] Borowski was charged with second-degree harassment for posting the words, "Your [*sic*] going to get assassinated," on a public official's Facebook election page.[259] The district court dismissed the charge as First Amendment-protected speech, after making factual findings on the pleadings and holding that Borowski could not be prosecuted unless he seriously intended the stated harm.[260] In addition to finding procedural error in the district court's ruling, the court of appeals declared that the district court's standard of intent was ultimately erroneous.[261] The court of appeals held that the necessary intent was not the subjective intent of the speaker to carry out the threatened harm, but the speaker's knowledge that the communication would be viewed by the recipient or audience as a threat.[262] Therefore, the court determined the speech qualified as a threat and was not protected under the First Amendment.[263] The court of appeals thus reversed the dismissal and reinstated the charge, holding that the intent required to uphold the second-degree harassment charge was intent to harass or annoy in making a communication the speaker knew would be interpreted as a threat to inflict harm.[264]

Brandner v. Providence Health & Servs.

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[253] *Id.*
[254] *Id.*
[255] *Id.*
[256] *Id.* at 1207–08.
[257] 378 P.3d 409 (Alaska Ct. App. 2016)
[258] *Id.* at 413.
[259] *Id.* at 410.
[260] *Id.* at 411.
[261] *Id.* at 412.
[262] *Id.*
[263] *Id.*
[264] *Id.* at 413.

In *Brandner v. Providence Health & Servs.*,[265] the supreme court held that a doctor's due process rights are violated when his privileges are terminated without pre-termination notice and hearing when there was not sufficient cause for emergency termination.[266] Dr. Brandner received an order from the Alaska State Medical Board to undergo psychiatric and medical evaluations after receiving a complaint he had contacted someone in the Governor's office and made a threat involving a gun.[267] He complied with this order and the investigations were thereafter dismissed.[268] Brandner did not disclose the order he received from the State Board to his employer, a "quasi-public hospital," although his employer's employment policy required disclosure of any orders to them within 30 days of receiving one.[269] When his employer learned Brandner did not disclose the order to them within the 30 days, the executive committee voted to recommend termination of Brandner's hospital privileges for failure to report the order without notice to or presence by Brandner.[270] The superior court found that Brandner's due process rights were not violated, reasoning that, when hospital policy requires self-reporting a condition placed on a physician's state license, due process does not require a pre-termination hearing for failure to report in violation of that policy.[271] On appeal, the supreme court reasoned that terminating hospital privileges before a hearing is justified only when there is evidence that a physician's conduct poses a realistic or recognizable threat to patient care, requiring immediate action by the hospital.[272] The supreme court further reasoned that since there was no determination that Brandner was an imminent danger to health or public safety, he should have received pre-termination notice and hearing.[273] Reversing the lower court's decision, the supreme court held that without sufficient cause for emergency termination, a doctor's due process rights are violated when his privileges are terminated without pre-termination notice and hearing.[274]

Akers v. State

In *Akers v. State*,[275] the court of appeals held that a defendant facing a probation revocation has a statutory right to a insist on a hearing by a district court judge, rather than a magistrate judge. Akers was charged with driving under the influence, and a plea deal was arranged with the State and accepted by a district court judge.[276] While on probation, Akers was charged with a new misdemeanor offense,[277] and the State offered Akers a plea bargain to resolve both the new charge and the violation of her probation.[278] The plea bargain was brought before a magistrate judge, who accepted the plea agreement without asking Akers if she had waived her right to a

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[265] 384 P.3d 773 (Alaska 2016).
[266] *See id.* at 781.
[267] *Id.* at 775.
[268] *See id.* at 775–76.
[269] *See id.* at 776.
[270] *See id.*
[271] *Id.* at 778.
[272] *Id.* at 780.
[273] *See id.* at 781.
[274] *See id.*
[275] 2016 WL 7422251(Ct. App. Alaska 2016).
[276] *Id*. at *1.
[277] *Id*.
[278] *Id*.

district court judge.[279] Akers subsequently violated her probation yet again.[280] This time, however, Akers rejected the plea offer and asked for an attorney and an adjudication hearing.[281] During an appearance before a district court judge to schedule the adjudication hearing, Akers' attorney asked that the hearing be before a district court judge.[282] The judge ruled, however, that Akers had waived her right to a district court judge when she appeared in front of a magistrate judge for her second offense.[283] On appeal, the court of appeals held that magistrate judges are not authorized to preside over parole provocation hearings by statute.[284] The court declined to answer the State's alternative argument that, nonetheless, a magistrate judge can preside over parole matters when parole was part of the sentence given by the same judge.[285] The court declared that it did not need to answer that question in this case, since Akers' original sentencing hearing was before a district court judge.[286] Reversing, the court of appeals held that a defendant is entitled to a probation revocation proceeding before a district court judge if she objects to a magistrate judge.[287]

CONTRACT LAW

Gunn v. Gunn

In *Gunn v. Gunn*,[288] the supreme court held that a lower court's interpretation of a contract is appropriate when it uses the contract text as a whole and relevant extrinsic evidence to interpret a disputed contract term.[289] In 2010, a husband and wife divorced and disagreed over whether they had jointly accrued a 50% marital interest in a joint venture company or whether the husband alone possessed the interest.[290] They had previously contracted that, if the company sold either of its two clients "on or prior to June 30, 2011, [the wife] [would] be paid 25% of the net commission from each such sale."[291] When one of the company's clients was sold in July 2010, the parties disagreed as to whether the wife was entitled to 25% of the company's net commission or only 25% of the husband's commission.[292] The lower court held that the wife should receive 25% of the net commission, because the plain language stated "net commission," not 25% of the husband's commission.[293] Agreeing, the supreme court reasoned the contract's simple phrasing supported the wife's interpretation.[294] Instead of pursuing her marital interest in

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[279] *Id*. at *2.
[280] *Id*.
[281] *Id*.
[282] *Id*.
[283] *Id*.
[284] *Id*. at *4.
[285] *Id.*
[286] *Id*.
[287] *Id*. at *5.
[288] 367 P.3d 1146 (Alaska 2016).
[289] *Id.* at 1147.
[290] *Id.*
[291] *Id.*
[292] *Id.*
[293] *Id.* at 1151.
[294] *Id.*

the company, the wife agreed to 25% of the net commission if a sale occurred before June 30, 2011.[295] The lower court reasoned this extrinsic evidence supported her interpretation of the agreement, because she settled for a chance at a larger share in the commission.[296] Finding the superior court's inferences supported by the language of the contract and substantial relevant evidence, the supreme court found it did not err in finding the wife entitled to 25% of the net commission.[297] Affirming the lower court's decision, the supreme court held that a lower court's interpretation of a contract is appropriate when it uses the contract text as a whole and relevant extrinsic evidence to interpret a disputed contract term.[298]

Flint Hills Res. Alaska, LLC v. Williams Alaska Petroleum, Inc.

In *Flint Hills Resources, LLC v. Williams Alaska Petroleum, Inc.*,[299] the supreme court held that the statute of limitations for a claim for breach of a contract's indemnification term begins to run when a request for indemnification is refused.[300] Flint Hills purchased a refinery from Williams in 2004, and the purchase agreement included an indemnification term.[301] When a local homeowner sued Flint Hills and Williams for damages from contaminated drinking water in January 2010, Flint Hills requested indemnification from Williams.[302] Williams refused the indemnification request in March 2010, and Flint Hills cross-claimed against Williams in May of that year.[303] The trial court determined that the statute of limitations for an indemnity claim begins to run when the indemnified party becomes aware of a potential cause of action against it.[304] Under this view, the three-year statute of limitations for contract claims had run on Flint Hills' indemnity claim.[305] On appeal, the supreme court looked to principles of contract law.[306] The court reasoned that the statute of limitations for a breach of contract claim begins to run at the time of the breach, and that, "intuitively," the breach of the indemnity clause occurs with the refusal to pay the indemnification.[307] The court rejected concerns that the indemnified party would sit on its damages because the purchase agreement included an incentive for the indemnified party to bring its claims sooner rather than later, while also providing that a delay in bringing claims would not bar indemnification.[308] The court concluded that beginning the statute of limitations at the refusal of the indemnification request is consistent with both the principles of contract law and the parties' intentions.[309] Reversing the superior court's decision, the supreme court held that the statute of limitations for breach of a contract's indemnification term

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[295] *Id.*
[296] *Id.*
[297] *Id.* at 1154.
[298] *Id.*
[299] 377 P.3d 959 (Alaska 2016).
[300] *Id.* at 970–71.
[301] *Id.*
[302] *Id.* at 964, 967.
[303] *Id.*
[304] *Id.* at 965–66.
[305] *Id.*
[306] *Id.* at 970.
[307] *Id.*
[308] *Id.*
[309] *See id.*

begins to run when the indemnifying party refuses the indemnified party's request for indemnification.[310]

Bachner Co. Inc. v. State

In *Bachner Co. Inc. v. State*,[311] the supreme court held that the state procurement code applies to a contract dispute regarding an ongoing lease and, therefore, a contractor must exhaust the procurement codes administrative remedies before filing suit.[312] The state entered into a ten-year contract to lease office space from Bachner Co. Inc. ("Bachner") with an option to renew for ten additional one-year terms.[313] Part of the office space was classified as rent-free, but when the state chose to exercise its first one-year option, the parties agreed on a price for that space as well.[314] The state's subsequent rent payments, however, did not include the agreed amount for the previously rent-free space.[315] The state then made a remedying payment and signed a lease amendment to include the agreed terms.[316] Bachner alleged the lease amendment was invalidly signed by the state[317] and filed a breach of contract claim in superior court, rather than exercising its rights under the procurement code.[318] On appeal, the supreme court disagreed with Bachner's argument that the case was a "payment dispute" under ALASKA STAT. 37.05.285 and therefore exempt from exhausting the administrative remedies under the procurement code.[319] The court reasoned that this was not a payment dispute because leasing office space to the state is providing "supplies," not "services," and only service disputes are payment disputes according to the statutory language of the procurement code.[320] The court further reasoned that the procurement code covers both the acquisition phase of the contract and all phases of contract administration.[321] Affirming the superior court, the supreme court held that a contractor must exhaust the administrative remedies of the state procurement code regarding a contract dispute over "supplies" leased to the state before filing suit.[322]

Thomas v. Archer

In *Thomas v. Archer*,[323] the supreme court held that a doctor's promise to contact an insurance company for preauthorization was not within the scope of the doctor's fiduciary duty and was not a contract, but may be enforceable under the doctrine of promissory estoppel.[324] Dr. Archer recommended that Thomas be medivacked from Ketchikan General Hospital to a medical facility

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[310] *Id.* at 970–71.
[311] 387 P.3d 16 (Alaska 2016).
[312] *Id.* at 18.
[313] *Id.*
[314] *Id.* at 18–19.
[315] *Id.* at 19.
[316] *Id.*
[317] *Id.*
[318] *Id.*
[319] *Id.* at 20.
[320] *Id.* at 24.
[321] *Id.* at 23.
[322] *Id.* at 25.
[323] 384 P.3d 791 (Alaska 2016)
[324] *Id.* at 793.

in Seattle.[325] Dr. Archer promised to contact Thomas's insurance company to get preauthorization for the medivac.[326] Thomas proceeded with the medivac, but Dr. Archer did not get the insurance company's preauthorization,[327] so Thomas was billed over $90,000.[328] In Thomas's suit to recover, the trial court granted summary judgment for the hospital.[329] On appeal, the supreme court held that Dr. Archer's failure to contact the insurance company was not a breach of her fiduciary duty.[330] The court reasoned that the physician's fiduciary duty protects patients who have no choice but to rely on the physician's medical expertise.[331] Because a promise about insurance authorization is not within the physician's expertise, the court concluded that it was not within the physician's fiduciary duty.[332] The court also held that Dr. Archer's promise was not an enforceable contract because it lacked consideration.[333] However, the court determined that Thomas may be able to assert promissory estoppel if she would have called the insurance company herself instead of relying on Dr. Archer to do so.[334] Remanding for more fact-finding, the supreme court held that while there could be no recovery under a breach of fiduciary duty or breach of contract claim, recovery may be permitted under the doctrine of promissory estoppel.[335]

CRIMINAL LAW

Thompson v. Alaska

In *Dana Ray Thompson v. State of Alaska*,[336] the court of appeals held that an adult who takes care of a child for a month or two months at a time occupies a position of authority over that child and resides in the same household as the child pursuant to sexual abuse statutes.[337] The defendant, Thompson, was convicted with first-degree sexual abuse of a minor, J.C.[338] J.C., who lived in an isolated rural cabin, would stay with Thompson for large periods of time while J.C. completed home-schooling requirements in Anchorage.[339] On appeal, Thompson argued that he should be charged with a lesser degree of sexual abuse because he was not in a "position of authority" over J.C., and the child did not "reside" with him.[340] The court of appeals disagreed, holding that the statute was flexible enough to cover the relationship between Thompson and

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[325] *Id.* at 793–94.
[326] *See id.*
[327] *Id.*
[328] *See id.*
[329] *See id.*
[330] *Id.* at 796–97.
[331] *Id.*
[332] *Id.*
[333] *Id.* at 798.
[334] *Id.* at 798–99.
[335] *Id.* at 801.
[336] 378 P.3d 707 (Ct. App. Alaska 2016).
[337] *Id*. at 709.
[338] *Id*.
[339] *Id*.
[340] *Id*.

J.C.[341] First, the court held that Thompson was in a "position of authority" over J.C.[342] The court noted that Alaska law defines "position of authority" as, among other things, a teacher, counselor, babysitter, "or a substantially similar position" to these positions.[343] The court found that Thompson's relationship to J.C. was "substantially similar" to a babysitter, because J.C.'s mother wanted her to stay with Thompson so that he could look after her.[344] Next, the court of appeals held that J.C. and Thompson "reside[d] in the same household."[345] The court determined that a "residence" did not have to be permanent to be covered under the statute; rather, a court should focus on the nature and duration of the cohabiting relationship.[346] The court found that J.C.'s two-month and later one-month stay with Thompson constitute "residing in the same household," because they were long stays negotiated by J.C.'s mother for her care.[347] Upholding the jury's verdicts, the court of appeals held that an adult who watches a child over a month-long period both occupies a position of authority over that child and resides in the same household as that child for the purposes of sexual abuse law.[348]

State v. Fyfe

In *State v. Fyfe*,[349] the supreme court held that, while criminal traffic offenses are subject to the doubling of fines or maximum fines if the offense occurs in a traffic safety corridor or highway work zone, such doubling does not apply to the minimum fine for an offense.[350] Fyfe was convicted of felony driving under the influence of alcohol and received the mandatory minimum $10,000 fine for driving through a designated traffic safety corridor at the time of the offense.[351] Because Alaska law imposes a mandatory doubling of certain fines when the traffic offense in question occurs in a traffic safety corridor or work zone, the superior court doubled Fyfe's fine.[352] Fyfe appealed, arguing that the legislature did not intend to double fines for felonies.[353] The court of appeals reversed the doubled fine, agreeing that the legislative history of the traffic safety statute precluded its application to criminal offenses.[354] The supreme court held that the plain meaning of the traffic safety statute applies to any instance where a person violates one its provisions, including by criminal traffic offense.[355] The court noted that the legislative history of the statute—including decisions not to narrow the statute's scope and ambiguous evidence as to whether the statute meant to address drunk driving—did not weigh convincingly against this

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[341] *Id*. at 713, 715.
[342] *Id*. at 713.
[343] *Id*. at 712.
[344] *Id*. at 713.
[345] *Id*. at 715.
[346] *Id*. at 714.
[347] *Id*.
[348] *Id*. at 709.
[349] 370 P.3d 1092 (Alaska 2016).
[350] *Id.* at 1094.
[351] *Id.*
[352] *Id.*
[353] *Id.*
[354] *Id.*
[355] *Id.* at 1095.

plain meaning.[356] However, the court held that, even though the statute applies to criminal traffic offenses, the fines which may be doubled are limited to any statutorily set or maximum fines—not the minimum fine.[357] The court also noted that the statute specifies that *the* fine *or* maximum fine may be doubled; this specific, disjunctive language would become superfluous if the statute was also applied to minimum fines.[358] Further, the court held that the "maximum fine" language was intended to assure judges that, under the traffic safety statute, they may increase fines above the otherwise imposed cap, whereas judges already have discretion to increase fines where only a minimum fine is statutorily imposed.[359] Affirming the court of appeals but rejecting its reasoning, the supreme court held that while criminal traffic offenses are subject to the doubling of set or maximum fines if the offense occurs in a traffic safety corridor or highway work zone, such doubling does not apply to the minimum fine for an offense.[360]

Crane v. State

In *Crane v. State*,[361] the court of appeals held that testimony containing evidence of a confession that was not properly disclosed to the defense constitutes a reversible error.[362] Officer Hershberger arrested Fred Russell Crane for driving under the influence and first-degree child endangerment.[363] Officer Hershberger claimed Crane apologized for driving while impaired, though there was no recording of the apology and, thus, it was not admissible in testimony.[364] During the trial, but prior to his own testimony, Office Hershberger remembered the apology and alerted the prosecutor, but the prosecutor failed to notify the defense.[365] Officer Hershberger was called as a rebuttal witness and testified that, even though it was not contained in the State's discovery material, Crane had apologized.[366] The trial judge ordered the testimony regarding the apology to be disregarded and denied the defense's request for a mistrial on the basis that the State committed a discovery violation and failed to comply with the *Stephan* doctrine, which requires custodial interrogations at police stations to be recorded.[367] The court of appeals held this was a reversible error because the prosecutor failed to notify Crane's attorney prior to Officer Hershberger's testimony.[368] Immediate disclosure would have allowed Crane's attorney to cross-examine Officer Hershberger and to investigate and litigate whether a *Stephan* violation had occurred.[369] The court also indicated that if the inadmissible testimony had been less prejudicial than a confession, the trial judge's exclusion without a retrial may have been

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[356] *Id.* at 1096–99.
[357] *Id.* at 1101.
[358] *Id.* at 1099–1100.
[359] *Id.* at 1101.
[360] *Id.* at 1099, 1101.
[361] 367 P.3d 1172 (Alaska Ct. App. 2016)
[362] *Id*. at 1176.
[363] *Id*. at 1174.
[364] *Id*. at 1174–75.
[365] *Id.* at 1175.
[366] *Id*.
[367] *Id*.
[368] *Id.*
[369] *Id*. at 1176.

proper.[370] Reversing the lower court's conviction, the court of appeals held that Crane was entitled to a new trial due to the prosecutions failure to notify and the nature of the testimony.[371]

Taha v. State

In *Taha v. State*,[372] the court of appeals held that vehicle impoundment under section 09.28.026 of the Anchorage Municipal Code is not a proper exercise of the municipal police force's "community caretaker" function, but must be justified by some other means.[373] Section 09.28.026 authorizes police officers to impound the motor vehicle of a person that is arrested for one of six enumerated offenses, including driving while under the influence.[374] Taha was arrested for driving under the influence and the police impounded his vehicle.[375] He was convicted for drug and weapon violations stemming from evidence found during an "inventory" of the vehicle before impoundment.[376] Taha challenged constitutionality of the impoundment.[377] On appeal, the State argued that section 09.28.026's is a constitutional exercise of a municipality's "community caretaker" function, which allows police to remove vehicles that threaten public safety.[378] The court of appeals reversed the lower court, reasoning that section 09.28.026 cannot be supported by the "community caretaker" rationale because it authorizes impoundment without regard to whether the vehicle threatens public safety.[379] The court then considered whether municipal policies adequately limit an officer's discretion to impound a vehicle to situations in which the "community caretaker" doctrine applies, but concluded that Anchorage has no such policies.[380] Although the court noted that other rationales might justify the impoundment, it did not reach a conclusion as to what those might be.[381] Reversing the lower court's decision, the court of appeals held that section 09.28.026 is not justified by the "community caretaker" doctrine and remanded for a determination of whether the ordinance is lawful under some other rationale.[382]

Jordan v. State

In *Jordan v. State*,[383] the court of appeals held that when an adult possesses four ounces or more of marijuana inside his home, the State must prove that the adult was at least negligent regarding the fact that the marijuana equaled or exceeded four ounces.[384] During a search, the police found that the two defendants each possessed over a pound and a half of marijuana on their residential

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[370] *Id.*
[371] *Id.*
[372] 366 P.3d 544 (Alaska Ct. App. 2016).
[373] *Id.* at 549.
[374] *Id.* at 545.
[375] *Id.* at 545.
[376] *Id.* at 546.
[377] *Id.* at 546.
[378] *Id.* at 545–46.
[379] *Id.* at 547.
[380] *Id.* at 548–49.
[381] *Id.* at 549.
[382] *Id.* at 545.
[383] 367 P.3d 41 (Alaska Ct. App. 2016).
[384] *Id.* at 45.

properties.[385] On appeal, Jordan argued that the State must prove a culpable mental state of recklessness as to the weight of the marijuana possessed.[386] The State argued that no culpable mental state was required, but instead only that the defendant must knowingly possess the marijuana.[387] The court of appeals reasoned that, if the marijuana were found outside of each defendant's residential property, the court would have agreed with the State and held each defendant strictly liable for the amount of marijuana in possession.[388] The marijuana, however, was found on the residential property of each defendant.[389] The court of appeals found that the right of privacy granted by the Alaska Constitution allows adults to possess in their homes less than four ounces of marijuana for personal use.[390] Thus, the court further reasoned that holding adults strictly liable for possessing four ounces or more of marijuana in their home when they innocently and reasonably, but mistakenly, believed they possessed a legal amount would notably weaken the constitutional right of privacy granted by the State of Alaska.[391] The court of appeals affirmed the lower courts conviction of each defendant and ultimately held that when marijuana is found inside the home, the State must prove negligence as to the weight of the marijuana equaling or exceeding four ounces.[392]

Bergman v. State

In *Bergman v. State*,[393] the court of appeals held that a person intends to damage the property of another, satisfying the intent element for third-degree criminal mischief, if that person intentionally alters another's property without permission.[394] Bergman was convicted of third-degree criminal mischief for bulldozing three miles of a wilderness trail, widening it into a road that was accessible to motor vehicles.[395] Bergman argued the evidence failed to establish that he intended to damage the road, because his intention in bulldozing the trail was not to damage it, but rather to improve it.[396] Nevertheless, the court of appeals reasoned that "damage" should be construed so as to protect an owner's interest in using or enjoying property free from alterations or attempts from others to change it.[397] Because Bergman intentionally altered the trail without permission, he significantly impaired the landowners' interests.[398] Affirming the lower court's decision, the court of appeals held that one has the requisite intent for third-degree criminal mischief if that person intentionally alters the property of another without permission.[399]

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[385] *Id.* at 44–45.
[386] *Id.* at 45.
[387] *Id.*
[388] *Id.*
[389] *Id.* at 44–45.
[390] *Id.* at 47–48.
[391] *Id.* at 52.
[392] *Id.* at 53–54
[393] 366 P.3d 542 (Alaska Ct. App. 2016).
[394] *Id.* at 543.
[395] *Id.* at 542.
[396] *Id.* at 543.
[397] *Id.*
[398] *Id.*
[399] *Id.*

Pitka v. Alaska

In *Pitka v. Alaska*,[400] the court of appeals reaffirmed that police cannot search closed containers in a vehicle, such as an ashtray, during an arrest without exigent circumstances, unless the container is immediately associated with the person.[401] In January 2011, police officers in Fairbanks stopped a vehicle driven by Pitka after observing a suspected drug transaction.[402] Based on a portable breath test and Pitka's behavior and answers during questioning, police established probable cause for an arrest.[403] After a drug-sniffing dog alerted the police to the presence of drugs, the police searched the interior of the vehicle and found a bindle of cocaine in the ashtray.[404] The superior court denied Pitka's motion to suppress the recovered cocaine because the police had probable cause and the search was valid incident to Pitka's arrest.[405] The court of appeals agreed that the search did not violate Pitka's Fourth Amendment rights because the police had probable cause to arrest him for a drug offense.[406] However, it held that the search did violate the search and seizure provision of the Alaska Constitution.[407] The court of appeals noted that under Alaskan law, when the police arrest the driver of a vehicle and there are no exigent circumstances, the police may not search closed containers within the vehicle unless the container is within the arrestee's immediate control at the time of the arrest, the container is large enough to contain evidence of the crime for which the person is being arrested, and the container is of the type immediately associated with the person of the arrestee.[408] The court of appeals found that the first two conditions were met, but the superior court failed to consider the third requirement.[409] To qualify as immediately associated with the person, the court of appeals held that state had the burden of proving that an ashtray is generally used, or was actually being used in this particular instance, to store items that would generally be stored in a pocket or purse.[410] Reversing the superior court's decision, the court of appeals held that the state has the burden of proving that a container is immediately associated with the person of the arrestee.[411]

Hicks v. State

In *Hicks v. State*, the court of appeals held that a trial court maintains the authority to impose no-contact orders on pretrial detainees, even though this power is not a statutorily enumerated judicial power.[412] Nathaniel Hicks was arraigned on a misdemeanor charge for assaulting his then-girlfriend, after which the magistrate judge set out Hick's conditions of bail release, including a condition that he have no direct or indirect contact with his former girlfriend.[413]

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[400] 378 P.3d 398 (Alaska 2016).
[401] *Id.* at 402.
[402] *Id.* at 399.
[403] *Id.* at 400.
[404] *Id.*
[405] *Id.*
[406] *Id.*
[407] *Id.* at 400–01.
[408] *Id*. at 401.
[409] *Id.*
[410] *Id.* 401–02.
[411] *Id.* at 402.
[412] 377 P.3d 976 (Alaska Ct. App.).
[413] *Id.* at 977.

Hicks was never actually released on bail, but rather was kept in pretrial detention for several months, during which period he called his former girlfriend four times from jail, leaving voice messages.[414] The lower court charged Hicks with four counts of first-degree unlawful conduct, under the theory that he recklessly disregarded the circumstances, namely that his phone calls to his former girlfriend violated the court's no contact order.[415] On appeal, Hicks argues that, in the absence of a statute expressly authorizing the court to issue a no-contact order to a defendant in pre-trial detention, the court lacked this power in his case.[416] The court of appeals rejected this argument, reasoning that, unless the legislature removes or limits their common law authority, courts retain the broad power to ensure the orderly and expeditious progress of a criminal trial and the power to protect victims and witnesses.[417] Upholding the lower court's decision, the court of appeals held that a trial court has the authority to impose no-contact orders on defendants who are being held in pre-trial detention, even without a statute explicitly designating this power.[418]

Belcher v. State

In *Belcher v. State*,[419] the court of appeals held that evidence of a past conviction may not be introduced as evidence of "mistake," unless it shows that the defendant's conduct was performed unwittingly or as a result of a misunderstanding.[420] On November 23, 2012, Walmart loss-prevention officer Dean Brown heard the electric alarm system at the doorway go off, and shortly thereafter he saw Belcher walk through the store's vestibule with a television in his cart.[421] Brown approached Belcher and Belcher explained that he had bought the merchandise in his cart, but did not have a receipt.[422] After reviewing surveillance footage and determining that Belcher had not paid for the merchandise, Brown contacted the Wasilla Police Department to report the theft.[423] Belcher was arrested and indicted for second-degree theft.[424] At trial, the prosecutor attempted to admit evidence that Belcher had been previously convicted for third-degree theft after the police found him with stolen goods and no receipt.[425] The prosecutor argued that this evidence was admissible because it tended to disprove that Belcher mistakenly threw out the receipt while at Walmart.[426] The trial judge ruled the past conviction was relevant to the issue of mistake and the jury convicted Belcher of second-degree theft.[427] On appeal, the court of appeals reasoned that Belcher did not claim that he inadvertently failed to pay for the

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[414] *Id*.
[415] *Id*. at 978.
[416] *Id*.
[417] *Id*. at 978-79.
[418] *Id*. at 978-80.
[419] 372 P.3d 279 (Alaska Ct. App. 2016).
[420] *Id.* at 284.
[421] *Id.* at 281.
[422] *Id.*
[423] *Id.*
[424] *Id.*
[425] *Id.* at 281-82.
[426] *Id*. at 283.
[427] *Id.* at 282, 84.

electronics or that he mistakenly threw out the receipt[428] but, rather, that he had paid for the items and that the state was simply wrong when it claimed he had not paid for them.[429] Consequently, the court of appeals held that the trial judge erred when she admitted evidence of Belcher's prior theft under a theory of mistake, because the evidence did not show the Defendant's conduct was performed unwittingly or as a result of a misunderstanding.[430] However, given the overwhelming evidence of Belcher's guilt, this error was harmless.[431] Affirming the lower court, the court of appeals held that the erroneous admission of Belcher's prior shoplifting conviction did not appreciably affect the jury's verdict.[432]

David v. State

In *David v. State*,[433] the court of appeals held that a petition and supporting documents for post-conviction relief alleging ineffective assistance of counsel must set forth specific evidence in order to meet the prima facie case—not simply bald assertions.[434] David was convicted of multiple accounts of assault.[435] He then filed a pro se petition for post-conviction relief regarding allegedly ineffective assistance of counsel from his attorney at trial.[436] David's initial petition asserted lack of communication, failure to perform pre-trial investigations and file pre-trial motions, failure to present expert testimony, conflict of interest, and—as amended—failure to warn him of the consequences of pleading guilty regarding the ability to defend any resulting civil claim.[437] The superior court dismissed each of these claims, holding that David's petition did not present specifics sufficient to make out the prima facie for his claims, and that the amended claim for failure to warn of the consequences of pleading guilty was irrelevant because David did not plead guilty.[438] The court of appeals affirmed the superior court's decision, reasoning that when the court rules on a post-conviction relief petition's legal sufficiency, the court does not presume the facts stated in the petition to be true without further support.[439] Affirming the superior court, the court of appeals held that a petition and supporting documents for post-conviction relief alleging ineffective assistance of counsel must set forth specific evidence in order to the meet the prima facie case—not merely bald assertions.[440]

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[428] *Id.* at 284.
[429] *Id.*
[430] *Id.*
[431] *Id.* at 286.
[432] *Id.*
[433] 372 P.3d 265 (Alaska Ct. App. 2016).
[434] *Id.* at 269.
[435] *Id.* at 267.
[436] *Id.*
[437] *Id.* at 268.
[438] *Id.* at 269-70.
[439] *Id.* at 269.
[440] *Id.* at 269-70

judicial power.[441] Nathaniel Hicks was arraigned on a misdemeanor charge for assaulting his then-girlfriend, after which the magistrate judge set out Hick's conditions of bail release, including a condition that he have no direct or indirect contact with his former girlfriend.[442] Hicks was never actually released on bail, but rather was kept in pretrial detention for several months, during which period he called his former girlfriend four times from jail, leaving voice messages.[443] The lower court charged Hicks with four counts of first-degree unlawful conduct, under the theory that he recklessly disregarded the circumstances, namely that his phone calls to his former girlfriend violated the court's no contact order.[444] On appeal, Hicks argues that, in the absence of a statute expressly authorizing the court to issue a no-contact order to a defendant in pre-trial detention, the court lacked this power in his case.[445] The court of appeals rejected this argument, reasoning that, unless the legislature removes or limits their common law authority, courts retain the broad power to ensure the orderly and expeditious progress of a criminal trial and the power to protect victims and witnesses.[446] Upholding the lower court's decision, the court of appeals held that a trial court has the authority to impose no-contact orders on defendants who are being held in pre-trial detention, even without a statute explicitly designating this power.[447]

Thompson v. Alaska

In *Dana Ray Thompson v. State of Alaska*,[448] the court of appeals held that an adult who takes care of a child for a month or two months at a time occupies a position of authority over that child and resides in the same household as the child pursuant to sexual abuse statutes.[449] The defendant, Thompson, was convicted with first-degree sexual abuse of a minor, J.C.[450] J.C., who lived in an isolated rural cabin, would stay with Thompson for large periods of time while J.C. completed home-schooling requirements in Anchorage.[451] On appeal, Thompson argued that he should be charged with a lesser degree of sexual abuse because he was not in a "position of authority" over J.C., and the child did not "reside" with him. [452] The court of appeals disagreed, holding that the statute was flexible enough to cover the relationship between Thompson and J.C.[453] First, the court held that Thompson was in a "position of authority" over J.C.[454] The court noted that Alaska law defines "position of authority" as, among other things, a teacher, counselor, babysitter, "or a substantially similar position" to these positions.[455] The court found

[441] 377 P.3d 976 (Alaska Ct. App.).
[442] *Id.* at 977.
[443] *Id*.
[444] *Id*. at 978.
[445] *Id*.
[446] *Id*. at 978-79.
[447] *Id*. at 978-80.
[448] 378 P.3d 707 (Ct. App. Alaska 2016).
[449] *Id*. at 709.
[450] *Id*.
[451] *Id*.
[452] *Id*.
[453] *Id*. at 713, 715.
[454] *Id*. at 713.
[455] *Id*. at 712.

that Thompson's relationship to J.C. was "substantially similar" to a babysitter, because J.C.'s mother wanted her to stay with Thompson so that he could look after her.[456] Next, the court of appeals held that J.C. and Thompson "reside[d] in the same household."[457] The court determined that a "residence" did not have to be permanent to be covered under the statute; rather, a court should focus on the nature and duration of the cohabiting relationship.[458] The court found that J.C.'s two-month and later one-month stay with Thompson constitute "residing in the same household," because they were long stays negotiated by J.C.'s mother for her care.[459] Upholding the jury's verdicts, the court of appeals held that an adult who watches a child over a month-long period both occupies a position of authority over that child and resides in the same household as that child for the purposes of sexual abuse law.[460]

Pitka v. Alaska

In *Pitka v. Alaska*,[461] the court of appeals reaffirmed that police cannot search closed containers in a vehicle, such as an ashtray, during an arrest without exigent circumstances, unless the container is immediately associated with the person.[462] In January 2011, police officers in Fairbanks stopped a vehicle driven by Pitka after observing a suspected drug transaction.[463] Based on a portable breath test and Pitka's behavior and answers during questioning, police established probable cause for an arrest.[464] After a drug-sniffing dog alerted the police to the presence of drugs, the police searched the interior of the vehicle and found a bindle of cocaine in the ashtray.[465] The superior court denied Pitka's motion to suppress the recovered cocaine because the police had probable cause and the search was valid incident to Pitka's arrest.[466] The court of appeals agreed that the search did not violate Pitka's Fourth Amendment rights because the police had probable cause to arrest him for a drug offense.[467] However, it held that the search did violate the search and seizure provision of the Alaska Constitution.[468] The court of appeals noted that under Alaskan law, when the police arrest the driver of a vehicle and there are no exigent circumstances, the police may not search closed containers within the vehicle unless the container is within the arrestee's immediate control at the time of the arrest, the container is large enough to contain evidence of the crime for which the person is being arrested, and the container is of the type immediately associated with the person of the arrestee.[469] The court of appeals found that the first two conditions were met, but the superior court failed to consider the third

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[456] *Id*. at 713.
[457] *Id*. at 715.
[458] *Id*. at 714.
[459] *Id*.
[460] *Id*. at 709.
[461] 378 P.3d 398 (Alaska 2016).
[462] *Id.* at 402.
[463] *Id.* at 399.
[464] *Id.* at 400.
[465] *Id.*
[466] *Id.*
[467] *Id.*
[468] *Id.* at 400–01.
[469] *Id*. at 401.

requirement.[470] To qualify as immediately associated with the person, the court of appeals held that state had the burden of proving that an ashtray is generally used, or was actually being used in this particular instance, to store items that would generally be stored in a pocket or purse.[471] Reversing the superior court's decision, the court of appeals held that the state has the burden of proving that a container is immediately associated with the person of the arrestee.[472]

Young v. State

In *Young v. State*,[473] the supreme court held that the *Manson v. Brathwaite*[474] test for evaluating eyewitness identifications failed to account for due process reliability concerns and thus devised a new test requiring evidence of a system variable of suggestiveness to justify a hearing, followed by a totality of circumstances analysis of system and estimator variables affecting the identification's reliability at the hearing.[475] Young was charged with attempted murder and misconduct involving weapons.[476] He challenged the admission of two eyewitness identifications, claiming that they were unnecessarily suggestive, but the superior court found neither unnecessarily suggestive.[477] While the court of appeals disagreed with the superior court as to the first identification, it found the error to be harmless.[478] Young petitioned to the Alaska supreme court, arguing that the identifications were inadmissible under the current test and that the due process clause of the Alaska Constitution required adopting a more protective eyewitness identification admissibility test.[479] The supreme court evaluated the identifications under the *Brathwaite* test, which first requires a determination that the identification be unnecessarily suggestive and then considers the totality of the circumstances as to reliability.[480] The court found that the first identification failed the test,[481] while the second identification passed.[482] The court noted, however, that the *Brathwaite* test emphasizes the reliability of an identification based heavily on the certainty of the witness—which may directly correlate with the process's suggestiveness.[483] The court proposed a new test requiring consideration of system and estimator variables contributing to an identification's reliability and necessity, rather than a preemptive qualification of outright unnecessary suggestiveness.[484] The supreme court affirmed the court of appeals,[485] but overturned the *Brathwaite* test for evaluating eyewitness identifications and devised a new test requiring evidence of a system variable of suggestiveness to justify a hearing,

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[470] *Id.*
[471] *Id.* 401–02.
[472] *Id.* at 402.
[473] 374 P.3d 395 (Alaska 2016).
[474] 432 U.S. 98 (1977).
[475] *Young*, 374 P.3d at 426–27.
[476] *Id.* at 399–400.
[477] *Id.* at 401.
[478] *Id.* at 403.
[479] *Id.* at 399.
[480] *Id.* at 406.
[481] *Id.* at 409.
[482] *Id.* at 412.
[483] *Id.* at 426.
[484] *Id.* at 427.
[485] *Id.* at 399.

followed by a totality of the circumstances analysis of system and estimator variables affecting the identification's reliability at the hearing.[486]

Palmer v. State

In *Palmer v. State*,[487] the court of appeals held that the trial court erred in requiring a defendant to undergo psychiatric evaluations, required of defendants who present a mental disease or defect defense, without first hearing whether evidence supported a proposed involuntariness defense.[488] Palmer was convicted of seven counts of third-degree assault.[489] After his arrest, it was determined that during the alleged assaults Palmer had been suffering from a brain hemorrhage caused by a ruptured brain aneurysm.[490] Before trial, the State sought to exclude evidence of the brain aneurysm on the ground that Palmer had not complied with an Alaska statute requiring defendants to give notice and undergo psychiatric or psychological examination before presenting a defense based on a mental disease or defect.[491] Palmer argued that he was not subject to the law, because he proposed to use the brain aneurysm to support an involuntariness defense, not a mental disease or defect defense.[492] Palmer withdrew the involuntariness defense after the superior court determined that he was in fact presenting a mental disease or defect defense.[493] On appeal, the court of appeals explained the difference between the mental disease or defect defense, which goes to the state's burden to prove a defendant's *mens rea*, and the involuntariness defense, which goes to the state's burden to prove a defendant's *actus reus*.[494] The court noted that "Alaska courts have yet to address the variety of conditions that can lead to a claim of involuntariness," but that the record in this case was insufficient to resolve whether a brain aneurysm can support a claim of involuntariness.[495] Nonetheless, reversing the lower court and remanding, the court of appeals held a defendant is allowed to first offer particular proof a brain aneurysm effected the voluntariness of actions—which evidence must amount to more than proof of the aneurysm itself—before a determination is made whether the classification as an involuntariness, rather than mental disease or defect, defense is accurate.[496]

Savo v. State of Alaska

In *Savo v. State.*,[497] the court of appeals held that it is plain error and prejudicial for a trial judge to bar a defense attorney from mentioning a non-frivolous self-defense claim in jury selection and in his opening statement.[498] The trial judge at hand ruled that Savo's defense attorney could

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[486] *Id*. at 426–27.
[487] 379 P.3d 981 (Alaska Ct. App. 2016).
[488] *Id.* at 984.
[489] *Id.* at 983.
[490] *Id.* at 985.
[491] *Id.*
[492] *Id.* at 985–86.
[493] *Id.* at 986.
[494] *Id.* at 987–89.
[495] *Id.* at 990.
[496] *Id.* at 990.
[497] 382 P.3d 1179 (Alaska Ct. App. 2016).
[498] *Id*. at 1180.

not mention self-defense to the jury until he presented evidence of self-defense in trial.[499] As a result, the attorney was forbidden to question prospective jurors on the defense's theory of the case or mention self-defense in the opening statement.[500] Savo was ultimately convicted.[501] The court of appeals vacated the convictions, holding that the trial judge misstated the rule.[502] The court noted that, while a jury should not be instructed on self-defense if there has not been sufficient evidence presented that would support a jury verdict of self-defense,[503] such jury is still allowed to hear about a non-frivolous self-defense claim before the defendant has a chance to introduce evidence.[504] The court then held that this error caused substantial prejudice to Savo.[505] The court reasoned that the defense attorney would reasonably have wished to question jurors on their beliefs about whether a man can claim self-defense against a woman.[506] The court further reasoned that jurors might think that, because they did not hear about self-defense until the very end of trial, that Savo's attorney had made up the defense at the last minute.[507] Reversing the lower court, the court of appeals determined barring a defense attorney from telling the jury about the defendant's self-defense claim during jury selection and the opening statement is plain error and prejudicial.[508]

Buckley v. State

In *Buckley v. State*,[509] the court of appeals held that mere clerical errors are irrelevant to the validity of an extradition order and that the governor of Alaska is authorized to issue an extradition order for a person charged with committing a crime in another state even if that person was not present in the demanding state during the time of the alleged crime.[510] Buckley was criminally charged with failing to pay child support in the State of Oregon.[511] The Oregon governor's extradition request spelled Buckley's first name correctly, but the State of Alaska's extradition order misspelled Buckley's first name.[512] Also, Buckley argued he was not present in Oregon at the time of the alleged crime.[513] Buckley challenged the extradition order by filing a writ of habeas corpus, but it was denied.[514] Buckley argued that the misspelling of his first name and the fact that he was not present in Oregon at the time of the alleged crime prohibited the governor of Alaska from issuing an extradition order.[515] The court of appeals reasoned, however,

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[499] *Id*. at 1181.
[500] *Id*.
[501] *Id*. at 1180.
[502] *Id*. at 1181.
[503] *Id*.
[504] *Id*.
[505] *Id*. at 1182.
[506] *Id*.
[507] *Id*.
[508] *Id*. at 1180.
[509] 378 P.3d 408 (Alaska Ct. App. 2016).
[510] *Id.* at 409.
[511] *Id.* at 408.
[512] *Id.* at 408.
[513] *Id.*
[514] *Id.*
[515] *Id.*

that mere clerical errors do not invalidate an extradition order when the record shows otherwise.[516] The court further reasoned that if Oregon could properly charge Buckley with criminal non-support while he was living outside the state, then the governor of Alaska was authorized to issue the extradition order.[517] Affirming the lower court, the court of appeals held that minor clerical discrepancies in extradition documents will not invalidate the order and that Alaska can issue an extradition order to a demanding state despite a person not being present in that state at the time of the alleged crime.[518]

del Rosario v. Clare

In *del Rosaria v. Clare*, the supreme court held that a trial court can modify a custody decree in order to allow the custodial parent telephonic visitation rights and that so ordering is within the lower court's inherent authority to enforce custody decrees.[519] Clare and del Rosario were married, had one child, got divorced, and ultimately received shared physical custody of their son.[520] After Clare moved out of Alaska, del Rosario requested, and the trial court granted him, primary physical and legal custody of their son.[521] The modified custody decree also gave Clare summer visitation right, provided that Kevin could contact the non-custodial parent at weekly designated times, and required Clare, when having custody, to provide her location and contact information to del Rosario ten days prior to travel.[522] A few months later, Clare picked up their son for visitation, but failed to provide del Rosario with the requisite information and was unresponsive to his phone calls.[523] This happened two more times later that week.[524] Kenneth sought remedy in the trial court, and the court issued a clarifying order, requiring Clare to give the son a telephone and to facilitate his ability to use it to contact his father.[525] On appeal, Clare argues that the court's clarifying order impermissibly modified the custody degree—namely that the custody decree did not grant del Rosario unconditional visitation rights—and that, by modifying the custody decree as such, the lower court abused its discretion.[526] The supreme court rejected this argument, reasoning that it had previously awarded del Rosario sole legal custody and had found nearly every custodial factor weighed in his favor, indicating its intent to provide him unrestricted access to his son while in Clare's custody.[527] Upholding the lower court's decision, the supreme court held that a trial court has the discretion to modify a custody decree in order to give a parent with sole legal custody extra visitation rights when in the custody of the non-custodian parent, including telephonic visitation rights, and that the trial court does not abuse its discretion by doing so.[528]

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[516] *Id.* at 409.
[517] *Id.*
[518] *Id.*
[519] 378 P.3d 380 (Alaska).
[520] *Id.* at 382.
[521] *Id.*
[522] *Id.*
[523] *Id.*
[524] *Id.*
[525] *Id.* at 383.
[526] *Id.* at 384
[527] *Id*. at 384–85.
[528] *Id*.

Olson v. State

In *Olson v. State*,[529] the court of appeals held that a defendant's trial is not void for purposes of habeas corpus law when the government relied on evidence obtained in violation of the Fourth Amendment.[530] In 2010, Olson was convicted of second-degree sexual assault and fourth-degree assault based on evidence police obtained by entering a residence without a warrant.[531] During his trial, Olson filed a motion to suppress the evidence that police observed and discovered inside the house, but the superior court concluded the entry was justified because the officers had reasonable grounds to believe an assault was occurring inside the house.[532] Olson filed a writ of habeas corpus attacking his convictions on the ground that much of the evidence against him was the fruit of an allegedly unlawful arrest.[533] The superior court dismissed Olson's petition, reasoning that Olson's argument—that a criminal conviction is void if the prosecution's case was based on evidence in violation of the Fourth Amendment—is mistaken, because courts of other states have consistently held that the government's use of evidence obtained through an unlawful search or seizure does not make the resulting judgment void for purposes of habeas corpus law.[534] On appeal, the court of appeals reasoned that, since violations of the Fourth Amendment do not diminish the fundamental fairness of the trial and violations of the Fourth Amendment normally can not be raised for the first time on appeal, it would be an error to render a criminal judgment void under habeas corpus law based on a Fourth Amendment violation.[535] Affirming the lower court, the court of appeals held that, for purposes of habeas corpus law, a defendant's trial is not void if the government relied on evidence obtained in violation of the Fourth Amendment.[536]

AB&M Enterprises, Inc. v. State

In *AB&M Enterprises, Inc. v. State*,[537] the court of appeals held that the State must prove beyond a reasonable doubt that an employee's criminal conduct was within the scope of their employment to hold an employer liable[538] and that a corporation is not liable for solicitation by employees who do not hold managerial authority.[539] AB&M was charged with fourth degree assault based on the conduct of two security guards that it employed at a bar.[540] While escorting a drunken patron to the security office of the bar, one of the guards indicated that they were out of sight of cameras and the other guard punched the patron in the face.[541] AB&M appealed its

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[529] 383 P.3d 661 (Alaska Ct. App. 2016).
[530] *Id.* at 661.
[531] *See id.* at 662.
[532] *See id.*
[533] *Id.*
[534] *See id.* at 663.
[535] *See id.* at 664.
[536] *Id.* at 661.
[537] 2016 WL 4608114 (Alaska Ct. App. 2016).
[538] *Id.* at *2.
[539] *Id*. at *3.
[540] *Id.* at *1.
[541] *Id.*

conviction on the grounds that it was not legally accountable for the employee's actions.[542] The court of appeals raised the issue of the evidentiary standard for the scope of the employee's action itself and determined that it was too fundamental an error to overlook in a criminal case.[543] The court also reasoned that attribution of criminal liability to corporations for solicitation required managerial authority because the legislature could not have intended for corporations to be found to have induced the behavior of all low-level employees.[544] Reversing the lower court, the court of appeals held that criminal liability imputed to corporations for employee behavior requires proof beyond a reasonable doubt that the conduct was within the scope of employment and proof of managerial authority to find liability for solicitation.[545]

Hess v. State

In *Hess v. State*,[546] the court of appeals held that, depending on context, it may not be improper for a prosecutor to discuss a victim's reluctance to incriminate a defendant in closing statements, but that it is improper for a prosecutor to state in closing that defense attorneys generally engage in false vilification of victims of domestic violence.[547] Hess allegedly strangled his mother while they were drinking together.[548] His mother claimed Hess strangled her, but later equivocated, saying that she could not remember.[549] Hess was convicted at trial.[550] On appeal, Hess argued that the prosecutors closing statements that the jury must "protect" the victim were improper.[551] Hess also argued that the prosecutor's general denigration of defense lawyers strategies to falsely vilify victims of domestic violence were improper.[552] The court of appeals noted that both statements by the prosecutor were, on their own, improper.[553] The court of appeals reasoned, however, that the statement regarding the victim being "worthy of protection" was not so obviously improper when put into context with the prosecutor's entire statement.[554] The court further reasoned that the remarks regarding a defense lawyer's strategies in general were improper, but that the comment was not so central to the trial as to make it fundamentally unfair.[555] Affirming the lower court, the court of appeals held that a prosecutor's statements regarding a victim being "worthy of protection" are not obviously improper when in context, but that general statements denigrating a defense lawyer's strategy are improper.[556]

State v. Evans

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[542] *Id.*
[543] *Id.* at *2.
[544] *Id.* at *3.
[545] *Id.*
[546] 382 P.3d 1183 (Alaska 2016).
[547] *Id.* at 1185–86.
[548] *Id.* at 1184.
[549] *Id.*
[550] *Id.* at 1185.
[551] *Id.*
[552] *Id.* at 1186.
[553] *Id.* at 1185–86.
[554] *Id.*
[555] *Id.* at 1186–87.
[556] *Id.* at 1185–87.

In *State v. Evans*,[557] the supreme court held Alaska's implied consent statute authorizes courts to issue warrants for chemical blood tests without consent if there is a showing of probable cause.[558] After being arrested for driving under the influence, Evans refused to consent to a breath test.[559] Subsequently, a judge granted a search warrant allowing the police to take a sample of Evans' blood.[560] When the test showed Evans blood-alcohol concentration exceeded the legal limit, Evans was charged with refusal to submit to a breath test and driving under the influence.[561] Evans filed a motion to suppress the blood test on the grounds that warrants issued for non-consensual blood tests in alcohol cases were not permitted when the defendant had refused a breath test.[562] The district court granted the motion to suppress and the state petitioned for review.[563] The supreme court began its analysis with the implied consent statute, noting it allowed police to administer chemical blood and breath tests without a motorist's consent only in cases of accidents that caused death or injury or where the motorist is incapable of refusal.[564] The court then noted the Alaska legislature had passed an amendment to the implied consent statute in 2001 to repudiate several court decisions that held non-consensual blood tests pursuant to a warrant were impermissible.[565] The court then explained the text of the amendment made clear the legislature's intent to free the government to obtain evidence of driving under the influence through search warrants.[566] The court also determined there was no conflict between the restriction on warrantless tests and the power of courts to authorize searches pursuant to warrants.[567] The court arrived at this harmonization by interpreting the implied consent statute to require officers only administer search warrants in circumstances authorized by statute, but giving the court authority to authorize chemical tests where probable cause exists.[568] Reversing the lower court, the supreme court held Alaska's implied consent statute permits courts to issue warrants for chemical blood tests without consent if there is a showing of probable cause.[569]

Trumbly v. State

In *Trumbly v. State*,[570] the court of appeals held that sentencing courts have the discretion to impose mandatory minimum fines for driving under the influence and refusal of testing concurrently or consecutively.[571] Trumbly was arrested and simultaneously charged with driving under the influence and refusing to submit to a chemical test.[572] He received a concurrent fine for

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[557] 378 P.3d 413 (Alaska 2016).
[558] *Id.* at 420.
[559] *Id.* at 414.
[560] *Id.*
[561] *Id.*
[562] *Id.*
[563] *Id.*
[564] *Id.* at 415.
[565] *Id.* at 416.
[566] *Id.* at 417.
[567] *Id.* at 419
[568] *Id.*
[569] *Id.* at 420
[570] 379 P.3d 996 (Alaska Ct. App. 2016)
[571] *Id.* at 997.
[572] *Id.*

these offenses at sentencing, meaning that he was only liable for one fine instead of two.[573] Because Alaska law mandates consecutive prison sentences for these offenses when arising out of the same incident, the prosecutor alleged that the concurrent fines violated such law.[574] Agreeing, the sentencing judge modified the judgment and instead imposed consecutive fines (separate fines for each offense).[575] On appeal, the court of appeals found that the legislative history and plain meaning of the statutes in question did not prohibit sentencing courts from imposing fines concurrently, only from limiting the suspension of minimum fines.[576] The court held that sentencing judges thus retained discretion as to whether such fines should be imposed consecutively or concurrently.[577] Therefore, the court held the modified judgment to be a violation of the restriction on double jeopardy and reinstated the original judgment.[578] Reversing the lower court, the court of appeals held that sentencing courts have the discretion to impose mandatory minimum fines for driving under the influence and refusal concurrently or consecutively.[579]

Lane v. State

In *Lane v. State*,[580] the court of appeals held that a defendant personally must make a knowing and voluntary decision to request a verdict of "guilty but mentally ill."[581] At Lane's trial, the jury entered a verdict of guilty.[582] During sentencing, Lane's attorney asked that the trial judge enter a verdict of guilty but mentally ill, and the prosecutor and judge agreed.[583] After an extremely brief conversation during which Lane stated, "I don't understand what's being said," the trial judge found Lane to be guilty but mentally ill and entered a verdict as such.[584] The court of appeals reversed the superior court's finding and directed the superior court to enter a verdict of "guilty," holding that Lane did not knowingly consent to the request.[585] The court looked to Alaskan rules of criminal procedure, which require a court to determine that a defendant seeking to enter a guilty plea has understood the allegations, the consequences of conceding the allegations, and the fact that they are waiving their right to a jury trial.[586] The court drew an analogy between a guilty plea and this request, saying that Lane was waiving his right to have a jury determine whether or not he was mentally ill.[587] The court held that this waiver must be made by Lane personally, not his counsel.[588] Reversing the convictions, the court of appeals held that a court must determine

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[573] *Id.*
[574] *Id.* at 998.
[575] *Id.*
[576] *Id.* at 999.
[577] *Id.*
[578] *Id.*
[579] *Id.*
[580] 382 P.3d 1188 (Alaska Ct. App. 2016).
[581] *Id*. at 1192.
[582] *Id*. at 1192.
[583] *Id*. at 1191.
[584] *Id*.
[585] *Id*. at 1192.
[586] *Id*. at 1191.
[587] *Id*.
[588] *Id*. at 1192.

that a defendant is knowingly and voluntarily deciding to request a verdict of "guilty but mentally ill."[589]

Moran v. State

In *Moran v. State*,[590] the court of appeals held that second-degree unlawful contact is a *malum prohibitum* offense, which a defendant cannot be convicted of violating without proof he or she was expressly informed of the statute's prohibition.[591] In 2011, Charles Moran was arrested for assaulting his wife.[592] From jail, Moran called his wife seven times, causing him also to be convicted of second-degree unlawful contact and third-degree assault.[593] Moran appealed, arguing that the second-degree unlawful contact charge was unconstitutional, given he was never informed that it would be illegal for him to contact his wife and had no reason to think he could not contact her.[594] The court of appeals held that, because second-degree unlawful contact is a *malum prohibitum* offense—and therefore not inherently bad, it was a violation of the due process clause of the Alaskan Constitution for Moran to be convicted without proof he was expressly informed of the statute's prohibition on communication with the alleged victim.[595] The court reasoned that without proof of this awareness in a malum prohibitum context, there is no proof of *mens rea*.[596] Thus, the court of appeals held that a defendant cannot be convicted of violating a malum prohibitum offense without proof that the defendant was expressly informed of the statute's prohibition.[597]

Barber v. State

In *Barber v. State*,[598] the court of appeals held that a probation condition prohibiting a defendant from knowingly associating with anyone in immediate possession of a firearm or from knowingly being anywhere a firearm is present was overly vague and overbroad.[599] In December of 2010, three masked men entered the residence of Barber and proceeded to beat him with a baseball bat.[600] The attackers left the home, but Barber grabbed a revolver, chased after them, and fired five shots in their direction.[601] Barber had a prior felony conviction, so under the terms of his probation, he was forbidden from possessing a revolver or allowed to live in a residence where he knew a concealable firearm was kept.[602] Barber was ultimately convicted of four crimes including third-degree weapons misconduct for residing in a dwelling with knowledge of

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[589] *Id*.
[590] 380 P.3d 92 (Alaska Ct. App. 2016).
[591] *Id.*at 94.
[592] *Id.* at 93.
[593] *Id.*
[594] *Id.* at 94.
[595] *Id.* at 97.
[596] *See id*.
[597] *Id.* at 97–98.
[598] 386 P.3d 1254 (Alaska Ct. App. 2016).
[599] *Id*. at 1267.
[600] *Id*. at 1258.
[601] *Id*.
[602] *Id*.

a concealable firearm.[603] Barber appealed his conviction to the court of appeals arguing the probation condition was overly vague and potentially overbroad.[604] The court agreed, concluding the probation condition, as written, was vague and appeared to forbid a large scope of behavior.[605] The court reasoned that the condition seemed to prohibit Barber from visiting a police station, talking to police officers, associating with any other citizen exercising their right to openly carry a firearm, or even entering the premises of a sporting goods or grocery store selling firearms.[606] Agreeing with the defendant, the court of appeals found that a probation condition prohibiting a defendant from knowingly associating with anyone in immediate possession of a firearm or from knowingly being anywhere a firearm is present was overly vague and overbroad.[607]

Sapp v. State

In *Sapp v. State*,[608] the court of appeals held that a probation officer is not a peace officer for the purposes of the criminal offense of failing to stop at the direction of a peace officer.[609] Sapp was dropping his wife off at the Alaska Department of Corrections when a probation officer asked him to park his car and come inside for a conversation.[610] Rather than doing as instructed, Sapp drove off in his car, ignoring the probation officer's command for him to stop.[611] Having caused an accident after fleeing from the officer, Sapp was convicted of, among other things, "failing to stop at the direction of a peace officer."[612] On appeal, the court began its inquiry by looking at the definition of "peace officer" contained in the statute under which Sapp was convicted, which enumerated various specific categories of officials who qualified as "peace officers," but also included a broader catch-all definition as well.[613] Looking to an informal opinion from the state Attorney General's office interpreting the definition of "peace officer" in an earlier version of the same statute, the court determined that only public employees "who spend substantially all of their working hours performing these [police] functions" constitute "officers of the peace," with probation officers being excluded from this definition.[614] The court reversed Sapp's conviction, holding that, for the purposes of the criminal offense of failing to stop at the direction of a peace officer, a probation officer is not a peace officer.[615]

Bass v. State

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[603] *Id*.
[604] *Id*. at 1267.
[605] *Id*.
[606] *Id*.
[607] *Id*.
[608] 379 P.3d 1000 (Alaska App. 2016).
[609] *Id.* at 1002.
[610] *Id.* at 1001.
[611] *Id.*
[612] *Id.*
[613] *Id.* at 1002.
[614] *Id.*
[615] *Id.*

In *Bass v. State*,[616] the court of appeals held that drivers involved in accidents where at least one person is injured or killed may not be convicted of failing to render reasonable assistance, a felony under Alaska law, merely because they failed to provide identifying information.[617] Under Alaska law, drivers who are involved in accidents where at least one person is injured must identify themselves to those injured or to an attending person by giving them their names, addresses, and vehicle license numbers[618] and render reasonable assistance to injured persons by helping them access medical treatment.[619] Failing to provide identifying information is a misdemeanor, but failing to render reasonable assistance is a felony.[620] Bass was charged with the felony, but at trial, the trial judge instructed the jury that Bass would be guilty if the State proved *either* that Bass failed to provide identifying information or that Bass failed to render reasonable assistance.[621] Bass objected to the instruction, but did not argue that that he did, in fact, provide reasonable assistance to the other driver and the jury convicted him.[622] On appeal, the court of appeals held that the jury instruction was not harmless, because there was evidence that Bass provided reasonable assistance to the other driver, but no evidence that he provided his identifying information.[623] The court of appeals reasoned that, since the jury had been instructed to convict him either if he failed to provide his identifying information or if he failed to render reasonable assistance, it made no difference whether Bass checked on the other driver's well being before he left the scene.[624] Therefore, the court of appeals concluded it did not matter that Bass failed to argue he rendered reasonable assistance.[625] Reversing the lower court, the court of appeals held that drivers involved in accidents where at least one person is injured or killed may not be convicted of failing to render reasonable assistance merely because they failed to provide identifying information.[626]

Hillman v. State

In *Hillman v. State*,[627] the court of appeals held that prison inmates could not be convicted under a section of a promotion of contraband statute that applied to non-inmates for bringing contraband from the outside into a correctional facility.[628] ALASKA STAT. § 11.56.330(a) sets out two ways for a person to commit the crime of second-degree contraband promotion: subsection (a)(1) only applies to non-incarcerated persons and subsection (a)(2) only applies to incarcerated persons who obtain contraband while within a correctional facility.[629] Hillman was already

[616] 384 P.3d 811 (Alaska Ct. App. 2016).
[617] *Id.* at 812.
[618] *Id.*
[619] *Id.*
[620] *Id.*
[621] *Id.*
[622] *Id.*
[623] *Id.*
[624] *Id.*
[625] *Id.*
[626] *Id.*
[627] 382 P.3d 1198 (Alaska Ct. App. 2016).
[628] *Id.* at 1200.
[629] *Id.* at 1199.

officially detained in a correctional facility.[630] While under official detention, Hillman was convicted of second-degree contraband promotion under subsection (a)(1).[631] On appeal, Hillman argued that she could not be convicted under that section, because it only applies to non-incarcerated individuals.[632] The court of appeals, in agreement, noted that the legislative history unambiguously demonstrates that the legislature intended each of the two subsections of the statute to apply to two different groups of people.[633] The court reasoned that the distinction is especially important because the two subsections have different levels of scienter: subsection (a)(1) requiring no knowledge of a non-incarcerated person bringing contraband from the outside into the correctional facility while subsection (a)(2) requires some knowledge of the already incarcerated person.[634] Reversing the lower court, the court of appeals held that a person who is already officially detained in a correctional facility cannot be convicted under a section of a promotion of contraband statute that applied to non-inmates for bringing contraband from the outside into a correctional facility.[635]

CRIMINAL PROCEDURE

Bourdon v. State

In *Bourdon v. State*, the court of appeals held that the superior court has proper jurisdiction over criminal cases regarding Native American sovereign citizens.[636] Eugene Brown was convicted of four counts of second-degree sexual abuse, appealed more than ten years later, and had his convictions affirmed by the court of appeals.[637] He then filed a writ of habeas corpus, arguing that the superior court lacked jurisdiction to enter judgment against him because he was a Native American sovereign citizen.[638] The superior court denied Bourdon's petition, reasoning that it was both untimely and without merit.[639] On appeal, Bourdon argued that, because he was a sovereign citizen, the state of Alaska had no power to enforce its laws against him without his consent.[640] The court of appeals also rejected this argument, reasoning that the Alaska Constitution granted the legislature authority to prescribe state court jurisdiction, and that the legislature had authorized the superior court to exercise original jurisdiction over all criminal matters that took place within Alaska.[641] Affirming the denial of the habeas corpus petition, the court of appeals held that because the superior court had jurisdiction over all criminal acts that were committed in Alaska, it had proper jurisdiction over Bourdon's acts which took place within the state.[642]

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[630] *Id.*
[631] *Id.*
[632] *Id.* at 1200.
[633] *Id.*
[634] *Id.*
[635] *Id.* at 1185–87.
[636] 370 P.3d 1116 (Alaska Ct. App.)
[637] *Id.* at 1117.
[638] *Id.*
[639] *Id.*
[640] *Id.*
[641] *Id.* at 1117-18.
[642] *Id.*

Alexiadis v. State

In *Alexiadis v. State*, the court of appeals held that an interlocutory petition for review is part of the process of litigating and that defendants cannot be charged attorney's fees as if a separate appeals proceeding had begun.[643] The defendant and the state reached a plea agreement which was rejected by the superior court.[644] The defendant filed an interlocutory petition for review,[645] and the court of appeals held that the superior court had committed error in denying the plea agreement.[646] The clerk of appellate courts then notified the defendant that attorney's fees would be entered against him pursuant to the statutory scheme by which the state recoups costs when indigent defendants pursue appeals.[647] The court of appeals found that interlocutory appeals are one aspect of the overall litigation in criminal proceedings before a verdict.[648] The court reasoned that the statutory scheme of taxation to indigent defendants compensates the State for attorney work in appeals, specifically for appellate work in an appeals proceedings after a conviction has been reached in the original trial.[649] Therefore, the court decided that an interlocutory appeal is part of the original trial work, and therefore is not statutorily taxable to indigent defendants as attorney work on a separate appeals proceeding.[650] Reversing the clerk's decision, the court of appeals held that interlocutory appeals are not taxable against indigent defendants as if they were separate appellate proceedings beyond the scope of the representation for a trial.[651]

State v. Spencer

In *State v. Spencer*,[652] the court of appeals held that whether or not a trooper was polite when asking a motorist to perform field sobriety tests does not affect the validity of the tests.[653] Spencer was pulled over while driving his four-wheeler in Nenana after the trooper saw signs that Spencer was intoxicated.[654] Although reluctant, after being told repeatedly to complete the field sobriety tests by the trooper, Spencer completed and failed tests and was subsequently arrested.[655] At trial, Spencer moved to suppress the evidence of his intoxication, claiming the trooper unlawfully coerced him into performing the tests.[656] The trial court ruled that the trooper needed probable cause to compel a motorist to take field sobriety tests, which the trooper did not have in this case.[657] On appeal, the court of appeals first noted that police in Alaska do not need

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[643] 369 P. 3d 561, 563–64 (Alaska Ct. App. 2016).
[644] *Id.* at 561–62.
[645] *Id.* at 562.
[646] *Id.*
[647] *Id.*
[648] *Id.* at 563.
[649] *Id*. at 564.
[650] *Id.*
[651] *Id.*
[652] 367 P.3d 1176 (Alaska Ct. App. 2016).
[653] *Id*. at 1178.
[654] *Id*. at 1177.
[655] *Id*.
[656] *Id*.
[657] *Id*.

probable cause sufficient for arrest when requesting a motorist to perform field sobriety tests.[658] The court additionally noted that, even though a motorist has the power to prevent the tests from being administered by refusing to cooperate, this does not equate to a constitutionally protected right to refuse the tests, as long as the circumstances around the stop as a whole were not so coercive that the motorist was subject to arrest prior to the trooper having probable cause.[659] Reversing the judgement of the district court, the court of appeals held that whether or not a trooper was polite when asking a motorist to perform field sobriety tests does not affect the validity of the tests.[660]

O'Dell v. State

In *O'Dell v. State*,[661] the court of appeals held that ALASKA R. CRIM. P. 53 could be used to relax a any deadline specified in another rule of criminal procedure as long as the opposing party is unable to show sufficient prejudice from the untimely act.[662] ALASKA R. CRIM. P. 53 grants broad authority to a court to relax criminal procedures where manifest injustice might otherwise occur.[663] The trial court ordered O'Dell to pay restitution in an amount to be set after sentencing.[664] ALASKA R. CRIM. P. 32.6(c)(2) gives the prosecutor 90 days after sentencing to file a proposed restitution judgment specifying the amount of restitution and who should receive restitution.[665] Here, the State filed the proposed restitution seven months late, but the trial court relaxed the filing deadline and granted the proposed restitution.[666] On appeal, O'Dell argued that, because ALASKA R. CRIM. P. 40(b) specifically addresses a court's authority to extend a deadline or ratify an untimely filing, then ALASKA R. CRIM. P. 53 could never be employed to relax any deadline specified in the rules of criminal procedure.[667] The court of appeals reasoned, however, that where manifest injustice might otherwise occur and where the relaxation would not be allowed under ALASKA R. CRIM. P. 40(b), then a court can invoke ALASKA R. CRIM. P. 53.[668] The court of appeals also found that relaxing a filing deadline should not cause any legally cognizable prejudice to the opposing party.[669] Affirming the lower court, the court of appeals held that ALASKA R. CRIM. P. 53 could be used to relax any deadlines in the ALASKA R. CRIM. P. assuming relaxation would not be allowed under ALASKA R. CRIM. P. 40(b) and sufficient prejudice did not occur due to the untimely act.[670]

Wassillie v. State

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[658] *Id*. at 1178.
[659] *Id*.
[660] *Id*.
[661] 366 P.3d 555 (Alaska Ct. App. 2016).
[662] *Id.* at 559.
[663] *Id.* at 556.
[664] *Id.* at 557.
[665] *Id.*
[666] *Id.*
[667] *Id.* at 556
[668] *Id.* at 558–59.
[669] *Id.* at 557.
[670] *Id.* at 558–59.

In *Wassillie v. State*,[671] the court of appeals held that a halfway house's incident report detailing an inmate's escape was admissible as evidence under the business records exception to the hearsay rule.[672] Wassillie was serving a sentence at a halfway house when he left the premises without authorization.[673] When the police located him, he was arrested and charged with escape in the second degree.[674] During the grand jury hearing, the halfway house's director was called as a witness to introduce into evidence the incident report that another member of the staff had prepared about the escape.[675] Wassillie argued that, because the author of the report did not testify, the report constituted inadmissible hearsay.[676] The court disagreed, holding that the report was admissible because it fell within the business records exception to the hearsay rule, as it was the regular practice of the halfway house to make incident reports of escapes, and because it was made at the time of the occurrence by a person who gained knowledge of the occurrence through a regular activity conducted by the business.[677] The court also rejected Wassillie's argument that the report was prepared in anticipation of litigation, as it was the regular practice of the halfway house to make reports every time an inmate escaped, and it was not the case that the halfway house began keeping records in anticipation of the litigation stemming specifically from Wassillie's escape.[678] Affirming the judgment of the superior court, the court of appeals that a halfway house's incident report detailing an inmate's escape was admissible as evidence under the business records exception to the hearsay rule.[679]

Bowlin v. State

In *Bowlin v. State*,[680] the court of appeals held that a person pending appeal from a class B felony conviction is ineligible for bail if he or she has been convicted of a prior felony within ten years preceding the *conviction*—not the request for bail.[681] Bowlin was convicted of a class B felony, appealed his conviction, and requested to be released on bail pending the resolution of his appeal.[682] The superior court denied bail, as Bowlin had been convicted of a felony within ten years preceding the current conviction.[683] Bowlin argued that the superior court erred in calculating the ten years from his current conviction, rather than from the date of his request for bail.[684] The court of appeals held that the legislative purpose behind the bail statute is to protect the public and victims from defendants who, through recidivism, have shown themselves to be dangerous.[685] The legislative history supports this purpose, as the statute was revised to allow

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[671] 366 P.3d 549 (Alaska Ct. App. 2016)
[672] *Id.* at 554.
[673] *Id.* at 551.
[674] *Id*.
[675] *Id.* at 552.
[676] *Id*.
[677] *Id*.
[678] *Id.* at 553.
[679] *Id.* at 554.
[680] 366 P.3d 534 (Alaska Ct. App. 2016).
[681] *Id.* at 535.
[682] *Id.*
[683] *Id.*
[684] *Id.*
[685] *Id.* at 536.

bail for certain less dangerous defendants.[686] As nothing in the purpose or history of the statute would indicate that the legislature believed recidivist offenders would become less dangerous while incarcerated pending appeal, the court of appeals held that common sense required calculation of the ten years from the date of the current conviction.[687] Affirming the superior court, the court of appeals held that a convicted class B felon is ineligible for bail if he was convicted of a prior felony within ten years preceding the current conviction.[688]

Meyer v. State

In *Meyer v. State*,[689] the court of appeals held whether a Fourth Amendment seizure took place is a question of law that the appellate court evaluates *de novo*.[690] Meyer was convicted of felony driving under the influence based on evidence obtained by the police.[691] Prior to the trial, Meyer filed a motion to suppress, claiming the evidence was obtained during an investigatory stop without necessary reasonable suspicion.[692] During the evidentiary hearing, the superior court concluded the encounter was an investigatory stop but was justified as there was reasonable suspicion.[693] On appeal, the court of appeals concluded the encounter was not an investigatory stop and thus reasonable suspicion was not needed.[694] On rehearing, Meyer argued the superior court's conclusion as to the investigatory stop was a finding of fact that could not be independently reviewed by an appellate court.[695] The court of appeals noted historical facts are reviewed under the "clearly erroneous" standard.[696] However, it concluded the categorization of those facts remains a question of law.[697] The court reasoned the use of *de novo* review on appeal increases uniformity and predictability by handling the fundamental question as a question of law.[698] Reaffirming its earlier decision, the court of appeals held whether a Fourth Amendment seizure took place is a question of law that the appellate court evaluates *de novo*.[699]

Smith v. State

In *Smith v. State*, the court of appeals held that a sentencing judge could not rely on unproven, speculative allegations when rendering a sentence for a committed crime.[700] Smith, a felon on probation, was driving by the beach when a seven-year old child ran onto the road and was hit by Smith's car.[701] He fled the scene of the accident and was indicted by a grand jury for leaving the

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[686] *Id.*
[687] *Id.*
[688] *Id.*
[689] 368 P.3d 613 (Alaska Ct. App. 2016).
[690] *Id*. at 615.
[691] *Id*. at 614.
[692] *Id*.
[693] *Id*. at 614–15.
[694] *Id*. at 615.
[695] *Id*.
[696] *Id*. at 617.
[697] *Id*.
[698] *Id*. at 620.
[699] *Id*. at 615.
[700] 369 P.3d 555 (Alaska Ct. App.).
[701] *Id*. at 556.

scene of an accident as well as first-degree, second-degree, and third-degree assault.[702] The parties reached an agreement where the State dismissed the assault charges and Smith pled guilty to leaving the scene, after which Smith's expert witness testified that he was not at fault for the accident.[703] Nevertheless, the sentencing judge sentenced Smith to 10 years of total jail time, and his remarks indicated that Smith had not driven prudently, that he potentially had been impaired by drugs, and that he fled the scene because he knew he caused the accident.[704] On appeal, Smith argued that these findings were not supported by the grand jury testimony and were nothing but speculation.[705] The court of appeals agreed with Smith, vacated the sentence, and remanded the case for resentencing, reasoning that the sentencing judge penalized Smith based on an unsupported finding of fault.[706] Vacating the lower court's decision, the court of appeals held that the sentencing judge cannot consider these unproven, speculative allegations in rendering a sentence for a committed crime.[707]

Allen v. State

In *Allen v. State*, the court of appeals held that a mistrial was manifestly necessary where a proper jury verdict would be impossible because jurors had implicitly accused each other of lying during the court's inquiry into possible juror misconduct.[708] Defendant Allen was charged with driving under the influence,[709] and the arresting officer, Officer Lorring, testified at her trial that she drove over the fog line.[710] The defense impeached the witness on the existence of the fog line,[711] which spurred the jury foreman to drive to the highway in question to investigate and report back to the jury that no fog line existed.[712] Another juror notified the judge of the foreman's conduct,[713] which initiated an investigation in which jurors provided contradictory answers.[714] The judge then declared a mistrial, against the wishes of the defense, on the basis that the jurors would not be able to reach a unanimous decision based on their inconsistent responses.[715] The court of appeals held that the mistrial was necessary because the allegations of misconduct would have required further inquiry, which would have revealed the jury member's reports that others were lying, thus removing any reasonable expectation that they could reach a proper unanimous verdict.[716] The court of appeals affirmed the declaration of a mistrial given the unique circumstances of jury members' contradictory accounts of misconduct.[717] For these

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[702] *Id*.
[703] *Id*.
[704] *Id*. at 556—57.
[705] *Id*. at 555.
[706] *Id*. at 557.
[707] *Id*.
[708] 355 P.3d 538 (Alaska Ct. App. 2016).
[709] *Id.* at 537.
[710] *Id.* at 538.
[711] *Id.*
[712] *Id.* at 539.
[713] *Id.* at 538–39.
[714] *Id.* at 539–40.
[715] *Id.* at 540.
[716] *Id.*
[717] *Id.*

reasons, the court of appeals held that a mistrial was manifestly necessary where a proper jury verdict would be impossible because jurors had implicitly accused each other of lying during the court's inquiry into possible juror misconduct.[718]

Isadore v. State

In *Isadore v. State,*[719] the court of appeals held that a defendant may not file an appeal of a bail order if the defendant does not remain in custody.[720] Isadore filed an appeal of his bail amount arguing that it was excessive.[721] However, this request was mischaracterized because bail orders are interlocutory orders, rather than final orders, meaning that litigants may only petition an appellate court for review instead of an appeal which requires review.[722] The Alaska legislature created the right to appeal bail decisions in AS 12.30.030(a).[723] However, this statute only created a right to appeal such an interlocutory decision when the defendant remains in custody following the bail decision.[724] In this case, Isadore was no longer in custody and had obtained his freedom by paying bail.[725] The court found that his freedom removes the statutorily created right to appeal bail conditions, so he could only file a petition for review of his bail.[726] The court then denied Isadore's petition for review of his bail conditions.[727] Denying the request for review of bail conditions for potential excessiveness, the court held that a defendant who is no longer in custody may not exercise the statutory right to appeal bail conditions but may only petition the court for voluntary review.[728] The court of appeals held that defendants who are not in custody cannot appeal bail orders.[729]

Hinson v. State

In *Hinson v. State*,[730] the court of appeals held that in a trial for failure to register as a sex offender charge, it is not plain error to tell the jury the charge involves registration as a sex offender.[731] While issuing a citation during a traffic stop, Alaska State Trooper Joel Miner asked Hinson for his address.[732] Hinson provided Miner with his home address for the citation and told Miner he was a registered sex offender.[733] When Miner ran Hinson's information through the Alaska Public Safety Information Network, he discovered that his address did not match the one

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[718] *Id.* at 538.
[719] 378 P.3d 406 (Alaska Ct. App. 2016).
[720] *Id.* at 407.
[721] *Id.*
[722] *Id.*
[723] ALASKA STAT. § 12.30.030 (2015).
[724] *Id.*
[725] *Id.*
[726] *Id.*
[727] *Id.*
[728] *Id.*
[729] *Id.*
[730] 377 P.3d 981 (Alaska Ct. App. 2016).
[731] *Id.* at 986.
[732] *Id.* at 983.
[733] *Id.*

Hinson reported to the sex offender registry.[734] Hinson was charged with felony failure to register as a sex offender for failing to notify the registry of his change of address.[735] The superior court considered whether it should alter the charge so that the jury only heard Hinson had been charged with "failure to register" and not "failure to register as a sex offender," but decided not to.[736] The court of appeals affirmed the superior court's decision, reasoning that attempting to disguise the charge would only lead to juror speculation and engender distrust of the legal process.[737] The court of appeals further reasoned that it was necessary for the jurors to understand the specific nature of Hinson's duty to register to evaluate the element of intent, because a duty to update a sex offender registry as opposed to, for example, a duty to inform the Department of Motor Vehicles of a change of address may affect jurors' evaluation of Hinson's intent.[738] Affirming the superior court's decision, the court of appeals held that in a trial for failure to register as a sex offender, it is not plain error to tell the jury the charge involves registration as a sex offender.[739]

Trout v. State

In *Trout v. State*,[740] the court of appeals held that a trial judge is not required to conduct an independent inquiry as to whether a defendant made a knowing and voluntary decision to take the stand at his/her trial.[741] In 2009, the three sons of Lisa Trout moved in with their father, Dunovan Trout after Lisa Trout was incarcerated for felony DUI.[742] At some point following, the oldest son, J.T., admitted to his father that Lisa Trout had sexually abused him.[743] Trout was charged with two counts of first-degree sexual abuse of a minor and one count of second-degree sexual abuse of a minor.[744] At trial, Trout chose to testify in her own defense where she admitted alcohol abuse and, when asked directly if she thought she might have sexually abused her son while black-out drunk, responded "yes."[745] Trout was convicted on all three counts, but claimed the trial court made an error by not conducting and on-the-record inquiring into her decision to waive her right of silence.[746] The court of appeals declared that Trout's claim is not supported by law and would be a new procedural rule that would require the trial court to conduct an inquiry every time a defendant chooses to take the stand at trial.[747] The court further articulated that such a rule is unnecessary, as there is no evidence that criminal defendants are being coerced or pressured by their lawyers to testify against their will.[748] The court also noted that such a rule

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[734] *Id.*
[735] *Id.*
[736] *Id.*
[737] *Id.* at 985.
[738] *Id.*
[739] *Id.* at 986.
[740] 377 P.3d 296 (Alaska Ct. App. 2016).
[741] *Id*. at 300.
[742] *Id*. at 297.
[743] *Id*.
[744] *Id*. at 298.
[745] *Id*. at 299
[746] *Id*.
[747] *Id*.
[748] *Id*. at 300.

might have a chilling effect on defendants choosing to take the stand, especially in instances when they do so contrary to their lawyer's advice.[749] Affirming the lower court, the court of appeals held a trial judge is not required to conduct an independent inquiry as to whether a defendant made a knowing and voluntary decision to take the stand at his/her trial.[750]

Miller v. State

In *Miller v. State*, the court of appeals held that the superior court is only permitted to impose a single surcharge on a defendant in a particular criminal case, rather than one for each of his convictions.[751] Miller was found guilty of more than a hundred counts of possessing child pornography.[752] At trial, Miller took the stand and denied possessing the pornographic images, after which the trial judge allowed admittance of evidence that Miller possessed a book that advocated for pedophilia.[753] The superior court also required Miller to pay a separate police training surcharge for each of his 116 convictions, totaling $11,500.[754] On appeal, Miller argues that his possession of a book advocating for pedophilia was inadmissible evidence and that the surcharge was intended to be only one $100 charge for all convictions, set aside for police training.[755] The court of appeals denied his argument relating to the book, reasoning that, because it was accompanied by other strong evidence, namely that he possessed dozens of other pornographic images, this was harmless error.[756] However, the court of appeals agreed with Miller in regards to the police training surcharges, reasoning that each additional piece of child pornography had no real impact on the amount of law enforcement training, if any, necessitated by Miller's case.[757] Reversing the lower court in regards to the surcharges, the court of appeals held that that only one surcharge is to be imposed on a convict in any one criminal case.[758]

Tinker v. State

In *Tinker v. State,* the court of appeals held that a trial court has the authority to hold a defendant's trial in a venue that was not listed as an approved trial site if the venue was appropriate under the statute governing venue changes.[759] Tinker was charged with fourth-degree assault for an incident that occurred in Hooper Bay, and Alaska statute designates Bethel as the presumptive trial site for offenses occurring in that location.[760] Tinker's attorney filed a motion asking to move the trial to Hooper Bay, rather than Bethel.[761] The district court denied this request for a change in venue, reasoning that a judge does not have the authority to hold a trial in a location that is neither designated as the presumptive trial site nor designated by the

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[749] *Id.*
[750] *Id*.
[751] 382 P.3d 1192 (Alaska Ct. App.)
[752] *Id.* at 1193.
[753] *Id.*
[754] *Id.* at 1193-94, 95.
[755] *Id.* at 1193-94.
[756] *Id.* at 1194.
[757] *Id.* at 1197.
[758] *Id.* at 1198.
[759] 2016 WL 7422253 (Alaska Ct. App.).
[760] *Id.* at 1.
[761] *Id*.

Administrative Director as an approved additional trial site.[762] Tinker appealed, arguing that the trial court's reasoning only applies to motions for change of venue by right, and that in a motion for discretionary change of venue, the only limitation is that the new trial site must simply meet the statutory requirements.[763] Agreeing with Tinker, the court of appeals vacated the district court's ruling and remanded the case, reasoning that the district court had the authority to allow a discretionary change of venue and that it should hold a hearing to assess Tinker's assertion that Hooper Bay met the statutory requirements.[764] Vacating the lower court's decision, the court of appeals held that a trial court has the discretionary authority to permit a change of venue to any site, so long as long as it meets the statutory requirements.[765]

Starkey v. State

In *Starkey v. State*,[766] the court of appeals held that trial courts have the authority to vacate a plainly erroneous discharge order without violating any vested rights under the double jeopardy clause.[767] Starkey was convicted of fourth-degree misconduct involving a controlled substance and, at sentencing, was granted a suspended imposition of sentence and placed on supervised probation for two years.[768] Starkey appealed his conviction, which in accordance with state appellate rules, automatically stayed his probation.[769] Following the court of appeals affirming Starkey's conviction, the automatic stay was lifted and Starkey's probation should have begun.[770] Instead, based on its mistaken belief that Starkey had long since successfully served his full term of probation, the superior court issued an order discharging Starkey from his probation and setting aside his conviction.[771] Subsequently, Starkey was again arrested and the State filed a petition to revoke Starkey's probation, arguing that the court's discharge and set-aside order was issued erroneously and was therefore without any legal effect.[772] Starkey moved to dismiss the State's petition to revoke his probation, arguing that jeopardy had already attached to the court's discharge and set-aside order.[773] On interlocutory review, the court of appeals found that the court has the discretionary authority to end a defendant's probation early if the court finds that "the ends of justice will be served" but concluded a plainly erroneous discharge is analogize to an illegal sentence that is unauthorized by the law, which is not considered a final judgment for purposes of the double jeopardy clause.[774] On review, the court of appeals held that trial courts have the authority to vacate a plainly erroneous discharge order without violating any vested rights under the double jeopardy clause.[775]

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[762] *Id*.
[763] *Id*.
[764] *Id.* at 2.
[765] *Id.* at 1-2.
[766] 382 P.3d 1209 (Alaska Ct. App. 2016).
[767] *Id*. at 1214.
[768] *Id*. at 1210.
[769] *Id*.
[770] *Id*.
[771] *Id*.
[772] *Id*.
[773] *Id*. at 1212.
[774] *Id*. at 1213.
[775] *Id*. at 1214.

M.H. V. State

In *M.H. v. State*,[776] the court of appeals held that when a juvenile case is not given a specific trial date, but is scheduled for a trial call instead, the twenty days' advance notice required by Alaska's delinquency rules to request a jury trial is calculated based on the trial call date.[777] The superior court set M.H.'s delinquency case for trial call to be held two months later.[778] M.H.'s attorneys appeared at the trial call and returned to court two days later, at which time they informed the court that M.H.'s case was not resolved and M.H. still desired to go to trial.[779] The superior court allowed the filing the next day, at which time the prosecutor suggested that the court hold a bench trial, rather than a jury trial, on the day of the hearing since M.H. had not specifically requested a jury trial.[780] Although one of M.H.'s attorneys declared that M.H. did indeed want a jury trial, the court denied the request as untimely.[781] The court proceeded to hold the bench trial six days later.[782] M.H. appealed, alleging that the "scheduled trial date" referred to in the delinquency rule requiring twenty days' notice for a jury request meant the specific trial date established by the court.[783] The court of appeals rejected M.H.'s argument on appeal, reasoning juvenile litigants rarely receive notice of their trial date more than a few days in advance.[784] The court held that the purpose of the twenty days' notice rule was to give courts sufficient notice to prepare for jury trials, a function which would be eliminated if all juvenile litigants were excused from the rule for good cause because of the short time between the trial call and trial date.[785] Affirming the superior court, the court of appeals held that when a juvenile case is not given a specific trial date, but is scheduled for a trial call instead, the twenty days' advance notice for a jury trial request is calculated based on the trial call date.[786]

In re Jacob S.,

In In re Jacob S,, the supreme court held that allowing telephonic testimony at a hearing for a 30-day involuntary commitment petition does not violate procedural due process and that the question of least restrictive means is properly decided by the court.[787] Jacob S. was involuntarily hospitalized for a mental health evaluation after he stopped taking his medication and started to experience paranoid delusions about his neighbor.[788] After evaluating Jacob, his doctor filed a 30-day commitment petition, asserting that Jacob had a mental illness and was likely to cause harm to himself or others, and also petitioned approval to administer psychotropic medication,

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[776] 382 P.3d 1201 (Alaska Ct. App. 2016)
[777] *Id.* at 1202.
[778] *Id.*
[779] *Id.*
[780] *Id.*
[781] *Id.*
[782] *Id.* at 1203.
[783] *Id.*
[784] *Id.*
[785] *Id.*
[786] *Id.*
[787] 384 P.3d 758 (Alaska).
[788] *Id.* at 762.

because Jacob lacked the capacity to give informed consent.[789] A magistrate judge held a hearing, at which both Jacob's neighbor and partner testified telephonically, and the judge ultimately recommended the 30-day commitment and medication.[790] The superior court approved and adopted these findings and issued the orders, and, later, the doctor who evaluated Jacob filed another petition for a 90-day commitment order and continued administration of psychotropic medication.[791] Jacob then requested a jury trial for the medication petition, received one, and, based on the jury's findings, the court determined that no less restrictive alternative to commitment existed at that time.[792] On appeal, Jacob argued, among other things, that the telephonic testimony did not afford him the opportunity to question the witnesses' credibility, thus violating his procedural due process, and that the jury was supposed to make factual determinations in regards to potential less restrictive means.[793] The supreme court rejected these arguments, reasoning that Jacob's attorney had the opportunity to question the witnesses' credibility during cross-examination but chose not to and that the statutory language on least restrictive means explicitly gives the court such authority.[794] Affirming the lower court, the supreme court held that telephonic testimony provides a defendant a sufficient opportunity to question a witness's credibility, and that the question of less restrictive means is properly answered by the court.[795]

EMPLOYMENT LAW

Bernard v. Alaska Airlines, Inc.

In *Bernard v. Alaska Airlines, Inc.*,[796] the supreme court held that an employee may file suit against their employer to enforce rights that do not depend on the terms of a collective bargaining agreement, and that an employee need not exhaust all contractual remedies before bringing suit unless they have clearly and unmistakably waived that right.[797] Pursuant to a collective bargaining agreement ("CBA"), an Alaska Airlines employee, Pierre Bernard, attended two hearings over his alleged misconduct, where the Airline decided to terminate him.[798] Two years later, Bernard brought suit against the Airline alleging the Airline had violated a state employment discrimination statute, had violated public policy, and had breached the covenant of good faith and fair dealing.[799] The superior court dismissed Bernard's claims because Bernard had not exhausted all contractual remedies by exercising an arbitration clause in the CBA, and because the claims rested on contractual rights under the CBA that were preempted by the Railway Labor Act.[800] The supreme court reversed the lower court's decision

[789] *Id.*
[790] *Id.* at 762-63.
[791] *Id.* at 763.
[792] *Id.*
[793] *Id.* at 764, 768.
[794] *Id.* at 764-65,768.
[795] *Id.*
[796] 367 P.3d 1156 (Alaska 2016).
[797] *Id.* at 1162, 1165.
[798] *Id.* at 1158.
[799] *Id.* at 1158–59.
[800] *Id.* at 1159.

because the Railway Labor Act does not preempt claims regarding rights that are independent of CBAs.[801] The supreme court also reasoned that states can create workers' rights that could be enforced independent of CBAs,[802] and that factual questions about employers' conduct could be determined independent of any CBA.[803] The court then determined Bernard's statutory discrimination claim and public policy claim depended on state law and the employer's motives, as opposed to CBA terms, and were not preempted.[804] Moreover, Bernard's claim relying on the covenant of good faith and fair dealing was not preempted because the CBA could not alter the right in question.[805] Additionally, the court found that the CBA did not have a provision requiring employees to submit their disputes to arbitration, nor a provision incorporating Alaskan law, and therefore was not a waiver of the right to sue.[806] Reversing the lower court's decision, the supreme could held that an employee may file suit against their employer to litigate rights that do not depend on the terms of a CBA, and that an employee need not exhaust all contractual remedies before bringing suit, unless they have clearly and unmistakably waived that right.[807]

Lingley v. Alaska Airlines, Inc.

In *Lingley v. Alaska Airlines, Inc.* the supreme court held that the Railway Labor Act ("RLA") does not expressly waive an employee's right to litigate therefore not requiring employees under its collective bargaining agreement to first exhaust contractual remedies.[808] Plaintiff was an employee for defendant who was terminated for allegedly stealing a left-behind pair of earphones from the airplane lost and found, lying about the incident in subsequent interviews, and making disparaging remarks about other employees.[809] The plaintiff brought a wrongful termination suit and followed the grievance process through her labor union until she reached the stage of appealing the grievance to arbitration.[810] However, the union then withdrew the appeal to arbitration, and the plaintiff brought suit.[811] The plaintiff amended her complaint multiple times after defendant moved to dismiss for lack of subject matter jurisdiction, claiming that the RLA preempted the plaintiff's claims because she had not exhausted remedies established under the collective bargaining agreement under which she was employed.[812] The superior court agreed with the defendant, denied the plaintiff's request to again amend her claim, and dismissed the existing claims as preempted by the RLA.[813] On appeal, the supreme court reasoned that the plaintiff's amended claims were not preempted by the RLA, because it could not preempt state claims and the collective bargaining agreement did not waive such a right.[814] The court noted

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[801] *Id.* at 1160–61.
[802] *Id.* at 1161.
[803] *Id.* at 1162.
[804] *Id.*
[805] *Id.*
[806] *Id.* at 1163–65.
[807] *Id.* at 1162, 1165.
[808] 373 P.3d 506, 509 (Alaska 2016).
[809] *Id.* at 510.
[810] *Id.*
[811] *Id.*
[812] *Id.*
[813] *Id.* at 511.
[814] *Id.* at 513, 515.

that waivers must be "clear and unmistakable."[815] The supreme court found this standard not to have been met by the collective bargaining agreement because it did not have an arbitration clause that specifically waived the right to litigate nor did it explicitly use state statutory language that would have waived such a right.[816] Reversing the superior court, the supreme court held RLA does not expressly waive employee's rights to seek recourse outside of the contract.[817]

Metcalfe v. State of Alaska

In *Metcalfe v. State*,[818] the supreme court held that state employees may not sue for breach of contract damages when the state legislature diminishes retirement benefits.[819] In 1981, Metcalfe left public employment and took a refund of his contributions to the Public Employees' Retirement System (PERS).[820] Under the statute at the time, Metcalfe was entitled to reinstate his PERS service tier and credit if he ever returned to state employment, as long as he returned the refund he took.[821] However, in 2005, the legislature repealed that statute, declaring instead that a former employee can only reinstate PERS status five years after he leaves employment.[822] In 2013, Metcalfe sued the state, arguing that the legislative act constituted a breach of employment contract.[823] The superior court dismissed the suit, saying that the statute of limitations for contract disputes had run out.[824] The supreme court affirmed the dismissal, holding that Metcalfe has no right to sue for breach of contract when the legislature diminished his retirement benefits.[825] The court held that, although the Alaska constitution declares that state employee benefit systems constitute contracts, it does not follow that the constitution grants a right to sue for breach of contract when benefits are diminished.[826] Instead, the court held that the proper remedy would be declaratory and injunctive relief that allow him to keep the retirement benefits available to him.[827] Since declaratory and injunctive relief is an equitable claim, the court declared that statute of limitations does not apply and remanded for further proceedings pursuant to that issue.[828] The court affirmed the dismissal of his claim for monetary damages, holding that state employees do not have the right to sue for breach of contract pursuant to their retirement benefits.[829]

Bockus v. First Student Services

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[815] *Id.*
[816] *Id.* at 514–15.
[817] *Id*. at 521.
[818] 382 P.3d 1168 (Alaska 2016).
[819] *Id*. at 1170.
[820] *Id*.
[821] *Id*.
[822] *Id*.
[823] *Id*. at 117-71.
[824] *Id*. at 1171.
[825] *Id*. at 1174.
[826] *Id*.
[827] *Id*. at 1175.
[828] *Id*.
[829] *Id*.

In *Bockus v. First Student Services*,[830] the supreme court held that employers may not refuse to preauthorize medical care to employees when doing so would excessively delay treatment or effectively terminate their medical benefits.[831] Bockus, a school bus driver for First Student Services (FSS), injured his back, resulting in three spinal surgeries.[832] Between his second and third surgeries, FSS scheduled Bockus an employer's independent medical evaluation (EIME) with a different doctor.[833] This EIME delayed Bockus' surgery by two months, during which time Bockus suffered severe back pain and filed a workers' compensation claim for the third surgery.[834] Even though FSS ultimately financed Bockus' third surgery, the Alaska Workers' Compensation Board (the "Board") awarded Bockus his attorney's fees, finding that FSS had unreasonably controverted his medical care.[835] The Alaska Workers' Compensation Appeals Commission reversed.[836] On appeal, the supreme court affirmed the Board, reasoning that FSS could have conducted an EIME without delaying Bockus' receipt of medical benefits.[837] The court concluded that, since FSS failed to do so, there was sufficient evidence to support the Board's finding that FSS' actions unreasonably delayed Bockus' compensable surgery.[838] Affirming the Board, the supreme court held that employers may not refuse to preauthorize medical care to employees when doing so would excessive delay treatment or effectively terminate their medical benefits.[839]

ENVIRONMENTAL LAW

Chevron U.S.A., Inc. v. State

In *Chevron U.S.A., Inc. v. State*,[840] the supreme court held that a commonsense interpretation of a statute is not a regulation and therefore such an interpretation does not require compliance with the Alaska Administrative Procedures Act (APA).[841] Pursuant to statute, the Alaska Department of Revenue (DOR) treated interdependently linked oil and gas fields as a single entity to determine tax obligations of oil producers.[842] Producers, who operated smaller oil fields adjacent to one of the largest oil field in the United States, challenged the interpretation.[843] They argued that the DOR's decision to aggregate the fields was a regulation that required process under the APA.[844] The supreme court disagreed with the producers that the DOR treatment was a regulation, because the decision to aggregate the fields was a commonsense interpretation of

[830] 384 P.3d 801, (Alaska 2016).
[831] *Id.* at 807–08, 810–11.
[832] *Id.* at 803.
[833] *Id.* at 804.
[834] *Id.*
[835] *Id.* at 806–07.
[836] *Id.* at 808.
[837] *Id.* at 810.
[838] *Id.* at 810–11.
[839] *Id.* at 807–08, 810–11.
[840] 387 P.3d 25 (Alaska 2016).
[841] *Id.* at 27.
[842] *Id.* at 33.
[843] *Id.* at 27–28 n.4.
[844] *Id.* at 27–28.

statute, rather than an addition of a substantial requirement to the existing regulations.[845] The court reasoned that the DOR's decision to aggregate the fields was a commonsense interpretation because they interpreted the statute according to its terms, the definitions of key terms were foreseeable, and the decision did not depart from previous interpretations of the statute allowing for aggregation of interdependent fields.[846] Affirming the superior court, the supreme court held that a commonsense interpretation is not a regulation and therefore does not have to follow the APA.[847]

ETHICS

In re Stepovich

In *In re Stepovich*,[848] the supreme court held that a suspension greater than six months is an appropriate sanction when an attorney knowingly creates a conflict of interest by drafting a will for a client that names the attorney as the contingent beneficiary.[849] The Alaska Bar initiated disciplinary proceedings against Stepovich for drafting a will for a terminally ill friend naming himself as the contingent beneficiary.[850] Stepovich appealed the Disciplinary Board's recommendation that the supreme court impose a six-month suspension.[851] The supreme court reviewed the facts to determine the appropriate sanction for Stepovich's misconduct using a three-step test: addressing (1) the duty the attorney violated; (2) the mental state of the attorney; and (3) the extent of actual or potential injury to the client, while considering aggravating and mitigating factors.[852] The court found that Stepovich violated the Alaska Rules of Professional Conduct by writing a will potentially giving a substantial gift to himself.[853] The court held that he knew of the conflict of interest his conduct created, as it was obvious, and that the aggravating factors—prior disciplinary offenses, the victim's vulnerability, and substantial experience in the practice of law—outweighed the mitigating factors—absence of selfish or dishonest motive, remorse, disclosure and cooperation, and lack of experience.[854] As a result, the court ordered a 12-month suspension and for Stepovich to take and pass the Multistate Professional Responsibility Exam.[855] Upholding the sanction, the supreme court held that a suspension from practice of law greater than six months is an appropriate sanction when an attorney knowingly creates a conflict of interest by drafting a will for a client that names the attorney as the contingent beneficiary.[856]

FAMILY LAW

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[845] *See Id.* at 35–37.
[846] *Id*. at 37–42.
[847] *Id.* at 27.
[848] 386 P.3d 1205 (Alaska 2016).
[849] *Id.* at 1215.
[850] *Id.* at 1205–06.
[851] *Id.* at 1208.
[852] *Id.* at 1208–09.
[853] *Id.* at 1209.
[854] *Id.* at 1210–15.
[855] *Id.* at 1217.
[856] *Id.* at 1215.

State v. Central Council of Tlingit

In *State v. Central Council of Tlingit*,[857] the supreme court held that tribal courts have inherent, non-territorial subject matter jurisdiction to adjudicate the child support obligations of parents of children who are tribal members or are eligible for membership.[858] The Uniform Interstate Family Support Act allows parents to register child support orders—for enforcement in Alaska—that were issued by a tribunal of another state, as well as the tribal courts of federally recognized Indian tribes.[859] The Central Council of Tlingit has an established tribal court system and a Tribal Child Support Unit that receives federal funding.[860] The State opposed a child support order issued by this tribal court system.[861] On appeal, the state argued that tribal courts do not have the proper jurisdiction to adjudicate child support issues or to issue child support orders to a non-tribal-member parent.[862] The supreme court reasoned, however, that the tribes' powers of internal self-governance should include the power to adjudicate over child support issues just as it includes the power to adjudicate over child custody issues.[863] The court further reasoned that these issues are integral to a tribe's inherent power to self-govern over family law matters.[864] The court also reasoned that parents should reasonably anticipate being required to support their children and perhaps being required to support their children by a court that is tied to the child rather than one of the parents.[865] The court found that tribal court jurisdiction is thus attached to a tribal member or member-eligible child rather than the non-member parent.[866] Affirming the lower court, the supreme court held that tribal courts have inherent, membership-based jurisdiction to adjudicate child support issues related to children who are tribal members or member-eligible.[867]

Sweeney v. Organ

In *Sweeney v. Organ*,[868] the supreme court held that a court has not abused its discretion in making a custody decision when it primarily focuses on the best interests of the child, even when its decision does not explicitly outline all the relevant factors and also appears to contravene a parent's abrasive conduct.[869] Sweeney and Organ shared physical and legal custody of their child.[870] Organ requested visitation time with their child that was outside the court's order, and, when Sweeney denied his requests, Organ went to Sweeney's residence with two Anchorage

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[857] 371 P.3d 255 (Alaska 2016).
[858] *Id.* at 267–68.
[859] *Id.* at 257–58.
[860] *Id.* at 259.
[861] *Id.* at 260.
[862] *Id.* at 266–68.
[863] *Id.* at 263.
[864] *Id.* at 263–64, 269.
[865] *Id.* at 272–74.
[866] *Id.*
[867] *Id.*
[868] 371 P.3d 609 (Alaska 2016).
[869] *Id.* at 613.
[870] *Id.* at 610.

police officers to give the child a present.[871] Based on the court's finding that Organ's conduct was designed to be disruptive, Sweeney filed a motion to modify custody and was awarded all-decision making authority for the child, but the court reinstated shared physical custody between the parties.[872] The superior court based its custody rulings on the best interests of the child, [873] but it did not explicitly outline in its decision the nine potentially relevant factors Alaska Statute 25.24.150(c) required it to consider.[874] Affirming the superior court's decision, the supreme court reasoned that a custody decision made primarily based on the best interests of the child is not an abuse of discretion.[875] The supreme court reasoned that, although the superior court did not explicitly list the factors under Alaska Statute 25.24.150(c), it considered the needs of the child, the parents' capabilities in meeting those needs, the love and affection between the child and each parent, and emphasized the importance of the child's environment when it concluded that a change from their regular custody routine would be disastrous to the child.[876] The supreme court also noted that while it would have been in the court's discretion to alter the custody agreement to reduce friction between the parties based on the findings of Organ's bad behavior, it is the well-being of the child and not reward or punishment of a parent that ought to guide every aspect of custody determination.[877] Affirming the superior court's decision, the supreme court held that a court has not abused its discretion in making a custody decision when it primarily focuses on the best interests of the child, even when its decision does not explicitly outline all the relevant factors and also appears to contravene a parent's abrasive conduct.[878]

Moira M. v. State

In *Moira M. v. State,*[879] the supreme court affirmed the termination of parental rights where the superior court did not abuse discretion in denying a motion for a placement review hearing and could have found that reasonable efforts were made by the Office of Children's Services (OCS) to facilitate reunification.[880] OCS took custody of the plaintiff's child after a police officer found the infant alone in a parked car in a lot while plaintiff was wandering around the road under the influence of drugs.[881] OCS began a reunification plan, but the plaintiff was uncommunicative, moved out of state without informing OCS, and did not adhere to drug treatment plans outlined in the plan to reunify her with her child in OCS custody.[882] As a result, OCS determined permanent adoption was in the best interest of the child, and temporarily placed him with his paternal grandmother.[883] The plaintiff requested a visitation review hearing, and, in response,

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[871] *Id.*
[872] *Id.*
[873] *Id.* at 612.
[874] *Id.*
[874] *Id.*
[875] *Id.* at 613.
[876] *Id.* at 612–13.
[877] *Id.* at 613.
[878] *Id.*
[879] 370 P.3d 595 (Alaska 2016).
[880] *Id*. at 603.
[881] *Id.* at 596.
[882] *Id.* at 599.
[883] *Id.* at 598.

OCS established a family contact plan that included visitation but continued the process towards non-parental placement.[884] At the termination hearing, the superior court terminated the parental rights, determining OCS had made reasonable efforts towards reunification and termination was in the best interests of the child.[885] The plaintiff appealed on the basis that the superior court erred in denying her visitation review hearing and in their finding of reasonable efforts by OCS.[886] The supreme court reasoned that the plaintiff's request was properly denied, because the family contact plan developed by OCS included visitation.[887] The supreme court also found that OCS made reasonable efforts towards serving the plaintiff in this case because the plaintiff's move without informing OCS and her overall incommunicativeness supported the level of effort extended towards reunification rather than adoption.[888] Affirming the superior court, the supreme held that a parent's rights were properly terminated where her appeal requested relief already granted to her and OCS made reasonable efforts towards her case given the specific facts of the situation.[889]

Mitchell v. Mitchell

In *Mitchell v. Mitchell*,[890] the supreme court held that actual income can be used to calculate child support for the following year and, in certain circumstances, an imputed income claim may be considered even if it was not properly raised in a cross-appeal.[891] Michael and Johanna Mitchell married in 1996, had two children together, and then separated in 2009.[892] Both parties represented themselves in the divorce and subsequent proceedings with the superior court accepting a divorce settlement in 2009.[893] In 2012, Michael, then 47, retired from his job and withdrew $50,000 from his pension account to buy a house in Arizona.[894] In 2014, Johanna filed a motion to modify child support claiming that the money Michael withdrew from his pension should have counted as income for 2013, and, in a separate claim, that his future payments should be calculated based on his income potential, rather than his actual income.[895] The supreme court held that since Johanna had no way of knowing about the $50,000 at the time of withdrawal, the new information qualified as a material change of circumstances and upheld the superior court's decision to set Michael's 2014 child support calculation to reflect the increased income.[896] The supreme court also held that the superior court erred in refusing to consider the claim that Michael was voluntarily and unreasonably unemployed.[897] Johanna's failure to cross-appeal did not waive her right to contest the superior court ruling, because the court may relax

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[884] *Id.*
[885] *Id.* at 599.
[886] *Id.* at 600–01.
[887] *Id.* at 601.
[888] *Id.* at 602–03.
[889] *Id*. at 603.
[890] 370 P.3d 1070 (Alaska 2016)
[891] *Id*. at 1072.
[892] *Id.* at 1073.
[893] *Id.*
[894] *Id.*
[895] *Id.* at 1073–74.
[896] *Id.* at 1078.
[897] *Id.* at 1081.

procedural requirements if it is clear what the self-represented party was attempting to accomplish.[898] In addition, the court held that in the child support context, the court has an independent duty to determine if a child's right to adequate support should be waived due to a procedural failure by a parent.[899] Partially affirming and partially remanding to the superior court, the supreme court held that, for a child support calculation, the previous years income can be used for the following year and earning potential can be considered in addition to actual income.[900]

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

In *Trevor M. v. State, Department of Health and Social Services*,[901] the supreme court held that parents that have "abandoned" their children by failing to regularly visit them for more than six months may have had a reasonable opportunity to remedy the abandonment within that same six-month period.[902] A father visited his daughter on July 31, 2014 and then essentially dropped off the face of her world thereafter.[903] Despite the Office of Children's Services' repeated attempts to reach him, the father did not visit or get in touch with his child until January, 2015, seven and a half months later.[904] Under Alaska Law, parents may legally abandon their children.[905] Failing to maintain regular visitation for more than six months without justifiable cause is one of eight ways outlined in the statutes where such abandonment can occur.[906] However, before terminating parental rights, the court must find by clear and convincing evidence that a parent has had a reasonable opportunity to remedy the abandonment.[907] On these facts, the superior court terminated the father's parental rights to his child.[908] He appealed, arguing that he did not abandon his daughter and that if he did he was not given enough time to remedy the problem.[909] The supreme court affirmed the lower court's ruling on appeal, reasoning that the legislature could not have intended the end of the six-month period to mark only the beginning of a parent's duty to remedy the conduct that endangered the child.[910] Rather, in most circumstances, a responsible parent could be expected to attempt to remedy the conduct within the six-month period.[911] Affirming the lower court's decision, the supreme court held that parents that have "abandoned" their children by failing to regularly visit them for more than six months may have had a reasonable opportunity to remedy the abandonment within that same six-month period.[912]

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[898] *Id.*
[899] *Id.* at 1081–82.
[900] *Id. at 1084.*
[901] 368 P.3d 607 (Alaska 2016).
[902] *Id.* at 611.
[903] *Id.* at 611.
[904] *Id.* at 609.
[905] *Id.* at 610.
[906] *Id.*
[907] *Id.* at 611.
[908] *Id.* at 609.
[909] *Id.*
[910] *Id.* at 611.
[911] *Id.*
[912] *Id.*

Limeres v. Limeres

In *Limeres v. Limeres*,[913] the supreme court held that an evidentiary hearing for a motion to modify child support is only necessary upon a showing of substantially new, sufficient evidence of a material change in income-related circumstances.[914] Rene Limeres appealed from the denial of his 2014 motion to modify his child support obligation, following his 2012 divorce and a prior failed attempt to have his support obligation modified in 2013.[915] In denying his motion, the superior court declined to grant an evidentiary hearing regarding tax returns and affidavits showing Rene's changed financial circumstances.[916] Rene argued that his submitted evidence of changed circumstances regarding assets and employment entitled him to an evidentiary hearing on his motion.[917] The supreme court held that to prevent successive and redundant hearings, the evidence submitted must sufficiently show a material, permanent reduction in income.[918] The court reasoned this evidence must therefore be new—not simply additional evidence of previously asserted hardship, as judged by the timespan between motions and the similarity in amount and nature of income stated.[919] Because Rene's income evidence was not sufficiently different from, and was filed within months of, his previous motion,[920] the supreme court affirmed the superior court's denial of his motion without an evidentiary hearing.[921] Affirming the lower court, the supreme court holding that an evidentiary hearing for a motion to modify child support is only necessary if the movant shows substantially new evidence of a material, permanent change in income-related circumstances.[922]

Sharpe v. Sharpe

In *Sharpe v. Sharpe*,[923] the supreme court held it is appropriate to deny a request to reduce child support when a non-custodial parent's voluntary unemployment would have an unreasonable impact on the financial resources of their child.[924] Jolene Lyon, a non-custodial parent, was ordered to pay $1,507 to her ex-husband in monthly child support in 2012, largely based on her $120,000 salary in Anchorage.[925] In 2013, Jolene voluntarily left her job to live a subsistence lifestyle in Stebbins, and subsequently filed a motion to reduce her monthly child support payments.[926] In support of her motion, Jolene testified that the move had helped her alcohol abuse, and that she desired to introduce her child to traditional life.[927] Jolene's ex-husband countered that child support would benefit the child by providing help with housing, food, and

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[913] 367 P.3d 683 (Alaska 2016).
[914] *Id.* at 687.
[915] Id. at 684-85.
[916] Id. at 685–86.
[917] *Id.* at 686.
[918] *Id.* at 687-88.
[919] *Id.* at 687–89.
[920] *Id.* at 689-90.
[921] *Id.* at 690.
[922] *Id.* at 690.
[923] 366 P.3d 66 (Alaska 2016).
[924] *Id.* at 71.
[925] *Id.* at 68.
[926] *Id.*
[927] *Id.*

clothing.[928] After hearing the arguments, the superior court acknowledged that the move to Stebbins had provided spiritual and personal benefits to Jolene, but denied the motion because Jolene's voluntary unemployment did not eliminate her earning potential.[929] On appeal, the supreme court reasoned that the duty to support a child supersedes legitimate voluntary unemployment decisions.[930] Further, the court reasoned career changes could further personal or professional advancement, but the custodial parent should not bear the financial burden of the other parent's career changes.[931] Additionally, the court pointed to the statutory requirement that the court consider the financial impact on the child when reducing child support payments.[932] Affirming the superior court's decision, the supreme court held it is appropriate to deny a request to reduce child support on the grounds that a non-custodial parent's voluntary unemployment would have an unreasonable impact on the financial resources of their child.[933]

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

In *Denny M. v. State, Department of Health & Social Services*,[934] the supreme court held that services provided by a therapeutic mental health court can be considered in determining whether the Office of Children's Services ("OCS") made "active efforts" to reunify a family, even when the therapeutic court and OCS have little to no coordination.[935] OCS developed a plan to reunify Denny M. and her children.[936] During the plan, Denny M. was arrested for assault and ordered to receive services, including counseling and assisted living, through a therapeutic mental health court.[937] Whether OCS and the therapeutic court communicated during this time is unclear.[938] When Denny M. repeatedly failed to respond to OCS, the superior court terminated her parental rights.[939] On appeal, Denny M. argued that OCS passively relied on the therapeutic courts instead of making "active efforts" as required by law to reunify the family.[940] The supreme court reasoned that services provided by agencies other than OCS, such as the therapeutic courts, are important to developing parental abilities and that OCS can rely on these services to avoid duplicating its own programs.[941] The court also reasoned that there was no evidence that a lack of coordination between OCS and the therapeutic courts disadvantaged Denny M.[942] Affirming the lower court's decision, the supreme court held that services provided by a therapeutic mental

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[928] *Id.*
[929] *Id.*
[930] *Id.*
[931] *Id.* at 70.
[932] *Id.* at 71.
[933] *Id.*
[934] 365 P.3d 345 (Alaska 2016).
[935] *Id.* at 350–51.
[936] *Id.* at 347.
[937] *Id.*
[938] *Id.* at 351.
[939] *Id.* at 348.
[940] *Id.* at 346, 349–50.
[941] *Id.* at 350.
[942] *Id.* at 351–52.

health court can be considered in evaluating whether OCS made "active efforts" to reunify a family.[943]

State, Office of Public Advocacy v. Estate of Jean R.

In *State, Office of Public Advocacy v. Estate of Jean R.*,[944] the supreme court held that 44.21.415 bars private parties from recovering attorneys' fees against the state in elder fraud protective order proceedings.[945] The Office of Public Advocacy ("OPA") petitioned for an elder fraud protective order to protect Jean R. from alleged financial exploitation by her daughter Sidney.[946] The superior court denied the petition, and Jean R. and Sidney moved to recover costs from OPA.[947] The superior court, finding that OPA's petition was filed without "just cause," awarded costs under AS 13.26.131(d), which provides for fee shifting in guardianship proceedings that are brought maliciously, frivolously, or without just cause.[948] On appeal, the supreme court held that neither AS 13.26.131 nor Civil Rule 82's fee-shifting regime apply to elder fraud proceedings.[949] Notwithstanding the elder fraud provision's location in chapter 13.26 and AS 13.26.131's application to all provisions in chapter 13.26, the court reasoned that applying AS 13.26.131 to elder fraud proceedings would allow a person accused of committing elder fraud to recover costs contrary to legislative intent.[950] Instead, the court concluded that AS 44.21.415 exclusively governs cost recovery in elder fraud proceedings.[951] The court reasoned that AS 44.21.415's cost recovery scheme supersedes Civil Rule 82 because Civil Rule 82 does not apply when fee shifting is "otherwise provided by law."[952] The court also reasoned that the ability of OPA to recover costs under AS 44.21.415 and the exclusion of cost recovery against OPA are consistent with the legislative intent to limit OPA's costs.[953] Reversing the lower court's award of attorneys' fees, the supreme court held that AS 44.21.415 governs costs in elder fraud protective order proceedings and does not provide for an award of attorney's fees against OPA.[954]

Sherrill v. Sherrill

In *Sherrill v. Sherrill*,[955] the supreme court held that it is an abuse of discretion to base a child support determination on an income ceiling of $110,000 and on the omission of reported income, due to its temporary nature.[956] Hallen and Sherrill separated in 2011, leading Hallen to move to

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[943] *Id.* at 350–51.
[944] 371 P.3d 614 (Alaska 2016).
[945] *Id.* at 615.
[946] *Id.* at 616.
[947] *Id.* at 616–17.
[948] *Id.* at 617–18.
[949] *Id.* at 618.
[950] *Id.* at 619–20.
[951] *Id.* at 623.
[952] *Id.*
[953] *Id.* at 622.
[954] *Id.* at 624.
[955] 373 P.3d 486 (Alaska 2016).
[956] *Id.* at 493–94.

Alaska with the couple's daughter.[957] During divorce proceedings, the couple agreed to settle a property division by having Danny submit a one-time $35,000 payment to Hallen.[958] Additionally, the couple agreed Hallen would have primary physical custody of their daughter, while both parents would share legal custody.[959] In determining child support payments, the superior court estimated Danny's income to be $110,000, which the court also claimed reflected a statutory income ceiling.[960] Despite Hallen's protests that the court had not accounted for Danny's retirement income or the statutory income ceiling of $120,000, the superior court calculated Danny's child support payments based on a monthly income of $110,000.[961] On appeal, after affirming the validity of the property division and the child custody order,[962] the supreme court reviewed the issue of child support payment de novo for abuse of discretion.[963] The court determined that the noncustodial parent's child support payments were based on adjusted annual income, which includes pensions and veterans' benefits.[964] Additionally, the court noted that the superior court had incorrectly used a $110,000 income cap to determine child support payments, as opposed to the general income ceiling of $120,000.[965] The court also determined that Danny's temporary contract work should not have been excluded from the superior court's child support payment calculations.[966] Reversing the superior court, the supreme court held it is an abuse of discretion to base a child support determination on an income ceiling of $110,000 and on the omission of reported income due to its temporary nature.[967]

Herring v. Herring

In *Herring v. Herring*,[968] the supreme court held when an equitable reallocation mechanism provision exists in a divorce settlement, a significant change in either parties' pension account triggers an equitable reallocation as a remedy.[969] Patton and Herring were legally divorced in 2013 after thirty-two years of marriage.[970] The parties participated in mediation to decide the terms of their divorce.[971] After negotiation, the parties agreed to divide Herring's pension using a Qualified Domestic Relations Order (QDRO) and to divide their IRA account.[972] However, the IRA division was subject to an equitable reallocation mechanism, which was included to deal with the uncertainty of the pension's split value following the QDRO.[973] After the QDRO had

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[957] *Id.* at 489.
[958] *Id.*
[959] *Id.*
[960] *Id.*
[961] *Id.*
[962] *Id.* at 491–92.
[963] *Id.* at 493.
[964] *Id.*
[965] *Id.*
[966] *Id.*
[967] *Id.* at 493–94.
[968] 373 P.3d 521 (Alaska 2016).
[969] *Id*. at 528.
[970] *Id*. at 523.
[971] *Id*.
[972] *Id*.
[973] *Id*. at 524.

been processed, Patton's portion of the pension decreased significantly in value, to the benefit of Herring, which caused Patton to ask the court to use the reallocation mechanism.[974] However, the superior court held the equalization mechanism was not warranted and ordered the IRA account to be distributed in accordance with the original divorce settlement.[975] The supreme court disagreed and concluded the equalization mechanism was an express provision which held the IRA funds in escrow until the pension amount could be verified.[976] The court also reviewed the intent of the parties at the time of the settlement and concluded they agreed the equalization mechanism would compensate one or both parties after the results of the QDRO.[977] Reversing the superior court, the supreme court held when an equitable reallocation mechanism provision exists in a divorce settlement, a significant change in either parties' expected settlement amount triggers an equitable reallocation as a remedy.[978]

Clementine v. State

In *Clementine v. State*,[979] the supreme court held that when the Office of Children's Services (OCS) takes emergency custody of a "child in need of aid" (CINA) and then subsequently releases the child to another parent or guardian, the court may properly dismiss a CINA petition without first making findings on allegations toward the parent or guardian receiving the child and without allowing evidentiary hearings on the new custodians suitability to take care of the child to proceed.[980] Clementine, the mother, was separated from the father, and taking care of their daughter.[981] OCS took emergency custody of the child from Clementine after receiving reports of drug use, neglect, and other conduct by the mother, which placed the child at a high risk of harm.[982] OCS then investigated the father and found that the child would be safe in his care.[983] The court subsequently ordered the release of the child to the father without confirming any of the probable cause findings about the mother.[984] The court also granted the father's motion to dismiss the mother's petition for evidentiary hearings regarding the father's suitability to care for the child.[985] The CINA rules require the child to be returned to a parent or guardian in the absence of a finding of probable cause.[986] Here, OCS conducted an investigation of the father, found that the child would be safe in his care, and subsequently returned the child and dismissed the case.[987] On appeal, Clementine argued that the court erred by not conducting an evidentiary hearing on her allegations about the father's conduct and for not making probable cause findings

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[974] *Id*. at 525
[975] *Id*. at 527.
[976] *Id*. at 529.
[977] *Id*. at 529–30.
[978] *Id*. at 528.
[979] 375 P.3d 39 (Alaska 2016).
[980] *Id.* at 44.
[981] *Id.* at 41.
[982] *Id.*
[983] *Id.*
[984] *Id.* at 41–43
[985] *Id.*
[986] *Id.* at 44.
[987] *Id.* at 41.

against her.[988] The supreme court reasoned that the CINA rules did not define that the child must be returned to a specific parent or guardian and that the lower court had good cause to dismiss the case after releasing the child.[989] The supreme court also reasoned that Clementine had received all the relief to which she was entitled and that she was not entitled to further review of a case that had already been settled in her favor by dismissal.[990] Affirming the lower court, the supreme court held that when a child in need of aid is taken into emergency custody and then subsequently released to another parent or guardian after first finding that the child would be safe, the other parent or guardian is not entitled to further review when the matter is dismissed in their favor.[991]

Lee-Magana v. Carpenter

In *Lee-Magana v. Carpenter*,[992] the supreme court held that prevailing petitioners, although not prevailing respondents, should generally be awarded attorneys' fees in protective order proceedings.[993] Lee-Magana and Carpenter were in a romantic relationship for approximately two years and had a child together, but split amidst allegations of domestic violence.[994] Lee-Magana petitioned first for protective orders against Carpenter, which were granted.[995] A few weeks after Lee-Magana's filed those petitions, Carpenter filed for his own protective orders against Lee-Magana, which were denied by the same judge.[996] Having prevailed in both petitions, Lee-Magana moved for attorneys' fees for each proceeding, which the superior court denied without explanation.[997] On reconsideration, the superior court stood by both of its decisions and explained that it was denying attorneys' fees for Lee-Magana's successful defense against Carpenter's protective order petition out of concern for chilling worthy domestic violence victims' pursuits of relief.[998] As for Lee-Magana's successful protective order petition against Carpenter, the superior court explained that, while Lee-Magana sought recovery under a statute that shifted fees in protective order proceedings for domestic violence victims, the hearing at which Lee-Magana ultimately won primarily addressed custody and child support issues.[999] On appeal, the supreme court agreed with the superior court's policy reasoning as to Lee-Magana's defense against Carpenter's petition and added that this was consistent with the relevant statute's plain text.[1000] However, the supreme court built on precedent developed in child support cases to conclude that the superior court erred in not granting attorneys' fees in Lee-Magana's successful petition because, based on the statute, withholding attorneys' fees for prevailing protective order

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[988] *Id.* at 43, 46.
[989] *Id.* at 44.
[990] *Id.* at 45.
[991] *Id.* at 47.
[992] 375 P.3d 60 (Alaska 2016).
[993] *See id.* at 65.
[994] *Id.* at 62.
[995] *Id.*
[996] *Id.*
[997] *Id.*
[998] *Id.* at 63.
[999] *Id.*
[1000] *Id.* at 63–64.

petitioners is proper only in exceptional circumstances.[1001] Accordingly, the supreme court affirmed the superior court's decision to deny attorneys' fees to Lee-Magana as a respondent, but reversed the decision to deny attorneys' fees for her successful petition.[1002] Affirming the superior court, the supreme court held that attorneys' fees should generally be awarded to prevailing petitioners, although not prevailing respondents, in protective order proceedings.[1003]

Collier v. Harris

In *Collier v. Harris*,[1004] the court of appeals held that the proper two-step process for a custody hearing requires determining if there is a substantial change in circumstances and then the best interests of the child.[1005] Collier and Harris' daughter was born in 2004, but the couple's relationship ended in 2006.[1006] In 2007, Collier and Harris agreed to a physical custody schedule and the superior court held that joint legal custody was in their daughter's best interest.[1007] In May 2013, Collier sought sole legal and physical custody and in the alternative requested that the superior court modify the custody schedule to reflect both parent's changed schedules.[1008] The superior court denied Collier's motion to modify the joint custody and also denied her request to change the custody schedule.[1009] In addition, the superior court granted Harris half of his attorney's fees.[1010] The court of appeals held that the superior court did not abuse its discretion, given it conducted an inquiry and determined there was sufficient communication between the parties and no significant change in circumstances.[1011] In addition, the court of appeals held that the superior court properly considered all the facts cited by Collier in the aggregate.[1012] The court of appeals also affirmed the superior court did not abuse its discretion by awarding attorney's fees, because the superior court properly considered both the relative financial resources of the parties and whether the parties acted in good faith.[1013] However, the court of appeals held that the superior court did abuse its discretion by not making a best interests inquiry and modifying the schedule to fit the daughter's best interest, even though the superior court granted a leave to the parties to request status hearing for a workable schedule.[1014] Affirming the superior court, the court of appeals held that the proper two-step process for a custody hearing requires determining if there is a substantial change in circumstances and then the best interests of the child.[1015]

Abby D. v. Sue Y.

[1001] *Id.* at 64–65.
[1002] *Id.* at 65.
[1003] *Id.*
[1004] 377 P.3d 15 (Alaska 2016).
[1005] *Id.*at 20.
[1006] *Id.* at 18.
[1007] *Id.*
[1008] *Id.* at 19.
[1009] *Id.*
[1010] *Id*.
[1011] *Id.* at 21.
[1012] *Id.* at 22.
[1013] *Id.* at 25.
[1014] *Id.* at 24.
[1015] *Id.* at 25.

In *Abby D. v. Sue Y.*,[1016] the supreme court held that, in order for a grant of custody over a child to be modified, the party seeking modification must show, in the aggregate, that his or her situation has changed since the time of the custody grant in such a way that modification of the grant would be in the child's best interests.[1017] Abby D. was a woman who suffered from mental health and substance abuse problems to such an extent that her mother, Sue Y., petitioned the superior court to be appointed the guardian of Abby D.'s daughter.[1018] After a series of proceedings, the court found by clear and convincing evidence that leaving the daughter in Abby D.'s custody would be detrimental to the child's best interests, and granted custody to Sue Y. and her husband.[1019] Nine months later, Abby D. sought to have the custody grant modified on the grounds that there had been a "substantial change in her life's circumstances," such that it would be in her daughter's best interests to be returned to her custody.[1020] The superior court denied her motion.[1021] Reviewing the denial of the motion, the supreme court examined the new circumstances in which Abby D. found herself both in the aggregate and in comparison to the situation she was in at the time of the custody grant to determine whether or not the change was significant enough to "overcome [the court's] deep reluctance to shuttle children back and forth."[1022] The court was not convinced that the changes Abby D. had made to her life would be enduring enough to warrant transferring custody of her daughter again and that, when considered against the circumstances in which Abby D. had been when the grant was first made, the changes were not that substantial.[1023] The supreme court ultimately upheld the superior court, holding that, in order for a grant of custody over a child to be modified, the party seeking modification must show that his or her aggregate circumstances have changed in such a way that revising the grant would be in the child's best interests.[1024]

Joy B. v. State

In *Joy B. v. State*,[1025] the supreme court held that parental rights were properly terminated where the Office of Children's Services (OCS) made reasonable efforts toward reunification and the mother permanently left the state after refusing to cooperate in remedying the conduct that caused her children to require aid.[1026] Joy B. fled to Alaska with her four daughters following extensive torture and abuse by her husband.[1027] The resulting PTSD and family relations did not improve for Joy in Alaska, and OCS eventually removed the children from Joy's care.[1028] Joy then left the state after refusing to coordinate with OCS to remedy the causes of her children's need for aid.[1029] The superior court subsequently granted OCS' petition to terminate the parental

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[1016] 378 P.3d 388 (Alaska 2016).
[1017] *Id.* at 398.
[1018] *Id.* at 390.
[1019] *Id.* at 391.
[1020] *Id.*
[1021] *Id.*
[1022] *Id.* at 394.
[1023] *Id.* at 397.
[1024] *Id.* at 398.
[1025] 382 P.3d 1154 (Alaska 2016).
[1026] *Id.* at 1168.
[1027] *Id.* at 1157.
[1028] *Id.* at 1157–58.
[1029] *Id.* at 1159.

rights.[1030] On appeal, the supreme court reasoned that both OCS and the lower court were correct in finding that Joy had failed to remedy the conduct causing need of aid,[1031] OCS made reasonable efforts towards reunification,[1032] and termination of parental rights was in the best interests of the children.[1033] Affirming the lower court, the supreme court held that reasonable efforts toward reunification, refusal of the parent to cooperate, and the parent's relocation to another state supported termination of parental rights.[1034]

HEALTH LAW

In re HEATHER R.

In *In re Heather R.*,[1035] the supreme court held that the screening investigation required to involuntarily commit a person to emergency psychiatric evaluation must include an interview with the person if reasonably possible.[1036] The neighbors of Heather R. filed a petition with the superior court, requesting that Heather be involuntarily committed because she was a threat to herself and to others.[1037] A superior court master held an ex parte evidentiary hearing, consisting solely of testimony from the manager of Heather's condominium complex and four of her neighbors, after which he found probable cause that Heather had a mental illness that presented a likelihood of harm to other people.[1038] Heather was taken to a psychiatric facility but was discharged because she did not meet the criteria for hospitalization or commitment.[1039] Heather subsequently appealed the evaluation order, arguing that the master did not conduct the screening investigation properly.[1040] Even though Heather's appeal came after she was discharged and was therefore moot, the supreme court applied the public interest exception to decide the case on the merits.[1041] The public interest exception overrides the mootness doctrine when (1) the disputed issues can be repeated in other cases, (2) applying the mootness doctrine will allow review of issues to be repeatedly circumvented, and (3) the issues presented are of significant importance to the public interest.[1042] Once the supreme court reached the merits of Heather's claim, it held that the statutory language requires that a screening investigation include an interview with the respondent "if possible."[1043] Since the master made no attempt to interview Heather and did not include any finding that interviewing her would not be possible, the ex parte hearing violated the

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[1030] *Id.* at 1160.
[1031] *Id.* at 1163–64.
[1032] *Id.* at 1164–66.
[1033] *Id.* at 1167–68.
[1034] *Id.* at 1168.
[1035] 366 P.3d 530 (Alaska 2016).
[1036] *Id*. at 533.
[1037] *Id*. at 531.
[1038] *Id*.
[1039] *Id*.
[1040] *Id*.
[1041] *Id*. at 532.
[1042] *Id*.
[1043] *Id*. at 533.

statutory requirements for involuntary commitment.[1044] The supreme court reversed and vacated the superior court's order, holding that a screening investigation should not omit an interview with the respondent unless an interview is not reasonably possible.[1045]

The Matter of the Necessity for the Hospitalization of Mark V.

In *the Matter of the Necessity for the Hospitalization of Mark V.*,[1046] the supreme court held that the petitioner bears the burden of proving, by clear and convincing evidence, that a respondent is gravely disabled and that commitment is the least restrictive alternative.[1047] Anchorage police took Mark V. into custody and transported him to a psychiatric emergency department after he "presented himself nude in public" and claimed to be the King of England.[1048] He was transferred to the Alaska Psychiatric Institute ("API") after it was determined that he was gravely disabled as a result of paranoid schizophrenia.[1049] The state filed a petition seeking to extend Mark V.'s commitment in API by thirty days.[1050] To be involuntarily committed for thirty days, courts must find that an individual is gravely disabled.[1051] At the thirty-day commitment hearing, Dr. Gee, a registered nurse, gave her opinion that if Mark V. returned home, he would not be able to properly maintain himself.[1052] At the close of testimony, Mark V.'s attorney argued that Mark should be returned home on an outpatient treatment basis as a less restrictive alternative to hospitalization at API.[1053] The magistrate judge held that there was clear and convincing evidence that Mark V. was gravely disabled and that there was no less restrictive alternative to hospitalization.[1054] The superior court approved the thirty-day commitment order. [1055] On appeal the Supreme Court held that the petitioner bears the burden of proving that a gravely disabled person could not function even with the support of family and friends.[1056] However, given Dr. Gee's testimony about Mark's condition, the magistrate judge's finding was supported by clear and convincing evidence.[1057] Affirming the lower court, the supreme court held that the petitioner must prove by clear and convincing evidence that the respondent is gravely disabled and that commitment is the least restrictive alternative.[1058]

INSURANCE LAW

Attorneys Liability Protection Society, Inc., v. Ingaldson Fitzgerald, P.C.

[1044] *Id*.
[1045] *Id*.
[1046] 375 P.3d 51 (Alaska 2016).
[1047] *Id.* at 56.
[1048] *Id.* at 54.
[1049] *Id.*
[1050] *Id.*
[1051] *Id.* at 56.
[1052] *Id.*
[1053] *Id.*
[1054] *Id.*
[1055] *Id.* at 55.
[1056] *Id.* at 58.
[1057] *Id.* at 60.
[1058] *Id.*

In *Attorneys Liability Protection Society, Inc. v. Ingaldson Fitzgerald, P.C.*,[1059] the supreme court held Alaska law prohibits insurance policies that reimburse insurers for attorneys fees and costs of defense claims they are obligated to defend, even when the insured accepts the insurer's explicit reservation of rights, and the claim is later determined to be outside the policy.[1060] Attorneys Liability Protection Society, Inc. (ALPS) insured the law firm Ingaldson Fitzgerlad under a policy that excluded fee disputes from coverage,[1061] but reserved the right to be reimbursed for fees incurred defending claims outside of the policy[1062]. In a bankruptcy dispute, ALPS initially accepted Ingaldson's tender of defense.[1063] Ingaldson retained, and ALPS paid, independent counsel during the representation.[1064] Eventually determining these claims were outside the policy, ALPS sued Ingaldson to recover reimbursements.[1065] The district court denied ALPS' recovery because the reimbursement provision did not comply with Alaska law.[1066] After ALPS filed an appeal to the Ninth Circuit, the supreme court undertook to answer the questions certified to it.[1067] The court began its analysis by finding state case law confirmed that insurers are obligated to pay all necessary expenses of independent counsel even while reserving rights to assert subsequent coverage defenses.[1068] The court then determined that the omission of statutory language regarding reimbursement indicated that reimbursement was precluded under Alaska law.[1069] The court also noted that Alaskan statutes only absolve insurers for the financial responsibility of allegations resulting in denied claims, and that the insured are entitled to independent counsel when reservation of rights letters are submitted.[1070] Answering the Ninth Circuit's certification questions, the supreme court held Alaska law prohibits insurance policies that reimburse insurers for fees and costs of defense claims they are obligated to defend, even when the insured accepts the insurer's explicit reservation of rights, and the claim is later determined to be outside the policy.[1071]

PROPERTY LAW

Beeson v. City of Palmer

In *Beeson v. City of Palmer*,[1072] the supreme court held that, in order for an inverse condemnation claim to be successful, governmental action must be a proximate cause of the alleged property damage.[1073] Beeson lived on a plot of land in Palmer bounded by a road owned

[1059] 370 P.3d 1101 (Alaska 2016).
[1060] *Id.* at 1111.
[1061] *Id.* at 1104.
[1062] *Id.*
[1063] *Id.*
[1064] *Id.*
[1065] *Id.*
[1066] *Id.* at 1104–05.
[1067] *Id.* at 1105.
[1068] *Id.* at 1106–07.
[1069] *Id.* at 1108.
[1070] *Id.* at 1110.
[1071] *Id.* at 1111.
[1072] 370 P.3d 1084 (Alaska 2016).
[1073] *Id.* at 1093.

by the city.[1074] Beeson's property would frequently flood in the spring.[1075] He alleged that the flooding was due to the road's obstruction of the land's natural drainage, prompting him to bring an inverse condemnation claim against the city for the damage caused by the road.[1076] At trial, the superior court found that the road "was not a substantial cause" of the flooding, leading to a judgment in favor of the city.[1077] The supreme court held that a public improvement must be found to be a proximate cause—that is, "more likely than not a substantial factor in bringing about the injury"—in order for a reverse condemnation action to be successful.[1078] Because proximate cause is a finding of fact, and not law, the supreme court deferred to the superior court's finding that the road was not a proximate cause of the damage to Beeson's property,[1079] and upheld the judgment in favor of the city.[1080] Affirming the superior court, the supreme court held that governmental action must be a proximate cause of property damage in order for an inverse condemnation action to be successful.[1081]

Pursche v. Matanuska-Susitna Borough

In *Pursche v. Matanuska-Susitna Borough*,[1082] the supreme court held that land with a federal patent in its chain of title is properly under the subject matter jurisdiction of the superior court and is subject to local taxes.[1083] Ray Pursche owned real property that was originally conveyed by a federal homestead patent.[1084] When Pursche failed to pay property taxes, the Matanuska-Susitna Borough listed the property on its annual petition for foreclosure filed in superior court.[1085] Pursche objected to the foreclosure, and the superior court granted summary judgment for the Borough.[1086] On appeal, Pursche argued that the superior court lacked subject matter jurisdiction over the property because federal courts have exclusive jurisdiction over claims involving federal land patents.[1087] The supreme court reasoned that a federal patent in the chain of title does not by itself give rise to federal jurisdiction and that once a federal land patent issues, the disputes surrounding the property are matters of local property law that are properly resolved in local courts.[1088] As the state's court of general jurisdiction, then, the superior court properly exercised authority over this parcel.[1089] The supreme court also reasoned that property once owned by the federal government becomes subject to local taxes when it is conveyed to a

[1074] *Id.* at 1086.
[1075] *Id.*
[1076] *Id.* at 1086-87.
[1077] *Id.* at 1087.
[1078] *Id.* at 1090.
[1079] *Id.*
[1080] *Id.* at 1092.
[1081] *Id.*
[1082] 371 P.3d 251 (Alaska 2016).
[1083] *Id.* at 252.
[1084] *Id.*
[1085] *Id.*
[1086] *Id.*
[1087] *Id.* at 253.
[1088] *Id.* at 253–54.
[1089] *Id.* at 254.

private party.[1090] Affirming the lower court's grant of summary judgment for the Borough, the supreme court held that the superior court properly exercised jurisdiction over property with a federal patent in its chain of title.[1091]

Fink v. Municipality of Anchorage

In *Fink v. Municipality of Anchorage*,[1092] the supreme court held that lot owners are required to show they had a substantial interest in a disputed parcel of land to succeed in a quite title claim.[1093] Matthew Fink is the owner of two lots in a subdivision, which was initially subdivided in May of 1952.[1094] As a result of a 1964 earthquake, the subdivision's bluff face flattened out and slid northward, causing the existing land between the pre-earthquake bluff face and the pre-earthquake mean high-tide line to become developable and creating new land between the pre-earthquake mean high-tide line and the post-earthquake mean high-tide line.[1095] While it appeared the original plats of the subdivision had the lots' northern boundary at the top of the pre-earthquake bluff face, Fink alleged that his property actually extended north to the pre-earthquake mean high-tide line.[1096] However, the defendant argued Fink failed to show a substantial interest in the disputed parcel of land and thus could not succeed in his quite title claim; the superior court agreed.[1097] Fink appealed to the supreme court arguing he had a substantial interest in the disputed parcel and that his interest was superior to the defendant's interest.[1098] The supreme court found that in order to determine whether the lot owner has a substantial interest in the disputed property, the deed must be interpreted.[1099] Deed interpretation is a three-step analysis: (1) look to the four corners of the deed to see if it unambiguously presents the parties' intent; (2) if the deed is ambiguous, look at the facts and circumstances surrounding the conveyance to determine the parties' intent; (3) if intent cannot be determined by either the deed or extrinsic evidence, a court should resort to rules of construction.[1100] The court found that the deed was ambiguous as to the boundaries but concluded extrinsic evidence showed the intent of the parties did not included the disputed area.[1101] Agreeing with the superior court, the supreme court held lot owners are required to show they had a substantial interest in a disputed parcel of land to succeed in a quite title claim.[1102]

Alaska Trustee, LLC v. Ambridge

[1090] *Id.* at 255.
[1091] *Id.* at 252.
[1092] 379 P.3d 183 (Alaska 2016).
[1093] *Id*. at 190.
[1094] *Id*. at 185.
[1095] *Id*.
[1096] *Id*.
[1097] *Id*.
[1098] *Id*. at 190.
[1099] *Id*.
[1100] *Id*. at 191.
[1101] *Id*.
[1102] *Id*. at 190.

In *Alaska Trustee, LLC v. Ambridge*,[1103] the supreme court held that businesses pursuing nonjudicial foreclosures are "debt collectors" under federal law and therefore subject to the requirements laid out by the Fair Debt Collection Practices Act."[1104] The Ambridges bought their first home in 2006 and took out a home loan secured by a deed of trust against the property.[1105] They fell behind in their payments and received a notice of default from Alaska Trustee in 2009.[1106] Federal law requires, among other things, that a consumer be informed of the amount of the debt in initial communications.[1107] However, Alaska Trustee's default notice to the Ambriges only stated the principal amount due, not the full amount, as it failed to specify what interest, late charges, or other costs were owed.[1108] The Ambridges sued Alaska Trustee alleging violations of the FDCPA.[1109] The superior court held that Alaska Trustee was a "debt collector" subject to the FDCPA and, accordingly, awarded the Ambridges $4,000 in damages.[1110] Alaska Trustee appealed and argued that it was not a "debt collector" under the act because it did not seek the payment of money, only the recovery of collateral.[1111] The supreme court affirmed the lower court's ruling on appeal, reasoning that the FDCPA's broad definition of "debt," relevant legislative history, and analogous cases in other circuits support its interpretation of the Act.[1112] The supreme court emphasized that the FDCPA was passed for remedial purposes and, thus, should be construed liberally.[1113] Moreover, it noted that accepting Alaska Trustee's more narrow interpretation of "debt" and "debt collector" would create an enormous loophole in the Act, immunizing any debt from coverage if it happened to be secured by a real property interest and foreclosure proceedings were used to collect the debt.[1114] Affirming the lower court's decision, the supreme court held that businesses pursuing nonjudicial foreclosures are "debt collectors" under federal law and therefore subject to the requirements laid out by the Fair Debt Collection Practices Act."[1115]

City of Kenai v. Cook Inlet Natural Gas Storage Alaska, LLC

In *City of Kenai v. Cook Inlet Natural Gas Storage Alaska, LLC*,[1116] the supreme court held that when the mineral and surface rights of a property have been severed, the rights to store injected natural gas in an emptied-out reservoir are included in the mineral rights.[1117] Alaska law requires that the State reserves all mineral rights in conveyances of State land.[1118] Cook Inlet Natural Gas

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[1103] 372 P.3d 207 (Alaska 2016).
[1104] *Id.* at 209.
[1105] *Id.*
[1106] *Id.*
[1107] *Id.* at 210.
[1108] *Id.*
[1109] *Id.*
[1110] *Id.* at 211.
[1111] *Id.* at 216.
[1112] *Id.* at 213–15
[1113] *Id.* at 213.
[1114] *Id.* at 215.
[1115] *Id.* at 209.
[1116] 373 P.3d 473 (Alaska 2016).
[1117] *Id*. at 484.
[1118] *Id*. at 476.

Storage Alaska, LLC (CINGSA) leased the rights to store gas in an empty reservoir from the holders of the property's mineral rights, the State and Cook Inlet Region, Inc. (CIRI).[1119] However, the City of Kenai claimed that gas storage rights were not included in the severed mineral rights, and so they belonged to the City as the owner of the surface.[1120] CINGSA brought a complaint against the City and interplead the State and CIRI as defendants, seeking declaratory judgment that the City did not own the gas storage rights.[1121] CIRI and the City cross-moved for summary judgment, and the superior court ruled that natural gas storage rights were included in the mineral rights reserved to the State at the time of conveyance.[1122] The supreme court agreed, holding that the language of Alaska law includes gas storage rights as mineral rights.[1123] The court found that "mineral" is not defined by statute, but that a broad definition matches the broad scope of the requirement that rights be reserved.[1124] The court reasoned that thinking of the emptied reservoir, called "pore space," as a "void" and therefore not a mineral is too simplistic.[1125] The court found that pore space is a matrix of microscopic holds that are given form by minerals, and is therefore expressly within the scope of the statute.[1126] The court also held that interpreting gas storage rights as within mineral rights furthers the statute's purpose, which was to maximize the State's revenue from the subsurface uses of the land it conveyed.[1127] Affirming the lower court's decision, the supreme court ruled that natural gas storage rights are part of the mineral rights of a property, not the surface rights.[1128]

State v. Alaska Laser Wash, Inc.

In *State v. Alaska Laser Wash, Inc.*,[1129] the supreme court held business damages cannot be recovered by a business owner in a taking unless relocation of the business is not feasible.[1130] As part of a state highway improvement project, the state manifested their intent to acquire one of three car washes owned by Alaska Laser Wash, which company was owned by Trefry.[1131] Eventually, the state purchased the location from Trefry.[1132] Despite being offered a check for relocation, Trefry did not build a new car wash location.[1133] Even though he did not open a new location, and sold his business, Trefry sued the state for lost business in an inverse condemnation claim.[1134] At trial, Trefry was awarded nearly two million dollars in damages for lost business,

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[1119] *Id*.
[1120] *Id*. at 478.
[1121] *Id*. at 476.
[1122] *Id*. at 476–77.
[1123] *Id*. at 484.
[1124] *Id*. at 481.
[1125] *Id*.
[1126] *Id*.
[1127] *Id*.
[1128] *Id.*
[1129] 382 P.3d 1143 (Alaska 2016).
[1130] *Id.* at 1152.
[1131] *Id.* at 1146–47.
[1132] *Id.* at 1147.
[1133] *Id.*
[1134] *Id.* at 1147.

which the jury found were not included in the purchase price.[1135] Moreover, the jury found Trefry did not have a duty to relocate and mitigate these damages according to a reasonableness standard.[1136] On appeal, the supreme court noted that Trefry's damages were only recoverable if they directly resulted from the state's taking.[1137] The court first reasoned that most states used feasibility standards in determining awards such as business damages.[1138] The court went on to explain this standard only allowed business damages when owners are prevented from moving their businesses.[1139] The court then rejected Trefry's contention that precedent from other states was inapplicable to Alaska, as well as the reasonableness test Trefry proposed.[1140] Reversing the superior court, the supreme court held business damages cannot be recovered by a business owner in a taking unless relocation of the business is not feasible.[1141]

TORT LAW

Marshall v. Peter

In *Marshall v. Peter*,[1142] the supreme court held that reasonable jurors could disagree over whether the defendant was negligent in an automobile accident case.[1143] Defendant Peter came to a complete stop behind the car of plaintiff Marshall at a red light, leaving about one-half car length between them.[1144] When the light turned green Marshall began to move forward, but then stopped before entering the intersection when the light turned red.[1145] Peter claimed he was focusing on the space between his car and hers,[1146] and that he had not even placed his foot on the accelerator when he slid into Marshall's vehicle.[1147] At trial, the lower court denied Marshall's motion for a directed verdict, stating that there was evidence to suggest liability was an issue.[1148] The lower court reasoned that since Peter had just stopped, was aware of the icy conditions, and made sure to leave distance between their cars, reasonable persons could disagree about whether Peter was negligent.[1149] On appeal, the supreme court reasoned that since a following driver exercising due care is one who, among other things, anticipates changing road conditions and sudden stops, there is evidence to suggest Peter was not driving negligently and that a directed verdict would be inappropriate.[1150] Affirming the lower court's decision, the

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[1135] *Id.* at 1149.
[1136] *Id.*
[1137] *Id.*
[1138] *Id.* at 1150–51.
[1139] *Id.*
[1140] *Id.* at 1151–52.
[1141] *Id.* at 1152.
[1142] 377 P.3d 952 (Alaska 2016).
[1143] *Id*. at 954.
[1144] *Id*.
[1145] *Id*.
[1146] *Id*. at 955.
[1147] *Id*. at 954.
[1148] *Id*. at 955.
[1149] *See id*. at 957.
[1150] *See id*. at 956–57.

supreme court held that in an automobile case, reasonable jurors could disagree over whether the defendant was negligent.[1151]

Jones v. Westbrook

In *Jones v. Westbrook*,[1152] the supreme court held that, for malpractice claims, an attorney's negligent contracting results in cognizable injury only when such negligence proximately causes actual harm, not merely when the flawed contract becomes effective.[1153] In 2003, Jones retained Westbrook to represent him in the sale of his corporation, which Jones had decided to finance himself.[1154] According to Jones, he told Westbrook to ensure the company's business assets would secure the buyer's debt.[1155] The buyer made regular payments, but missed one in October 2005.[1156] In October 2011, due to tax issues, the IRS placed two liens on the company's assets, eventually selling them and closing the company.[1157] Accordingly, Jones filed a complaint against Westbrook in December 2013, alleging malpractice based on Westbrook's alleged failure to properly document the sale of the company.[1158] Westbrook raised the statute of limitations as a defense and moved for summary judgment.[1159] The superior court granted his request, finding that the statute of limitations on Jones' malpractice claim began running in October 2005, when Jones was first notified of the buyer's late payment.[1160] At that point, the court reasoned, a prudent businessman would have been put on inquiry notice that the buyer's payments were not secured by the company's physical assets.[1161] On appeal, the supreme court held that the statute of limitations had not started running until October 2011, because Jones had not suffered an appreciable injury yet.[1162] Specifically, the court reasoned that Jones had not lost his ability to recover the company's physical assets in the case of the buyer's default until the IRS recorded liens on them. Consequently, the supreme court held it was clear error to find that the statute of limitations barred Jones' claim.[1163] Reversing the lower court, the supreme court held that an attorney's negligent contracting results in cognizable injury for a malpractice claim only when such negligence proximately causes actual harm, not when the contract becomes effective.[1164]

[1151] *See id*. at 956.
[1152] 379 P.3d 963 (Alaska 2016)
[1153] *Id.* at 969.
[1154] *Id.* at 965.
[1155] *Id.*
[1156] *Id.*
[1157] *Id.*
[1158] *Id.*
[1159] *Id.*
[1160] *Id.* at 967.
[1161] *Id.*
[1162] *Id.* at 969.
[1163] *Id.*
[1164] *Id.*