THE YEAR IN REVIEW 2017

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

Central Recycling Services, INC. v. Municipality of Anchorage

In *Central Recycling Services, INC. v. Municipality of Anchorage,*[1] the supreme court held that the Municipality of Anchorage properly interpreted the relevant ordinance and was correct in not providing rebates for the recycling of concrete, asphalt, tires, and lumber.[2] Central Recycling Services, Inc. provides recycling services for construction and demolition waste – materials mainly including cardboard, glass, steel, aluminum, copper, asphalt, concrete, tires, and lumber.[3] For entities who are primarily engaged in the disposal of recyclable materials, the Municipality of Anchorage provides reduced fees at landfills for the solid waste generated from some recyclable materials.[4] The municipal ordinance provides that a rebate may be given for companies that recycle paper, plastic, glass and steel, aluminum, copper and brass.[5] Central Recycling submitted rebates to the Municipality for waste fees associated with the recycling of both materials listed in the ordinance and materials not listed in the ordinance.[6] However, the Municipality only provided rebates for the listed materials.[7] Central Recycling brought suit, claiming the Municipality incorrectly interpreted the ordinance and unlisted materials should be subject to the rebate.[8] The supreme court, agreeing with the superior court, found that the Municipality properly interpreted the ordinance by not including the unlisted materials.[9] The court first considered the text itself, conceding that the ordinance was too ambiguous to interpret based on its language alone.[10] The court then considered the relevant legislative history, finding that the original version of the ordinance contained no list and the list was later added to limit eligibility.[11] Agreeing with the Municipality, the supreme court found that the Municipality of Anchorage properly interpreted the relevant ordinance and correctly did not provide rebates for the unlisted materials.[12]

Horner-Neufeld v. University of Alaska Fairbanks

In *Horner-Neufeld v. University of Alaska Fairbanks*,[13] the supreme court held that a state university's dismissal of a Ph.D. student did not violate either procedural or substantive due process.[14] The University of Alaska Fairbanks dismissed Horner-Neufeld from its School of Fisheries and Ocean Science Ph.D. program in January 2009.[15] At the time of her dismissal, Horner-Neufeld, who had joined the program in 2003, had failed to file required advisory

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[1] 389 P.3d 54 (Alaska 2017).
[2] *Id*. at 61.
[3] *Id*. at 56.
[4] *Id*.
[5] *Id*.
[6] *Id*.
[7] *Id*.
[8] *Id*.
[9] *Id*. at 61.
[10] *Id*. at 58.
[11] *Id*. at 60.
[12] *Id*. at 61.
[13] 389 P.3d 6 (Alaska 2017).
[14] *Id.* at 12. The court also upheld as supported by substantial evidence the university's findings that the student was not subject to discrimination. *Id.* at 12–14.
[15] *Id.* at 10.

committee reports for three consecutive years, had failed to submit a complete thesis project proposal (generally required after eighteen months), had failed to take the required comprehensive exam (generally taken after two years), and had gone nine months without an advisor.[16] The University made Horner-Neufeld aware of the various program requirements and deadlines, including the need for an advisor, in multiple direct communications to her and in its student handbooks and guidelines.[17] Horner-Neufeld sought judicial review of the dismissal, arguing that it violated procedural and substantive due process.[18] The supreme court explained that for an academic dismissal to comport with procedural due process, the student must have had notice and the university must have made a careful decision.[19] The court then determined that the University had given Horner-Neufeld opportunity to correct her poor performance on multiple occasions, and that the decision to dismiss her after six years was careful and deliberate.[20] The supreme court then explained that an academic dismissal violates substantive due process if it departs from academic norms in such a way that the decision maker was not exercising professional judgment, and that this was not the case in Horner-Neufeld's situation.[21] Affirming the lower court's decision, the supreme court held that Horner-Neufeld's dismissal did not violate due process.[22]

Radebaugh v. State, Department of Health & Social Services

In *Radebaugh v. State*,[23] the supreme court held that an administrative agency decision is subject to the highly deferential substantial evidence test unless it reverses an administrative law judge's underlying factual determination that was based on credibility determination, to which the agency's decision is then subject to a heightened scrutiny standard.[24] Radebaugh was a 70-year-old woman with various disabilities who was disqualified from a Department of Health and Social Services (DHSS) program that provides disabled Alaskans with in-home care services.[25] Radebaugh appealed DHSS's decision to an administrative law judge (ALJ), who reversed DHSS initial termination decision.[26] However, DHSS rejected the ALJ's determination and re-affirmed its initial decision to terminate Radebaugh's services.[27] Radebaugh appealed DHSS's final agency determination first to the superior court and then to the supreme court.[28] She argued that DHSS's final agency decision violated her due process rights because when the agency reverses an ALJ's factual determination, that reversal is subject to heightened scrutiny, which DHSS failed to meet.[29] The supreme court affirmed the lower court's decision by applying the substantial evidence test, which requires that final agency decisions have "such relevant evidence

[16] *Id.* at 9–10.
[17] *See id.* at 9–10, 15–18.
[18] *Id.* at 17–18.
[19] *Id.* at 16.
[20] *Id.* at 18.
[21] *Id.*
[22] *Id.* at 18.
[23] 397 P.3d 285 (Alaska 2017).
[24] *Id.* at 294.
[25] *Id.* at 287–88.
[26] *Id.* at 290.
[27] *Id.* at 291.
[28] *Id.*
[29] *Id.* at 293.

as a reasonable mind might accept as adequate to support a conclusion."[30] The court stated that the test is highly deferential to the agency's decision and allows for reversal only if, when reviewing the entire record, the court finds that the evidence detracting from the agency's decision is dramatically disproportionate to the evidence.[31] Although the court conceded that heightened scrutiny may apply when an agency is overruling an ALJ's credibility determinations, that was not the case here where DHSS's decision was based on substantial credible evidence.[32] Therefore, the supreme court held that an administrative agency decision is subject to the highly deferential substantial evidence test unless it reverses an administrative law judge's underlying factual determination which was based on the fact-finder's credibility determination, to which the agency's decision is then subject to a heightened scrutiny standard.[33]

Wright v. Anding

In *Wright v. Anding*,[34] the supreme court held that a prisoner does not make a valid claim of medical mistreatment when conflicting physician opinions lead the Department of Correction's (DOC) to deny medically necessary treatment.[35] Wright, an inmate, began complaining of loss of hearing and ear infections in 2009 and was treated.[36] Following an appointment in October of 2010, where a doctor initially recommended hearing aids,[37] Wright's repeated requests for hearing aids were denied.[38] Wright was subsequently seen by multiple specialists who determined he did not require hearing aids, though one eventually recommended he be given a Pocket Talker which Wright received.[39] On appeal, Wright argued that the DOC was deliberately indifferent to his serious medical need for hearing aids and therefore, the court erred in granting summary judgment.[40] The supreme court, assuming that Wright had a serious medical issue, explained that medical mistreatment claims require a prisoner allege deliberate indifference to serious medical needs.[41] It elaborated that deliberate indifference means that the corrections officials know of and disregard an excessive risk to an inmate's health and safety which could result in further significant injury or unnecessary pain if untreated.[42] It reasoned that the DOC's decision to follow the latter recommendation of specialists over an earlier recommendation that Wright receive hearing aids did not constitute deliberate indifference.[43] Affirming the lower court's decision, the supreme court held a prisoner does not make a valid claim of medical mistreatment when conflicting physician opinions lead the Department of Correction's (DOC) to deny medically necessary treatment.[44]

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[30] *Id.* at 293.
[31] *Id.*
[32] *Id.* at 294–95.
[33] *Id.* at 294.
[34] 390 P.3d 1162 (Alaska 2017).
[35] *Id.* at 1174.
[36] *Id.* at 1165.
[37] *Id.* at 1172–73.
[38] *Id.* at 1165–67.
[39] *Id.*
[40] *Id.* at 1171.
[41] *Id.* at 1173.
[42] *Id.*
[43] *Id.* at 1174.
[44] *Id.*

Yankee v. City & Borough of Juneau

In *Yankee v. City & Borough of Juneau*,[45] the supreme court held that an administrative agency's discretionary enforcement decision is not subject to judicial review.[46] Yankee owned a plat of land adjacent to the Gilbertos', but the two properties were in different subdivisions in Juneau.[47] Accordingly, each property was subject to different covenants.[48] After receiving approval from Community Development Department (CDD) of the City and Borough of Juneau (CBJ), the Gilbertos built a fence on their plat.[49] Yankee complained to the CDD, asserting that the fence violated two restrictive covenants.[50] The Director of the CDD sent a letter to Yankee informing Yankee of his decision that the Gilbertos' fence did not violate the covenants.[51] After appealing to the CBJ Planning Commission and CBJ Assembly.[52] While the Planning Commission ruled against Yankee on the merits, the Assembly determined that Yankee lacked standing because he did not own property in the Gilbertos subdivision.[53] Yankee appealed the Director's decision to the superior court, which affirmed the Assembly's decision.[54] On appeal to the supreme court, Yankee argued that he had standing.[55] The supreme court affirmed the lower court's decision on different grounds, declining to review executive branch decisions to not prosecute an individual or enforce a law.[56] The court reasoned that when an act is committed to executive discretion and the discretion is exercised within constitutional bounds, a court interfering with that discretion would violate separation of powers.[57] The court found that courts are less inclined to intrude when the matter falls within a subject matter that is traditionally recognized as within an agency's discretionary power than when the agency has acted in a novel or questionable fashion.[58] However, the court noted that not all enforcement decisions are unreviewable; the legislature could statutorily empower courts to review such decisions.[59] Affirming the lower court's decision, the supreme court held that an administrative agency's discretionary enforcement decision is not subject to judicial review.[60]

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[45] 407 P.3d 460 (Alaska 2017).
[46] *Id.* at 463.
[47] *Id.* at 461.
[48] *Id.*
[49] *Id.*
[50] *Id.* at 461–62.
[51] *Id.* at 462.
[52] *Id.*
[53] *Id.*
[54] *Id.*
[55] *Id.* at 463.
[56] *Id.* at 464.
[57] *Id.* at 465.
[58] *Id.*
[59] *Id.* at 466.
[60] *Id.* at 467.

BUSINESS LAW

Comsult LLC v. Girdwood Mining Co.

In *Comsult LLC v. Girdwood Mining Co.*,[61] the supreme court held that stock and royalty interests are property, and that suit to enforce rights to them is not barred by Alaska securities law.[62] Girdwood Mining Company (Girdwood) and Comsult LLC (Comsult) entered into two agreements, the business relationship soured, and the parties executed a Memorandum of Understanding terminating both agreements.[63] Under the Memorandum, Girdwood was to compensate Comsult by issuing a promissory note and awarding Comsult 60,000 shares of stock and a royalty.[64] Comsult sued Girdwood, seeking payment on the unpaid promissory note, and Girdwood confessed judgment.[65] Girdwood then sued Comsult seeking to cancel Comsult's stock and royalty interests, arguing that the relevant portions of the agreement were illegal under Alaska securities law, and therefore void.[66] The superior court granted summary judgment in favor of Comsult.[67] On appeal, Girdwood argued that Comsult was barred by statute from suing to enforce stock royalty interests that stemmed from the illegal contract, but the supreme court disagreed.[68] The court reasoned that both corporate stock and mineral royalty interests are property.[69] Therefore, although a contract suit would have been barred by statute, the court determined that the instant suit was to enforce property rights and therefore not barred.[70] Reversing and remanding the lower court, the supreme court held that stock and royalty interests are property, and therefore are enforceable even if they obtained in a contract illegal under securities law.[71]

Daggett v. Feeney

In *Daggett v. Feeney*,[72] the court held that (1) companies that provide wind turbine installation must be registered as specialty steel erection contractors, and (2) in calculating the setoff amount under a rescinded contract, the liable company's offset amount can only equal that greater than any profit received.[73] Feeney entered into a contract with Alaskan Wind Industries (AWI), where AWI was to provide and install a wind turbine, inverter and tower on Feeney's property.[74] AWI falsely stated it was a licensed steel erector in Alaska.[75] The superior court allowed Feeney to rescind the contract due to the misrepresentation and allowed him to regain his down payment less an offset; in determining this offset amount, the superior court did not subtract AWI's profits

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[61] 397 P.3d 318 (Alaska 2017).
[62] I*d.* at 321.
[63] *Id.*
[64] *Id.*
[65] *Id.*
[66] *Id.*
[67] *Id.*
[68] *Id.*
[69] *Id.*
[70] *Id.* at 320–21.
[71] *Id.* at 320.
[72] 397 P.3d 297 (Alaska 2017).
[73] *Id.* at 309.
[74] *Id.* at 300.
[75] *Id.* at 300–01.

gained from reselling parts.[76] AWI then failed to repay the damages and the superior court granted Feeney with the right to collect the amount from its undisclosed principal, Daggett LLC.[77] Daggett argued AWI was exempt from registering because wind turbine installation fell under section 08.18.161(4) of the Alaska Statutes' exemption for contractors installing "finished products."[78] The supreme court rejected this argument, holding that wind turbine installation was not covered under the exemption because it was not a finished project that would become a fixed and permanent structure or part of a structure.[79] The supreme court also held that a company's profits must factor into the determination of offset amounts.[80] Therefore, the supreme court affirmed the superior court's decision in part, holding that wind turbine installation companies must be registered, and reversed the superior court's determination of offset amounts, holding it must equal the costs less the profits.[81]

***Ivy v. Calais Company*, et al.**

In *Ivy v. Calais Company, et al.*,[82] the supreme court held that a contract that requires the appraisal of a corporation's fair value requires a valuation not of the fair market value of the corporation's assets, but rather the liquidation value of the company.[83] In 2007, Ivy filed for the involuntary dissolution of Calais company.[84] Two years later, Ivy and Calais reached a settlement in which Ivy agreed to withdraw her claims while Calais agreed to purchase Ivy's shares of Calais company stock at their fair market value, as determined by a panel of three appraisers.[85] Ivy argued that the appraisal panel's was not properly instructed by the superior court given the supreme court's order for the superior court to provide "explicit instructions to calculate [the] 'fair value'" of the company in accordance with Alaska Statute 10.06.630(a) and the terms of the agreement.[86] The supreme court affirmed the superior court decision, explaining that the lower court's instructions to calculate the fair value of the company by taking into account capital gains taxes and the possibility of the sale of the business as a going concern value was in accordance with its prior ruling.[87] The supreme court explained that the appraisal panel "taking into account the possibility of sale of the entire business as a going concern in a liquidation" is not synonymous with a requirement that the appraisal panel actually do so.[88] The supreme court held the a contract that requires the appraisal of a corporation's fair value requires a proper valuation of the liquidation value of the company rather than solely the fair market value of its assets.[89]

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[76] *Id.* at 302–04.
[77] *Id.* at 303.
[78] *Id.* at 304–05.
[79] *Id.* at 306.
[80] *Id.* at 309.
[81] *Id.* at 311–12.
[82] 397 P.3d 267 (Alaska 2017).
[83] *Id.* at 272.
[84] *Id.* at 271.
[85] *Id*.
[86] *Id.* at 272.
[87] *Id.* at 273
[88] *Id.*
[89] *Id.* at 272.

CIVIL PROCEDURE

Alaska Building, Inc. v. Legislative Affairs Agency

In *Alaska Building, Inc. v. Legislative Affairs Agency*,[90] the supreme court held that Alaska Civil Rule 11 sanctions are for frivolous claims or claims that are made in bad faith, not claims that have little likelihood of success.[91] Alaska Legislative Affairs Agency and 716 West Fourth Avenue LLC entered into a lease agreement to renovate and expand the Legislative Information Office building which included demolishing an adjoining building and the Agency agreeing to pay a maximum of $7.5 million for certain "tenant improvements."[92] The owner of the property next door, Alaska Building, Inc., filed a lawsuit challenging the lease agreement and renovation for the agreement's alleged violation of 36.30.0830(a) of the Alaska Statute.[93] Alaska Building, Inc. argued that if it succeeded in invalidating or reforming the lease, then it should receive judgment of 10 percent of the resulting savings to the Alaska Legislative Affairs Agency.[94] The lower court imposed a sanction under Alaska Civil Rule 11 for this percentage-of-savings claim on the grounds that it was "frivolous," but the court did not explain why.[95] The supreme court held that for Rule 11(b)(2) sanctions, courts must determine whether a party's "claims, defenses, and other legal contentions are warranted by existing law or by a nonfrivolous argument for . . . establishing new law," and "make a clear record" for their rationale for imposing a sanction.[96] In particular, the supreme court emphasized that a Rule 11 sanction is not determined based off of the merits of a claim, but rather "whether the attorney has abused the judicial process,"[97] as Rule 11 was "designed to deter parties from abusing judicial resources, not from filing [claims]."[98] Here, despite the percentage-of-savings claim being unlikely to prevail and was a claim that was a form of "creative advocacy,"[99] there was no evidence that it was frivolous or brought in bad faith.[100] Overall, Alaska Civil Rule 11 sanctions are reserved for frivolous claims or claims made in bad faith.[101]

Alaska Miners Ass'n v. State, Division of Elections

In *Alaska Miners Ass'n v. State, Division of Elections*,[102] the supreme court held that under section 09.60.010(c) of the Alaska Statutes, constitutional claimants (if they lose the litigation) are not required to pay the attorneys' fees for the prevailing party; a party is not a constitutional claimant if it has received a direct economic benefit, therefore having a "sufficient economic incentive" for bringing the action.[103] Alaska Miners Association brought an action questioning the constitutionality of Lieutenant Governor Mead Treadwell's approval of a ballot initiation

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[90] 403 P.3d 1132 (Alaska 2017).
[91] *Id.* at 1139.
[92] *Id.* at 1134.
[93] *Id.* at 1134.
[94] *Id.*
[95] *Id.* at 1136.
[96] *Id.* at 1135–36.
[97] *Id.* at 1137.
[98] [Citation].
[99] *Id.* at 1139.
[100] *Id.*
[101] *Id.* at 1139.
[102] 397 P.3d 312 (Alaska 2017).
[103] *Id.* at 313.

requiring additional legislative approval for a large-scale mining project in Bristol Bay.[104] The superior court dismissed the action.[105] The superior court then moved for a judgment requiring Alaska Miners Association to pay the attorneys' fees and costs of the State because the legal fees for the Alaska Miners Association were covered by Pebble Limited Partnership, who had significant economic interest in the litigation (despite not being a legal party). The supreme court reversed the judgment ordering legal fees, holding the Alaska Miners Association was a constitutional claimant, and the actions of Pebble Limited Partnership as a third party were not central to that determination.[106] The supreme court held that direct economic benefit is required in order to prove "sufficient economic incentive," and the parties do not have to be entirely disinterested to constitute constitutional claimants.[107]

Barber v. State

In *Barber v. State*,[108] the supreme court held that when both parties fail to timely appeal a final order from a superior court, the order becomes the law of the case.[109] In 1990, pro se prisoners entered into a final settlement agreement with the Department of Corrections following a class action lawsuit.[110] The Alaska legislature subsequently passed legislation sharply limiting the courts' authority to order prospective relief in actions regarding correctional facility conditions.[111] Following a motion from the Department to terminate the settlement agreement, the superior court ruled in 2001 that the statute required termination of the prospective effect of the agreement, but not the agreement itself.[112] Neither party appealed that decision.[113] From 2013 to 2015, prisoners filed three different motions under the settlement agreement, but the superior court held that the 2001 order misinterpreted the statute and the settlement agreement should have been terminated.[114] On consolidated appeal, the supreme court reversed, holding that the 2001 order was the law of the case.[115] The supreme court explained that the law of the case doctrine forbids a court from reconsidering a final decision made earlier in an existing case.[116] The court reasoned that, while the law of the case doctrine traditionally applies to issues that have been adjudicated on appeal, it equally applies to final orders that parties choose not to timely appeal.[117] The court found that, when the Department did not appeal the 2001 order terminating prospective relief but keeping the settlement agreement intact, that order became final and the law of the case.[118] As a result, the court concluded the superior court does not have the authority to relitigate the issue and dismiss the new motions.[119] The supreme court reversed

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[104] *Id.* at 313.
[105] *Id.* at 314.
[106] *Id.* at 316, 318.
[107] *Id.* at 317.
[108] 393 P.3d 412 (Alaska 2017).
[109] *Id.* at 420.
[110] *Id.* at 415.
[111] *Id.*
[112] *Id.*
[113] *Id.*
[114] *Id.* at 417.
[115] *Id.* at 420.
[116] *Id.* at 419.
[117] *Id.*
[118] *Id.*
[119] *Id.*

and remanded, holding that a final order becomes the law of the case when both parties choose not to file a timely appeal. [120]

Government Employees Insurance Co. v. Gonzalez

In *Government Employees Insurance Co. v. Gonzalez*,[121] the supreme court held that an insurer's bad faith in delaying payment to plaintiff compelled nominal damages.[122] After plaintiff was injured in a car accident, she requested payment under the underinsured motorist coverage in the policy, but the insurer ignored her repeated requests.[123] A few years later, and only after she had filed suit against the insurer, the request was reviewed and plaintiff was paid the money.[124] The superior court found that under *Ennen v. Integon Indemnity Corp,*[125] the jury's finding that the insurer acted in bad faith entitled plaintiff to nominal damages regardless of findings of causation and harm.[126] On appeal, the insurer argued that awarding nominal damages relieved plaintiff from proving causation.[127] The supreme court affirmed the lower court on the grounds that insurance companies may undermine the purpose of the bad faith cause of action by denying coverage arbitrarily and delaying payments with only interest on the amount owed as damage.[128] Overall, when insurer's act in bad faith in delaying payments, they may be required to pay nominal damages regardless of causation and damages.[129]

Haines v. Comfort Keepers, Inc.

In *Haines v. Comfort Keepers, Inc.*[130], the supreme court held that: (1) the trial court abused its discretion by granting the conditional application for entry of default without giving effect to the representative's want for a jury trial on damages and (2) it was error not to award damages or attorney's fees when allegations of the complaint could have supported an award of punitive damages.[131] Verna Haines, an elderly woman, hired Comfort Keepers, Inc., an in-home care company, to assist with her daily living.[132] The assistant they provided stole Haines's jewelry and prescription medicine.[133] Haines sued both the company and the assistant for conversion and assault, among other charges.[134] Eventually, Haines applied for default judgment against the assistant, with the condition that damages be decided by a jury trial.[135] The lower court granted the default but held that the trial on damages would take place without a jury and Haines appealed.[136] The supreme court of Alaska reasoned that because the right to a jury trial is of

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[120] *Id.* at 420.
[121] 403 P.3d 1153 (Alaska 2017).
[122] *Id.* at 1162.
[123] *Id.* at 1158.
[124] *Id.*
[125] 268 P. 3d 277 (Alaska 2012).
[126] *Gonzalez*, 403 P.3d at 1162.
[127] *Id.*
[128] *Id.*
[129] *Id.* at 1162.
[130] 393 P.3d 422 (Alaska 2017).
[131] *Id.* at 425.
[132] *Id.* at 426.
[133] *Id.*
[134] *Id.*
[135] *Id.*
[136] *Id.* at 427.

significant importance, it was an abuse of discretion to grant the default without a jury trial.[137] Furthermore, the court reasoned that because the allegations of the complaint included evidence of the assistant having malice, bad motives, and reckless indifference to the interest of another person, the court concluded it was an error for the lower court to hold that it could award no punitive damages.[138] The supreme court of Alaska held that: (1) the trial court abused its discretion by granting the application for default and (2) it was error to award no damages or attorney's fees when the allegations could have supported an award for punitive damages.[139]

Hodari v. State, Department of Corrections

In *Hodari v. State, Department of Corrections*,[140] the supreme court held that if a party fails to provide a specific itemization of attorneys' fees after the paying party has requested one, the court can refuse to award any fees it deems too vague or unreasonable.[141] Hodari moved to recover his legal fees, which he estimated to be $1800 for attorneys' fees and $3000 for paralegal fees, after the State dropped a case against him.[142] The superior court granted Hodari's motion, but did not specify how much he was entitled to.[143] The State sought a clarification order, which the superior court granted, requiring the State to pay the attorneys' fees but not the paralegal fees because Hodari had did not specified—after being asked to do so by the State—which of those services constituted work typically done by a lawyer.[144] On appeal, Hodari argued that the superior court had erred in denying the paralegal's fees because the paralegal's time had not been itemized, contending that the State had never requested itemization.[145] The supreme court affirmed the superior court's decision because it found that the State had requested a detailed list of services. Accordingly, the supreme court held that courts may reject any attorneys' fees for vagueness if the party has failed to respond to a request for itemization.[146]

Hopper v. Estate of Goard

In *Hopper v. Estate of Goard*,[147] the supreme court held that the denial of two co-conservators' motion to intervene as of right was not harmless error.[148] In May 2015, Hopper and Rollins were appointed permanent co-conservators for Stahlman, who had recently undergone multiple surgeries and been prescribed "extreme narcotic pain medication."[149] Around that time, the co-conservators learned of a settlement agreement in a dispute between Stahlman and the estate of his former business partner.[150] The co-conservators moved to reopen and reconsider the settlement on the ground that Stahlman's signature on the agreement could not have been

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[137] *Id.* at 428-29.
[138] *Id.* at 436-37.
[139] *Id.* at 425.
[140] 407 P.3d 468 (Alaska 2017).
[141] *Id.* at 472–73.
[142] *Id.* at 469.
[143] *Id.* at 470.
[144] *Id.*
[145] *Id.* at 472.
[146] *Id.* at 472–74.
[147] 386 P.3d 1245 (Alaska 2017).
[148] *Id.* at 1248–49.
[149] *Id.* at 1247.
[150] *Id.*

authentic.[151] The trial court treated the motion as one to intervene and denied it.[152] On appeal, the supreme court explained that although state civil procedure provides for intervention as of right if certain factors are met, the supreme court will not review a denial of a motion to intervene that was harmless error.[153] The supreme court then determined that the co-conservators met the factors that (1) the motion be timely, (2) the applicant show an interest in the subject matter of the action, (3) the interest may be impaired as a consequence of the action, and (4) the interest is not adequately represented by an existing party.[154] The supreme court further determined that the denial of the motion to intervene was not harmless error because the co-conservators had alleged facts that, if proven, would allow them to prevail.[155] Reversing the lower court, the supreme court held that the co-conservators had a right to intervene.[156]

Johnson v. Johnson

In *Johnson v. Johnson*,[157] the Alaska Supreme Court held that the superior court did not abuse its discretion in denying an untimely motion to enforce the judgment and a motion for recusal in the absence of a showing of bias.[158] At the conclusion of her divorce proceedings, Cynthia Johnson physically attacked her husband's attorney as the trial judge read her decision.[159] In the criminal hearing that followed, the judge that presided over the divorce proceeding testified about the events that occurred in her courtroom.[160] While incarcerated, Johnson filed a number of motions asking the court to reconsider the distribution of the marital estate after she failed to refinance the house in compliance with the earlier decision.[161] After the court denied these motions, Johnson filed a motion for recusal arguing that the judge was biased against her after witnessing Johnson's outbreak at trial.[162] The court denied this motion and Johnson appealed.[163] On appeal, the Alaska Supreme Court applied an abuse of discretion standard of review and affirmed the superior court's rulings.[164]

Kocurek v. Wagner

In *Kocurek v. Wagner*, [165] the supreme court held that the proper standard of review in a motion for a partial new trial on the amount of damages is to independently weigh the evidence and assess whether the jury's verdict is against the weight of the evidence.[166] In the 1970s or 1980s, Kocurek had purchased valuable pre-Columbian artifacts and brought them into the United

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[151] *See id.*
[152] *Id.*
[153] *Id.*
[154] *Id.* at 1248.
[155] *Id.* at 1248–49.
[156] *Id.* at 1249.
[157] 394 P.3d 598 (2017).
[158] *Id.* at 603–04.
[159] *Id.* at 599.
[160] *Id.*
[161] *Id.* at 600–02.
[162] *Id.* at 603.
[163] *Id.* at 604.
[164] *Id.* at 603–04.

[165] 390 P.3d 1144 (Alaska).
[166] *Id*. at 1151.

States.[167] Kocurek's son, Eric, assisted his father with financial matters and was granted power of attorney in 2011.[168] Eric accepted an offer from Wagner, one of Kocurek's acquaintances, to help execute a complicated plan by which they would sell his father's artifact collection to the United States government without it being confiscated.[169] While the plan was ongoing, Kocurek's family moved him to Texas, where he ultimately decided he wanted the artifacts returned to him unsold.[170] Wagner demanded payment for his services.[171] Kocurek sought remedy in the superior court, and the jury awarded him $5000 in damages for Wagner's interference with Kocurek's right to possess the artifact collection without a legal excuse. Kocurek moved for a new trial on the amount of damages, and, alternatively, to amend the judgment, but the superior court denied his motion.[172] On appeal, Kocurek argued that the lower court applied the wrong standard of review in rejecting his motion, and that the jury's $5000 damage award was against the weight of the evidence.[173] The supreme court rejected this argument, reasoning that the proper standard of a review in a motion for a new trial or, alternatively, to amend a judgment, is for the trial court to independently weigh the evidence and use its discretion in deciding whether or not to approve such a motion.[174] The court found that the trial court had not abused its discretion by finding that the jury's damage award was not against the weight of the evidence. [175] Upholding the lower court's decision, the supreme court held that a superior court may only set aside a verdict and order a new trial if it is in the interest of justice because the verdict was against the weight of the evidence.[176]

Larson v. State

In *Larson v. State*,[177] the court of appeals held that Alaska Appellate Rule 404(f) rule does not apply in cases where the appellate court issues a decision on the merits of the petitioner's claim, but denies relief.[178] Larson filed this current appellate action under Appellate Rule 404 and asked the court of appeals to re-open the proceedings in one of his earlier appeals, which the court decided in January 2016.[179] The court denied Larson's original application for relief in November 2016, and Larson appealed to get a rehearing of that November 2016 decision.[180] Appellate Rule 404(f) states, "a petition for rehearing of the denial of an original application may not be filed."[181] The court of appeals compared the rule to analogous circumstances in petition for review cases and found that the appellate court has an interest in ensuring it did not make a mistake when resolving the merits of a case.[182] Thus, the court of appeals granted Larson's

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[167] *Id*. at 1146.
[168] *Id*.
[169] *Id*.
[170] *Id*. at 1147.
[171] *Id.* at 1148.
[172] *Id*. at 1149–50.
[173] *Id.* at 1150
[174] *Id*. at 1150–51.
[175] *Id*. at 1153.
[176] *Id*. at 1151.
[177] 407 P.3d 520 (Alaska Ct. App. 2017).
[178] *Id.* at 522.
[179] *Id*. at 521.
[180] *Id.*
[181] *Id.* at 522.
[182] *Id.*

request for a rehearing and held that Alaska Appellate Rule 404(f) does not prohibit a party from seeking rehearing when the appellate court took the case and resolved the merits of a party's claim by denying relief.[183]

Mattox v. State

In *Mattox v. State*,[184] the supreme court held that in applying the doctrine of discretionary function immunity, the jury did not consider extraneous prejudicial information, because the defendant impliedly consented to it by not objecting to the jury instruction.[185] While serving a prison sentence, Mattox was assaulted by a fellow inmate.[186] Prior to the altercation, Mattox requested a transfer to another housing module.[187] Mattox filed suit against the Department of Corrections alleging that it was negligent in not accommodating his request for a transfer.[188] At trial, the superior court gave a jury instruction that included the doctrine of discretionary function immunity.[189] After trial, the parties were permitted to conference with the jurors and learned that they considered this doctrine in reaching their decision.[190] Mattox proceeded to move for a new trial on the grounds that the jury improperly considered extraneous prejudicial information.[191] On appeal, the supreme court affirmed the lower court's denial of the motion, holding that the doctrine was not extraneous information because it came to the jury through the trial process.[192]

McAnally v. Thompson

In *McAnally v. Thompson*,[193] the supreme court held that a defendant's awareness of the facts underlying a claim does not permit a plaintiff to add such a claim after the filing of pleadings without leave of the court or consent of the adverse party.[194] McAnally was terminated from his position as police captain for the City of Houston (City), and sued the City, alleging that his termination had been motivated by retailiation for his involvement in investigating city leaders.[195] The trial was originally set for December 2012 wit the deadline to amend complaints in November of 2011.[196] After multiple continuances, the trial was set to begin in November 2013.[197] Three weeks before that, McAnally, without moving to amend his complaint, added a new claim.[198] The trial court dismissed the new claim because it had not been timely pled and the City would be substantially prejudiced by forcing to defend a claim introduced late.[199] On appeal, McAnally argued that the court abused its discretion in dismissing the new claim because

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[183] *Id.*
[184] 397 P.3d 250 (2017).
[185] *Id.* at 252.
[186] *Id.*
[187] *Id.*
[188] *Id.*
[189] *Id.* at 253.
[190] *Id.*
[191] *Id.* at 253–54.
[192] *Id.* at 255–56.
[193] 397 P.3d 322 (Alaska 2017).
[194] *Id.* at 328.
[195] *Id.* at 325.
[196] *Id.*
[197] *Id.*
[198] *Id.*
[199] *Id.*

the City's awareness of the facts underlying the claim meant it would not have been substantially prejudiced by its addition.[200] The supreme court disagreed.[201] In holding that the lower court did not abuse its discretion, the supreme court reasoned that McAnally was prohibited from pursuing the claim without pleading it.[202] Alternatively, if McAnally's intent was to amend his pleading, he would have required leave of the court or written consent of the adverse party since leave was sought after a responsive pleading had been filed.[203] The supreme court added that the City's awareness of the facts underlying a possible claim does not mean that it would not be prejudiced by the court granting leave to amend his complaint three weeks before trial.[204] Affirming the lower court's decision, the supreme court held that the trial court had acted within its discretion when it denied the plaintiff's motion to add a claim, without leave of the court or consent of the defendant, after the deadline to amend pleadings had passed.[205]

Rae v. State, Dep't of Corrections

In *Rae v. State, Dep't of Corrections*,[206] the supreme court held that a court does not abuse its discretion by failing to advise a pro se litigant of substantive legal defects in his complaint before dismissing the action sua sponte.[207] Rae, an inmate in the custody of the Alaska Department of Corrections (DOC), filed a pro se complaint in the superior court alleging that DOC lacked the constitutional authority to hold him.[208] The superior court dismissed the complaint sua sponte for failure to advance a cognizable or discernable claim.[209] On appeal, Rae asserted that the superior court erred in dismissing his complaint because, as a pro se litigant, his burden of complying with procedural rules was "relaxed," and the court should have advised him of defects in his complaint before dismissing the action sua sponte.[210] The court reasoned that although the pleadings of self-represented litigants should be held to less stringent standards than pleadings of lawyers, judges must be careful to maintain impartiality.[211] The court noted that a trial judge should inform a pro se litigant of proper procedure for an action he is obviously attempting to accomplish, but the judge may not act as an advocate for pro se litigants on substantive legal issues.[212] The court reasoned that Rae's complaint contained obvious deficiencies that needed correction, and that any lenience from the court would go beyond mere procedural asisstance.[213] The court could not advise Rae on how to shape his grievances into cognizable legal claims, even if he could have benefited from advice, because it would have crossed the line between procedural assistance and substantive legal advice.[214] Affirming the superior court, the supreme

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[200] *Id.* at 327.
[201] *Id.* at 328.
[202] *Id.* at 327.
[203] *Id.* at 327.
[204] *Id.* at 327–28.
[205] *Id.* at 328.
[206] 407 P.3d 474 (Alaska 2017).
[207] *See id.* at 479.
[208] *Id.* at 476.
[209] *Id.*
[210] *Id.* at 479.
[211] *Id.*
[212] *Id.*
[213] *Id.* at 480.
[214] *Id.*

court held that a trial court is not required to give pro se litigants substantive legal advice to support their complaints.[215]

Reasner v. State

In *Reasner v. State*,[216] the supreme court held that the lower court erred in granting a motion for summary judgment on the grounds that the statute of limitations had tolled, because there was a material question of fact regarding when the alleged victim acquired the necessary information to alert her of a potential cause of action.[217] Reasner was placed in the Office of Children's Services ("OCS") custody as a child and was subsequently placed with a foster family.[218] While in foster care, Reasner was repeatedly sexually abused.[219] After reaching adulthood, Reasner learned that OCS might have been aware of her sexual abuse but nevertheless neglected to investigate or address the issue.[220] Reasner sued OCS alleging that it negligently handled reports of her sexual assault, and as a result allowed the abuse to continue throughout her childhood.[221] At trial, the superior court ruled in favor of OCS on motion for summary judgment, concluding that Reasner failed to bring suit within the requisite two year period provided for in the statute of limitations for tort claims.[222] The supreme court reversed, recognizing that the statute of limitations does not start running until a reasonable person would have sufficient information to give them notice that they might have a claim.[223] There was a material question of fact concerning when Reasner acquired such information, and therefore it was improper for the trial court to grant the motion for summary judgment.[224]

Rice v. McDonald

In *Rice v. McDonald,* the supreme court held that a trial court must properly consider the importance of protecting children from future domestic violence in ceding its jurisdiction over a case to a new venue.[225] McDonald and his wife had three children, and the children had maternal relatives living in Anchorage while their paternal relatives were in Texas.[226] The family lived together until McDonald killed his wife, was arrested, and pled guilty to his crime.[227] Shortly after his arrest, McDonald's sister moved the children from Alaska to Texas and filed a custody petition in Texas.[228] The next month, Rice, the sister of the deceased mother, filed a separate custody petition in Alaska.[229] The Alaska court held a telephonic conference with a Texas judge, where they discussed the inconvenient forum provision which allows a state with higher priority

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[215] *Id.*
[216] 394 P.3d 610 (2017).
[217] *Id.* at 615.
[218] *Id.* at 613.
[219] *Id.*
[220] *Id.*
[221] *Id.*
[222] *Id.*
[223] *Id.* at 614–15.
[224] *Id.* at 614–15.

[225] 390 P.3d 1133 (Alaska).
[226] *Id*. at 1135.
[227] *Id*.
[228] *Id*.
[229] *Id*.

to cede jurisdiction to a lower priority state if the other state is a more appropriate forum.[230] The Alaska superior court declined to exercise its jurisdiction, concluding that a court in Texas would be a more appropriate forum to make the initial custody determination because most of the relevant evidence was in Texas where the children were living.[231] On appeal, Rice argued that the superior court placed too much weight on the Texas evidence and not enough weight on protecting the children from domestic violence.[232] The supreme court agreed with Rice, reasoning that placing the children with paternal relatives subjected them to potential future domestic violence whenever their father was released from prison, while also reasoning that the Texas evidence would still be amenable for use in an Alaskan court.[233] Vacating the lower court's decision, the supreme court held that a superior court cannot cede its jurisdiction over a child custody case without properly considering the potential for future domestic abuse and whether evidence located in another state can still be brought into Alaskan court.[234]

Todeschi v. Sumitomo Metal Mining Pogo, LLC

In *Todeschi v. Sumitomo Metal Mining Pogo, LLC*,[235] the supreme court held the superior court's refusal to provide an adverse inference jury instruction for an employee, based on the employer's failure to produce certain evidence during discovery, was harmless because the employee was permitted to argue in closing arguments that the jury could make adverse inferences based on the missing evidence.[236] Todeschi was terminated from his employment as mine supervisor following his request for accommodation of his back injuries and his renewed pursuit of a three-year-old workers' compensation claim.[237] He brought suit against the employer, Sumitomo, for breach of the covenant of good faith and fair dealing and unlawful discrimination based on both a disability and his workers' compensation claim,[238] and a jury's special verdict found Sumitomo liable only for breach of the covenant of good faith and fair dealing.[239] On appeal, Todeschi argued that the superior court erred when it declined to give an adverse inference jury instruction based on alleged spoliation of evidence,[240] as his proposed instruction would have instructed the jury that if it concluded that Sumitomo's attorney intentionally deleted emails regarding Todeschi's request for accommodation, it could infer that the deleted emails would have proven a discriminatory intent.[241] The supreme court affirmed the superior court's holding, reasoning that the jury was made well aware that it was free to draw an adverse inference from missing evidence as Todeschi was invited to make the same point in closing arguments and a similar jury instruction was provided that cautioned the jury in viewing the evidence.[242] The court further recognized a trial court's need for flexibility in determining sanctions for discovery violations,[243]

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[230] *Id*.
[231] *Id*.
[232] *Id*. at 1137.
[233] *Id*. at 1137-39.
[234] *Id.* at 1139.
[235] 394 P.3d 562 (Alaska 2017).
[236] *Id.* at 576−580.
[237] *Id.* at 566−568.
[238] *Id.* at 568.
[239] *Id.* at 569.
[240] *Id.* at 573−574.
[241] *Id.* at 576−577.
[242] *Id.* at 579−580.
[243] *Id.* at 577.

and it declined to decide what a litigant has to show to be entitled to a permissive inference instruction under Alaska law.[244] Affirming the superior court's decision, the supreme court held the court's refusal to provide an adverse inference jury instruction for an employee was harmless because the employee was permitted to argue in closing arguments that the jury could make adverse inferences based on missing evidence.[245]

[244] *Id.* at 579.
[245] *Id.* at 576–580.

CONSTITUTIONAL LAW

Studley v. Alaska Public Offices Commission

In *Studley v. Alaska Public Offices Commission*,[246] the supreme court held that hypothetical scenarios are an insufficient basis for a constitutional privacy right exemption from the financial disclosure requirements a candidate is subject to when running for public office.[247] Studley ran as a candidate for a local office and was therefore subject to Alaska's financial disclosure laws, requiring Studley to report the "source" of any income over a certain amount.[248] Because Studley was "self-employed" for purposes of the disclosure laws, the "source" meant including actual client names.[249] However, Studley did not provide his clients' names, claiming that it would be financially harmful to the clients.[250] Studley alleged that this information was protected by providing two hypothetical scenarios to illustrate how disclosure could harm the client.[251] The Commission concluded that client information was not constitutionally protected and sent Studley a Notice of Penalty for failing to file complete disclosure statements.[252] Studley appealed the penalty, but the Commission issued a Final Order finding that Studley violated the financial disclosure requirements and delivering a civil penalty.[253] The superior court affirmed the Commission's decision, finding that Studley had not been required to disclose any confidential information.[254] On appeal, the supreme court agreed with the Commission's ultimate decision. The supreme court reasoned that to qualify for an exemption to the financial disclosure laws, a candidate must provide the necessary facts to prove that an exemption is applicable.[255] The court further reasoned that Studley's hypothetical scenarios did not qualify as facts and that Studley did not provide any other reason to show that such information was constitutionally protected under a zone of privacy. Affirming the superior court, the supreme court held that actual facts, not hypotheticals, are necessary to qualify for a constitutional privacy right exemption to financial disclosure requirements.[256]

Watson v. State

In *Watson v. State*,[257] the court of appeals held that the legislature did not violate Alaska's equal protection clause in passing a statute requiring minors charged with misdemeanor traffic offenses to be prosecuted as adults.[258] Watson was charged with driving under the influence (DUI) when she was fourteen years old.[259] She was tried as an adult, pursuant to the criminal statute, and convicted of DUI in district court.[260] On appeal, Watson argued that the legislature violated the

[246] 389 P.3d 18 (Alaska 2017).
[247] *Id.* at 24.
[248] *Id.* at 20.
[249] *Id.*
[250] *Id.* at 21.
[251] *Id.*
[252] *Id.*
[253] *Id.* at 21–22.
[254] *Id.* at 22.
[255] *Id.* at 24.
[256] *Id.*
[257] 400 P.3d 121 (Alaska 2017).
[258] *Id.* at 122.
[259] *Id.*
[260] *Id.*

equal protection clause by requiring minors who commit traffic misdemeanors to be tried as adults because minors who commit traffic felonies are tried as juveniles.[261] Watson argued further that because minors who commit traffic misdemeanors are as amenable to rehabilitation as those who commit traffic felonies, the legislature violated the equal protection clause by treating minor misdemeanants and minor felons differently.[262] The court of appeals affirmed the judgment of the district court, explaining that minors have only a narrow interest in minimizing punishment for their offense by being tried as a juvenile.[263] The court reasoned, by contrast, that the legislature has a strong and valid interest in regulating driving as a dangerous, adult activity.[264] Moreover, the court reasoned that the legislature may treat minor misdemeanants as adults while treating minor felons as juveniles because an adult felony sentence may impose significant imprisonment and lifetime legal disabilities.[265] Affirming the district court's judgment, the court of appeals held that the legislature did not violate Alaska's equal protection clause by requiring minors charged with traffic misdemeanors to be prosecuted as adults, while allowing minors charged with traffic felonies to be prosecuted as juveniles.[266]

Wielechowski v. State

In *Wielechowski v. State*,[267] the supreme court held that the 1976 amendment to the Alaska Constitution does not give the legislature the authority to dedicate the Permanent Fund income.[268] In 2016, the legislature appropriated money from the Fund for dividend distributions, but the governor vetoed about half of the appropriation and the legislature was unable to override the veto.[269] Two former and one current legislators sued State and Alaska Permanent Fund Corporation, claiming that the legislature's use of Permanent Fund income was not subject to gubernatorial veto since the amendment authorized the legislature to pass laws "dedicating use of Permanent Fund income without need for annual appropriations."[270] The superior court disagreed and emphasized that even if that were the case, the actual use of the income was subject to normal appropriation and veto budgetary processes.[271] The supreme court agreed that Permanent Fund was not exempt from the anti-dedication clause, as there was no evidence that the voters approving the 1976 amendment understood it to be exempt from the Constitution's anti-dedication clause, and the plain meaning of the amendment "does not plainly allow the legislature to dedicate Permanent Fund income."[272] Thus, the Permanent Fund income was held to be subject annual appropriations and gubernatorial veto.[273]

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[261] *Id.*
[262] *Id.*
[263] *Id.* at 123.
[264] *Id.*
[265] *Id.*
[266] *Id.* at 122.
[267] 403 P.3d 1141 (Alaska 2017)
[268] *Id.* at 1143.
[269] *Id.*
[270] *Id.*
[271] *Id.*
[272] *Id.* at 1150–51.
[273] *Id.* at 1143.

CRIMINAL LAW

Adams v. State

In *Adams v. State*,[274] the court of appeals held that even when the police have violated an arrested suspect's right to counsel, his subsequent statements are still admissible if the government shows that those statements were both initiated by the suspect and not tainted by the preceding violation.[275] Adams was arrested on suspicion that he murdered his wife.[276] At the police station two police officers decided to speak to Adams and ascertain whether Adams wished to invoke his right to counsel, even though the two police officers had heard from a third police officer that Adams had already invocated this right.[277] When the two police officers entered the interview room, Adams told them that he thought he needed an attorney, but also that he wanted to talk to one of the police officers alone.[278] Then Adams described the events that preceded his arrest to the police officer that he asked to speak with.[279] Based in part on these statements, Adams was convicted of first-degree murder and tampering with evidence.[280] On appeal, Adams contended that his statements should have been suppressed because the police violated his Fifth Amendment right to counsel when they decided to speak to Adams in the interview room.[281] The court disagreed. [282] The court explained that Fifth Amendment doctrine holds that when an arrested suspect expresses his desire to deal with the police only through counsel, the suspect must not be subjected to further interrogation by the authorities until counsel has been made available to him, unless the suspect himself initiates further communication, exchanges, or conversations with the police.[283] While the court of appeals assumed arguendo that the police officers violated Adams' rights by initiating contact with him, it held that this violation did not taint Adams' ensuing interview with the police officer because Adams expressly asked one of the police officers to stay behind and converse.[284] Affirming the lower court, the court of appeals held that even when the police have violated an arrested suspect's right to counsel, his resulting statements are still admissible if the government shows that those statements were both initiated by the suspect and not tainted by the preceding violation.[285]

Coleman v. State

In *Coleman v. State*,[286] the court of appeals held that a bicycle storage shed qualifies as a building for the purposes of Alaska's burglary statute,[287] and that a conviction for making a false report requires a reasonable likelihood that police would act and expend resources on a false

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[274] 390 P.3d 1194 (Alaska Ct. App. 2017).
[275] *Id.* at 1200.
[276] *Id.* at 1197.
[277] *Id.*
[278] *Id.* at 1198.
[279] *Id.* at 1197–98.
[280] *Id.* at 1196.
[281] *Id.*
[282] *Id.* at 1200.
[283] *Id.* at 1199.
[284] *Id.* at 1201.
[285] *Id.* at 1200.
[286] 407 P.3d 502 (Alaska Ct. App. 2017).
[287] *Id.* at 507.

claim.[288] In the case at issue, Coleman was convicted by jury for second degree burglary of two bicycles from a commercial bike shop's storage shed,[289] and for making a false report to police that his van was stolen.[290] On appeal, Coleman argued that the shed was too small to qualify as a building under Alaska's burglary statute, considering that a normal sized person would have to stoop to go inside the structure, and thus the shed would not "'comfortably accommodate people moving around' in it."[291] The court of appeals upheld the burglary conviction, explaining that the shed was a building based on the term's ordinary definition, since the shed had four walls, a floor, a roof, a fixed entry way,[292] and was large enough for a person to "physically enter and occupy."[293] Coleman also argued on appeal that his false statement that his van was stolen did not qualify as a false report since he made the statement in response to police questioning and did not expect the police to act on that information.[294] The court of appeals reversed the false report conviction, explaining that a false report requires more than a making a passive false statement to police.[295] The court of appeals held that a bicycle storage shed qualifies as a building for the purposes of conviction under Alaska's burglary statute,[296] and that a false report conviction requires a reasonable likelihood that police would act and expend resource based on a false statement.[297]

Dirks v. State

In *Dirks v. State*,[298] the court of appeals held that an individual cannot be convicted on a theory of constructive possession of a gun merely because he was aware of the presence of the gun.[299] After a jury trial, Dirks was convicted of fourth-degree weapons misconduct for possessing a holstered gun while impaired by alcohol.[300] Dirk was driving his car while his friend was sitting in the front passenger seat and his friend's gun was lying on the backseat.[301] The State's theory of prosecution was that Dirks possessed the gun because he was aware that the gun was inside his car at the time.[302] Although the court of appeals did not question that Dirks knew the gun was in the car, it reversed his conviction because the government had nevertheless failed to prove possession.[303] The court noted that possession can be actual or constructive—that is, control or dominion over the property in question.[304] However, constructive possession is not proved simply by knowledge or awareness of the property.[305] The court found that such a theory would

[288] *Id.* at 510.
[289] *Id.* at 503
[290] *Id.* at 507.
[291] *Id.* at 504.
[292] *Id.* at 506.
[293] *Id.* at 507
[294] *Id.* at 508.
[295] *Id.* at 509.
[296] *Id.* at 507.
[297] *Id.* at 510.
[298] 386 P.3d 1269 (Alaska App. 2017).
[299] *Id.* at 1271.
[300] *Id.* at 1269.
[301] *Id.*
[302] *Id.*
[303] *Id.* at 1271.
[304] *Id*.
[305] *Id.*

be overly broad.[306] Therefore, reversing Dirks's conviction, the court of appeals held that knowledge or awareness of property alone is not sufficient to prove possession.[307]

Hart v. State

In *Hart v. State*,[308] the Court of Appeals of Alaska held that a trial judge could reasonably rely on statements made by two drug dealers to a reliable police informant when the drug dealers did not know the individual was a police informant and were unaware that their statements would be provided to the police.[309] Hart was convicted of two counts of misconduct involving a controlled substance for possession of heroin and related paraphernalia.[310] Statements from the two drug dealers about Hart were used, in combination with other evidence, to obtain a search warrant.[311] On appeal, Hart moved to suppress evidence gained by a search warrant issued in part on statements two drug dealers made to a reliable police informant, claiming the two drug dealers did not meet the credibility and reliability requirements of the *Aguilar/Spinelli* test for probably cause.[312] The court of appeals affirmed the lower court's decision, relying on its reasoning in *State v. Malkin*[313] that a secondary source has no motive to lie when making statements that he has no reason to believe will eventually reach police and can therefore be reasonably relied on as a credible informant for purposes of finding the probable cause necessary to issue a search warrant.[314] The court noted that the two drug dealers thought they were engaged in a genuine drug transaction and would therefore be likely to make factually reliable statements.[315] Additionally, the information obtained from the two drug dealers was consistent with other information the police detective had provided to obtain the search warrant.[316] Affirming the lower court's decision, the court of appeals held that a trial judge could reasonably rely on statements two drug dealers made to a reliable police informant when the drug dealers did not know the individual was a police informant and were unaware that their statements would be provided to the police.[317]

Johnson v. State

In *Johnson v. State*,[318] the court of appeals held that a conviction for first-degree stalking that requires a course of conduct must involve repeated acts of contact that are non-consensual.[319] Johnson was convicted in the superior court for first-degree stalking, which requires the State to prove that Johnson had engaged in a "course of conduct" that reasonably placed the victim of fear of death or physical injury, and that Johnson had acted recklessly as to whether the course of

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[306] *See id.* (positing hypotheticals where a theory of possession based on knowledge or awareness would be counterintuitive).
[307] *Id.*
[308] 397 P.3d 342 (Alaska Ct. App. 2017).
[309] *Id.* at 343.
[310] *Id.*
[311] *Id.* at 344.
[312] *Id.*
[313] 678 P.2d 1356, 1359 (Alaska App. 1984), *rev'd on other grounds*, 722 P.2d 943 (Alaska 1986).
[314] 397 P.3d at 345.
[315] *Id.* at 345–46.
[316] *Id.* at 346.
[317] *Id.* at 343.
[318] 390 P.3d 1212 (Alaska Ct. App. 2017).
[319] *Id.* at 1219–20.

conduct would have this result.[320] Over several weeks, Johnson had had consensual interactions with a young boy under the age of sixteen.[321] During this time, the boy never suggested that the interactions were non-consensual or caused him to fear injury or death.[322] Later, the boy's mother and police took away the boy's cellphone, which Johnson was using to contact him via text message.[323] The boy's mother also told the boy that Johnson had previously been convicted of molesting a child, which the boy testified was scary and forced him to retrospectively reconsider his previous course of consensual contacts.[324] The police, posing as the boy, carried on the text messages with Johnson for three weeks.[325] Johnson appealed the conviction for legal insufficiency of evidence.[326] The State argued that either the actual interactions between Johnson and the boy or the text messages from Johnson to the boy's phone, possessed by police, could qualify as a "course of conduct" in violation of the statute.[327] The court of appeals disagreed. [328] Noting that a "course of conduct" to satisfy the statute required repeated acts of non-consensual contact,[329] the court ruled that the State had not satisfied its burden.[330] The contacts between Johnson and the boy, although repeated, were consensual, and the court said that the boy's retrospective re-evaluation did not alter that.[331] Further, the contacts between Johnson and the police, posing as the boy, could likewise not be non-consensual because the boy never actually conveyed non-consent, nor was he even aware of the messages.[332] The court of appeals thus held that a conviction for first-degree stalking requires the state to prove that the defendant engaged in repeated acts with the victim that the victim considered non-consensual.[333]

Kim v. State

In *Kim v. State*,[334] the court of appeals held that it was not plain error for the prosecutor to ask a criminal defendant if he was lying or if the State's witness against him was lying.[335] Kim was convicted of third-degree theft for stealing a laptop from the University of Alaska and falsely reporting to the police that the laptop had been stolen from him.[336] On appeal, he raised multiple claims of plain error, including that the prosecutor behaved improperly when she asked Kim on the stand if he was telling the truth or if the State's witness, who offered testimony that Kim gave him the laptop as collateral for a loan, was lying.[337] The court of appeals recognized that so-called "were they lying?" questions offer little probative value because the witness must

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[320] *Id*. 1219.
[321] *Id.*
[322] *Id.*
[323] *Id.*
[324] *Id.*
[325] *Id.*
[326] *Id.* at 1214.
[327] *Id.*
[328] *Id.* at 1219–20.
[329] *Id.* at 1219.
[330] *Id.* at 1221.
[331] *Id.* at 1219.
[332] *Id*. at 1220.
[333] *Id*. at 1219–20.
[334] 390 P.3d 1207 (Alaska Ct. App. 2017).
[335] *Id.* at 1212.
[336] *Id.* at 1208.
[337] *Id.* at 1210.

speculate about another's state of mind, they are designed to make the defendant witness look bad, they ignore other possible reasons for discrepancies aside from lying, they infringe on the factfinder's task of deciding whether the State has proven its case beyond a reasonable doubt, and they are argumentative.[338] While declining to offer a bright-line rule as to the appropriateness of "were they lying?" questions, the court found that because Kim's testimony and that of the State's witness could not be reconciled, the question in this case was not prejudicial.[339] Therefore, the court held that asking a criminal defendant if he was lying or if the State's witness against him was lying did not rise to the level of plain error.[340]

Maguire v. State

In *Maguire v. State*,[341] the court of appeals held that five years of probation for failure to comply with child-support obligations for fifteen years is not excessive.[342] Maguire continuously failed to comply with child-support obligations for fifteen years and, after accepting a plea agreement for misdemeanor criminal contempt, the sentencing court imposed five years of probation for Maguire.[343] The sentencing judge found that Maguire had consciously opted to disregard the child-support obligations.[344] On appeal, Maguire argued that a five-year probationary sentence for this misdemeanor offense is excessive due to his lack of criminal history, older age, and the lack of an ability to be properly rehabilitated if on probation.[345] The court of appeals disagreed, noting that this probationary period was necessary to deter others from similar conduct, motivate Maguire to pay the child-support, and affirm community values that one must work as hard as one needs to meet obligations for one's children.[346] The court reasoned that this probationary period was appropriate so that Maguire could rehabilitate himself without confinement.[347] Affirming the sentencing court, the court of appeals held that a five-year probationary period for persistent and long-term failure to pay child support is not excessive.[348]

McCord v. State

In *McCord v. State*,[349] the court of appeals held that a criminal defendant has a constitutional right to question the analyst who conducts lab tests admitted into evidence in her case.[350] McCord was convicted of driving under the influence though her blood alcohol level was not over the statutory limit.[351] At the time of arrest, McCord's blood showed the presence of four medications, one of which—clonazepam—is a controlled substance.[352] At trial, the State proved the presence of

[338] *Id.* at 1210–11.
[339] *Id.* at 1212.
[340] *Id.*
[341] 390 P.3d 1175 (Alaska Ct. App. 2017).
[342] *Id.* at 1176.
[343] *Id.*
[344] *Id.*
[345] *Id.*
[346] *Id.*
[347] *Id.*
[348] *Id.*
[349] 390 P.3d 1184 (Alaska Ct. App. 2017).
[350] *Id*. at 1186.
[351] *Id*. at 1185.
[352] *Id*.

clonazepam through the testimony of Noble, a forensic toxicologist.[353] Noble conducted the initial drug screening of McCord's blood sample, but another analyst, Swenson, performed the test that confirmed the presence and concentration of clonazepam.[354] Swenson was unavailable to testify and thus Noble reviewed Swenson's results and testified regarding the final results.[355] On appeal, the court of appeals explained that under the confrontation clause of the Sixth Amendment, the government is required to present live testimony from the laboratory technician who tested the substance at issue.[356] The court of appeals reversed, holding that a criminal defendant's confrontation clause rights are violated when she is unable to question the analyst who conducted lab tests used by the prosecution.[357]

Municipality of Anchorage v. Brooks

In *Municipality of Anchorage v. Brooks*,[358] the court of appeals held that a sentencing statute based on prior convictions applies to defendants with one or more prior convictions.[359] AS 12.55.135(a)(1)(C) is a sentencing statute stating that past criminal convictions for crimes similar to the offense raise the maximum penalty for a class A misdemeanor from 30 days to one year imprisonment.[360] Brooks was charged with operating a motor vehicle under the influence, a crime for which he had one prior conviction.[361] The district court ruled that Brooks was not covered by subsection (1)(C) because he had only a single prior conviction and the statutory language states "convictions" in the plural form.[362] The court of appeals reversed the lower court's decision, reasoning that the plain or ordinary meaning of the word "convictions" includes the singular form.[363] The court also noted that the Alaska legislature has enacted a statute stating that words in plural form include the singular form.[364] Additionally, legislative history from the House Judiciary Committee confirms the legislature's intent for the provision to apply to one or more prior convictions.[365] The court states that this persuasive legislative history negates the applicability of the rule of lenity to this question of statutory construction.[366] Reversing the district court's decision, the court of appeals held that a sentencing statute based on prior convictions applies to defendants with one or more prior convictions.[367]

Olson v. State

In *Olson v. State*,[368] the court of appeals held that while the probative value of an unredacted version of a restraining order was substantially outweighed by its danger of unfairly prejudicing

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[353] *Id*.
[354] *Id*.
[355] *Id*.
[356] *Id*.
[357] *Id*. at 1186.
[358] 397 P.3d 346 (Alaska Ct. App. 2017).
[359] *Id.* at 349.
[360] *Id.* at 347–48.
[361] *Id.* at 348.
[362] *Id.*
[363] *Id.*
[364] *Id.*
[365] *Id.* at 349.
[366] *Id.*
[367] *Id.*
[368] 390 P.3d 1188 (Alaska Ct. App. 2017).

the defendant, this error was harmless.[369] Olson's wife obtained a domestic violence protective order against Olson.[370] After Olson was found within a quarter mile of his wife's residence, Olson was charged with violating the protective order.[371] At trial, over the defense attorney's objection, the trial judge allowed the prosecutor to introduce a copy of the restraining order that identified that the judge who issued the restraining order found probable cause to believe Olson had committed, or had attempted to commit, assault or reckless endangerment, stalking, and some unspecified sexual offense, as well as criminal mischief and criminal trespass.[372] The trial judge reasoned that the restraining order had sufficient probative value because it showed that the restraining order was valid and that the trial judge had probable cause to issue it.[373] On appeal, the court of appeals held that restraining order's probative value was not sufficient because the parties did not dispute the validity of the restraining order.[374] After all, the court reasoned, Olson told the trial judge that he would stipulate that the restraining order was valid.[375] The court further found that, while the trial judge abused its discretion by allowing the prosecutor to introduce this evidence, this error was harmless because the trial judge issued cautionary instructions to the jury to disregard the allegations referenced on the restraining order multiple times throughout the trial. Affirming the judgment of the lower court, the court of appeals held that while the unredacted version of a restraining order's probative value was substantially outweighed by its danger of unfairly prejudicing the defendant, the trial judge's abuse of discretion was harmless.[376]

Rask v. State

In *Rask v. State*,[377] the court of appeals held that an intoxicated driver was denied his due process rights when the police provided him with incorrect and misleading implied consent warnings telling him that he could refuse a chemical breath test without criminal penalties as long as he agreed to submit to a chemical blood test.[378] Anchorage Police Officers escorted Rask, who was visibly impaired, to a hospital after he drove his car into a pole in the early morning of 2011 and later arrested him when he left the hospital while they were seeking a warrant to test his blood for controlled substances.[379] Although a portable breath test administered by hospital staff measured Rask's blood-alcohol content at 0.00 percent and the officers had secured a warrant to test his blood, the officers asked Rask if he was willing to submit to an additional breath test without explaining that it was a crime for him to refuse to do so, and he subsequently refused.[380] Following a jury trial, the trial court convicted Rask of felony refusal to submit to a breath test, accepting the State's argument that an independent test advertisement the officers read to Rask after he had refused the breath test cured any deficiencies in their earlier advertisements.[381] On

[369] *Id.* at 1192–93.
[370] *Id.* at 1189.
[371] *Id.*
[372] *Id.* at 1190.
[373] *Id.* at 1190–91.
[374] *Id.* at 1191.
[375] *Id.*
[376] *Id.*
[377] 404 P.3d 1236 (Alaska Ct. App. 2017).
[378] *Id.* at 1240−42.
[379] *Id.* at 1237.
[380] *Id.* at 1238.
[381] *Id.* at 1237−41.

appeal, the appellate court held that the trial court erred in finding the advertisements read to Rask adequate for purposes of assuring his due process rights, as the independent test advertisement was read to Rask after he had already refused to submit to the breath test.[382] The court of appeals stressed the severity of the criminal consequences of refusing a blood test, and reasoned that due process required care to be taken so that Rask had adequate notice of his legal duty to take the breath test.[383] Reversing the trial court's decision, the court of appeals held Rask was denied his due process rights when the police provided him with incorrect and misleading implied consent warnings telling him that he could refuse a chemical breath test without criminal penalties as long as he agreed to submit to a chemical blood test.[384]

Roberts v. State

In *Roberts v. State*[385], the court held that: (1) an error in failing to instruct the jury on requirement of a unanimous decision was cured by a polling of jurors and (2) restriction of defense counsel's explanation of the four burdens of proof on grounds it would confuse the jury was a harmless error.[386] Roberts pleaded no contest to eight counts of flying an aircraft without a license, and after a jury trial he was additionally convicted of one count of unlawful possession or transportation of game.[387] Roberts challenged his conviction on appeal, arguing the trial court committed error when it failed to instruct the jury about a unanimous decision requirement, and that the trial judge improperly restricted his attorney's closing argument when he precluded the attorney from contrasting the "beyond a reasonable doubt" burden with the lesser burdens of proof used in other types of proceedings.[388] The Alaska Court of Appeals affirmed the lower court, reasoning that although the trial judge should have instructed the jurors their decision needed to be unanimous, the judge individually polling the jurors rendered this error harmless.[389] The court further reasoned that although it was error for the judge to prohibit the defense attorney from contrasting the burdens, this error was rendered harmless because the defense attorney was able to address the same concept using other phrasings.[390] The Court of Appeals of Alaska affirmed the lower court by holding that: (1) an error in failing to instruct the jury on requirement of a unanimous decision was cured by a polling of jurors and (2) restriction of defense counsel's explanation of the four burdens of proof on grounds it would confuse the jury was harmless error.[391]

Rossiter v. State

In *Rossiter v. State*[392], the Alaska Court of Appeals reversed the lower court and held that the inflammatory and misleading nature of the prosecutor's closing argument required reversal of defendant's conviction.[393] Devin Rossiter was convicted of second-degree murder for stabbing a

[382] *Id.* at 1239–40.
[383] *Id.* at 1240.
[384] *Id.* at 1236.
[385] 394 P.3d 639 (Alaska Ct. App. 2017).
[386] *Id.*
[387] *Id.* at 640.
[388] *Id.* at 640-41.
[389] *Id.* at 642.
[390] *Id.* at 645.
[391] *Id.* at 639.
[392] 404 P.3d 223 (Alaska Ct. App. 2017).
[393] *Id.* at 223.

man.[394] At Mr. Rossiter's trial, his attorney argued that he should be acquitted because he acted in self-defense.[395] The prosecutor's closing argument included the following language: "Nick Stachelrodt did not deserve to die [for pulling Rossiter out of the car]. The only way that you can find [that] the defendant is not guilty of murder in the second degree is if you disagree with that premise —that Nick Stachelrodt did not deserve to die for what he did."[396] The court reasoned that because the availability of self-defense does not hinge on whether the deceased "deserved to die," the argument was impermissible and the conviction should be overturned.[397] The Alaska Court of Appeals reversed the defendant's murder conviction and held that the inflammatory and misleading nature of the prosecutor's closing argument required reversal of defendant's conviction.[398]

Silook v. State

In *Silook v. State*,[399] the court of appeals held that the statutory prohibition of rendering assistance to a person who has committed a felony only applies to physical or material forms of assistance and does not include lying to the police.[400] In 2009, Silook's three-year old daughter started suffering a series of physical injuries when left in the care of Silook's live-in-boyfriend, Michael Ponte.[401] These injuries culminated in November of that year when Ponte was looking after the young child while her mother was running errands.[402] When she returned, Ponte informed her that he had bathed the child and put her to bed.[403] Later that night, the child began seizing and was rushed to the hospital with serious injuries.[404] When police later interviewed Silook about the incident, she lied by telling the officer that she was the one taking care of her daughter that night, not Ponte.[405] Silook was convicted of first-degree hindering prosecution, and appealed her conviction.[406] The appellate court reasoned that the trial court misinterpreted the statute, and reversed the conviction.[407] Legislative history shows that the state legislature did not intend for the statute to encompass all forms of assistance within the ordinary meaning of the word, and instead envisioned a definition for assistance that would include only those acts explicitly specified within the subsections of the act.[408] The appellate court held that the statute criminalizing rendering assistance to a person who has committed a felony only prohibits physical and material methods of assistance.[409]

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[394] *Id.* at 224.
[395] *Id.*
[396] *Id.* at 225.
[397] *Id.* at 226.
[398] *Id.* at 223.
[399] 397 P.3d 352 (2017).
[400] *Id.* at 357.
[401] *Id.* at 353–54.
[402] *Id.*
[403] *Id.*
[404] *Id.*
[405] *Id.* at 354–55.
[406] *Id.* at 353.
[407] *Id.*
[408] *Id.* at 356–57.
[409] *Id.* at 357.

State v. Jouppi

In *State v. Jouppi*,[410] the Court of Appeals of Alaska held any vehicle that is knowingly used in an endeavor to introduce alcoholic beverages into a local option community must be subject to forfeiture, regardless of whether the alcoholic beverages ever physically arrived in the community.[411] Alaska State Troopers seized various boxes of beer from Jouppi's airplane, which was scheduled to fly to Beaver, a local option village, in April 2012, and, following a jury trial, Jouppi and Ken Air, LLC, the legal owner of the airplane, were convicted of importation of alcoholic beverages into a local option community. [412] At sentencing, however, the district court denied the State's request to order forfeiture of the airplane, concluding that the law did not authorize, much less mandate, the forfeiture of the airplane.[413] On appeal, Jouppi argued that the legislature only intended to allow forfeiture in the most serious cases where alcoholic beverages are actually delivered into local option communities.[414] The appellate court reversed the lower court's ruling on the issue of airplane forfeiture, concluding that the legislature intended to punish all aspects of any endeavor to bring alcoholic beverages into a local option community.[415] Although the court acknowledged that the plain language of the statute at issue would seem to demand otherwise, it reasoned that the legislative history and the greater regulatory scheme around the statute indicated courts were required to order forfeiture of any airplane involved in such an endeavor.[416] Reversing the lower court's ruling on the forfeiture issue, the appellate court held any vehicle that is knowingly used in an endeavor to introduce alcoholic beverages into a local option community must be subject to forfeiture, regardless of whether the alcoholic beverages ever physically arrive in the community.[417]

State v. Wright

In *State v. Wright*,[418] the supreme court held that an accused individual's speedy trial right was not violated because he was primarily responsible for the presumptively prejudicial delay due to leaving the state upon realizing he was under investigation.[419] Sean Wright was accused of sexually abusing two young girls and moved away when the investigation began.[420] Wright worked construction jobs in several states under his real name and passed various background tests while obtaining security clearances.[421] In evaluating the potential violation of Wright's speedy trial rights under the four-factor balancing test established in *Barker v. Wingo*,[422] the court of appeals found that the superior court has misapplied the test because, although Wright was partially responsible for the delay due to leaving the state, the State did not avail itself of available methods of locating him that would have been effective in producing him, including

[410] 397 P.3d 1026.
[411] *Id.* at 1033−1035.
[412] *Id.* at 1027−1028.
[413] *Id.* at 1033−1034.
[414] *Id.* at 1035.
[415] *Id.*
[416] *Id.* at 1033−1034.
[417] *Id.* at 1033−1035.
[418] 304 P.3d 166 (Alaska 2017).
[419] *Id*. at 181.
[420] *Id*. at 168.
[421] *Id*. at 169–70.
[422] 407 U.S. 514 (1972).

issuing an extraditable warrant.[423] The supreme court reversed the appellate court's decision, finding that in applying the balancing test, the relative responsibility for a delay must weigh heavily against an individual who flees a state to avoid prosecution.[424] The balance is not altered because the government was potentially negligent in its efforts to apprehend him.[425] The court reasoned that although the state failed to obtain an extraditable warrant, Wright's flight was the primary cause of the trial delay.[426] Reversing the appellate court's holding and affirming the superior court's decision, the supreme court held that an accused individual's speedy trial right was not violated because he was primarily responsible for the presumptively prejudicial delay due to leaving the state upon realizing he was under investigation.[427]

Taylor v. State

In *Taylor v. State*,[428] the court of appeals held that a factual unanimity instruction requiring the jury to unanimously agree on the theory upon which a crime was committed is not required to uphold a criminal conviction.[429] On May 15, 2012, two Anchorage police officers witnessed a Suburban vehicle failing to stop at a red light and then activated their patrol car's overhead lights to pursue the vehicle.[430] The police officers pursued the Suburban, which accelerated away from the officers at speeds of up to 70 miles per hour despite driving in residential areas and alleys with speed limits of 25 to 30 mile per hour.[431] After allegedly hitting an unattended Nissan Maxima, the Suburban then back up and collided with the officers' patrol car.[432] The state charged defendant Taylor with felony eluding, which requires that the motorist fails to stop at the order of a police officer, and that the motorists commits one of four aggravating factors including reckless driving and causing an accident.[433] On appeal, Taylor argued that since the trial judge amended the jury instructions to allow the jury to convict on either a reckless driving or accident theory, and the jury did not reach unanimity upon the validity of either of the two theories, that his conviction should be reversed.[434] The court of appeals upheld the conviction, reasoning that a single crime that could be committed in different ways does not require a jury to be unanimous on which of the ways the crime was committed.[435] Instead, the court explained that both reckless driving and the collision with the patrol car were alternative theories the jury could use to convict Taylor for felony alluding.[436] Affirming the jury's verdict, the court of appeals held that a jury does not need to unanimously agree on the particular theory upon which a crime was committed in order to convict.[437]

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[423] 304 P.3d at 170.
[424] *Id*. at 180.
[425] *Id*.
[426] *Id*.
[427] *Id*. at 181.
[428] 400 P.3d 130 (Alaska Ct. App. 2017).
[429] *Id.* at 134.
[430] *Id.* at 132.
[431] *Id.*
[432] *Id.*
[433] *Id.* at 132
[434] *Id.* at 134
[435] *Id.*
[436] *Id.* at 135.
[437] *Id.* at 134.

Tofelogo v. State

In *Tofelogo v. State*,[438] the court of appeals held that the statutory aggravating factor for felonies involving domestic abuse did not apply to a defendant who killed a roommate with whom he shared no family connection or emotional relationship.[439] Tofelogo lived in a treatment group home, and he shared a room with the victim, Fathke.[440] On the day in question, both Tofelogo and Fathke were in their room.[441] Tofelogo, pretending to be a ninja, executed a martial arts move with a long-bladed knife and accidently inflicted Fathke with a fatal wound.[442] Tofelogo later pled guilty to criminally negligent homicide.[443] When imposing the sentence, the superior court judge gave weight to aggravator (c)(18)(A)—i.e., to the fact that Tofelogo and Fathke were roommates.[444] Tofelogo appealed, arguing that the underlying rational of aggravator (c)(18)(A) did not apply to the facts of his case.[445] The court of appeals held that aggravator (c)(18)(A) is based on the policy rational of "altering various provisions of law to facilitate the prosecution and punishment of crimes that occur between people who are involved with or related to each other in specified ways."[446] Because Tofelogo and Fathke's roommate relationship fell outside the scope of aggravator (c)(18)(A), the court of appeals found that the superior court erred by giving any weight to the aggravating factor.[447] Directing the superior court to re-sentence Tofelogo, the court of appeals held that that the statutory aggravating factor for felonies involving domestic abuse did not apply to a defendant who killed a roommate with whom he shared no family connection or emotional relationship.[448]

Treptow v. State

In *Treptow v. State*,[449] the court of appeals held that under Criminal Rule 23(a), for both felony and misdemeanor cases, defendant can waive jury trial only when the government consents and court approves the waiver.[450] Defendant was charged with felony driving under the influence due to his two prior DUI convictions within the past decade: one in Arizona, the other in Alaska.[451] On appeal, defendant argued that his Arizona DUI conviction was not a "prior convictions" for purposes of Alaska's felony DUI law because for felony and misdemeanor cases in Arizona, the waiver of jury trial requires the approval of both the government and court, whereas in Alaska, defendants in misdemeanor cases have an "absolute right" to demand a bench trial.[452] The court of appeals found this to be a "misreading" of Alaska Criminal Rule 23(a).[453] The second sentence of Rule 23(a) states that in felony cases, the waiver must: (1) be in writing; (2) have

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[438] 408 P.3d 1215 (Alaska Ct. App. 2017).
[439] *Id.* at 1219.
[440] *Id.* at 1215.
[441] *Id.*
[442] *Id.*
[443] *Id.* at 1216.
[444] *Id.*
[445] *Id.* at 1217.
[446] *Id.*
[447] *Id.* at 1219.
[448] *Id.*
[449] 408 P.3d 1220 (Alaska Ct. App. 2017).
[450] *Id.* at 1221.
[451] *Id.*
[452] *Id.*
[453] *Id.*

court approval; and (3) have state's consent. While the third sentence states that in misdemeanor cases, the waiver can be either "in writing" or "made on the record in open court."[454] Despite defendant's interpretation that the third sentence–(i.e. the requirements for misdemeanor cases)–does not include the requirements of the second sentence, the court emphasized that another reasonable interpretation was that the rule "simply relaxed" the writing requirement that governs waivers.[455] To resolve the ambiguity in interpretation, the court looked towards the legislative history and intent of the drafters.[456] First, the court noted Alaska Criminal Rule 23(a) is rooted in the corresponding federal rule that governed Alaska's criminal trials in the territorial days, which required the waiver be in writing with the consent of both the government and court.[457] However, Rule 23(a) relaxes the "writing" requirement for misdemeanor cases to take into account District Court Criminal Rule 1(d), which allows waivers to be made orally on the record.[458] Furthermore, the court administrative staff did not intend to change substantive criminal law–they simply sought to meld District Court Criminal Rule 1(d) with Alaska Rule 23(a).[459] Thus, affirming the lower court, the court of appeals rejected defendant's argument that his Arizona DUI convictions do not count as "prior convictions" for Alaska's determination if he was guilty of a felony or misdemeanor since both Arizona and Alaska have the same requirements for the waiver of a jury trial for felony and misdemeanor cases: that the waiver be in writing with the approval of both the government and court.[460]

[454] *Id.*
[455] *Id.*
[456] *See id.* at 1222–26.
[457] *Id*. at 1226.
[458] *Id.*
[459] *Id.* at 1225–26.
[460] *Id.* at 1226.

CRIMINAL PROCEDURE

Alexie v. State

In *Alexie v. State*,[461] the court of appeals held that summary judgment is inappropriate where a defendant's post-conviction claim that he did not understand his plea agreement is controverted only by his colloquy with the sentencing judge and competing affidavits, which thereby present a dispute of material fact.[462] Alexie pled guilty at a change-of-plea hearing upon the advice of his attorney.[463] However, Alexie submitted an application after sentencing for post-conviction relief seeking to withdraw his plea.[464] Alexie claimed that his attorney had not provided sufficient explanation of the plea—particularly, how much time he would actually serve and the nature of the offense to which he was pleading guilty.[465] The superior court summarily dismissed Alexie's application finding that his claims were inconsistent with the change-of-plea hearing record.[466] On appeal, the State argued that Alexie's claims were patently false, and therefore need not be accepted by a court making a summary judgment decision, because they were contradicted by his responses during his colloquy with the sentencing court regarding the knowingness and voluntariness of his plea.[467] The court of appeals disagreed, finding instead that the dispute was between competing affidavits—of Alexie and his attorney—and was therefore a question of witness credibility.[468] Where there are contested material facts, the court of appeals added, summary judgment is inappropriate because the court must hear the evidence to determine which assertions of fact are more credible.[469] As such, there remained a dispute of material fact and the court of appeals remanded Alexie's application for post-conviction relief because a colloquy was not alone sufficient to create an absence of dispute of material fact.[470]

Berezyuk v. State of Alaska

In *Berezyuk v. State of Alaska*,[471] the court of appeals held that evidence of prior convictions cannot be introduced in court if the evidence is meant to prove the character of the defendant; such evidence can only be introduced for non-propensity purposes.[472] After being found with heroin and other drug paraphernalia, Berezyuk was charged with second-degree substance misconduct (among other charges).[473] During trial, the prosecutor introduced evidence of his prior drug conviction, purportedly to convince the jury of Berezyuk's intent to distribute.[474] The trial court did not explain the non-propensity uses of the evidence when allowing it.[475] After the prosecutor repeatedly referenced the prior conviction as evidence that Berezyuk was a known

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[461] 402 P.3d 416 (Alaska Ct. App. 2017).
[462] *Id.* at 417.
[463] *Id.*
[464] *Id.*
[465] *Id.* at 417–18.
[466] *Id.* at 417.
[467] *Id.* at 418.
[468] *Id.* at 418.
[469] *Id.*
[470] *Id.* at 418-419.
[471] 407 P.3d 512 (Alaska Ct. App. 2017).
[472] *Id.* at 516–17.
[473] *Id.* at 514.
[474] *Id.* at 514–15.
[475] *Id.* at 516.

drug dealer, the jury convicted Berezyuk of second-degree substance misconduct.[476] The court of appeals reversed the defendant's conviction because the prosecutor had plainly used the prior convictions to show Berezyuk's propensity for dealing drugs.[477] The court noted that the trial court had improperly applied a test that allows for the introduction of character evidence, notwithstanding the evidentiary rules' prohibition against character evidence.[478] Rather, the court of appeals determined, the trial court was required to exclude the evidence because the prosecutor had not in fact introduced it for a non-propensity purpose. Reversing Berezyuk's conviction, the court of appeals held that information regarding prior convictions can only be admissible if the prosecutor introduces it for a non-propensity purpose.[479]

Brown v. State

In *Brown v. State*,[480] the court of appeals held that a grand jury indictment will not be dismissed even when one grand juror is biased unless the defendant can show that the rest of the panel became biased by the grand juror.[481] Brown was indicted for thefts from a Kenai store.[482] During the grand jury proceeding, the prosecutor asked the grand jurors if any of them knew anyone involved in the case.[483] When one of the grand jurors stated that she was an employee at the store, another grand juror called out "[g]uilty,"[484] and several other grand jurors laughed. Brown's motion to dismiss the indictment was denied. [485] On appeal, Brown argued that the "guilty" comment demonstrated that the grand juror was biased and therefore tainted the entire grand jury panel.[486] Brown added that the indictment should have been dismissed because the prosecutor failed to admonish the grand juror or provide a curative instruction to the rest of the panel.[487] The court of appeals affirmed the trial court's decision.[488] While noting that the grand juror's comment was improper, the court noted that the burden was on Brown to prove not only that the commenting grand juror was biased, but also that the bias affected other grand jurors, and that this had to be shown with particularity.[489] The court found no evidence that the single grand juror's comment significantly influenced the other grand jurors.[490] Therefore, the court found no legitimate basis for imputing the bias of the grand juror to the entire grand jury. Affirming the lower court's decision, the court of appeals held that a defendant must show that one grand juror's demonstrated bias furthermore biased the other grand jurors in order for an indictment to be dismissed.[491]

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[476] *Id.* at 515.
[477] *Id.* at 516.
[478] *Id.*
[479] *Id.* at 516–17.
[480] 400 P.3d 142 (Alaska Ct. App. 2017).
[481] *Id.* at 143.
[482] *Id.* at 144.
[483] *Id.*
[484] *Id.*
[485] *Id.*
[486] *Id.*
[487] *Id.*
[488] *Id.* at 145.
[489] *Id.* at 144.
[490] *Id.* at 144–45.
[491] *Id.* at 143.

Brown v. State

In *Brown v. State*,[492] the Alaska Court of Appeals held that combat-related post-traumatic stress disorder (PTSD) could be used by a former soldier as grounds on which to mitigate his prison sentence.[493] The defendant had previously served two tours in the U.S. military.[494] Expert testimony indicated that he suffered from PTSD from his combat experience in Iraq, as well as from a sexual assault during his second tour in Kuwait.[495] Alaskan law specifically allows combat-related PTSD to be used as a mitigating factor for certain offenses during sentencing.[496] At trial, the defendant pleaded guilty to distribution of child porn.[497] The superior court judge concluded that the viewing of child pornography did not relate to any combat-related PTSD suffered by the defendant, because it was only related to the incident in Kuwait.[498] On this basis, the superior court judge did not apply the mitigator to the defendant's sentence.[499] On appeal, the Court found that the superior court erred in rejecting the proposed mitigator because the defendant's PTSD associated with his service in Kuwait was considered combat-related, based on the plain meaning and legislative history of the mitigation statute.[500] The defendant's post-traumatic stress from the sexual assault in Kuwait was "combat-related," and the court remanded the case for resentencing with the defendant's proposed mitigator.[501] Thus, combat-related PTSD could be used by a former soldier as grounds on which to mitigate his prison sentence.[502]

Ghosh v. State

In *Ghosh v. State*,[503] the court of appeals held that a criminal defendant does not waive all objections to his sentence if he offers his guilty plea based on a reasonable, but materially different, understanding of the plea agreement from the judge and prosecution.[504] Ghosh entered into a plea agreement designed to restrict the court's sentencing authority, which provided for a "jail range" of a maximum of 3.5 years.[505] The judge and prosecution interpreted the phrase "jail range" to refer to Ghosh's active term of imprisonment, distinct from any additional suspended term he might receive.[506] The judge sentenced Ghosh to 3.5 years of active imprisonment, plus an additional 3.5 years suspended.[507] Ghosh's attorney challenged the sentence as outside the range permitted by the agreement, based on his understanding that the term "jail range" meant Ghosh's total term of imprisonment.[508] Ghosh moved to alter the sentence to reflect his

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[492] 404 P.3d 191 (Alaska Ct. App. 2017).
[493] *Id.* at 192.
[494] *Id.*
[495] *Id.*
[496] *Id.* at 193.
[497] *Id.* at 192.
[498] *Id.* at 193.
[499] *Id.*
[500] *Id.* at 193–194.
[501] *Id.* at 195.
[502] *Id.* at 196.
[503] 400 P.3d 147 (Alaska Ct. App. 2017).
[504] *Id.* at 153.
[505] *Id.*
[506] *Id.* at 151.
[507] *Id.* at 150.
[508] *Id.*

attorney's interpretation of the agreement, which the trial court denied.[509] The court reasoned that Ghosh had waived any claim that his sentence did not conform to the terms of the agreement by failing to object or take any other action until after the sentence was announced.[510] On appeal, the court of appeals reasoned that there was no judicial finding regarding Ghosh's own understanding of the agreement, and that if Ghosh pled believing that his total sentence could not exceed 3.5 years, he had not received the benefit of the bargain as he understood it.[511] The court of appeals determined that *Ghosh* was therefore entitled to raise the issue.[512] Vacating and remanding to the superior court for further proceedings, the court of appeals held that a criminal defendant does not waive all objections to his sentence from a plea agreement if he offers his pleas based on an objectively reasonable but different interpretation of the agreement.[513]

Jeter v. State

In Jeter v. State,[514] the court of appeals held that when defendants who are on probation commit a new crime and receive a sentence for their new crime plus probation revocation sentences based on the same crime, these sentences can be appealed individually.[515] While on probation in two criminal cases, Jeter committed a third crime.[516] Jeter received one sentence in the new criminal case and probation revocation sentences in the two earlier cases. [517] Jeter appealed the lower court's revocation of his probation, but not the new third sentence. [518] The court of appeals initially affirmed the lower court, stating that proper sentencing review requires assessing the entirety of a defendant's convictions and conduct as a whole. [519] However, on rehearing, the court of repeals disavowed its earlier decision.[520] The court emphasized that while a composite sentence approach to sentence review may make sense when the same judge imposes the sentences, under Alaska law different judges will typically preside over probation revocation proceedings and criminal defendants' new criminal cases, and these sentencing evaluations will typically be performed at different times.[521] Amending its earlier decision, the court of appeals held that when defendants on probation are convicted of a new crime, defendants can appeal their sentences for a new crime and their probation revocation sentences individually.[522]

Jordan v. State

In *Jordan v. State*,[523] the court of appeals held that a defendant's personal consent is not required for the State to dismiss a charge with prejudice after the trial has begun in a criminal

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[509] *Id.* at 152.
[510] *Id.*
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[512] *Id.*
[513] *Id.* at 155.
[514] 393 P.3d 438 (Alaska Ct. App. 2017).
[515] *Id.* at 442.
[516] *Id.*
[517] *Id.*
[518] *Id.*
[519] *Id.*
[520] *Id.*
[521] *Id.* at 40–41.
[522] *Id.* at 41.
[523] 407 P.3d 499 (Alaska 2017).

prosecution.[524] Anchorage police officers arrested and charged Jordan with assault, among other offenses.[525] At trial, the State sought to dismiss the assault charge with prejudice because the State could not locate two witnesses.[526] Jordan's defense attorney consented to the dismissal and the State dismissed the charge with prejudice.[527] A jury then convicted Jordan of the remaining charges against him.[528] Jordan appealed, arguing that the trial court committed plain error because his personal consent was required for dismissal of the assault.[529] The court of appeals affirmed the lower court's decision, reasoning that the dismissal rule only applied to dismissals without prejudice because the rule was based on the federal rule, which was intended to address dismissals without prejudice.[530] The court of appeals thus held, affirming the trial court's decision, that a defendant's personal consent is not required for the State to dismiss a charge with prejudice after trial has begun in a criminal case.[531]

Mayuyo v. State

In *Mayuyo v. State*,[532] the court of appeals held that a witness may not alter a defendant's out-of-court statement in order to avoid a constitutional confrontation clause problem if doing so would materially misrepresent what the witness understood the defendant to be saying.[533] Mayuyo and his co-defendant, Balallo, were charged with sexually assaulting a woman.[534] At trial, prosecutors sought to introduce an out-of-court statement that Mayuyo had made to his roommate shortly after the alleged sexual assault.[535] When called upon to testify, the roommate would say that Mayuyo had stated several times, "we're going to jail."[536] But the roommate understood Mayuyo to be saying that Mayuyo and Balallo were going to jail for what Balallo had done.[537] In other words, according to the roommate's understanding, Mayuyo was not incriminating himself, only Balallo.[538] In order to avoid a Sixth Amendment confrontation clause problem, the trial court, over objections from the defense, allowed the prosecutor to instruct the roommate to testify that Mayuyo had said "I'm going to jail."[539] At trial and on appeal, Mayuyo argued that the alteration would materially change the meaning of the statement, as understood by both Mayuyo and the witness-roommate, because it would appear to be an admission of Mayuyo's own wrongdoing rather than an assertion that Mayuyo was going to jail because of what Balallo had done.[540] On appeal, the court of appeals reversed the lower court, reasoning that although the alteration of Mayuyo's statement protected Balallo's confrontation rights and that

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[524] *Id.* at 500.
[525] *Id.*
[526] *Id.*
[527] *Id.*
[528] *Id.*
[529] *Id.* at 501.
[530] *Id.*
[531] *Id.* at 500.
[532] 400 P.3d 136 (Alaska Ct. App. 2017).
[533] *Id.* at 140.
[534] *Id.* at 138
[535] *Id.* at 139.
[536] *Id.*
[537] *Id.*
[538] *Id.*
[539] *Id.*
[540] *Id.*

courts may alter a defendant's out-of-court statements to preserve confrontation rights, this alteration was unfair to Mayuyo because it made it appear that Mayuyo was incriminating himself to a significantly greater degree than he actually was.[541] The court found that the superior court failed to ensure that the altered version of Mayuyo's statement still accurately reflected what Mayuyo said about his own culpability.[542] The court reasoned that the altered statement materially misrepresented what Mayuyo said about his own involvement in the crime, and therefore should never have been introduced as evidence.[543] Reversing the lower court's decision, the court of appeals held that allowing the State to introduce an altered version of a defendant's out-of-court statement that materially misrepresents what the defendant actually said is improper.[544]

Nelson v. State

In *Nelson v. State*,[545] the court of appeals held that the superior court does not abuse its discretion in denying a request for the immediate appointment of conflict counsel when no specific assertions of incompetent representation had been provided.[546] Nelson pled guilty to attempted first-degree sexual abuse of a minor as part of a plea agreement with the State.[547] After his conviction, but before sentencing, Nelson claimed ineffective counsel from the public defender and sought to withdraw his plea, requesting a delay in sentencing and the appointment of a conflict counsel to litigate his claim of ineffective representation.[548] On appeal, Nelson argued for a bright-line rule requiring trial judges to automatically appoint conflict counsel when an issue of ineffective representation is raised.[549] The court of appeals affirmed the lower court's decision, stating that Nelson had failed to provide any support for his claim of incompetent representation.[550] Additionally, the court noted that most jurisdictions ultimately leave the issue of appointing conflict counsel to the discretion of the trial court.[551] Affirming the trial court's decision under the totality of the circumstances, the court of appeals held that the superior court does not abuse its discretion in denying a request for the immediate appointment of conflict counsel when no specific assertions of incompetent representation had been provided.[552]

Nicklie v. State

In *Nicklie v. State*,[553] the Alaska Court of Appeals held that a jury's two guilty verdicts, given for the same offense, were required to merge into a single conviction and sentence under Alaska double jeopardy law.[554] A jury found the defendant guilty of both third- and fourth-degree

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[541] *Id.*
[542] *Id.* at 140.
[543] *Id.*
[544] *Id.* at 138–40.
[545] 397 P.3d 350 (Alaska Ct. App. 2017).
[546] *Id.* at 352.
[547] *Id.* at 350.
[548] *Id.* at 350–351.
[549] *Id.* at 351.
[550] *Id.* at 351–352.
[551] *Id.*
[552] *Id.* at 352.
[553] 402 P.3d 424 (Alaska Ct. App. 2017).
[554] *Id.*

assault for beating up and strangling his girlfriend.[555] At sentencing, both the prosecutor and defense attorney agreed that the jury's verdicts should merge into a single conviction for the more serious crime, third-degree assault.[556] The judge agreed with the parties, and imposed a sentence for third-degree assault.[557] However, the judgment form declares that the defendant was "convicted" of both counts of assault and that the two counts were merged only "for sentencing purposes."[558] On appeal, the court held that Alaska law does not recognize the existence of merging "for sentencing purposes only."[559] The court asked the Alaska Court System to modify the sentencing report form that the lower court used, so as to avoid future confusion.[560] It then remanded the case to clarify the judgment that the jury verdicts on third- and fourth-degree assault should merge into a single conviction for third-degree assault.[561] Thus, a jury's two guilty verdicts for the same offense were required to merge into a single conviction and sentence under Alaska double jeopardy law.[562]

Parson v. State

In *Parson v. State*,[563] the court of appeals held that the sentencing judge was not clearly mistaken in denying a request for a suspended imposition of a sentence because the judge found that the defendant's conduct was more severe than common domestic violence assault.[564] After leaving home for a week unannounced, Parson returned home to his family in an agitated state and physically assaulted his wife in front of their son by shoving her into the stone fireplace.[565] Parson disabled the family vehicles so that his wife and kids were unable to flee, and had a history of unreported domestic violence.[566] After being convicted, Parson unsuccessfully requested a suspended imposition of a sentence, and subsequently appealed the denial. The sentencing court has the sole discretion to suspend imposition of a sentence.[567] The sentencing judge provided reasons for the denial, noting that Parson's conduct was more severe than the average domestic assault.[568] Affirming the sentencing judge's decision, the court of appeals concluded that it was not clearly wrong for the judge to deny the suspended imposition of a sentence request.[569]

Pieniazek v. State

In *Pieniazek v. State*,[570] the court of appeals held that the superior court misapplied the factors for determining a criminal defendant's competency to stand trial, did not adequately investigate

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[555] *Id.* at 425.
[556] *Id.*
[557] *Id.*
[558] *Id.*
[559] *Id.* at 426.
[560] *Id.*
[561] *Id.* at 427.
[562] *Id.*
[563] 404 P.3d 227 (Alaska Ct. App. 2017).
[564] *Id.* at 230–31.
[565] *Id.* at 229.
[566] *Id.*
[567] *Id.* at 230–31.
[568] *Id.*
[569] *Id.*
[570] 394 P.3d 621 (Alaska Ct. App. 2017)

the defendant's current competency, and failed to adequately consider additional factors for determining competency.[571] Pieniazek was charged with two counts of third-degree assault after he shot a gun at two state troopers responding to a disturbance on his property.[572] His attorney moved for a judicial determination of his competency, and one of the two psychologists who evaluated him found him incompetent to stand trial.[573] The trial judge found him competent to stand trial after conducting a hearing where witnesses testified as to his poor mental condition, finding that he had previously exhibited signs of competency.[574] On appeal, Pieniazek argued that the court erred in determining his competency to stand trial because it did not appropriately apply the factors required under Alaska law and did not conduct an independent assessment of his present competency.[575] The court of appeals found that the superior court applied only the competency factors for determining whether an individual has the intellectual functioning necessary to cope with ordinary demands in life, and that the superior court evaluated only Pieniazek's past rather than current ability to cope.[576] The court also held that additional factors for determining if an individual can understand the proceedings against him or is unable to assist in his defense under were not considered.[577] Therefore, the court of appeals remanded the case for reconsideration of the defendant's competency on the current record because the superior court misapplied the factors for determining an individual's ability to cope, failed to investigate the defendant's current competency, and failed to consider additional factors for determining competency.[578]

Shepersky v. State of Alaska

In *Shepersky v. State of Alaska*,[579] the court of appeals held that a victim's desires are not a sufficient reason to deny a request for bail; instead, denials of bail must be explained and based on doubt that the defendant will appear for his or her hearing, or on doubt that the community or victim will be safe.[580] Shepersky was sentenced to nine years' imprisonment after pleading guilty to negligent homicide.[581] The superior court denied Shepersky's request for bail pending appeal, expressing doubt that the bail conditions would ensure the community's safety but providing no further explanation.[582] The superior court discussed its reliance on the victim's strong opposition to bail and decided to respect the victim's desires.[583] Although some discretion is allowed in the denial of bail, the court of appeals held that the superior court must make "a reasoned decision" in denying bail; the victim's desires for finality are not a sufficient reason to deny bail.[584] The court of appeals vacated the decision and remanded the case to the superior court, requiring the court to consider only the safety of the community and victim, and the assurance that the

[571] *Id.* at 626.
[572] *Id.* at 622.
[573] *Id.* at 622–23.
[574] *Id.*
[575] *Id.*
[576] *Id.* at 624–25.
[577] *Id.* at 625.
[578] *Id.* at 626–27.
[579] 401 P.3d 990 (Alaska Ct. App. 2017).
[580] *Id.* at 994.
[581] *Id.* at 992.
[582] *Id.*
[583] *Id.*
[584] *Id.* at 993.

defendant will appear for his hearing; the superior court must also elaborate on any determination.[585]

State v. Nicori

In *State v. Nicori*,[586] the court of appeals held that parties can seek reconsideration of a rehearing or reconsideration decision as long as the second reconsideration request relates to new problems resulting from the court's prior reconsideration decision.[587] Nicori filed a request for discovery and was re-indicted the following day on more serious charges.[588] He then filed a motion alleging the appearance of prosecutorial vindictiveness and the superior court granted an evidentiary hearing.[589] Nicori then subpoenaed the prosecuting attorney and the State asked the court to reconsider its decision.[590] The superior court then reversed itself saying that the facts did not give rise to an appearance of prosecutorial vindictiveness, but that Nicori could still subpoena the prosecutor to ask him about actual vindictiveness.[591] The State filed a second motion for reconsideration and the superior court held that it was barred from doing so.[592] The court of appeals reversed the lower court's refusal to allow the State to seek reconsideration.[593] While no Alaska case directly addressed this issue, the court recognized that many other states allow it and that allowing it furthers the policy of giving trial courts a full opportunity to review and correct errors before appeal.[594] The court of appeals held that parties have the right to seek reconsideration of a decision issued by a trial court on reconsideration, so long as it involves a newly arisen problem.[595]

State v. Seigle

In *State v. Seigle*,[596] the Court of Appeals of Alaska held that though judicial orders to lower courts in a specific case go into effect at the time dictated by appellate rules 507(b) and 512(a), the opinion becomes binding precedent as soon as it is issued until superseded by the supreme court.[597] Seigle was convicted for sexual assault and sentenced below the normal minimum by a special panel which relied on the holding of *Collins v. State*.[598] *Collins* was awaiting a hearing by the Alaska Supreme Court, and the supreme court ultimately dismissed it when new legislation overturned the court of appeals holding in *Collins*.[599] The prosecution appealed Seigle's sentence arguing that because *Collins* was on appeal and then overturned, appellate rules 507(b) and 512(a) meant its judgment never became binding precedent.[600] The prosecution contended this

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[585] *Id.* at 994.
[586] 407 P.3d 518 (Alaska Ct. App. 2017).
[587] *Id.* at 519–20.
[588] *Id.* at 519.
[589] *Id.*
[590] *Id.*
[591] *Id.*
[592] *Id.*
[593] *Id.*
[594] *Id.* at 519–20.
[595] *Id.* at 520.
[596] 394 P.3d 627 (Alaska 2017).
[597] *Id.* at 633–35.
[598] *Id.* at 629–30.
[599] *Id.* at 631–32.
[600] *Id.* at 632.

made the sentencing commission's reliance on *Collins* illegal.[601] The court of appeals explained that Appellate Rule's 507(b) and 512(a) govern when the court of appeal's orders to a lower court take effect in a particular case.[602] It distinguished this from when the court's opinion on the law becomes binding precedent.[603] The court of appeals indicated that the legislative history and plain text of the appellate rules support this conclusion.[604] Affirming the sentencing panel's decision, the court of appeals held that though judicial orders to lower courts in a specific case go into effect at the time dictated by appellate rules 507(b) and 512(a), the opinion becomes binding precedent as soon as it is issued until superseded by the supreme court.[605]

Stiner v. State

In *Stiner v. State*,[606] the court of appeals held that it is does not violate double jeopardy to convict a defendant of both being a felon in possession of a concealable firearm and for violating the terms of release by possessing a firearm.[607] While on bail release pending the appeal of his conviction for felony assault, Stiner was stopped in his truck for a traffic infraction.[608] The officer who conducted the stop observed a pistol barrel in the vehicle and Stiner was later convicted of three offenses relating to the possession of a firearm: felon in possession of a concealable firearm, and two counts of violating the conditions of his release (that he obey all laws, and that he not possess a firearm).[609] At sentencing, Stiner's attorney asked the superior court to merge the convictions for all three offenses.[610] The superior court ruled that Stiner's two convictions for violating the terms of his release should be merged, but that the conviction for violating terms of release should not merge with the felon-in-possession conviction.[611] On appeal, Stiner argued that the failure to merge the convictions constituted double jeopardy.[612] The court of appeals, however, explained that separate convictions for the same conduct are permitted under double jeopardy doctrine when the statutory interests for each offense are sufficiently distinct to support separate convictions.[613] Here, the court of appeals agreed with the superior court that Stiner's violation of his bail conditions implicated a societal interest that is substantially different from the societal interest in prohibiting felons from possessing concealable firearms.[614] Affirming the lower court, the court of appeals held that it is does not violate double jeopardy to convict a defendant of both being a felon in possession of a concealable firearm and for violating the terms of release by possessing a firearm. [615]

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[601] *Id.*
[602] *Id.* at 632–33.
[603] *Id.* at 633.
[604] *Id.* at 632–34.
[605] *Id.* at 633–35.
[606] 389 P.3d 73 (Alaska Ct. App. 2017).
[607] *Id.* at 74.
[608] *Id.*
[609] *Id.*
[610] *Id.*
[611] *Id.*
[612] *Id.*
[613] *Id.*
[614] *Id.*
[615] *Id.*

Wahl v. State

In *Wahl v. State*,[616] the court of appeals held that in order to introduce grand jury testimony when a declarant-witness is unavailable, the proponent must show that there was a similar motive in both examinations.[617] Wahl was convicted of murder.[618] At his trial, he contested the charge on the theory that someone else had committed the murder.[619] One possibility, he argued, was Hardwick.[620] Hardwick had testified before the grand jury.[621] At Wahl's jury trial, the prosecutor had intended to call Hardwick as a witness, but then announced that they could not locate him.[622] It turned out that he, without notice, had left Alaska.[623] Wahl moved to introduce Hardwick's grand jury testimony under the prior testimony exception to the rule against hearsay.[624] After a hearing, the trial court denied Wahl's motion.[625] The court of appeals, noting that there had been no cases in Alaska deciding how the prior testimony exception to the rule against hearsay applied to grand jury testimony, agreed with the trial court.[626] Drawing from the Ninth Circuit's interpretation of the related federal evidentiary rule, the court of appeals noted that in order to introduce hearsay that is sworn testimony, the examiner must have a similar motive in questioning the witness.[627] Thus, the court reasoned that Hardwick's grand jury testimony was not admissible because the prosecutor's motive examining Hardwick before the grand jury, to elicit facts about Wahl's behavior in the days surrounding the murder, would not be the same that Wahl would have in introducing the testimony at trial, to suggest that Hardwick was the murderer.[628] The court of appeals added that because the similar motive was lacking, the testimony was also inadmissible under the residual exception to the rule against hearsay because it thus lacked sufficient guarantees of trustworthiness.[629] The court of appeals affirmed the trial court's exclusion of the grand jury testimony, holding that a party seeking to introduce grand jury testimony when the declarant-witness is unavailable must show that the examiner at trial would have a similar motive to that of the grand jury examiner.[630]

Willock v. State

In *Willock v. State*,[631] the court of appeals held that evidence of a person's previous acts is not admissible at trial under Alaska R. Evid. 404(a) if that evidence is solely being used to prove a person's general proclivity to engage in that conduct when that evidence is not otherwise relevant to an issue in dispute.[632] In the case at issue, the State asked the superior court to

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[616] 402 P.3d 419 (Alaska Ct. App. 2017).
[617] *Id.* at 422-23.
[618] *Id.* at 420.
[619] *Id.* at 421
[620] *Id.*
[621] *Id.*
[622] *Id.*
[623] *Id.* at 422
[624] *Id.*
[625] *Id.*
[626] *Id.*
[627] *Id.*
[628] *Id.*
[629] *Id.* at 423.
[630] *Id.* at 422-23.
[631] 400 P.3d 124 (Alaska Ct. App. 2017).
[632] *Id.* at 130.

introduce evidence of defendant Willock's prior sexual assault.[633] The superior court ruled that evidence of the defendant's prior conviction was admissible given both the strong similarities between the present case and Willock's previous conviction, and that the evidence was used for a non-character purpose in displaying the defendant's intent and plan to commit sexual assault.[634] The court of appeals reversed the lower court's decision, reasoning that Evidence Rule 404(a) requires that a judge applies the words "'intent', 'plan', 'knowledge', or 'absence of mistake or accident'" in their technical sense in order to determine whether the evidence actually has a case specific purpose other than illustrating the defendant's general character.[635] The court explained that the defendant's intent would not be at issue given Willock's argument that he did not engage in sexual conduct at all.[636] Reversing the lower court's decision, the court of appeals held that evidence of a person's previous acts is not admissible at trial if that evidence is being used to make an inference that his past actions illustrate a general desire to engage in that conduct again.[637]

Wyatt v. State

In *Wyatt v. State*,[638] the court of appeals held that a petitioner's application for post-conviction relief need only set forth a prima facie case for relief to survive the pleadings stage.[639] Toward the end of Wyatt's criminal trial for murder and evidence tampering, his attorney announced that he intended to rest his case without putting Wyatt on the stand.[640] Wyatt was convicted of both charges, and filed a pro se application for post-conviction relief raising a number of claims, including the assertion that Wyatt's trial attorney had actively obstructed Wyatt's decision to testify on his own behalf.[641] The superior court appointed an attorney to represent Wyatt, and that attorney filed an amended application for post-conviction relief that did not include Wyatt's claim that his trial attorney had obstructed him from testifying.[642] The superior court dismissed Wyatt's post-conviction relief application, finding that it failed to state a prima facie case.[643] Wyatt then filed a second application for post-conviction relief, alleging that the attorney who represented him in the first post-conviction relief litigation was incompetent because he abandoned Wyatt's original claim for relief—that Wyatt's trial attorney had actively obstructed him from testifying.[644] Wyatt submitted a detailed affidavit in support of his claim, but the superior court dismissed Wyatt's second application for post-conviction relief.[645] The court of appeals reversed, arguing that Wyatt's burden to avoid dismissal was only to offer a prima facie case for post-conviction relief. [646] The court reasoned that because Wyatt did not have to prove at this stage he was actually entitled to relief, it did not matter that there might be a possibility that

[633] *Id.* at 126.
[634] *Id.*
[635] *Id.* at 127.
[636] *Id.* at 128.
[637] *Id.* at 130.
[638] 393 P.3d 442 (Alaska Ct. App. 2017).
[639] *See id.* at 448.
[640] *Id.* at 444.
[641] *Id.*
[642] *Id.*
[643] *Id.*
[644] *Id.*
[645] *See id.* at 444–45.
[646] *See id.* at 445.

his attorney had acted competently.[647] Because the affidavit established a prima facie case that his post-conviction attorney incompetently selected the issues to be pursued in the amended application, the court of appeals reasoned that Wyatt's second post-conviction relief application met the standard to avoid dismissal.[648] Reversing the superior court, the court of appeals held that a petitioner's application for post-conviction relief should not be dismissed when it sets forth a prima facie case for relief.[649]

[647] *See id.* at 445.
[648] *See id.* at 445–46.
[649] *See id.* at 448.

EMPLOYMENT LAW

Alaska Airlines, Inc. v. Darrow

In *Alaska Airlines, Inc. v. Darrow*,[650] the Alaska Supreme Court held [1] that the offset for social security disability (SSDI) benefits against permanent total disability (PTD) compensation payments was not limited to claimant's actual wage at time of injury; and [2] the statute that allowed reduction to PTD benefits did not authorize any offset for previously paid permanent partial impairment (PPI) benefits.[651] In this worker's compensation case, the Alaska Supreme Court reviewed the proper method for calculating the PTD compensation of an injured employee.[652] An employee incurred a job-related knee injury, yet continued working for ten years until she became permanently and totally disabled due to that injury.[653] Her employer asked the Alaska Compensation Board and Worker's Compensation Appeals Commission ("Commission") to offset the employees PTD compensation by her SSDI benefits payments and earlier PPI payments accrued during the ten years in which she continued working after sustaining the injury.[654] In the first part of the opinion, the supreme court construed two Alaskan statutes to determine the proper calculation for an offset of SSDI payments.[655] The Commission had previously rejected the employer's proposal for an offset amount, siding with the employee.[656] Using the text of the statutes, legislative history and plain reason, the Supreme Court concluded that the Commission correctly calculated offsets based on the employees' *average weekly wage* and that they applied the offset correctly.[657] In the second part of the opinion, the Court determined that the Commission incorrectly allowed an offset for PPI.[658] This was based on the plain words of the statute, which allowed offsets for permanent partial *disability* benefits, but not for PPI.[659] Thus, the court affirmed the part of the Commission's decision regarding the calculation of the SSDI offset and reversed the part of the Commission's decision permitting an offset for PPI benefits.[660] Offsets for SSDI benefits against PTD compensation payments are not limited to claimant's actual wage at time of injury and the statute that allows reduction to PTD benefits do not authorize any offset for PPI benefits.[661]

State v. Shea

In *State v. Shea*,[662] the supreme court held that the administrative law judge's decision to deny an employee occupational disability benefits because prolonged sitting during employment was not a proximate cause of the employee's disability was supported by substantial evidence.[663] Shea presented evidence that she suffered from chronic pain in the form of ilioinginal neuralgia and

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[650] 403 P.3d 1116 (Alaska 2017).
[651] *Id.*
[652] *Id.*
[653] *Id.* at 1118.
[654] *Id.*
[655] *Id.* at 1121.
[656] *Id.* at 1120.
[657] *Id.* at 1125.
[658] *Id.*
[659] *Id.* at 1129.
[660] *Id.* at 1132.
[661] *Id.*
[662] 394 P.3d 524 (Alaska 2017).
[663] *Id.* at 527.

that the sitting requirement of her employment was a substantial factor, and therefore a proximate cause, of her permanent disability.[664] The evidentiary record contained conflicting medical evidence regarding the status, extent, and aggravating circumstances of her pain.[665] On appeal, the superior court reversed the ALJ's decision, finding a logical inconsistency with the ALJ's determination that Shea's employment-related sitting was a but-for but not a proximate cause of her disability. The supreme court reversed the superior court's finding, affirming the administrative law judge's decision, because Shea failed to carry the burden of proving her employment was a substantial factor in causing her disability.[666] The court weighed five factors in reaching its conclusion: (1) conflicting medical testimony concerning the on-going versus resolved nature of her ilioinginal neuralgia; (2) Shea's failure to list employment sitting as a pain trigger until after filing her occupational disability claim; (3) medical testimony that ordinary daily activities other than sitting aggravated Shea's pain; (4) Shea's medical expert's testimony that sitting aggravated her chronic pain 5% to 10%; and (5) medical testimony that psychological factors may have contributed to the chronic pain.[667] The court reasoned that, considering the five factors, sufficient evidence existed for the ALJ to determine that reasonable persons would not regard sitting at work as an important enough cause of Shea's pain to attached legal responsibility to it.[668] The dissent agreed with the superior court regarding the logical inconsistency in finding employment-related sitting was a but-for but not a proximate cause of Shea's disability[669] and argued that the substantial factor determination was met by the medical evidence despite the contradictory testimony.[670] Reversing the superior court's decision, and affirming the administrative law judge's decision, the supreme court held that the administrative law judge's decision to deny an employee occupational disability benefits because prolonged sitting during employment was not a proximate cause of the employee's disability was supported by substantial evidence.[671]

[664] *Id.*
[665] *Id.* at 530–31.
[666] *Id.* at 528.
[667] *Id.* at 529–30.
[668] *Id.* at 532.
[669] *Id.* at 535.
[670] *Id.* at 536.
[671] *Id.* at 527.

ETHICS & PROFESSIONAL RESPONSIBILITY

In re District Court Judge

In *In re District Court Judge*,[672] the supreme court held that a judge does not have a duty to correct erroneous statements of independent supporters during an election.[673] After the Alaska Commission on Judicial Conduct recommended that a judge not be retained after a disciplinary action, the judge decided not to campaign in the next election.[674] A friend mounted a retention campaign on the judge's behalf, without his knowledge or consent.[675] The Commission found that this campaign promulgated misleading statements in its campaign materials, and issued an informal private admonishment on the judge for not publicly correcting the statements.[676] The judge filed an application for relief with the supreme court, which the court granted.[677] The court first found it had constitutional authority to review informal private admonishments of members of the judiciary, and that review here was appropriate because the judge raised an unsettled issue of Alaska law.[678] The court then held that a judge does not have a duty to correct statements made by independent supporters.[679] The court reasoned that a judge has a duty in an election to not knowingly make misrepresentations, and she is forbidden from authorizing or permitting someone else from taking an action she as a candidate cannot take.[680] The court found that the judge could not have knowingly misrepresented facts, as he was unaware that the materials even existed.[681] The court further reasoned that because the judge had no control over the publication of the materials, and because the materials clearly stated that they were not authorized by the candidate, the judge did not have a duty to publicly address their misrepresentations.[682] The supreme court reversed the Commission's informal private admonishment, finding that a judge in a retention election has no duty to publicly correct statements made by independent supporters.[683]

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[672] 392 P.3d 480 (Alaska 2017).
[673] *Id.* at 482.
[674] *Id.*
[675] *Id.*
[676] *Id.* at 483.
[677] *Id.*
[678] *Id.* at 484.
[679] *Id.*
[680] *Id.* at 485.
[681] *Id.* at 487
[682] *Id.*
[683] *Id.*

FAMILY LAW

Alex H. v. State Dept. of Health & Social Services

In *Alex H. v. State Dept. of Health & Social Services*,[684] the supreme court held that the trial court did not abuse its discretion by denying a father's statutory request for transportation to attend in person his termination of parental rights trial.[685] Alex and his wife were married and the biological parents of three children.[686] In 2014, Alex was arrested and indicted for 27 counts of first degree sexual abuse of a minor and the Office of Children's Services petitioned to terminate both parents' parental rights.[687] One week before the scheduled termination trial, Alex sought an order requiring Alaska Department of Public Safety (DPS) to transport him from the jail to the courthouse so that he could attend the termination trial in person.[688] DPS filed a written opposition contending that Alex's in-person attendance at the termination trial would add little value because he did not intend to testify and that DPS would face significant burdens in accommodating the request.[689] The superior court denied Alex's order and conducted the trial without the parties, ultimately terminating both Alex's and his wife's parental rights in January of 2016.[690] Alex appealed the termination order, claiming the superior court abused its discretion by denying his transportation request.[691] The supreme court found that the trial court properly considered all the factors presented, weighed them, and used its significant discretion to deny the transport.[692] The supreme court also concluded that the decision by the trial court was not manifestly unreasonable.[693] Thus, the supreme court held that the trial court did not abuse its discretion by denying a father's statutory request for transportation to attend in person his termination of parental rights trial.[694]

Bruce H. v. Jennifer L.

In *Bruce H. v. Jennifer L.*,[695] the supreme court held that a finding of domestic violence need not be supported by separate judicial proceedings nor multiple incidents of domestic violence for the purposes of finding a substantial change in circumstances when a court decides a legal custody modification motion or makes a best interests determination.[696] Bruce and Jennifer divorced in 2012 and agreed that Jennifer would have primary physical custody and sole legal custody of their only son.[697] In 2016, Bruce requested a modification to their custody arrangement so that they would have joint legal custody and shared physical custody.[698] Soon after, Jennifer sought

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[684] 389 P.3d 35 (Alaska 2017).
[685] *Id*. at 39.
[686] *Id*. at 40.
[687] *Id*.
[688] *Id*.
[689] *Id*.
[690] *Id*. at 41.
[691] *Id*.
[692] *Id*. at 49.
[693] *Id*.
[694] *Id*. at 39.
[695] 407 P.3d 432 (Alaska 2017).
[696] *Id.* at 439.
[697] *Id.* at 434.
[698] *Id.*

the court's authorization for her and the child to move to Kentucky.[699] In arguing for custody modification and against authorization for Jennifer moving to Kentucky with their child, Bruce alleged that Jennifer had committed domestic violence against her ex-boyfriend.[700] Testimony by Jennifer's ex-boyfriend and Jennifer supported Bruce's allegation.[701] Nevertheless, the lower court denied Bruce's motion to modify custody, finding that there had been no substantial change in circumstances, and authorized Jennifer to move with the child to Kentucky, finding that the relocation was in the child's best interests.[702] Bruce appealed both of the court's decisions.[703] Vacating and remanding the lower court's decisions, the supreme court held that the lower court committed legal error in requiring that a finding of domestic violence be supported by a separate judicial proceeding or multiple incidents of domestic violence.[704] The court reasoned that the lower court improperly relied on section 25.24.150(g) of the Alaska Statutes in requiring that a finding of domestic violence be supported by a separate judicial proceeding or multiple incidents of domestic violence.[705] Vacating and remanding the lower court's decisions, the supreme court held that a finding of domestic violence need not be supported by separate judicial proceedings nor multiple incidents of domestic violence for the purposes of finding a substantial change in circumstances on a motion to modify legal custody or in making a best interests determination.[706]

Barry H. v. State, Department of Health & Social Services

In *Barry H. v. State, Department of Health & Social Services*,[707] the supreme court held that trial courts, in determining whether to allow self-representation in a Child in Need of Aid (CINA) proceeding, must apply the standard developed under *McCracken v. State*.[708] The Office of Children's Services (OCS) took emergency custody of Barry's children after receiving reports of familial abuse.[709] OCS then sought to terminate Barry's parental rights to children in a CINA proceeding.[710] During the proceeding, Barry requested to represent himself.[711] Basing its decision on Barry's erratic behavior and eccentric statements, the trial court denied Barry's request for self-representation.[712] On appeal, Barry argued that parents in CINA proceedings have a constitutional right to represent themselves.[713] The supreme court reasoned that CINA's rule, providing that a court "shall accept a valid waiver of the right to counsel by any party if the court determines that the party understands the benefits of counsel and knowingly waives those benefits," effectively incorporated the *McCracken* standard.[714] The *McCracken* standard requires

[699] *Id.*
[700] *Id.* at 435.
[701] *Id.*
[702] *Id.*
[703] *Id.* at 436.
[704] *Id*. at 442.
[705] *Id.* at 439.
[706] *Id.*
[707] 404 P.3d 1231 (Alaska 2017).
[708] *Id.* at 1234.
[709] *Id.* at 1232.
[710] *Id.*
[711] *Id.* at 1233.
[712] *Id.* at 1235.
[713] *Id.* at 1233.
[714] *Id.* at 1234–35.

parties to "present[ ] themselves in a way that is rational and coherent."[715] The supreme court affirmed the trial court, finding that it did not abuse its discretion in denying Barry's request to represent himself in CINA proceedings because the *McCracken* standard applies in CINA proceedings.[716]

Caitlyn E. v. State of Alaska, Dep't of Health & Social Services

In *Caitlyn E. v. State of Alaska, Dep't of Health & Social Services*,[717] the supreme court held that under the Indian Child Welfare Act (ICWA), an individual without expertise in substance abuse could still testify as an expert in a child custody proceeding involving substance abuse, if the individual had the requisite expertise in Indian child-rearing and child protection.[718] The Office of Children's Services (OCS) took emergency custody of Caitlyn E.'s children in January of 2013 due to Caitlyn E.'s involvement with drugs.[719] After protracted proceedings, a termination of parental rights trial was held in superior court in 2016.[720] OCS called a woman from the same Alaska Native tribe as Caitlyn E. who had six years of doing social services work for the tribe as its ICWA expert;[721] the specific knowledge of tribe culture was required by the 2015 Bureau of Indian Affairs Guidelines.[722] Over Caitlyn E's objection, she was qualified as an expert in the tribe's child-rearing practices and child protection.[723] The witness did not have an expertise in substance abuse or a formal professional education, nor was she a licensed social worker.[724] Caitlyn E. appealed the termination of her parental rights, arguing that the trial court had abused its discretion insofar as it allowed the witness, a qualified expert on child-rearing, to testify about substance abuse.[725] The supreme court disagreed, reasoning that the witness had not testified on Caitlyn E.'s substance abuse, but rather was restricted to whether substance abuse has an effect on child rearing and child protection, which was critical for determining actual neglect or abuse in this case.[726] Thus, the supreme court held that an ICWA expert witness could opine on how issues outside her expertise—to wit, substance abuse—affected matters within her expertise, child-rearing.[727]

Dara v. Gish

In *Dara v. Gish*,[728] the supreme court held the superior court did not err in awarding the maternal grandmother and step-grandfather joint legal and primary physical custody of their grandchild.[729] The grandparents of a child with developmental delays and dyslexia who had been his legal guardians for much of his young life filed for custody of the grandchild after the child's mother

[715] *Id.* at 1233.
[716] *Id.* at 1236.
[717] 399 P.3d 646 (Alaska 2017).
[718] *Id.* at 651–52.
[719] *Id.* at 649.
[720] *Id.* at 650.
[721] *Id.*
[722] *Id.* at 652.
[723] *Id.* at 650.
[724] *Id.* at 652.
[725] *Id.* at 654
[726] *Id.*
[727] *Id.*
[728] 404 P.3d 154 (Alaska 2017).
[729] *Id.* at 165.

brought an action to terminate their guardianship.[730] The superior court found that the grandparents had achieved psychological parent status with their grandchild, a more demanding means of establishing standing than that required for third parties to seek custody.[731] The superior court held that the grandparents had proven by clear and convincing evidence that their grandchild would suffer clear detriment if his mother were given sole custody, specifically given the boy's special educational, emotional, and psychological needs.[732] On appeal, the mother challenged many of the superior court's factual findings, including that she has an unstable home, is unwilling to recognize her son's special needs, and is ill-equipped to meet those needs.[733] The supreme court affirmed the lower court's decision, reasoning that the lower court applied the correct legal framework and its findings were not clearly erroneous given that the mother had failed to enroll the child in therapy during a summer visit when her visitation rights were conditioned on her doing so.[734] The court further reasoned that the superior court could have found the mother has an unstable home with her husband, who she married after knowing for only 30 days, because he has 5 children with 3 different women yet has visitation with none, and he exhibited explosive anger during an outburst in an earlier court proceeding.[735] Affirming the superior court's decision, the supreme court held the superior court did not err in awarding the maternal grandmother and step-grandfather joint legal and primary physical custody of their grandchild.[736]

Dennis O. v. Stephanie O.

In *Dennis O. v. Stephanie O.*,[737] the supreme court held that the Alaska Constitution's due process clause does not require an indigent parent be provided counsel in a custody hearing when the other parent is represented by private counsel unless lack of counsel would effectively deny the indigent parent the right to argue the case.[738] Dennis and Stephanie were divorced in 2011 and awarded joint legal custody of their four children; they shared physical custody of the younger three, and Stephanie was awarded primary physical custody of their eldest.[739] In January 2014 Stephanie moved to take sole legal custody and primary physical custody of all four children because Dennis allegedly sexually assaulted her and trespassed in her home in 2013.[740] Stephanie retained counsel for the custody proceeding and Dennis moved for the state to provide him counsel based on his indigent status in the interests of due process.[741] Dennis's request was denied and despite significant help in his self-representation, he lost and Stephanie obtained custody.[742] On appeal, Dennis argued that denying him state appointed counsel violates Alaska's due process clause and equal protection clauses.[743] The supreme court adopted the *Mathews v.*

[730] *Id.* at 157−58.
[731] *Id.* at 161−62.
[732] *Id.* at 162−65.
[733] *Id.* at 162−64.
[734] *Id.* at 162−65.
[735] *Id.* at 163.
[736] *Id.* at 165.
[737] 393 P.3d 401 (Alaska 2017).
[738] *Id.* at 411–12.
[739] *Id.* at 404.
[740] *Id.*
[741] *Id.*
[742] *Id.* at 404–05.
[743] *Id.* at 405.

Eldridge balancing test which considers the likelihood of an erroneous decision, the strength of the government interest, and the magnitude of the private interest to determine what due process is required.[744] It explained indigent parents in custody suits as a class are typically not provided counsel because there is a low risk of erroneous deprivation, the government has substantial interests in cheap and efficient proceedings, and parental interests in loss of custody are less severe than in cases which threaten termination of parental rights.[745] The supreme court elaborated that the same balancing should be applied to each individual case, and that here no facts made it practically impossible for Dennis to adequately represent himself so fairness did not require he be provided counsel.[746] The supreme court affirmed the lower court holding that the Alaska Constitution's due process clause does not require an indigent parent be provided counsel in a custody hearing when the other parent is represented by private counsel unless lack of counsel would effectively deny the parent the right to argue the case.[747]

Easley v. Easley

In *Easley v. Easley*[748], the supreme court affirmed the lower court's order that a spouse who has received notice of and been given numerous opportunities to be heard regarding the enforcement of a settlement agreement previous to a judgment does not have his or her due process rights violated.[749] Kevin Easley and Tammy Easley filed for divorce in 2007.[750] Paragraph 21(b) of their 2008 divorce decree, which was based on a settlement agreement, required Kevin to pay Tammy $325,000 after selling the marital home.[751] Paragraph 22 of the decree required Kevin to pay Tammy $3,500 in spousal support each month until the sale.[752] As early as 2009, Kevin realized that the marital home had substantially declined in value and he filed an Alaska Civil Rule 60(b) motion for relief from judgment asserting mutual mistake of fact regarding valuation of the home.[753] In 2015, the issue was revisited sua sponte, and the judge ordered Kevin to sell the home within 90 days.[754] Kevin appealed, arguing he was not given notice or an opportunity to be heard regarding the sale of the marital home and the interpretation of the decree, and therefore was prejudiced by a lack of due process.[755] The supreme court affirmed the superior court, reasoning that there was adequate notice and Kevin had an opportunity to be heard based on the previous arguments raised by Kevin and hearings regarding the sale of the house.[756] The court further reasoned that there is adequate notice when an aggrieved party has an opportunity to present at a case and have its merits fairly judged.[757] Affirming the superior court's decision, the supreme court

[744] *Id.* at 406.
[745] *Id.* at 407–09.
[746] *Id.* at 409–11.
[747] *Id.* at 411–12.
[748] 394 P.3d 517 (Alaska 2017).
[749] *Id.* at 520.
[750] *Id.* at 519.
[751] *Id.*
[752] *Id.*
[753] *Id.*
[754] *Id.* at 519–20.
[755] *Id.* at 520.
[756] *Id.* at 520–21.
[757] *Id.* at 521.

held that a spouse, who has had numerous opportunities to be heard regarding the enforcement of a settlement agreement prior to a judgment, does not have his or her due process rights violated.[758]

Fredrickson v. Hackett

In *Fredrickson v. Hackett*,[759] the supreme court held that in a motion to modify custody, obtaining suitable housing for the children constitutes a significant change in circumstances and warrants an evidentiary hearing.[760] Under their divorce agreement, Frederick received a cabin that was rented to a tenant at the time, and Hackett received the family home.[761] More than three years after the divorce decree was issued, Frederickson filed a motion to modify custody, seeking approximately forty percent physical custody instead of twenty-five percent.[762] In his motion and affidavit, he stated that the agreement initially left him without suitable housing for the children.[763] Since then, however, the tenant had moved out of the cabin, Frederickson had moved in, and he had built an addition so that the cabin had large kitchen/living area and separate bedrooms for each child.[764] Without holding a hearing, the superior court denied Frederickson's motion to modify custody, explaining that Frederickson's remodeling of the cabin constituted merely an improvement and was insufficient to establish a change in circumstances.[765] The supreme court reversed the superior court's order, reasoning that Frederickson's claims about his change in living situation were sufficient to require a hearing.[766] The court reasoned that Frederickson's circumstance, his ability to provide living conditions suitable for children, substantially changed when the tenant left and he moved into the cabin and enlarged it.[767] The court noted that the custody section of the agreement provided Hackett with primary custody while the property section left Frederickson without suitable accommodations for the children, therefore this alleged change in his living situation was substantial.[768] Furthermore, the court added that the change in living situation was not temporary and was directly related to his ability to house the children.[769] Thus, the supreme court reversed and remanded, holding that a change in living condition that provides suitable housing for children is a substantial change in circumstances and is therefore sufficient to require a hearing.[770]

Grove v. Grove

In *Grove v. Grove*,[771] the supreme court upheld the presumption that student loan debt is marital debt[772] and held that a spouse's TRICARE, post-retirement medical benefits are marital property

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[758] *Id.* at 520.
[759] 407 P.3d 480 (Alaska 2017).
[760] *See id.* at 481.
[761] *Id.* at 482.
[762] *Id.*
[763] *Id.*
[764] *Id.*
[765] *Id.*
[766] *Id.* at 484.
[767] *Id.*
[768] *Id.*
[769] *Id.*
[770] *Id.*
[771] 400 P.3d 109 (Alaska 2017).
[772] *Id*. at 113.

requiring objective valuation.[773] Cheryl brought a divorce action against Melvin, and following a bench trial, the judge granted a divorce and divided the estate.[774] At trial, the parties testified to Cheryl's student loan debt and presented expert testimony to evaluate Melvin's post-retirement medical benefits.[775] In dividing the estate, the court characterized most of Cheryl's student loan debt as marital and all of Melvin's benefits as marital, but the court declined to assign a cash value to Melvin's benefits.[776] On appeal, Melvin challenged the court's characterization of Cheryl's student loan debt, and both parties appealed the court's method of valuation and allocation of Melvin's medical benefits.[777] The supreme court upheld the precedent in finding that student loan debt is marital debt.[778] The supreme court held that Melvin's medical benefits should be evaluated.[779] The supreme court said the experts provided evaluations that comply with precedent because they estimated Melvin's TRICARE benefits' premium subsidy value by reference to analogous plans.[780] Reversing and remanding the lower court's decision, the supreme held that student loan debt is marital debt[781] and held that a spouse's TRICARE benefits are marital property requiring objective valuation.[782]

Hockema v. Hockema

In *Hockema v. Hockema,*[783] the Alaska Supreme Court held that the lower court's decision to award spousal support to a divorcing wife, instead of a larger share of the marital estate, was not supported by its findings.[784] Throughout the proceedings, the divorcing wife showed the lower court a strong and consistent preference for receiving spousal support payments, instead of a greater share of her marital assets.[785] The lower court awarded her spousal support payments partly on that basis.[786] On review, the court found that the lower court abused its discretion by deferring to the wife's preferences.[787] The Supreme Court held that spousal support payments are ordinarily disfavored because the courts do not want to require one person to support another on a long-term basis.[788] When possible, the courts should instead try to address spouses' financial needs through property distribution.[789] Here, the lower court should have entered findings about whether the wife's needs could be met through unequal property division or through a larger cash equalization payment.[790] The Supreme Court vacated the lower court's spousal support

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[773] *Id.* at 115.
[774] *Id.* at 111.
[775] *Id.*
[776] *Id.*
[777] *Id.* at 112.
[778] *Id.* at 112–13.
[779] *Id.* at 113–16.
[780] *Id.*
[781] *Id*. at 113.
[782] *Id.* at 115.
[783] 403 P.3d 1080 (Alaska 2017).
[784] *Id.* at 1092.
[785] *Id.* at 1093.
[786] *Id.*
[787] *Id.*
[788] *Id.* at 1089.
[789] *Id.*
[790] *Id.* at 1092.

award and remanded the case for further consideration.[791] Thus, the lower court's decision to award spousal support to a divorcing wife, instead of a larger share of the marital estate, was not supported by its findings.[792]

Horning v. Horning

In *Horning v. Horning*,[793] the supreme court held that, in a divorce proceeding, the trial court could not invade one spouse's separate property by using that property to offset the value of the other spouse's marital property.[794] The wife was eligible for healthcare from the Indian Health Service (IHS) because she was an Alaska Native.[795] The husband had unvested post-retirement healthcare benefits through the military's TRICARE program.[796] When the superior court divided the marital estate after the couple's divorce trial, it did not classify, value, or distribute either party's healthcare, finding instead that each had "an equal benefit that [was] in essence a wash for the purpose of dividing the marital estate."[797] On appeal, the supreme court disagreed, reasoning that a proper equitable division of marital assets involves first determining what property is available for distribution, then finding the value of the property, and finally, dividing the property equitably.[798] Because the superior court did not provide those detailed findings in this case, the supreme court argued, this was reversible error and typically would require a remand to the trial court for additional findings.[799] However, the supreme court further argued that, in this case, additional findings are unnecessary because the court can classify both parties' health benefits as either marital or separate property as a matter of law based on the existing record.[800] Because the wife's IHS healthcare was separate property and the husband's TRICARE benefits were marital property, the supreme court vacated the superior court's order and remanded this case with instructions to classify the husband's post-retirement TRICARE benefits as marital property and to classify the wife's eligibility for IHS healthcare as separate property, and to equitably divide the marital property based on these findings.[801] In vacating the superior court's order and remanding for further proceedings, the supreme court held that the trial court could not invade one spouse's separate property by using that property to offset the value of the other spouse's marital property.[802]

In re Adoption of Hannah L.

In *In re Adoption of Hannah L*, [803] the supreme court held that an adoption petition can be denied based on either a lack of required consent or based on the best interests of the child.[804] Tarrah

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[791] *Id.* at 1095.
[792] *Id.*
[793] 389 P.3d 61 (Alaska 2017).
[794] *See id.* at 63.
[795] *Id.*
[796] *Id.*
[797] *Id.*
[798] *See id.* at 63–64.
[799] *See id.* at 64.
[800] *See id.*
[801] *See id.* at 64–65.
[802] *See id.* at 63.
[803] 390 P.3d 1153 (Alaska).
[804] *Id*. at 1162.

and Brandon are the biological parents of Hannah, and never married.[805] Tarrah and Daniel married, and Brandon continued to attempt to repair his relationship with Hannah.[806] Eventually, Daniel petitioned to adopt Hannah.[807] The superior court denied Daniel's adoption petition because it determined that (1) Brandon's conduct did not terminate his parental rights and (2) it was in Hannah's best interests to maintain a relationship with Brandon.[808] On appeal, Daniel argued that Brandon had waived his consent and that the court erred by deciding the adoption was not in Hannah's best interests.[809] The supreme court rejected this argument, explaining that a court can only issue an adoption decree if both (1) the parent's consent has been obtained or excused and (2) it is in the child's best interests. [810] As a result, the court reasoned that a negative determination under either the consent or best interests prong will preserve parental rights.[811] Upholding the lower court's decision, the supreme court held that an adoption petition can be denied by either finding that the parent did not give proper consent to the adoption or if the court determines the adoption is not in the child's best interests.[812]

Jordan v. Watson

In *Jordan v. Watson*,[813] the supreme court affirmed a lower court's denial of a motion by grandparents seeking visitation rights with their grandchild because the filings failed to allege any detriment to the child that would arise from failing to provide visitation rights.[814] Cheryl and Thomas Jordan are the paternal grandparents to their young grandchild, but alleged that the child's mother did not let them visit with the child for sufficient amounts of time and that she would not let them babysit the child.[815] The Jordans sought visitation rights with their grandchild, but the superior court denied the motion without a hearing, so they appealed.[816] Alaska law allows grandparents to seek visitation rights with their grandchild.[817] However, judicial precedent imposes a requirement that the grandparents prove that the lack of visitation is detrimental to the child.[818] Here, the grandparents did not include anything in their filings to suggest that the child would suffer if the grandparents were not provided visitation.[819] Therefore, the supreme court affirmed the decision of the superior court, because the grandparents' motion failed to satisfy the minimal requirements for a meritorious claim.[820]

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[805] *Id.* at 1155.
[806] *Id.*
[807] *Id.*
[808] *Id*. at 1156.
[809] *Id.* at 1156.
[810] *Id*. at 1158.
[811] *Id*. at 1158.
[812] *Id*. at 1162.
[813] 407 P.3d 497 (Alaska 2017).
[814] *Id.* at 498–99.
[815] *Id.* at 498.
[816] *Id.*
[817] *Id.*
[818] *Id.*
[819] *Id.*
[820] *Id.* at 498–99.

Judd v. Burns

In *Judd v. Burns*,[821] the supreme court held that a trial court abuses its discretion by modifying legal custody in a manner that was neither requested by either party, supported by evidence demonstrating the need for the modification, nor at issue to the parties.[822] Judd and Burns divorced and were able to agree on a shared custody arrangement.[823] In 2015, Burns, the mother, filed a motion to modify the custody agreement so that she could have primary physical custody of their son and move to Hawaii.[824] Following a hearing, the court granted the requested modification as to the physical custody arrangement.[825] However, the court also modified Judd and Burns' legal custody arrangement, granting Burns final say on legal custody issues.[826] Burns had not sought modification of legal custody, and therefore had presented no evidence at the hearing to support such a modification.[827] To the contrary, she supported legal custody remaining as it was in her motion to the court.[828] On appeal, Judd argued that the court had abused its discretion in making a modification that neither party had asked for or adduced evidence to.[829] The supreme court agreed with Judd that the change was more than a simple clarification, as Burns had contended, and gave Burns the ability to effect a change over Judd's disagreement.[830] The court reasoned that because Burns did not seek to modify legal custody, she did not adduce evidence or allege facts, and Judd received no notice that legal custody could be at issue.[831] Vacating the lower court's modification of legal custody, the supreme court held that it was an abuse of discretion to modify legal custody when neither party requested it, the allegations in support of the modification motion did not support it, and there was no notice that the court would consider it.[832]

Jude M. v. State

In *Jude M. v. State*,[833] the supreme court held a parent's parental "rights of custody" may be deemed "suspended" for the purposes of appointing a guardian for their unmarried, minor child, even though the parent still retains "residual rights" of custody.[834] The Office of Children's Services ("OCS") petitioned to terminate M's parental rights of custody over his minor daughter in August 2012 while he was completing a prison sentence for transporting child pornography across state lines and his daughter was in OCS's custody.[835] After twice denying termination, the superior court granted OCS's alternative request that M's daughter be placed in a long-term guardianship with her maternal aunt, rejecting M's argument that the superior court lacked

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[821] 397 P.3d 331 (Alaska 2017).
[822] *Id.* at 342.
[823] *Id.*
[824] *Id.*
[825] *Id.* at 335.
[826] *Id.*
[827] *Id.* at 341.
[828] *Id.*
[829] *Id.*
[830] *Id.*
[831] *Id.*
[832] *Id.* at 342.
[833] 394 P.3d 543 (Alaska 2017).
[834] *Id.* at 550−552.
[835] *Id.* at 548−549.

authority to establish a guardianship.[836] M contended that, because the superior court was only authorized to appoint a guardian for an unmarried minor if all parental "rights of custody" had been terminated or suspended, the court lacked such authority in his case as he retained "residual rights" of parenting and thus his parental rights of custody had not all been terminated or suspended.[837] On appeal, the supreme court affirmed the superior court's authority to establish a guardianship, reasoning that the parent of a child in OCS custody retains residual rights, but rights of custody are not included in those residual rights.[838] The court further reasoned that the appropriate question is whether M's "custodial rights" were suspended while his daughter was in OCS's custody.[839] Because M was prevented from exercising his "parental rights of custody" once OCS took custody of his daughter, his parental "rights of custody" for purposes of the superior court's authority to appoint a guardian were considered "suspended."[840] Affirming the superior court's authority, the supreme court held a parent's parental "rights of custody" may be deemed "suspended" for the purposes of appointing a guardian for their unmarried, minor child, even though the parent still retains "residual rights" of custody.[841]

Kylie L. v. State, Dep't of Health and Social Services

In *Kylie L. v. State*,[842] the supreme court held that it was error for the trial court to excuse OCS from making reasonable efforts to reunify a mother and daughter when an appropriate basis for exclusion was not determined by clear and convincing evidence.[843] In the case at issue, the trial court found that Belinda suffered injuries on three separate occasions while in the care of her mother, Kylie L.[844] After the third incident of reported harm, OCS took emergency custody of Belinda, placed her in foster care, and referred her to individual and dyadic therapy.[845] The second therapist assigned believed that visitation between the mother and daughter was causing Belinda's post-traumatic stress disorder to trigger, and effectively terminated visitation and dyadic therapy.[846] However, in a Quality Assurance Report, OCS internally determined that the services it provided had "not been well organized and have not served to facilitate reunification," and that they were not providing a positive visitation environment.[847] On appeal, OCS argued that its failure to provide the reasonable efforts required by statute to reunite Kylie and Belinda could be excused by two different bases.[848] OCS argued that the statute specifically applied since "the trial court 'found Kylie subjected Belinda to circumstances that posed a substantial risk to her health or safety" given the three prior incidents of abuse.[849] The supreme court declined to affirm on the basis of the statute considering the trial court did not base its decision on that ground, but rather on Dr. Cranor's testimony that the bond between Kylie and Belinda had been

[836] *Id.* at 549−550.
[837] *Id.* at 550−551.
[838] *Id.* at 551.
[839] *Id.*
[840] *Id.*
[841] *Id.* at 550−552.
[842] 407 P.3d 442 (Alaska 2017).
[843] *Id.* at 449.
[844] *Id.* at 452.
[845] *Id.* at 446.
[846] *Id.* at 447.
[847] *Id.*
[848] *Id.* at 449.
[849] *Id.* at 452

"irrevocably damaged."[850] The supreme court found that OCS was not excused from making reasonable efforts to reunify a mother and daughter when the trial court did not find by clear and convincing evidence grounds for excusal based specifically on the bases provided in the statute.[851]

Matthew H. v. State, Department of Health & Social Services

In *Matthew H. v. State, Department of Health & Social Services*,[852] the supreme court held that a parent's parental rights can be terminated when the parent's significant unresolved mental health issues are the root cause of the child's harm, even if the parent makes efforts to resolve the physical conditions of his home.[853] In May 2013, the Office of Children's Services (OCS) removed Matthew H.'s 7 and 13-year-old daughters from his home after finding that the one-room cabin they shared had unclean living conditions, lacked electricity, plumbing, and water.[854] The children were injured, severely underweight, occasionally had to forage for food at waste transfer sites, and tested positive for methamphetamine.[855] Matthew H. was diagnosed with several mental disorders and substance abuse, yet he did not engage in substance abuse treatment or mental health counseling despite recommendations that he do so.[856] The superior court granted OCS' petition to terminate Matthew H.'s parental rights, finding that the daughters were children in need of aid under and that Matthew H. the root cause of the children's suffering was Matthew H.'s mental health.[857] On appeal, Matthew H. argued that the superior court erred because he had taken substantial steps to improve his situation, including cleaning the cabin, obtaining a driver's license and a job, and not testing positive for methamphetamine.[858] The supreme court affirmed the lower court's decision. [859] The court noted that a parent's failure to remedy any condition that placed a child in need of aid leaves the child at risk and supports a judicial decision to terminate parental rights.[860] The court found that the record supported the conclusion that Matthew H. had significant mental health issues that negatively affected both his own functioning and his ability to parent, and that not only was Matthew H.'s mental health a cause of the children's need of aid, but was a root cause.[861] Affirming the lower court's decision, the supreme court held that where a parent's mental health issues are an underlying cause of a child's need of aid, the failure to remedy mental health can support termination of parental rights.[862]

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[850] *Id.* at 451.
[851] *Id.* at 449.
[852] 397 P.3d 279 (Alaska 2017).
[853] *Id.* at 283.
[854] *Id.*
[855] *Id.*
[856] *Id.*
[857] *Id.* at 282.
[858] *Id.*
[859] *Id.*
[860] *Id.*
[861] *Id.* at 283.
[862] *Id.*

Schaeffer-Mathis v. Mathis

In *Schaeffer-Mathis v. Mathis*,[863] the supreme court held that the trial court did not abuse its discretion by denying the wife's request that the court update its initial child custody investigation.[864] Schaeffer filed for divorce from Mathis after ten years of marriage, initiating a custody dispute over their two children.[865] Mathis alleged that Schaeffer had been abusive towards him in the past and he was granted a protective order against her.[866] After a custody investigation, the court ultimately awarded Mathis sole legal and shared physical custody as recommended by the court's investigator.[867] The supreme court held that the superior court did not abuse its discretion in denying Schaeffer's subsequent request for an updated investigation because the court could get updated information directly from witnesses. The court also stated that prolonging the case further was not in the best interest of the children and that there were concerns about Schaeffer influencing the children's answers.[868] The supreme court affirmed the lower court's denial of an updated child custody investigation.[869]

Shanigan v. Shanigan

In *Shanigan v. Shanigan*,[870] the supreme court held that an income affidavit is mandatory when a parent seeks a modification of their child support obligation.[871] Pursuant to a 2012 court order, Terrence made monthly child support payments to his divorced wife, Elissa.[872] In 2014, Terrence asked the Child Support Services Division (CSSD) to review his support obligation in hopes of a downward modification.[873] Based on copies of his previous year's tax returns and six pay stubs, CSSD found that Terrence qualified for a reduction in his support obligation, and the superior court granted CSSD's requested modification over objections from Elissa.[874] On appeal, she argued that CSSD had incorrectly calculated Terrence's income and that it erred in granting the modification without requiring him to submit an income affidavit.[875] The supreme court agreed.[876] The court found that CSSD had mistakenly calculated Terrence's adjusted annual income, resulting in a material change in circumstances justifying a modification in his support obligation. [877] The supreme court also agreed that CSSD, and therefore the superior court, had erred by not requiring Terrence to submit an income affidavit.[878] The court found that the commentary to the Alaska Civil Rules appear to require an income statement provided under oath in reviewing a request for a child support obligation modification.[879] Thus, the supreme

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[863] 407 P.3d 485 (Alaska 2017).
[864] *Id.* at 492.
[865] *Id.* at 487–88.
[866] *Id.* at 488.
[867] *Id.* at 489–90.
[868] *Id.* at 492.
[869] *Id.* at 492.
[870] 386 P.3d 1238 (Alaska 2017).
[871] *Id.* at 1240.
[872] *Id.*
[873] *Id.*
[874] *Id*.
[875] *Id.*
[876] *Id.*
[877] *Id.* at 1242.
[878] *Id.* at 1244.
[879] *Id.* (citing Alaska R. Civ. P. 90.3, cmt. VIIIA).

court held that an income affidavit is mandatory in any request for a child support modification.[880]

Thomson v. Thomson

In *Thomson v. Thomson*,[881] the supreme court held that a divorced husband may not modify the Qualified Domestic Relations Order (QDRO) governing his divorce to require that his ex-wife's share of his retirement benefits be based on his salary at the time of divorce instead of his salary at the time of retirement, unless that requirement was already established by clear language in the QDRO.[882] David and Marjorie Thomson married in 1982 and legally divorced in 2006.[883] As part of their settlement agreement, David and Marjorie agreed that Marjorie would receive 46.96% of David's monthly benefits from his State of Alaska Public Employees' Retirement System (PERS) accounts, which would be enforced by a QDRO.[884] For the purpose of negotiating this percentage, the value of David's future benefits were projected based on his average earnings for 2003-2005.[885] The QDRO was signed in 2006 as part of the divorce decree and settlement in 2006.[886] In 2014 David received an updated projection of the total value of his PERS benefits based on his average earnings for 2013-2015, which increased the projected value of his benefits by 80%, meaning that Marjorie would receive nearly double the amount of benefits in dollars than originally anticipated.[887] David moved to amend the QDRO to have Marjorie's portion of the benefits calculated using the 2003-2005 projection.[888] The superior court, siding with Marjorie, found the QDRO lacked the clear language required to divide David's retirement benefits based on his salary prior to divorce, rather than retirement.[889] David appealed, arguing that references in the QDRO to "marital portion" constituted sufficiently clear language to require the use of the 2003-2005 projection.[890] The supreme court affirmed the decision of the lower court, reasoning that the term "marital portion" simply refers to the numerator of the coverture fraction and does not affect the denominator, which is defined by David's total period of employment upon retirement.[891] The supreme court explained that, absent clear language, the court was required to interpret the QDRO to require the division of benefits based on David's average earnings during the last three years of his career, i.e., 2013-2015.[892] In affirming the lower court's decision, the supreme court held that an ex-husband may not modify the QDRO governing his divorce to require that his retirement benefits be divided based on his average salary upon divorce instead of his average salary upon retirement, unless the QDRO contains clear language establishing that requirement.[893]

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[880] *Id.* at 1240.
[881] 394 P.3d 604 (Alaska 2017).
[882] *Id.* at 606.
[883] *Id.*
[884] *Id.*
[885] *Id.*
[886] *Id.*
[887] *Id.* at 606–07.
[888] *Id.* at 607.
[889] *Id.*
[890] *Id.* at 607–09.
[891] *Id.* at 609.
[892] *Id.* at 609–10.
[893] *Id.* at 606.

Timothy W. v. Julia M

In *Timothy W. v. Julia M.*,[894] the supreme court held that "domestic living partner" in 25.24.150(g) of the Alaska Statutes was not limited to partners that lived in the same domestic household, but also extended to partners who spent a "significant amount of their time in a shared domestic environment."[895] Defendant appealed an order that required him to complete a parenting class and batterer intervention program before he could continue unsupervised visits with his children after the lower court found that his three acts of domestic violence against his partner constituted the presumption of AS 25.24.150(j) against unsupervised visitation.[896] Defendant argued that, because defendant and his partner did not reside in the same home,[897] the trial court was incorrect in finding that he had "a history of perpetrating domestic violence against . . . a domestic living partner" in accordance with AS 25.24.150(g), and that the court therefore erred in applying AS 25.24.150(j)'s presumption against unsupervised visitation.[898] The supreme court highlighted that "domestic living partner" was undefined in Alaska's relevant statutes, nor had the court defined the term.[899] Concerned that limiting the definition to traditional households would allow domestic violence cases to "slip through the cracks" and thwart the legislative intent of H.B. 385 to protect children from witnessing violence at home, the court extended the term "domestic living partner" to include partners that "spend a significant amount" of time in a "shared domestic environment."[900] The supreme court remanded for findings as to whether the domestic violence occurred during the period that defendant and partner were "domestic living partners."[901] Thus, the term "domestic living partner" in AS 25.24.150(g) is not limited the traditional domestic household, but also includes partners who spend a "significant amount of their time in a shared domestic environment."[902]

Wagner v. Wagner

In *Wagner v. Wagner*,[903] the supreme court held that a spouse seeking to avoid responsibility for their partner's premarital debts and liabilities consolidated during the marriage must show that the couple intended keep those obligations separate.[904] During the course of their marriage, Felicia and Richard consolidated student loans Felicia had incurred prior to the marriage with additional student loans incurred during the marriage.[905] The couple then divorced and Richard petitioned to be absolved of responsibility for the premarital portion of the consolidated loan.[906] The superior court, unable to calculate how to separate the premarital portion from the total consolidated loan amount, ruled that the consolidated loans were entirely marital debt and held

[894] 403 P.3d 1095 (Alaska 2017).
[895] *Id.* at 1113–14.
[896] *Id.* at 1099–100.
[897] *Id.* at 1106.
[898] *Id.* at 1113.
[899] *Id.* at 1110.
[900] *Id.* at 1113–14.
[901] *Id.* at 1114.
[902] *Id.* at 1113-14.
[903] 386 P.3d 1249 (Alaska 2017).
[904] *Id.* at 1252.
[905] *Id.* at 1249.
[906] *Id.*

Richard and Felicia equally responsible for the loans.[907] On appeal, the supreme court agreed.[908] While noting that spouses are not generally liable for their partner's premarital debts, the court reaffirmed that debt incurred during the marriage is presumptively marital, and therefore shared.[909] Accordingly, the court found that Richard had the burden of proving that he and Felicia intended to keep the amount of the premarital debt separate from the rest of the consolidated loans.[910] Having failed to do so, the court held that Richard could not succeed in claiming that the superior court had erred.[911] Affirming the superior court, therefore, the supreme court held that when a spouse seeks to avoid responsibility for their partner's debts incurred prior to marriage, he or she has the burden of proving that the couple intended to keep the obligations separate.[912]

[907] *Id*.
[908] *Id.*
[909] *Id.* at 1252.
[910] *Id.*
[911] *Id.* at 1252–53.
[912] *Id.* at 1252.

HEALTH LAW

Brandner v. Providence Health & Services-Washington

In *Brandner v. Providence Health & Services-Washington*,[913] the supreme court held that a doctor may be entitled to a pre-termination hearing as a matter of due process[914] and that a hospital may not be immune under the Healthcare Quality Improvement Act (HCQIA) if it does not provide a pre-termination hearing.[915] Providence Alaska Medical Center (Providence) terminated Brandner's hospital privileges without providing any type of hearing beforehand, with hearings only taking place after the fact.[916] Brandner sued Providence for violating his right to due process.[917] The superior court ruled that Providence did not violate Brander's due process right and that Providence was immune from suit under the HCQIA.[918] Brandner appealed both rulings.[919] The supreme court reversed the lower court's decision as to Brandner's due process claim, reasoning that Providence's interest in providing quality medical care did not outweigh the "stigma of medical incompetence" that would attach to Brandner were he summarily terminated, given that there was no serious threat to patient care.[920] Moreover, the court ruled that Providence was not immune from suit under the HCQIA because the hospital failed to meet the statute's immunity requirements in denying Brandner a pre-termination hearing.[921] Reversing these two lower court holdings, the supreme court held that due process may require a pre-termination hearing before a hospital may terminate a doctor's hospital privileges[922] and that a hospital may not be entitled to immunity under the HCQIA if it does not provide a doctor a pre-termination hearing.[923]

[913] 394 P.3d 581 (Alaska 2017).
[914] *Id.* at 589–90.
[915] *Id.* at 597.
[916] *Id.* at 586.
[917] *Id.* at 587.
[918] *Id.*
[919] *Id.*
[920] *Id.* at 589–90.
[921] *Id.* at 592–97.
[922] *Id.* at 589–90.
[923] *Id.* at 597.

PROPERTY LAW

Alaska Fur Gallery, Inc. v. Tok Hwang

In *Alaska Fur Gallery, Inv. V. Tok Hwang*[924], the supreme court held that a sublease provision which included an option to purchase the premises with the lease amount to be applied to a negotiated purchase price was too indefinite to enforce as an option to purchase.[925] Tok Hwang subleased a leasehold to Alaska Fur Gallery for $55,000 annual rent for a three-summer term.[926] The lease included an option to purchase the premises with the lease amount to be applied to the negotiated purchase price.[927] In 2014, one of Alaska Fur's owners sought to exercise the purchase option, but Hwang asserted any agreement to negotiate was nonenforceable.[928] Both parties moved for summary judgment, with Alaska Fur claiming the refusal to negotiate by Hwang violated the implied covenant of good faith and fair dealing and an implied agreement to negotiate in good faith.[929] The superior court held that the contract was unenforceable as written because there was no price or method for determining price.[930] The supreme court affirmed the lower court's decision, reasoning that the disputed provision failed to meet the standard for an agreement to negotiate because it did not even include a purchase price or details on how to determine a purchase price.[931] The court further reasoned that mere mentioning of a negotiation does not create an enforceable agreement to negotiate.[932] The supreme court affirmed the lower court and held a sublease provision including an option to purchase premises with a lease amount to be applied to a purchase price was too indefinite to enforce as an option to purchase.[933]

Bibi v. Elfrink

In *Bibi v. Elfrink,*[934] the supreme court held value generated by a foreclosure sale constitutes payment under the state usury statute but a junior lienholders loses its security interests in a property when it is sold in foreclosure by the senior lienholder.[935] A couple bought a home using loans from a bank and later received an additional loan from a separate lender.[936] When the couple defaulted on the second loan, the lender foreclosed and purchased the home at the foreclosure sale by credit bidding the amount due under the loan, then he filed a complaint for forcible entry and detainer.[937] The couple divorced, the wife counterclaimed for usury, quiet title and possession, and the bank foreclosed its senior deed of trust, whereupon the lender purchased the home a second time.[938] The lower court found for the lender and denied all the wife's

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[924] 394 P.3d 511 (Alaska 2017).
[925] *Id.* at 511.
[926] *Id.* at 513.
[927] *Id.* at 512.
[928] *Id.* at 513.
[929] *Id.*
[930] *Id.*
[931] *Id.* at 515.
[932] *Id.* at 516
[933] *Id.* at 511.
[934] 408 P.3d 809 (Alaska 2017).
[935] *Id.* at 822−827.
[936] *Id.* at 812.
[937] *Id.*
[938] *Id.*

counterclaims.[939] On appeal, the wife argued that the value generated by the first foreclosure should constitute payment under the state's usury statute, she is entitled to recover double the amount of usurious interest paid, and the bank's foreclosure of its senior interests should not cut off the junior interest on which her claim for title is based because the purchaser at the foreclosure was the junior interest holder.[940] The supreme court reversed the lower court's denial of the wife's usury counterclaim, reasoning that the usury statute prohibits a person from receiving, in any manner, a value greater than that prescribed under its terms, thus the noncash nature of the value the lender received constitutes payment.[941] The court further gave guidance to the lower court, in calculating the recovery to the wife, that the usury statute entitled the wife to recover double the amount of usurious interest receiver by the lender.[942] However, the supreme court affirmed the lower court's denial of the wife's counterclaim for title and possession and its grant of forceful entry and detainer, reasoning that the state's foreclosure statutes require that junior lienholders lose their security interests in a property when it is sold in foreclosure by the senior lienholder, and no exception is made when the purchaser at a foreclosure sale is a junior lienholder.[943] Reversing the lower court's ruling in part and affirming in part, the supreme court held value generated by a foreclosure sale constitutes payment under the state usury statute but a junior lienholders loses its security interests in a property when it is sold in foreclosure by the senior lienholder.[944]

Dixon v. Dixon

In *Dixon v. Dixon*,[945] the supreme court held that a quitclaim deed must designate and describe the grantee so as to distinguish him from the rest of the world to be enforceable by the grantee;[946] and further that conditionally granting does not constitute a parol gift of land.[947] Carolyn Dixon owned a house encumbered with a mortgage.[948] Her son, Dan Dixon, proposed that she refinance the house in his name and offered to renovate it.[949] Carolyn signed a quitclaim deed, conveying her interest in the house to Austin Dixon, Dan's son and her grandson.[950] The quitclaim deed was not notarized, formally witnessed, or recorded.[951] Dan made repairs to the house and rented it out, but stopped making mortgage payments, causing Carolyn to pick up the payments.[952] Carolyn sued to recover the house from Dan, and Dan counterclaimed for a judgment to quiet title.[953] The superior court found that Dan had failed to prove that Carolyn intended to gift him the property and that Carolyn intended to transfer ownership of the house only on the condition that Dan pay the

[939] *Id.* at 812−813.
[940] *Id.* at 822−825.
[941] *Id.* at 822−823.
[942] *Id.* at 824−825.
[943] *Id.* at 826−827.
[944] *Id.* at 822−827.
[945] 407 P.3d 453 (Alaska 2017).
[946] *Id.* at 457.
[947] *Id.* at 460.
[948] *Id.* at 455.
[949] *Id.*
[950] *Id.*
[951] *Id.*
[952] *Id.*
[953] *Id.*

mortgage, which he failed to satisfy.[954] On appeal, Dan argued that the quitclaim deed proved Carolyn's intent to gift Dan the house, even though it lacked the necessary formalities and, in the alternative, that his claim fits an exception to the statute of frauds for parol gifts of land.[955] The supreme court affirmed the lower court's decision, reasoning that the lower court did not err when it rejected the quitclaim deed as persuasive evidence that Carolyn intended to gift the property to Dan because the deed unambiguously identified the grantor (Carolyn) and the grantee (Austin) while making no mention of Dan.[956] The court reasoned that the grantee must be designated on the deed so as to distinguish him from the rest of the world and that using another person's real name does not satisfy this standard, especially when both parties know the other person.[957] Regarding Dan's parol gift of land theory, the court reasoned that Dan failed to prove that the land had been conveyed as a gift because evidence showed that Carolyn only intended to gift Dan the house if certain conditions were met.[958] Therefore, there was no immediate divestiture of Carolyn's rights to the house and no consequent immediate vesting of ownership rights in Dan, and thus no parol gift.[959] Affirming the lower court's decision, the supreme court held a quitclaim deed must designate and describe the grantee so as to distinguish him from the rest of the world to be enforceable by the grantee;[960] and granting property only conditionally does not constitute a parol gift of land.[961]

Prax v. Zaleweski

In *Prax v. Zaleweski*,[962] the supreme court held that the 2003 amendments to Alaska's adverse possession laws apply to claims that had not vested before their 2003 enactment.[963] Zaleweski claimed she acquired title to Pax's parking lot by adverse possession.[964] Zaleweski filed suit in 2013, and the trial court found that she had possessed the property from 2002 to 2012.[965] In 2003, the legislature amended the adverse possession laws to require claimants to prove that they believed they owned the property in good faith.[966] The trial court found that the good-faith requirement did not apply to Zaleweski's claim because her possession of the parking lot began in 2002, a year before the passing of the amendments.[967] On appeal, Pax argued that the trial court erred by applying the pre-2003 adverse possession laws.[968] Examining the text of the statute, the supreme court reasoned that the legislature expressly declared the 2003 amendments to apply retroactively to claims that had not vested by 2003.[969] The supreme court reversed the

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[954] *Id.*
[955] *Id.* at 457.
[956] *Id.*
[957] *Id.*
[958] *Id.* at 459.
[959] *Id.* at 460.
[960] *Id.* at 457.
[961] *Id.* at 460.
[962] 400 P.3d 116 (Alaska 2017).
[963] *Id.* at 120–21.
[964] *Id.* at 117.
[965] *Id*. at 118.
[966] *Id.* at 121.
[967] *Id.* at 118.
[968] *Id.* at 119.
[969] *Id.* at 119.

judgment of the trial court and remanded for further proceedings because the 2003 amendments apply to claims that had not vested by their 2003 enactment.[970]

Yuk v. Robertson

In *Yuk v. Robertson*,[971] the supreme court held that a property owner may acquire adverse possession of a piece of property despite the presence of a municipal sewer easement[972] and despite mistakenly believing that they own the property.[973] In 2010, the Yuks discovered that a portion of land on the Robertsons' side of the fence in fact belonged to the Yuks.[974] In 2015, the Yuks sued to quiet title, but the Robertsons asserted adverse possession as an affirmative defense.[975] The lower court ruled in favor of the Robertsons.[976] The Yuks appealed, arguing that the Robertsons could not establish exclusivity because the parcel of land was subject to a municipal sewer easement.[977] Moreover, the Yuks argued that the Robertsons could not establish hostility because the Robertsons believed that they owned the disputed land.[978] The supreme court affirmed the lower court's decision, reasoning that the Robertsons claimed adverse possession over the Yuk's interest in the land, exclusive of the municipal sewer easement, and that the existence of the easement did not prevent the Robertsons' use of the land as the average owner of similar property would us it.[979] Furthermore, the supreme court reasoned that the Robertsons established hostility because they acted as if they owned the land, as evidenced by the fence, and that their subjective state of mind of irrelevant to determining hostility.[980] Affirming the lower court's decision, the supreme court held that an owner may acquire property through adverse possession despite the presence of a municipal sewer easement[981] and despite mistakenly believing that he or she owned the disputed land.[982]

[970] *Id.* at 120–21.
[971] 397 P.3d 261 (Alaska 2017).
[972] *Id.* at 266.
[973] *Id.* at 267.
[974] *Id.* at 262–63.
[975] *Id.* at 263.
[976] *Id.*
[977] *Id.* at 265.
[978] *Id.* at 266.
[979] *Id.* at 265–66.
[980] *Id.* at 266–67.
[981] *Id.* at 266.
[982] *Id.* at 267.

TORT LAW

Burnett v. Government Employees Insurance Co.

In *Burnett v. Government Employees Insurance Co.*,[983] the supreme court held that a liability insurer can owe a tort duty to a third-party claimant while handling a claims process involving both the insured and such third-party claimant.[984] A driver of a truck lost control and crashed into Burnett's premises, damaging the property and causing Burnett bodily injuries.[985] Government Employees Insurance Company ("GEICO"), the driver's insurer, hired a contractor to inspect the damages and coordinate cleanup, allegedly creating a direct obligation between GEICO and Burnett for GEICO to provide the cleanup.[986] The damages were not cleaned up for almost two years after the accident, prolonging and worsening Burnett's bodily injuries and making the premises uninhabitable.[987] Burnett filed suit against the driver, but GEICO made a payment to Burnett in exchange for withdrawing the claim against the driver.[988] Burnet also filed suit against GEICO alleging that GEICO had not cleaned up the damages in a reasonable manner.[989] GEICO argued that it owed no duty to Burnett to act reasonably in handling the cleanup of the premises because as a liability insurer, GEICO could not owe a duty to both the insured (the driver) and a third-party claimant (Burnett) during the claims handing process.[990] The superior court granted GEICO summary judgement.[991] On appeal, the supreme court disagreed with the superior court's decision, noting that an insurer's contractual duties to the insured should not negate other and completely different common law tort duties that GEICO may have to Burnett.[992] The court reasoned that the general rule that prevents third-parties from bringing a direct action against a liability insurer should not apply when it is alleged that the insurer contracted directly with the third-party claimant.[993] Reversing the superior court, the supreme court held that a liability insurer can owe a tort duty to a third-party claimant if the insurer creates a new and independent duty to the third-party claimant, different from the contractual obligation it owes to the insured.[994]

Burton v. Fountainhead Development, Inc.

In *Burton v. Fountainhead Development, Inc.*,[995] the supreme court held that a plaintiff suing for special damages in a defamation suit must show that the defamatory statements were the legal cause of his financial injury.[996] Princess Tours hired Burton to work as its guest service host stationed at the Bear Lodge hotel.[997] Bear Lodge's management refused to let Burton work at Bear Lodge, telling Princess Tours that years earlier Burton had participated in a physical

[983] 389 P.3d 27 (Alaska 2017).
[984] *Id.* at 28.
[985] *Id.*
[986] *Id.*
[987] *Id.*
[988] *Id.*
[989] *Id.*
[990] *Id.* at 29–30.
[991] *Id.* at 29.
[992] *Id.* at 30.
[993] *Id.*
[994] *Id.*
[995] 393 P.3d 387 (Alaska 2017).
[996] *Id.* at 400.
[997] *Id.* at 390.

altercation with a guest and had defaced hotel property.[998] After a grace period, Princess Tours terminated Burton's employment because Burton could not get transportation to Princess Tours' other hotel partners.[999] Burton sued Fountainhead Development, Inc., the owner of Bear Lodge, for defamation, claiming its managers' false statements resulted in his termination.[1000] The superior court awarded Burton general damages, finding that the statements were defamatory per se.[1001] However, the superior court denied Burton's claim for special damages, finding that Burton was fired for his inability to relocate, not due to the defamatory statements.[1002] On appeal, the supreme court upheld the superior court's ruling, finding that Burton had failed to prove causation.[1003] The court explained that, in order for Burton to receive special damages for lost wages, he needed to prove that the defamatory statements were the legal cause of his termination.[1004] The court found that the superior court did not err when it concluded that Princess Tours fired Burton because of his transportation issues, not because of the accusations.[1005] The supreme court affirmed, holding that an award for special damages in a defamation case requires a showing that the defamatory statements caused a concrete financial injury.[1006]

Coulson v. Steiner

In *Coulson v. Steiner*,[1007] the supreme court held that alienation of affections is not a recognized cause of action in Alaska.[1008] Coulson and Omadlao married in 2009.[1009] In 2013, Omadlao began a romantic relationship with Steiner, and filed for divorce from Coulson a few months thereafter.[1010] Coulson sued Steiner on the basis of three claims, the first of which was the tort of alienation of affections.[1011] The tort of alienation of affections is a common law cause of action that dates back to the nineteenth century and permits a spouse to sue a third party for interference in the marital relationship with the intent to alienate one spouse from the other.[1012] Steiner moved for summary judgment, contending that alienation of affections was not a cognizable claim.[1013] The superior court agreed and granted Steiner's motion for summary judgment on that claim.[1014] The supreme court affirmed, disallowing any claims based of alienation of affections.[1015] The supreme court noted that alienation of affections remains recognized in only a few states today because of changing conceptions of marriage, protection of privacy, and limitation of

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[998] *Id.*
[999] *Id.* at 398.
[1000] *Id.* at 391.
[1001] *Id.*
[1002] *Id.*
[1003] *Id.* at 390.
[1004] *Id.* at 399.
[1005] *Id.*
[1006] *Id.* at 400.
[1007] 390 P.3d 1139 (Alaska 2017).
[1008] *Id.* at 1142.
[1009] *Id.* at 1141.
[1010] *Id.*
[1011] *Id.*
[1012] *Id.* at 1142.
[1013] *Id.*
[1014] *Id.*
[1015] *Id.*

damages.[1016] For those public policy reasons, the supreme court joined the majority of states in barring the tort of alienation of affections in Alaska.[1017] Such a decision, the court noted, was furthermore consistent with the rule that economic losses from divorce are not recoverable.[1018] Thus, the supreme court held that alienation of affections is not a cognizable cause of action in Alaska.[1019]

Jovanov v. State Department of Corrections

In *Jovanov v. State Department of Corrections*,[1020] the supreme court of Alaska held that: (1) the Department of Corrections was entitled to summary judgment on Jovanov's negligence claims because the attack on the inmate was not foreseeable and the officer's five-second response time was reasonable,[1021] and (2) the discretionary function immunity precluded claims arising out of the Department of Corrections decisions regarding resource allocation.[1022] Mr. Jovanov is an inmate at the Anchorage Correctional Complex and was in an altercation with another inmate Modeste.[1023] Modeste punched Jovanov on the left side of the head and pushed his head into the wall, requiring Jovanov to obtain medical treatment for his injuries. Jovanov sued the Department of Corrections ("DOC") on a variety of claims, including negligence claims based on: (1) an allegation that the assault was foreseeable and the DOC should have prevented it and that Corrections Officer Robinson failed to respond promptly to the argument and prevent further injuries, and (2) DOC was negligent in understaffing the prison unit and placing the officer's desk out of view of the telephone.[1024] The court reasoned that because the DOC had no reason to suspect any harm posed to Jovanov and that there was no genuine factual dispute on the issue of whether Officer Robinson responded promptly, the superior court was correct in granting the DOC's motion for summary judgment on the negligence claims.[1025] The court further reasoned that because prison overcrowding is an issue that requires prison officials to make discretionary decisions involving staffing levels, Jovanov's claim regarding staffing decisions, general prison overcrowding problems, and DOC's officer placement decisions is precluded by the doctrine of discretionary function immunity.[1026] The Alaska supreme court affirmed the superior court's grant of summary judgment in respect to Jovanov's claim of negligence because the attack was not foreseeable, there was no genuine dispute of fact in regards to Officer Robinson's response time, and the staffing decisions are precluded by the doctrine of discretionary function immunity.[1027]

Recreational Data Services, Inc. v. Trimble Navigation, Ltd.

In *Recreational Data Services, Inc. v. Trimble Navigation, Ltd.*,[1028] the Supreme Court of Alaska held that in a suit in tort the fact of harm and the amount of damages are proved separately, and

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[1016] *Id.*
[1017] *Id.*
[1018] *Id.* at 1143.
[1019] *Id.* at 1142.
[1020] 404 P.3d 140 (Alaska 2017).
[1021] *Id.* at 146–48.
[1022] *Id.* at 148.
[1023] *Id.* at 143.
[1024] *Id.*
[1025] *Id.* at 146–48.
[1026] *Id.* at 147–48.
[1027] *Id.* at 146–149.
[1028] 394 P.3d 627 (Alaska 2017).

that if the former is proved, but not the latter, nominal damages may still be recovered.[1029] Recreational Data Services (RDS) had entered into a business arrangement with Trimble where it would produce the software, and Trimble Navigation the hardware, for a ruggedized phone with specialized apps geared toward the outdoors.[1030] Eventually the plan fell through when RDS learned a separate division of Trimble was working to market a competing product.[1031] RDS alleged that this occurred because Trimble Navigation violated the confidentiality agreement between the companies, misrepresented that the other Trimble division's product was not a competitor, and intentionally delayed RDS's project so that the other division of Trimble could succeed.[1032] The jury found for RDS on all counts, but the superior court granted Trimble judgment notwithstanding the verdict on the basis that RDS had failed to prove damages to a reasonable certainty.[1033] RDS appealed arguing that it had proven harm so even if the precise amount of damages was not proven it was at least entitled to nominal damages.[1034] The supreme court explained that the fact of harm and the amount of damages are separate issues.[1035] It elaborated that the former must be proven for recovery, while the latter only need be proven to a reasonable certainty to recover compensatory damages.[1036] The supreme court concluded that though RDS failed to prove the amount of damages or to make a claim for nominal damages, it was entitled to nominal damages because it had proven some harm and its pleadings were sufficient to imply a claim for nominal damages.[1037] Reversing the superior court, the supreme court held that in a suit in tort the fact of damages and the amount of damages are proved separately, and that if the former is proved but not the latter nominal damages may still be recovered.[1038]

[1029] *Id.* at 507–08, 510–11.
[1030] *Id.* at 494.
[1031] *Id.* at 494–95.
[1032] *Id.* at 495–96.
[1033] *Id.* at 496.
[1034] *Id.* at 496
[1035] *Id.* at 507.
[1036] *Id.* at 507–08.
[1037] *Id.* at 510–11.
[1038] *Id.* at 507–08, 510–11.

TRUSTS & ESTATES

In re Estate of Seward

In *In re Estate of Seward*,[1039] the supreme court held that a paternity determination may be made during estate proceedings in order to determine whether a party has an interest in the probate proceeding.[1040] In August 2013, attorney Willard applied for probate of the decadent's will, in which the decadent declared that he did not have any children.[1041] In October, Mock petitioned the court to conduct genetic testing on the decadent's ashes to prove that he was the decadent's son, and also asked the court to not distribute the proceeds of the decadent's estate until paternity status was ascertained. [1042] The decadent's counsel argued that a probate proceeding is not the proper place for a paternity contest, and Mock lacked standing to contest the decadent's will since "he is not an interested party in [the] estate case."[1043] The supreme court reversed the superior court decision, explaining that "when the superior court acts as the probate court it has 'jurisdiction over all subject matter relating to decedents' estates,'" and that its jurisdiction extends to "'questions ancillary' to the probate proceedings." [1044] Alaska Statute 13.12.114(d) provides that the subject matter jurisdiction of the probate court extends to a "determination of heirs and successors" and that the court may determine the existence of a parent and child relationship.[1045] Thus, the supreme court held that a paternity determination is proper during estate proceedings to determine whether a party has standing in the probate proceeding.[1046]

[1039] 401 P.3d 976 (Alaska 2017).
[1040] *Id.* at 978–79.
[1041] *Id.* at 979.
[1042] *Id.*
[1043] *Id.* at 980.
[1044] *Id.* at 982.
[1045] *Id.* at 982–83.
[1046] *Id.* at 978–79.