

THE YEAR IN REVIEW 2021

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

ADMINISTRATIVE LAW	2
BUSINESS LAW	4
CIVIL PROCEDURE.....	5
CONSTITUTIONAL LAW	7
CONTRACT LAW.....	9
CRIMINAL LAW	9
CRIMINAL PROCEDURE	20
ELECTION LAW	25
EMPLOYMENT LAW	29
ENVIRONMENTAL LAW.....	35
ETHICS & PROFESSIONAL RESPONSIBILITY	36
FAMILY LAW	38
HEALTH LAW	42
MARITIME LAW.....	47
NATIVE LAW	47
PROPERTY LAW	50
TAX LAW	53
TORT LAW.....	54
TRUSTS & ESTATES LAW	54

INTRODUCTION

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

ADMINISTRATIVE LAW

Creekside Ltd. Partnership v. Alaska Housing Finance Corp.

In *Creekside Ltd. Partnership v. Alaska Housing Finance Corp.*, 482 P.3d 377 (Alaska 2021), the supreme court held that a housing developer could not terminate the extended affordability period under its Low-Income Housing Tax Credit Program development before the end of the 15-year extended affordability period when a condition of its acceptance into the program required waiving the Program's qualified contract option. (*Id.* at 385). The Internal Revenue Code grants states the discretion to provide a qualified contract option for housing developers building low-income housing, allowing the developers to prematurely end affordability restrictions on their developments that had received federal tax credits. (*Id.* at 380). States mandating more stringent requirements than federally prescribed may decline providing the qualified contract option. (*Id.*). The Alaska Housing Finance Corporation (AHFC) allocates federal tax credits for low-income housing developments. (*Id.* at 380–81). AHFC offers developers extra points towards qualification if housing developers commit to low-income pricing on their developments for an additional 15 years beyond the federally required minimum. (*Id.* at 381). Creekside, a low-income housing developer, received tax credits for a development after submitting an application in which it claimed the extra qualifying points, though later attempted to invoke the qualified contract option. (*Id.* at 381–82). The supreme court affirmed the lower court's decision denying Creekside the option, reasoning that AHFC's offer established more stringent requirements than federally mandated. (*Id.* at 383). Because of the heightened requirements and no contract language otherwise indicating that a qualified contract option was available, the supreme court determined that the contract between AHFC and Creekside did not grant Creekside a qualified contract option. (*Id.* at 383–85). Affirming the lower court's decision, the supreme court held that a housing developer could not terminate the extended affordability period under its Low-Income Housing Tax Credit Program development before the end of the 15-year extended affordability period when a condition of its acceptance into the program required waiving the Program's qualified contract option. (*Id.* at 385).

Espindola v. Peter Pan Seafoods, Inc.

In *Espindola v. Peter Pan Seafoods, Inc.*, 486 P.3d 1116 (Alaska 2021), the supreme court held that while the Alaska Workers' Compensation Board has authority to weigh the evidence provided by medical opinions, if the Board's crucial findings are not supported by the record, under the substantial evidence standard, it has committed error. (*Id.* at 1121–23). A seasonal fish-processing worker filed for workers' compensation for serious shoulder and lower-back pain resulting in his inability to consistently lift his arms above his head. (*Id.* at 1117–19). The doctor completing his Employer Medical Examination (EME) concluded that none of the issues arose from his work, and the company then controverted all claims. (*Id.* at 1118–19). A Second Independent Medical Evaluation (SIME) of the worker found that while the back issues persisted from before his work at the company, his shoulder problems likely arose out of a specific incident at work. (*Id.* at 1119). At the Board hearing, the doctor that completed the EME was the only one present, and the Board relied on his testimony to find in favor of the employer, briefly noting that the SIME was primarily based on the worker's own account. (*Id.* at 1120). On appeal, the Alaska Workers' Compensation Appeals Commission held that it was within the Board's discretion to favor one doctor's opinions over another's. Reviewing the Commission's holding de novo, the supreme court held that the evaluation of the back injury was sufficient because the

Commission had adequately made findings about all contested and material issues. (*Id.* at 1122). However, the record did not support several of the Commission’s findings, including the contention that the SIME primarily utilized the worker’s own account regarding the injured shoulder. (*Id.* at 1122–23). The Commission’s holding with regards to the shoulder injury was therefore erroneous. (*Id.*). Affirming in part and reversing in part the Commission’s evaluation, the supreme court held that while the Alaska Workers’ Compensation Board has authority to weigh the evidence provided by medical opinions, if the Board’s crucial findings are not supported by the record, under the substantial evidence standard, it has committed error. (*Id.*).

Exxon Mobil Corporation v. Department of Revenue

In *Exxon Mobil Corporation v. Department of Revenue*, 488 P.3d 951 (Alaska 2021), the supreme court held that a Department of Revenue advisory bulletin was not a challengeable regulation for the purposes of the state’s Administrative Procedures Act and that the parties’ tax dispute was therefore not ripe. (*Id.* at 952). This case arose after several taxpaying entities requested a nonbinding interpretive advisory bulletin from the Department of Revenue about provisions in the state’s oil taxation scheme. (*Id.* at 954). The plaintiff oil company sued the Department, seeking a declaratory judgement that would void the bulletin. (*Id.* at 955). The superior court judge granted the Department’s motion for summary judgment, noting that the dispute was not ripe for judicial resolution since there was no injury or hardship. (*Id.* at 955). On appeal, the company argued its claim was ripe because further facts were unnecessary to resolve the legal issue and that the advisory bulletin was an “interpretation” within the bounds of the APA. (*Id.* at 955–57). The supreme court disagreed with both claims, observing that the legislature chose to leave these non-binding bulletins outside the APA. (*Id.* at 956 n.43). Further, these bulletins are not relied upon by the Department in its decisions affecting the public. (*Id.* at 956). The court also stated that the case would not be ripe until the Department issued an assessment against the company, or the company requested a refund from the Department and was denied. (*Id.* at 959). Affirming the decision of the superior court, the supreme court held that a Department of Revenue advisory bulletin was not a challengeable regulation for the purposes of the state’s Administrative Procedures Act and that the parties’ tax dispute was therefore not ripe. (*Id.* at 952).

North Slope Borough v. State, Department of Education & Early Development

In *North Slope Borough v. State, Department of Education & Early Development*, 484 P.3d 106 (Alaska 2021), the supreme court held that when summary adjudication has been stipulated to in an agency proceeding, and therefore no factual dispute is up for debate, the hearing officer need only apply a reasonable basis standard in reviewing the decision. (*Id.* at 115–16). Likewise, in reviewing an agency’s interpretation of an issue within the department’s expertise, a superior court should use a reasonable basis standard. (*Id.* at 116–17). A northern Alaska municipality and school district sought to use Alaska’s school debt reimbursement program. (*Id.* at 110). The program, designed to reimburse municipalities for payments made on approved school construction bonds, had strict statutory requirements, including that bonds “be repaid in approximately equal annual principal payments or approximately equal debt service payments over a period of at least 10 years.” (*Id.*). The municipality issued bonds with unequal service payments over several years, and after initially reimbursing them, the Alaska Department of Education & Early Development refused to reimburse the rest. (*Id.* at 110–11). On appeal to the Commissioner, a designee affirmed the denial. (*Id.* at 111–12). The municipality sought a formal

hearing, and the hearing officer first issued an order stating that summary adjudication was in order as the facts were undisputed, and after reviewing briefs, used a reasonable basis standard to affirm the denial. (*Id.* at 112). The superior court, on further appeal, applied a reasonable basis standard to the agency's interpretation of equal debt service bonds and affirmed denial. (*Id.* at 113). Affirming the superior court's standard of review and final decision, the supreme court held that when summary adjudication has been stipulated to in an agency proceeding, and therefore no factual dispute is up for debate, the hearing officer need only apply a reasonable basis standard in reviewing the decision, and, in reviewing an agency's interpretation of an issue within the department's expertise, a superior court should use a reasonable basis standard. (*Id.* at 115–17).

State, Department of Corrections v. Porche

In *State, Department of Corrections v. Porche*, 485 P.3d 1010 (Alaska 2021), the supreme court held that records from an unsubstantiated internal agency investigation are exempted from disclosure by the Alaska Open Records Act. (*Id.* at 1018). In May 2018, Porche was informed by the Department of Corrections (DOC) that he had been investigated, but the investigation had proved to be unsubstantiated. (*Id.* at 1011). Porche, citing the Alaska Open Records Act, requested the records from this investigation. (*Id.*). The DOC denied this request and the DOC commissioner reviewed and affirmed the denial based on one of the exemptions from the Act. (*Id.*). Porche appealed the decision to the superior court where he argued that the exemption in question protects against the unwarranted invasion of the personal privacy of suspects, defendants, victims, and witness, and, because the claims against him were unsubstantiated, there were no such parties in his case. (*Id.* at 1011–12). The DOC appealed the superior court's decision in favor of Porche. (*Id.* at 1013). The supreme court held that the definition of witness within the exemption includes witnesses whose allegations prove to be unsubstantiated. (*Id.* at 1016). Further, the court acknowledged that if it held otherwise there could be a possible chilling effect on future investigations. (*Id.*). The supreme court reversed and remanded the case, holding that records from an unsubstantiated internal agency investigation are exempted from disclosure by the Alaska Open Records Act. (*Id.* at 1018).

BUSINESS LAW

Ahmasuk v. State, Department of Commerce, Community & Economic Development, Division of Banking & Securities

In *Ahmasuk v. State, Department of Commerce, Community & Economic Development, Division of Banking & Securities*, 478 P.3d 665 (Alaska 2021), the supreme court held that a newspaper opinion letter submitted by a shareholder did not constitute a shareholder proxy solicitation mandating that the shareholder file the letter with the Alaska Division of Banking & Securities. (*Id.* at 666). Ahmasuk, a shareholder of Sitnasuak, wrote an opinion letter published in the *Nome Nugget*, which advocated that shareholders not vote through discretionary proxy. (*Id.* at 669–70). After a complaint from a director at Sitnasuak, the Alaska Division of Banking & Securities determined that Ahmasuk's letter was a proxy solicitation and that Ahmasuk violated Alaska law by not filing a disclosure. (*Id.* at 670–71). The Alaska Division of Banking & Securities punished Ahmasuk with a \$1,500 fine and ordered him to comply with state laws and regulations. (*Id.* at 671). Both the Administrative Law Judge and the Superior Court upheld the Alaska Division of Banking & Securities' order. (*Id.* at 671–72). On appeal, Ahmasuk argued that his letter was

political speech protected under the First Amendment, did not constitute a proxy solicitation, and did not contain false or misleading information. (*Id.* at 671). The supreme court reversed the lower court's decision, reasoning that the Division of Banking & Securities' interpretation of what constitutes a proxy solicitation was too broad. (*Id.* at 677). The court further reasoned that this broad interpretation would be difficult to enforce evenly and would hinder free-flowing corporate governance discussions. (*Id.*) Since Ahmasuk did not solicit the execution or non-execution of a proxy, the supreme court determined that his letter was not a solicitation covered by the Division of Banking & Securities' regulation. (*Id.* at 678). Reversing the lower court's decision, the supreme court held that a newspaper opinion letter submitted by a shareholder did not constitute a shareholder proxy solicitation mandating that the shareholder file the letter with the Alaska Division of Banking & Securities. (*Id.* at 666).

Cook v. Quashnick

In *Cook v. Quashnick*, 484 P.3d 1026 (Alaska 2021), the supreme court held that Alaska Rule of Civil Procedure 82, rather than the attorney's fees provision of Alaska's Unfair Trade Practices and Consumer Act (UTPA), applied to determine the proper fee award in an offer of judgment to settle a case when the settlement did not specify an alternate law to govern the provision of attorney's fees. (*Id.* at 1027). Cook and Quashnick are commercial fishermen in Bristol Bay. (*Id.*) Cook alleged that Quashnick drove his boat over Cook's nets and intentionally struck his boat into Cook's. (*Id.*) Cook, representing himself, filed suit against Quashnick, seeking, among other damages, attorney's fees and costs under the UTPA. (*Id.* at 1027–28). Before the trial, Cook and Quashnick entered into the following settlement: the court entered judgment in favor of Cook without admission of Quashnick's fault, Quashnick paid Cook \$25,000, and the court would assess fees and costs against Quashnick. (*Id.* at 1028). Cook moved for entry of judgment an award of attorney's fees, requesting \$15,652.65 in attorney's fees for his representation of himself. (*Id.*) Quashnick opposed Cook's motion, arguing the fees should be capped at \$4,500 under Alaska Rule of Civil Procedure 82. (*Id.*) The superior court found Rule 82 governed Cook's entitlement to attorney's fees. (*Id.*) Cook appealed. (*Id.*) The supreme court cited precedent stating that a trial court shall, unless the settlement specified otherwise, award attorney's fees under Rule 82. (*Id.* at 1030). The supreme court found that the Order of Judgment between Cook did not otherwise specify that the claims resolved in the settlement were governed by the UTPA. (*Id.*) Affirming the decision of the superior court, the supreme court held that Alaska Rule of Civil Procedure 82, rather than the attorney's fees provision of Alaska's Unfair Trade Practices and Consumer Act (UTPA), applied to determine the proper fee award in an offer of judgment to settle a case when the settlement did not specify an alternate law to govern the provision of attorney's fees. (*Id.* at 1027).

CIVIL PROCEDURE

Doan v. Banner Health

In *Doan v. Banner Health*, 485 P.3d 537 (Alaska 2021), the supreme court held that settlement funds may be withheld for non-settling defendants' eventual attorneys' fees; however, the court also held that reserved settlement funds may be partially distributed for the payment of plaintiff's attorneys' fees. (*Id.* at 542–45). In 2013, Doan's estate brought a wrongful death suit against seven defendants, resulting in a settlement with two defendants in 2018. (*Id.* at 539). Doan's estate requested the immediate distribution of that settlement for the payment of attorney's fees

and the establishment of a trust for the estate's beneficiary; the non-settling defendants requested that the court deny any distribution, reserving the settlement to pay their attorneys' fees should they prevail in subsequent proceedings. (*Id.* at 539–40). The superior court ordered that the settlement be applied to the estate's attorneys' fees, but that the remainder be reserved. (*Id.* at 540). In response, the estate appealed for the distribution of the entire settlement, while the non-settling defendants appealed for the reservation of the entire settlement. (*Id.*). The supreme court first found that because Doan's estate was representing Doan's beneficiary, the defendants, should they prevail, may only seek attorneys' fees from a reserved settlement fund. (*Id.* at 542). Therefore, the settlement fund must be reserved to make the defendant's recovery possible. (*Id.*). However, the court also found that because the reserved settlement fund only exists due to the Doan estate and its attorney, it would be unjust to prevent the estate from paying its attorney through that fund. (*Id.* at 543–44). To find otherwise, the court held, would unjustly enrich the non-settling defendants at the expense of the Doan estate. (*Id.*). Affirming the superior court, the supreme court held that courts may withhold settlement funds for the potential payment of non-settling defendant's attorneys' fees but may also partially distribute reserved settlement funds for the payment of a plaintiff's attorneys' fees. (*Id.* at 542–45).

PADRM Gold Mine, LLC v. Perkumpulan Investor Crisis Center Dressel – WBG

In *PADRM Gold Mine, LLC v. Perkumpulan Investor Crisis Center Dressel – WBG*, 498 P.3d 1073 (Alaska 2021), the supreme court held that legal malpractice claims are not involuntarily assignable but declined to decide whether such claims are voluntarily assignable. (*Id.* at 1078). A group of Indonesian citizens (Perkumpulan) filed a federal fraud suit in Washington State against the Dressel corporation. (*Id.* at 1074). During discovery, Perkumpulan came to believe that some of Dressel's Alaskan assets such as the PADRM Gold Mine (PADRM) had been purchased with the profits of fraud and brought an in rem action in Alaska state court seeking to quiet title to the properties. (*Id.* at 1074–75). Ultimately the Washington lawsuit was dismissed, and the Alaska superior court granted summary judgment to PADRM in the quiet title action, along with an award of attorneys' fees. (*Id.*). PADRM was unable to collect on its judgment and filed a writ of execution for Perkumpulan's sole remaining asset: a potential legal malpractice claim against Perkumpulan's Alaska attorneys, which Perkumpulan had declined to pursue. (*Id.* at 1075). The superior court denied PADRM's motion for a writ of execution, and PADRM appealed, arguing that legal claims are personal property under Alaska state law, personal property is subject to assignment, and no statute exempts legal malpractice claims from execution. (*Id.* at 1076). Noting that the assignment of legal malpractice claims was a matter of first impression, the Alaska supreme court affirmed the lower court and denied PADRM's writ of execution. (*Id.* at 1078). The court cited policy considerations such as the negative impacts of involuntary assignment on the attorney-client relationship, and the negative effects of commodifying legal claims in general. (*Id.* at 1079–80). The court also noted that a majority of states to consider the issue have concluded that legal malpractice claims are unassignable as a matter of public policy. (*Id.* at 1078). Affirming the lower court's decision, the supreme court held that legal malpractice claims are not involuntarily assignable but declined to decide whether such claims are voluntarily assignable. (*Id.*).

Windel v. Matanuska-Susitna Borough

In *Windel v. Matanuska-Susitna Borough*, 496 P.3d 392 (Alaska 2021), the supreme court held that (1) an unchallenged res judicata judgment in a prior case bound the parties in the current proceeding and (2) a plaintiff's pursuit of bad faith claims which had already been decided in prior cases justified an enhanced award of attorneys' fees to the defendant. (*Id.* at 398, 402–03). The Windels sued the Borough to challenge the validity of access easements on their property. (*Id.* at 396). The superior court dismissed the majority of the Windels' claims on res judicata grounds, finding the claims either were raised or could have been raised in one of the Windels' four prior suits relating to the easements. (*Id.*). The superior court also awarded the Borough 80% of its actual attorneys' fees because the Windels' claims had been brought in bad faith. (*Id.* at 397). On appeal, the Windels argued that res judicata did not apply to the dismissed claims because neither the privity requirement nor the same cause of action requirement had been met. (*Id.*). The supreme court affirmed the lower court's decision, noting that the Windels had voluntarily dismissed their appeal of a prior case whose res judicata holding they had initially challenged. (*Id.* at 398). Because the prior res judicata holding was unchallenged, the privity requirement had already been established, and the Windels could not now challenge the res judicata effect of the prior suit. (*Id.*). Additionally, the court noted that an enhanced award of attorneys' fees for the Borough was justified because the Windels' claims had already been adjudicated in previous cases and were therefore brought in bad faith. (*Id.* at 402–03). Affirming the lower court's decision, the supreme court held that (1) an unchallenged res judicata judgment in a prior case bound the parties in the current proceeding and (2) a plaintiff's pursuit of bad faith claims which had already been decided in prior cases justified an enhanced award of attorneys' fees to the defendant. (*Id.* at 398, 402–03).

CONSTITUTIONAL LAW

Dunleavy v. Alaska Legislative Council

In *Dunleavy v. Alaska Legislative Council*, 498 P.3d 608 (Alaska 2021), the supreme court held that Alaska Statute § 39.05.080(3) and House Bill 309, both of which provided that legislative inaction on the Governor's appointments was akin to a rejection, were unconstitutional. (*Id.* at 612–13). In 2020, Governor Dunleavy provided over 90 appointees for legislative confirmation. (*Id.* at 611). When the pandemic began and the legislature was not able to reliably meet, it passed House Bill 309, which extended the time for the legislature to act on appointments, making nonaction not equivalent to a rejection until the earlier of January 18, 2021, or the expiration of the public health emergency. (*Id.*). After the end of the public health emergency the legislature did not act, making the nonaction equivalent to a rejection. (*Id.*). Governor Dunleavy stated he was using his power under the recess appointment clause to allow his appointees to continue to serve and the Legislative Council filed a complaint alleging the governor had violated the Alaska Constitution. (*Id.* at 611–12). The superior court held that Alaska Statute § 39.05.080(3) and House Bill 309 were constitutional—therefore the appointments had been rejected by the legislature and the recess appointment clause could not apply. (*Id.* at 612). In reversing the superior court, the supreme court reasoned that, by defining inaction as akin to a rejection, Alaska Statute § 39.05.080(3) and House Bill 309 nullify the Alaska Constitution's joint session vote requirement, thereby rendering them unconstitutional. (*Id.* at 613). The court further reasoned that this interpretation is supported both by the plain language of the Alaska Constitution and by the delegates' intention as shown through constitutional history. (*Id.* at 613–

15). Reversing the superior court, the supreme court held that Alaska Statute § 39.05.080(3) and House Bill 309, both of which provided that legislative inaction on the Governor’s appointments was akin to a rejection, were unconstitutional as consideration of appointees must occur by a joint session vote. (*Id.* at 610–12).

Perozzo v. State

In *Perozzo v. State*, 493 P.3d 233 (Alaska Ct. App. 2021), the court of appeals held that a police officer’s request for a vehicle passenger’s identification before subsequently conducting a warrants check is not part of a “routine” traffic stop, meaning it cannot be done “without a reasonable suspicion of criminality or other particularized justification.” (*Id.* at 243). After an Anchorage police officer pulled over a car with an obstructed license plate for a routine traffic stop, he requested the passenger’s identification and received it after the passenger’s light protest. (*Id.* at 236). The officer later admitted he regularly checked passenger identification and there was nothing about this passenger that particularly interested him. (*Id.*). After the officer ran a warrants check and discovered that the passenger had an outstanding search warrant for his DNA, the officer removed him from the car and found a weapon in the vehicle, which the passenger admitted was his. (*Id.*). Possessing a prior felony, the passenger was indicted for being a felon in possession of a concealable firearm and charged with failing to immediately inform the police that he was armed. (*Id.*). After the passenger’s motion to suppress was denied and he was convicted at trial on both counts, he appealed, arguing the police exceeded the scope of the traffic stop. (*Id.* at 236–37). After reviewing the decisions by U.S. district courts and other state courts, the Alaska court of appeals held that a police officer’s request for a vehicle passenger’s identification before subsequently conducting a warrants check is not part of a “routine” traffic stop, meaning it cannot be done “without a reasonable suspicion of criminality or other particularized justification.” (*Id.* at 243).

Perozzo v. State

In *Perozzo v. State*, 493 P.3d 233 (Alaska Ct. App. 2021), the Court of Appeals held that the state constitution prohibits officers from requesting a passenger’s identification and then using that identification to run a warrants check when the officer’s request is unrelated to the basis for the stop, and the officer has no other case-specific jurisdiction for doing so. (*Id.* at 242). An Anchorage police officer performed a traffic stop on a vehicle—in which Perozzo was a passenger—for having an obscured license plate. (*Id.* at 235). The officer asked Perozzo as well as the driver for their identifications. (*Id.* at 236). Perozzo handed his identification to the officer, who then used it to run a warrants check. (*Id.*). The warrants check revealed an outstanding search warrant for Perozzo’s DNA, prompting the officer to detain Perozzo. (*Id.*). The trial court denied Perozzo’s motion to suppress evidence seized as a result of the traffic stop, concluding that the officer’s request for Perozzo’s identification did not impermissibly expand the traffic stop. (*Id.*). The Court of Appeals reversed, determining that privacy rights under the state constitution provide additional protections beyond those guaranteed by the Fourth Amendment. (*Id.* at 241). The court held that the state constitution prohibits officers from requesting a passenger’s identification and then using that identification to run a warrants check when the officer’s request is unrelated to the basis for the stop, and the officer has no other case-specific jurisdiction for doing so. (*Id.* at 242).

CONTRACT LAW

ResQSoft, Inc. v. Protech Solutions, Inc.

In *ResQSoft, Inc. v. Protech Solutions, Inc.*, 488 P.3d 979 (Alaska 2021), the supreme court held that non-contractual claims, even when arising out of state statutory law or equitable principles, may still be subject to the forum selection clause within the contract if the claims arise from or relate to the contract's terms. (*Id.* at 985). A subcontractor filed suit against a state contractor after the relationship between the parties broke down and the contractor terminated the subcontract without payment for work completed. (*Id.* at 983). The since-broken contract included a forum selection clause mandating all proceedings arising out of or relating to the contract would be settled in the Federal District Court of Delaware. (*Id.* at 984–85). The subcontractor failed on claims in Alaska state courts on a finding of improper venue and saw their claims for unjust enrichment dismissed. (*Id.* at 982–83). Reviewing the claims de novo, the supreme court affirmed the dismissal of the unjust enrichment claim because the subcontractor failed to state a sufficient claim for which relief could be granted. (*Id.* at 990). In its evaluation of the forum selection question, the supreme court considered the four reasons why a court might refuse to enforce a contract's forum selection clause: (1) public policy, (2) there is no available remedy in the chosen forum, (3) disproportionate bargaining power, and (4) fraud. (*Id.* at 986–89). After reasoning that none of the enforceability exceptions applied, the supreme court held that non-contractual claims, even when arising out of state statutory law or equitable principles, may still be subject to the forum selection clause within the contract if the claims arise from or relate to the contract's terms. (*Id.* at 985).

CRIMINAL LAW

Baer v. State

In *Baer v. State*, 499 P.3d 1037 (Alaska Ct. App. 2021), the court of appeals held that a conviction for second-degree theft was proper where a social security card was stolen, that admission of evidence from the initial theft of the card was not clear error, and that special probation conditions were not clear error where based on the defendant's history and imposed to protect victims or those negatively impacted by the theft. (*Id.* at 1039). Baer was convicted of second-degree theft and of providing false information by the trial court, based in part on the theft of a social security card. (*Id.* at 1039–40). Baer appealed on three claims of error: first, that a social security card should not qualify as an "access device" under Alaska's second-degree theft statute, AS 11.46.130(a)(7), (*Id.* at 1040); second, that the court erroneously admitted evidence of an uncharged burglary, (*Id.* at 1042); and third, that portions of Baer's sentence to Special Probation Conditions were erroneous, (*Id.* at 1043–44). The court of appeals first determined that a social security card was an access device because, while also defined as an identification document, a social security card was also necessarily an access device because it contains a social security number, one of the statutorily listed examples of an access device. (*Id.* at 1041). Next, the court of appeals found that admission of evidence suggesting that Baer had committed the initial burglary in which the social security card was stolen – among other items – was not plain error because it did not improperly impact the jury's decision. (*Id.* at 1043). Finally, the court of appeals found that requiring Baer to inquire into specific medical alternatives when consulting a physician and to refrain from contact with the owner of the social security card or the storage unit from which the card was stolen was not plain error because

neither probation requirement violated Baer's privacy rights or his rights to travel or to free association. (*Id.* at 1044). Therefore, the court of appeals held that a conviction for second-degree theft was proper where a social security card was stolen, that admission of evidence from the initial theft of the card was not clear error, and that special probation conditions were not clear error where based on the defendant's history and imposed to protect victims or those negatively impacted by the theft. (*Id.* at 1039).

Bragaw v. State

In *Bragaw v. State*, 482 P.3d 1023 (Alaska Ct. App. 2021), the court of appeals held that trial courts must consider the validity of drug recognition evaluation (DRE) evidence under the *Daubert* standard for admissibility. (*Id.* at 1032). Bragaw was arrested for driving under the influence and completed a DRE, which led troopers to determine that she had used central nervous system depressants and stimulants. (*Id.* at 1025). A blood test showed that Bragaw consumed a central nervous system depressant, but not a central nervous system stimulant. (*Id.* at 1025). At trial, the lower court did not apply the *Daubert* standard to determine the scientific validity of the DRE method and prohibited Bragaw from providing expert testimony that criticized DRE's reliability. (*Id.* at 1030, 1026). The jury convicted Bragaw of felony driving under the influence (*Id.* at 1024). The court of appeals held that the lower court erred by failing to apply the *Daubert* standard to the DRE evidence and excluding expert testimony criticizing the DRE evidence. (*Id.* 1032). The court of appeals reasoned that the *Daubert* standard applied because DRE evidence is scientific, and Bragaw's expert testimony should have been admitted because the defense always has a right to present expert testimony critiquing the State's scientific evidence. (*Id.* at 1030–31). The court of appeals found that these errors were not harmless because discussion of the DRE evidence took up a significant amount of time at trial and was central to the State's case, making it likely that the jury would view the evidence as valid. (*Id.* at 1032). Reversing the lower court's decision, the court of appeals held that trial courts must subject drug recognition evaluation (DRE) evidence to the *Daubert* standard for admissibility. (*Id.* at 1032).

Collins v. State

In *Collins v. State*, 494 P.3d 60 (Alaska Ct. App. 2021), the Court of Appeals held that the 2013 session law amending the provisions of AS 12.55.125 to establish significantly higher presumptive sentencing ranges for offenders convicted of sexual felonies was a clarification rather than a modification of the statute; therefore, there were no *ex post facto* concerns when applying the session law to a defendant's conviction for a felony that had taken place prior to the session law. (*Id.* at 65). Collins was convicted in the Superior Court, Third Judicial District, Palmer of first-degree sexual assault. (*Id.* at 63). The Court of Appeals determined that Collins was entitled by statute to have his case referred to a three-judge sentencing panel. (*Id.*). The Alaska legislature later enacted a session law disavowing the Court of Appeals' statutory interpretation. (*Id.*). On remand, the lower court then denied Collins's request for a referral to a sentencing panel. (*Id.* at 64). Collins appealed, arguing that because his crime was committed before the session law was enacted, the *ex post facto* clauses in the state and federal constitution prohibited courts from applying the session law to his case. (*Id.*). The Court of Appeals applied the doctrine of clarifying legislation, taking note of the existence of reasonable debate regarding the interpretation of the pre-existing law, as well as the circumstances surrounding the enactment of the session law. (*Id.* at 69–70). On these grounds, the court concluded that the session law was

a clarification of the law that existed at the time the crime was committed and therefore could be applied to the defendant's case without triggering *ex post facto* concerns. (*Id.*).

Dorsey v. State

In *Dorsey v. State*, 480 P.3d 1211 (Alaska Ct. App. 2021), the court of appeals held that the involuntary intoxication defense did not apply to an individual charged with sexual assault who claimed to be in a state of “transient mild delirium” due to a reaction to a prescription muscle relaxant, as it is not an excuse under Alaska law. (*Id.* at 1213–14, 1220–21). Dorsey was convicted of second-degree sexual assault after lifting the skirt of a woman in a grocery store and touching her genitals. (*Id.* at 1213). At trial, Dorsey wanted to argue his conduct was a result of involuntary intoxication from a prescription muscle relaxant that prohibited him from confirming his conduct to the requirements of the law. (*Id.* at 1214). The court ruled that if Dorsey introduced this defense, the jury would be instructed to find him guilty but mentally ill, so Dorsey abandoned the defense. (*Id.*). On appeal, Dorsey argued the trial court erred in this ruling. (*Id.* at 1217). The court of appeals affirmed Dorsey's conviction, reasoning that the ruling was a harmless error. (*Id.* at 1213). There is no statutory basis for the involuntary intoxication defense in Alaska, but it is recognized as a common law defense if the involuntary intoxication negates either of the essential elements of the crime — the actus reus or mens rea. (*Id.* at 1219–20). Dorsey argued his actions should be excused because his involuntary intoxication prohibited him from confirming his conduct to the requirements of the law, but, as this court previously held, involuntary intoxication is only available as an excuse if the defendant's state of mind resembles the statutorily defined test for insanity. (*Id.* at 1220). In Alaska, the legislature changed the test for insanity to not include a volitional prong related to the capacity to conform conduct to the requirements of the law, so there is no excuse. (*Id.* at 1220–21). While the trial court was incorrect to rule the defense would result in a verdict of guilty but mentally ill, this error was harmless as the defense does not exist under Alaska law. (*Id.* at 1223). In affirming Dorsey's conviction, the court of appeals held that the involuntary intoxication defense did not apply to an individual charged with sexual assault who claimed to be in a state of “transient mild delirium” due to a reaction to a prescription muscle relaxant, as it is not an excuse under Alaska law. (*Id.* at 1213–14, 1220–21).

Galindo v. State

In *Galindo v. State*, 481 P.3d 686 (Alaska Ct. App. 2021), the court held that Special Conditions of Probation need to be supported by the record and if there are less restrictive alternatives those should be considered by the trial court. (*Id.* at 690–94). Galindo was convicted of first-degree sexual assault and second-degree criminal trespass and appealed the conviction and the sentence. (*Id.* at 688). Galindo argued that the state failed to prove that the sexual assault was without consent, that the sentence was excessive, and that multiple Special Conditions of Probation should be overturned. (*Id.* at 688). The court of appeals upheld the conviction as well as the sentence. (*Id.* at 688–90). However, the court reversed one Special Condition of Probation for failing to set a maximum term for the residential treatment program it required Galindo to enroll in. (*Id.* at 690). It remanded multiple other Conditions for failing to have adequate evidence in the record to support the Condition. (*Id.* at 691–93). Further, it discussed how two of the conditions, which limited Galindo from possessing sexually explicit materials and adopted a definition of sexually explicit material from a statute that involved minors, implicated concerns about constitutional rights that the trial court needed to consider when reviewing the Condition.

(*Id.* at 693–94). The court of appeals remanded the case, holding that Special Conditions of Probation need to be supported by the record and if there are less restrictive alternatives those should be considered by the trial court. (*Id.* at 690–94).

Geisinger v. State

In *Geisinger v. State*, 498 P.3d 92 (Alaska Ct. App. 2021), the court of appeals held that the defendant was not entitled to post-conviction relief for convictions and sentencing related to manslaughter, first-degree assault, driving under the influence, leaving the scene of an injury accident, and second-degree forgery. (*Id.* at 95–96). Geisinger was driving his truck with a forged insurance card and under the influence of alcohol when he failed to brake and instead collided straight on with a parked car on the side of the road, killing one and severely injuring two. (*Id.* at 95). Geisinger left the scene without calling for assistance and hid from authorities for the fifteen hours following the accident. (*Id.*). In denying defendant’s post-conviction relief, the court of appeals held the following: (1) Alaska’s Professional Conduct Rule 3.3(a)(3) is not limited to perjury and instead requires refusal to offer evidence that the *lawyer* reasonably believes to be false. (*Id.* at 100); (2) It was harmless error for the defense attorney to not request a jury instruction on incapacitation as a defense for leaving the scene of an injury accident because there was no reasonable possibility that a jury would have acquitted on this account. (*Id.* at 102); (3) Third-degree assault as defined in A.S. 11.41.220(a)(4) is not a lesser included offense of first-degree assault charges as defined under A.S. 11.81.900(b)(59)(A). (*Id.* at 102–03); (4) Since there is no legal distinction between direct and circumstantial evidence, surrounding circumstances can establish intent to defraud for a forgery charge. (*Id.* at 105); (5) Consolidating all six counts against the defendant wouldn’t have made a difference in the outcome. (*Id.* at 108); (6) A flaw in the jury instruction on the elements of the crime does not require automatic reversal of a criminal conviction. (*Id.* at 109). But reversal can be proper if the flaw in the jury instructions prevents the defendant from presenting and the jury is prevented from considering a chosen defense. (*Id.* at 110–11); and (7) The trial attorney’s failure to call a witness to the stand to testify to the blood alcohol content the defendant would have after the four beers witnesses saw him consume would not have had an influence on the jury’s decision because there was testimony from other witnesses, which the jury found credible, stating that the defendant appeared intoxicated well before he was seen drinking the four beers. (*Id.* at 117–18). For the aforementioned reasons, the court of appeals held that the defendant was not entitled to post-conviction relief for convictions and sentencing related to manslaughter, first-degree assault, driving under the influence, leaving the scene of an injury accident, and second-degree forgery. (*Id.* at 95–96).

King v. State

In *King v. State*, 487 P.3d 242 (Alaska Ct. App. 2021), the court of appeals held that sufficient factual findings may support multiple convictions for the same criminal charges without comprising the “same offense” for double jeopardy purposes, so long as the individual convictions relate to independent events occurring at different times and on separate occasions. (*Id.* at 247). King was convicted of ten counts of first-degree sexual abuse of a minor and two counts of second-degree sexual abuse of a minor. (*Id.* at 244). Neither King nor the State requested specific findings during the initial trial, though the court did provide an explanation of the evidence underlying each conviction. (*Id.* at 245). Prior to sentencing, King filed a motion for the court to make additional factual findings explaining each verdict, arguing that otherwise King

may be convicted of multiple charges for the same behavior in violation of double jeopardy. (*Id.*). The court therefore reviewed its previous findings and found that each charge related to independent events which occurred at different times. (*Id.* at 247). King argued on appeal that the trial court made insufficient factual findings to support the imposition of separate convictions for each criminal charge against him. (*Id.*). The court reasoned that the factual findings of the trial court adequately supported the conclusion that each conviction related to a separate act, and that therefore the two could not be considered the same offense. (*Id.*). Affirming the trial court on the issue of the sufficiency of factual findings, the court of appeals held that separate convictions of the same criminal charge do not violate double jeopardy so long as each charge is factually related to independent events occurring at different times and on separate occasions. (*Id.*).

Ledbetter v. State

In *Ledbetter v. State*, 482 P.3d 1033 (Alaska Ct. App. 2021), the court of appeals held that a prosecutor’s repeated erroneous characterizations of the law of self-defense during closing argument, combined with other inflammatory and prejudicial remarks, amounted to plain error, requiring reversal of the defendant’s conviction. (*Id.* at 1037). Ledbetter was charged and convicted of second-degree assault after stabbing a man during a bar fight. (*Id.* at 1034). Ledbetter claimed he acted in self-defense. (*Id.*). On appeal, he argued that the prosecutor’s improper remarks during closing argument deprived him of a fair trial. (*Id.*). The court of appeals agreed, holding that the prosecutor erroneously told the jury on multiple occasions that a conclusion that Ledbetter was authorized to use deadly force was equivalent to a conclusion that Ledbetter had the right to kill the victim. (*Id.*). However, the question for the fact-finder is whether the amount of force used by the defendant was reasonable under the circumstances, not whether the same circumstances theoretically might have justified an even greater use of force. (*Id.* at 1036). The prosecutor made a series of other highly inflammatory and prejudicial remarks to the jury. (*Id.* at 1035). First, the prosecutor stated that if Ledbetter had legitimately acted in self-defense, the State would not have charged him with a crime in the first place. (*Id.* at 1036). Second, the prosecutor analogized the case to the polarizing and dissimilar shooting of Trayvon Martin. (*Id.* at 1035–36). Finally, the prosecutor’s exhortation for the jury to “do the right thing” was indistinguishable from an exhortation for the jury to “do its job,” which the Supreme Court has condemned as an exertion of undue pressure on the jury’s verdict. (*Id.* at 1036). The court held that the trial court’s failure to intervene during the prosecutor’s closing argument amounted to plain error, requiring Ledbetter’s conviction be reversed and his case remanded for retrial. (*Id.* at 1037).

Linden v. Municipality of Anchorage

In *Linden v. Municipality of Anchorage*, 501 P.3d 238 (Alaska Ct. App. 2021), the Court of Appeals held that the crimes of assault and of family violence do not constitute the same offense for purposes of double jeopardy when a single act produces two crimes suffered by separate victims. (*Id.* at 241). Linden was convicted of both assault and family violence after attacking his girlfriend in the presence of their child. (*Id.* at 240). On appeal, Linden argued that the double jeopardy clauses of the state and federal constitutions required the lower court to merge his guilty verdicts for assault and family violence into a single conviction. (*Id.*). The Court of Appeals applied the *Whitton* merger test to determine the validity of Linden’s claim, looking to the different criminal statutes and then assessing any differences in intent or conduct in light of societal interests to be vindicated. (*Id.* at 241). The court concluded that the legislature intended

for separate convictions for assault and family violence when each of the crimes resulted in separate injuries to different people. (*Id.* at 243). The Court of Appeals thus held that the crimes of assault and of family violence do not constitute the same offense for purposes of double jeopardy when a single act produces two crimes suffered by separate victims. (*Id.* at 241).

Lord v. State

In *Lord v. State*, 489 P.3d 374 (Alaska Ct. App. 2021), the court of appeals held that Alaska’s “guilty but mentally ill” (GBMI) statutes did not violate equal protection of GBMI defendants by denying them the same treatment given to defendants found not guilty by reason of insanity, and that a criminal defendant was not prejudiced by her attorney’s failure to raise certain claims at trial. (*Id.* at 378). Cynthia Lord was convicted of three counts of first-degree murder for killing her three teenage sons. (*Id.* at 376). There was no dispute that Lord was severely mentally ill, but the trial court rejected her insanity defense and found her guilty but mentally ill (GBMI). (*Id.*). On appeal, Lord challenged Alaska’s insanity and GBMI statutes on both due process and cruel and unusual punishment grounds, but the court of appeals affirmed her convictions and the constitutionality of both statutes. (*Id.*). Lord also filed an application for post-conviction relief, arguing that her trial attorneys provided ineffective assistance of counsel and that Alaska’s GBMI statutes unconstitutionally denied equal protection to GBMI inmates. (*Id.* at 376–77). The superior court granted the State’s motion to dismiss the application for post-conviction relief. (*Id.* at 377). On appeal, the court of appeals held that Lord had not been prejudiced by her trial attorneys’ failure to challenge the future conditions of her confinement, because she could still challenge those conditions in a civil suit. (*Id.* at 380). Similarly, Lord had not been prejudiced by her trial attorneys’ failure to raise constitutional challenges, because her appellate attorney had raised those challenges in her direct appeal. (*Id.* at 378). Notwithstanding serious concerns about Alaska’s GBMI statutes raised in concurring and dissenting opinions, the court of appeals deferred to its precedents upholding the constitutionality of Alaska’s unique GBMI statutory scheme. (*Id.* at 379). Affirming the lower court’s decision, the court of appeals held that Alaska’s “guilty but mentally ill” (GBMI) statutes did not violate equal protection of GBMI defendants by denying them the same treatment given to defendants found not guilty by reason of insanity, and that a criminal defendant was not prejudiced by her attorney’s failure to raise certain claims at trial. (*Id.* at 378).

Matter of Mark V.

In *Matter of Mark V.*, 501 P.3d 228 (Alaska 2021), the supreme court held that that for a less restrictive analysis in a commitment proceeding only options available at the time need to be considered and not all of the factors supporting a finding that a patient lacks competence to consent to the administration of medication are required for a court to make such a finding. (*Id.* at 236). Mark V. has had a history of severe mental illness, and he has repeatedly been committed to the Alaska Psychiatric Institute (API) since he stabbed his parents during a psychotic episode. (*Id.* at 229–30). In September 2019, a psychiatric advanced nurse practitioner at API, Gerald Martone, petitioned for a 180-day commitment order, and he testified that Mark needed to take his medication to control the symptoms of his disorder. (*Id.* at 230). The court found that Mark was not ready to be discharged and that there was no feasible less restrictive alternative at the time. (*Id.* at 230–32). In May 2020, Martone petitioned the court again because Mark was refusing to take medication, and the court found that Mark was unable to give or withhold informed consent at the time and gave Martone authorization to administer the

medication involuntarily. (*Id.* at 232–34). Mark is appealing both the commitment order and the orders authorizing the administration of medication involuntarily. (*Id.* at 234). The court found that the trial court had not improperly shifted the burden to Mark to show that there was no less restrictive alternative to confinement, and that its findings regarding the lack of a less restrictive alternative were accurate. (*Id.* at 234–35). The court also found that Mark’s continued institutionalization did not violate federal antidiscrimination laws, because even if the court had considered ADA requirements in its analysis, the court only had to consider options available to it at that time, which it did. (*Id.* at 236). The court found that the lower court testimony supported a finding that Mark met at least one of the factors supporting a lack of competence to consent to the administration of medication because he lacked the ability to rationally participate in his treatment, but the court reminded the lower court to include specific findings in its future orders. (*Id.* at 237–38). The supreme court affirmed both the confinement order and the medication order, holding that for a less restrictive analysis in a commitment proceeding only options available at the time need to be considered and not all of the factors supporting a finding that a patient lacks competence to consent to the administration of medication are required for a court to make such a finding. (*Id.* at 236).

Maves v. State, Department of Public Safety

In *Maves v. State, Department of Public Safety*, 479 P.3d 399 (Alaska 2021), the supreme court held sexual assault convictions set aside by courts before the 1999 amendment to the Alaska Sex Offenders Registration Act (ASORA) do not constitute “convictions” as outlined in the statute. (*Id.* at 402). In 1997, Maves plead guilty to two counts of sexual assault in Colorado. (*Id.* at 400). In 2002, a Colorado court allowed Maves to withdraw his guilty plea to one of the sexual assault offenses and dismissed it with prejudice. (*Id.*). After moving to Alaska in 2015, the Department of Public Safety (Department) required Maves to register as a sex offender for life under ASORA. (*Id.*). In determining the length of registration, the Department followed the 1995 regulation which defined “conviction” to include judgments set aside under Alaska’s statute or a similar procedure in a differing jurisdiction. (*Id.* at 400–401). On appeal, the Department argued that Maves must register for life because the 1995 regulation, which was a valid use of authority within the scope of ASORA, counts both of his convictions for registration requirements purposes. (*Id.*). The supreme court reversed and remanded the lower court’s decision, finding that the 1995 regulation was outside the scope of its enabling legislation since the regulation was not “reasonably necessary” to implement ASORA. (*Id.* at 404–405). The court reasoned that the intent for setting aside convictions, which is to limit the effects of a sexual assault conviction for those offenders who do not pose a high risk of reoffending, was not compatible with the central purpose of ASORA, to monitor offenders at high risk of reoffending. (*Id.* at 403–404). The court also noted the limitations of this decision since the state legislature amended ASORA in 1999 in accordance with the 1995 amendment’s definition of “conviction.” (*Id.* at 404). Reversing the lower court’s decision, the supreme court held sexual assault convictions set aside by courts before the 1999 amendment to ASORA do not constitute “convictions” as outlined in the statute. (*Id.* at 402).

Peterson v. Municipality of Anchorage

In *Peterson v. Municipality of Anchorage*, 500 P.3d 314 (Alaska Ct. App. 2021), the court of appeals held that a court cannot rely on uncharged conduct as the basis for a restitution order but can rely on that same conduct in crafting a term of imprisonment. (*Id.* at 325). Peterson, driving with a revoked license, was involved in a traffic accident that severely injured another driver. (*Id.* at 316). Peterson pleaded guilty to a single count of driving with a revoked license. (*Id.*). At the sentencing hearing, the Municipality did not present any formal evidence about the accident or the reasons for Peterson’s revoked license but factored the accident prominently in its decision to impose a term of one year in prison as well as restitution. (*Id.* at 318). Peterson appealed, arguing that the accident was not a foreseeable consequence of driving with a revoked license, and therefore the court should not take it into consideration at sentencing. (*Id.* at 317). The court of appeals reversed the order of restitution but affirmed the prison sentence. (*Id.* at 325). The court of appeals found that under the restitution statute, a defendant’s liability is limited to the proximate effects of the offense of conviction. (*Id.*). Therefore, the Municipality was required to show that Peterson’s criminal conduct was a “substantial factor” in bringing about the ensuing damage, not merely the but-for cause of the accident. (*Id.* at 321). Without a link between the losses for which restitution was ordered and Peterson’s criminal conduct, awarding restitution would penalize Peterson for conduct for which she was not convicted nor afforded the right to a trial under the sixty amendment. (*Id.* at 323). However, the court did not find a similar requirement for imprisonment, holding that so long as a defendant has notice and an opportunity to contest the conduct on which the court relies, a court may rely on conduct for which the defendant was acquitted in formulating an appropriate sentence. (*Id.* at 325). Reversing the lower court’s decision in part and affirming in part, the court of appeals held that a showing of proximate cause is required for an order of restitution but not for a prison sentence within the statutory maximum. (*Id.*).

Seaman v. State

In *Seaman v. State*, 499 P.3d 1028 (Alaska Ct. App. 2021), the court of appeals held that the eligibility date for discretionary parole is not determined by deducting good time credit from the active term of imprisonment. (*Id.* at 1030). The case arose after an inmate serving seventy-year sentence challenged the date at which he would become eligible for discretionary parole. (*Id.* at 1029). Although the court had already rejected a similar argument in an unpublished opinion, he argued that a 2016 legislative amendment and Minnesota Supreme Court decision militated in favor of a different interpretation. (*Id.* at 1029–30). The court of appeals disagreed, observing that the plain language, legislative history, and past practice of the Department of Corrections cause problems for Seaman’s preferred reading of Alaska Stat. § 12.55.015(g), which he used to support his proposed definition of “active term of imprisonment.” (*Id.* at 1031–33). Moreover, the legislative amendment, which never applied to his situation, created no ambiguity because it was explicit about good time credits. (*Id.* at 1034–35). And the Minnesota Supreme Court decision was unpersuasive because their overall statutory sentencing schemes are structured differently, and Alaska’s statutes include a definition of “term of imprisonment” unlike the ambiguity present in Minnesota. (*Id.* at 1036). Affirming the decision of the superior court, the court of appeals held that the eligibility date for discretionary parole is not determined by deducting good time credit from the active term of imprisonment. (*Id.* at 1030).

Sherwood v. State

In *Sherwood v. State*, 493 P.3d 230 (Alaska Ct. App. 2021), the court of appeals held that the lower court erred in dismissing the defendant's application for post-conviction relief, because it was plain error for the court to accept the defendant's attorney's certificate of no arguable merit when the attorney had a clear conflict of interest. (*Id.* at 231–32). The defendant was represented by the same attorney during his direct appeal of assault convictions and during post-conviction relief proceedings based on claims of ineffective assistance of counsel. (*Id.* at 231). The attorney filed a certificate of no arguable merit, asserting that the defendant had no non-frivolous claims for post-conviction relief and affirming that he had no conflict of interest in representing the defendant. (*Id.*). The lower court accepted the certificate and dismissed the post-conviction relief application, and the defendant appealed. (*Id.*). The court of appeals found that because the attorney has a personal interest in defending the professional competency of his own representation, the attorney had an obvious conflict of interest under Alaska Rule of Criminal Procedure 35.1(e)(2)(C). (*Id.* at 231–32). The court of appeals held that because of the conflict of interest, the attorney was prohibited from filing a certificate of no merit, and the defendant was entitled to new, conflict-free counsel during his post-conviction relief proceedings. (*Id.* at 233).

Simpson v. State

In *Simpson v. State*, 489 P.3d 1181 (Alaska Ct. App. 2021), the court of appeals held that the investigatory stop and breath test of the defendant were warranted and that the defendant's convictions should not be merged (*Id.* at 1186, 1188.). Responding to a call from Simpson's girlfriend, officers found Simpson parked outside of his girlfriend's house where he admitted he had driven to earlier that evening (*Id.* at 1184.). The officers searched Simpson's person and he disclosed that he had a gun in his pocket. (*Id.*). The officers then arrested him and then performed a breath test on him (*Id.*). At trial, the jury convicted Simpson of driving under the influence, third-degree weapons misconduct, and fourth-degree weapons misconduct (*Id.*). The trial court, at a bench trial, also considered Simpson's prior driving under the influence convictions and found Simpson guilty of felony driving under the influence (*Id.*). On appeal, Simpson challenged the officer's performance of the breath test and search and argued that his convictions should be merged (*Id.* at 1185–87.). The court of appeals affirmed the lower court's decision, reasoning that the officers had authority to conduct the breath test and it was proper for the authors to conduct the breath test at the station instead of on site (*Id.* at 1185–86.). The court further reasoned that the officers' pat-down search was justified because the officers saw a long object in Simpson's pocket and Simpson reached for that pocket when he stepped out of his car (*Id.* at 1186.) Since Simpson's three weapons convictions all concern different societal interests, the court held that the lower court did not error by refusing to merge the three convictions (*Id.* at 1188.). Affirming the lower court's decision, the court of appeals held that the investigatory stop and breath test of the defendant were warranted and that the defendant's convictions should not be merged (*Id.* at 1186, 1188.).

Stacy v. State

In *Stacy v. State*, 500 P.3d 1023 (Alaska 2021), the supreme court held that under *Brady v. Maryland*, 373 U.S. 83 (1963) and Alaska law, prosecutors have a duty to take steps to learn about favorable material possessed by the prosecution and in personnel files. (*Stacy*, 500 P.3d at 1026-27). Stacy was convicted "of second-degree misconduct involving a controlled substance (possession of heroin with the intent to deliver)." (*Id.* at 1026). Stacy appealed arguing the trial

court erred in not instructing the jury on accomplice liability for a lesser included offense, it erred in allowing an officer to testify to his opinions on Stacy's intent, that there was insufficient evidence, and that the trial court violated his due process rights under *Brady*. (*Id.*) The state argued that there is no independent duty under *Brady* for the prosecution to learn *Brady* material from a police officer's personnel file. (*Id.* at 1033). The supreme court affirmed in part, but remanded the *Brady* issue, reasoning the state has a duty to disclose *Brady* materials, so prosecutors must learn of *Brady* material in police personnel files to insure proper disclosure. (*Id.* at 1038–39). The court remanded to the superior court with orders for the prosecutor to review the relevant personnel files. (*Id.* at 1040). Affirming in part and remanding in part, the supreme court held that under *Brady* and Alaska law, prosecutors have a duty to take steps to learn about favorable material possessed by the prosecution and in personnel files. (*Id.* at 1026–27).

State v. Powell

In *State v. Powell*, 487 P.3d 609 (Alaska Ct. App. 2021), the court of appeals held that a video of a forensic interview of a victim in a child sexual abuse and controlled substance case was inadmissible evidence as presented to a grand jury because the grand jury format was not covered by the Evidence Rules did not allow for cross-examination – one of the requirements to admit evidence that would otherwise be hearsay under Alaska's Evidence Rule 801(d)(3)(B). (*Id.* at 610–11). In its presentation to the grand jury on the indictment of Harry Powell, the State introduced a video of the forensic interview with the 14-year-old victim, but did not call the victim as a witness. (*Id.* at 610). The superior court found that this presentation violated Alaska's hearsay rules because Evidence Rule 801 “contemplates a cross-examination contemporaneous to the introduction of the recording” to qualify evidence for the hearsay exception. (*Id.*) The trial court further clarified that the victim here did not qualify for separate grand jury hearsay exceptions in Criminal Rule 6(r)(2) because the victim was over ten years old. (*Id.* at 610–11). The trial court therefore dismissed both counts against Powell, citing legislative history suggesting that the hearsay exceptions depend on the witness's availability to testify. (*Id.* at 611). The court of appeals agreed with the superior court because the plain language of Evidence Rule 801(d)(3) – which excepts video statements of victims under sixteen – sets forth clear foundational requirements to find evidence admissible. (*Id.* at 611). The video recording here did not meet three of the eight requirements at the time of the grand jury presentation. (*Id.* at 611–12). The court concluded that while the legislative history showed that Rule 801(d)(3) was not intended to apply to grand juries, the lack of amendment to the grand jury rules that would have allowed child hearsay implied that no such protection for child victims existed at the grand jury stage. (*Id.* at 614–15). The court of appeals therefore held that a video of a forensic interview of a victim in a child sexual abuse and controlled substance case was inadmissible evidence as presented to a grand jury because the grand jury format was not covered by the Evidence Rules and did not allow for cross-examination – one of the requirements to admit evidence that would otherwise be hearsay under Alaska's Evidence Rule 801(d)(3)(B). (*Id.* at 610–11).

Watson v. State

In *Watson v. State*, 487 P.3d 568 (Alaska 2021), the supreme court upheld Alaska Statute 47.12.030 as constitutional under the Alaska Constitution's equal protection clause. (*Id.* at 570). The defendant was a minor convicted on two counts of misdemeanor DUI. (*Id.*) On appeal, the defendant argued that the criminal statute, which provided that juvenile defendants of

misdemeanor traffic violations would be tried in district court as adults, impermissibly violated the Alaska equal protection clause by creating overbroad categories of juvenile defendants – those charged with felony traffic offenses and those charged with non-felonious traffic offenses. (*Id.* at 571). The court, however, found no constitutional issue with the classifications. (*Id.*) The court therefore proceeded to apply the “three-step equal protection analysis.” (*Id.* at 572). First, the court found that defendants have special personal interest in rehabilitative treatment by the criminal system, and such interest requires a “close relationship” between the state interest at issue and the regulation of the individual interest, but the court recognized that it owed deference to legislative decisions to emphasize one sentencing goal over another in designing systems of crimes and punishments. (*Id.* at 572–73). Second, the court found that the government had important interests in both protecting the public and promoting rehabilitation. (*Id.* at 574–75). Lastly, the court found that the statute’s classification system was a closely related means both to preserve a consistent and graduated punishment system for misdemeanor traffic violations, protecting the public, and also to promoting rehabilitation of minors convicted of felonies, shielding them from the harsher punishments levied against adult felons in district court. (*Id.* at 573–76). Affirming the Court of Appeals, the supreme court upheld Alaska Statute 47.12.030 as constitutional under the Alaska Constitution’s equal protection clause. (*Id.* at 570).

Williams v. State

In *Williams v. State*, 480 P.3d 95 (Alaska Ct. App. 2021), the court of appeals held that joint involvement by both spouses in the criminal or fraudulent activity is not required for the crime-fraud exception to confidential marriage communications to apply. (*Id.* at 97). Williams and his girlfriend went to the decedent’s apartment to steal valuables and in the process, he wielded a gun. (*Id.*) In the ensuing struggle for control of the gun it fired, killing the decedent. (*Id.*) Shortly after, Williams called his estranged wife to ask her to buy him a plane ticket out of Alaska, recanting that he had shot someone. (*Id.* at 97–98). Without Williams’ knowledge, his wife allowed her mother to record the conversation and provided it to the police. (*Id.* at 98). On appeal, Williams argued that the trial court erred in denying his motion to dismiss his indictment based on his claim that his conversation with his wife was protected by the confidential marriage communications privilege. (*Id.*) He based this argument in part on federal case law that recognized the joint participation exception, requiring both spouses to be involved in the crime. (*Id.* at 99). The court of appeals remanded the case for other issues, but affirmed the trial court on this point, reasoning that the plain language of Alaska Evidence Rule 505(b), which sets out the marriage communications privilege, does not require joint participation. (*Id.* at 99, 104). The court further reasoned that the federal joint participation exception is different from the crime-fraud exception, and that the latter only requires one spouse to be aware that the communication is related to a criminal or fraudulent matter. (*Id.* at 99–100). Upholding the trial court on this matter, the court of appeals held that joint involvement by both spouses in the criminal or fraudulent activity is not required for the crime-fraud exception to confidential marriage communications to apply. (*Id.* at 97).

Williams v. State

In *Williams v. State*, 486 P.3d 1134 (Alaska Ct. App. 2021), the Court of Appeals affirmed a conviction of second-degree sexual assault. (*Id.* at 1135). Williams was convicted of second-degree sexual assault following a jury trial in the Superior Court, First Judicial District, Juneau. (*Id.*) Williams raised four issues on appeal. (*Id.*) First, Williams argued that the trial court

improperly admitted text messages sent from his phone to the victim. (*Id.*) Because Williams’s attorney had not raised this argument at trial, it was not preserved and thus the court required a finding of plain error. (*Id.*) Because Williams’s attorney had acknowledged the text messages were sent from Williams’s phone, the court found no plain error and rejected this argument. (*Id.* at 1136). Williams further argued that even if the texts were sent from his phone, there was insufficient evidence to show that he was the author. (*Id.*). The court determined that the State presented sufficient evidence to the contrary and rejected this argument. (*Id.*). Second, Williams argued that the trial court erred in denying his motion for a mistrial based on the victim’s demeanor on the witness stand. (*Id.*). In prior decisions, the court had previously acknowledged the risk that a witness’s demeanor will lead the jury to decide the case based primarily on emotion or sympathy for the witness. (*Id.* at 1137). Nevertheless, the court did not find the abuse of discretion required to overturn the trial court’s decision and rejected Williams’s argument. (*Id.*). Third, Williams argued that the evidence was insufficient to support his conviction. (*Id.* at 1138). When reviewing a claim of insufficient evidence, the court must view the evidence and all reasonable inferences in the light most favorable to upholding the jury’s verdict. (*Id.*). The court rejected Williams’s argument, finding that the State presented sufficient evidence to show that the victim was incapacitated and that Williams knew this at the time of the assault. (*Id.*). Lastly, Williams argued that his sentence of 35 years with 12 years suspended was excessive given that the trial court failed to conduct an on-the-record review of sentences imposed in similar cases. (*Id.*). The court rejected this argument, stating that the trial court’s thorough application of *Chaney* criteria provided sufficient detail to communicate the basis for its sentencing decision. (*Id.*). The Court of Appeals thereby affirmed the judgment of the trial court and upheld Williams’s conviction of second-degree sexual assault over Williams’s four issues on appeal. (*Id.* at 1135).

CRIMINAL PROCEDURE

Burton-Hill v. State

In *Burton-Hill v. State*, 500 P.3d 1016 (Alaska Ct. App. 2021), the court of appeals held that in order to prevent a miscarriage of justice, an appellate court has the authority to request supplemental briefing, and effectively used that authority in requesting supplemental briefs regarding the definitions of terms and phrases in Alaska’s riot statute. (*Id.* at 1023). After several defendants were convicted under Alaska’s riot statute, they appealed, separately arguing that the terms “tumultuous and violent” either did not apply to their activity or were unconstitutionally vague or overbroad. (*Id.* at 1019–20). Recognizing the importance of defining these terms, the court of appeals requested supplemental briefing from both parties. (*Id.*). The State responded by filing a motion asking the court rescind its request for supplemental briefing, arguing that the defendants had waived their right to raise the issues through inadequate initial briefing. (*Id.* at 1020). However, the court recognized the tension between the service of justice and waiver. (*Id.* at 1022–23). Thus, the court of appeals held that even with prior inadequate briefing, in order to prevent a miscarriage of justice, an appellate court has the authority to request supplemental briefing, and effectively used that authority in requesting supplemental briefs regarding the definitions of terms and phrases in Alaska’s riot statute. (*Id.* at 1023).

Compton v. State

In *Compton v. State*, 485 P.3d 56 (Alaska Ct. App. 2021), the court of appeals held that a trial judge’s ruling that parties could not play recordings of conversations for the jury unless the witness who made the statement denied having made that statement was in violation Rule 613(b) of the Alaska Rules of Evidence. (*Id.* at 62–63). However, the error must still have “appreciably affected” the jury’s verdict to require reversal on appeal. (*Id.* at 63). After an altercation between a man and a pregnant woman with whom he and his wife were romantically involved resulted in several injuries to the pregnant woman’s head, she was interviewed by a police officer. (*Id.* at 59). At trial for two fourth-degree assault charges, the woman struggled to remember several key facts from the conversation. (*Id.*). The man’s attorney sought to introduce four recorded statements to impeach the woman’s credibility, but the trial judge stated that this was only possible if she denied the statements; if she simply could not remember them, the recordings could only permissibly be played to her without the jury present in order to refresh her memory. (*Id.*). While noting that two of the statements did not implicate Rule 613(b), the court of appeals held that the other two did, and therefore the trial court erred in the way it imposed evidence rules. (*Id.* at 61–63). However, the court of appeals nonetheless rejected the man’s claims on both constitutional and evidentiary grounds, stating that because his attorney was still able to use the woman’s inconsistency to impeach her before the jury without the use of the recordings, the error was harmless. (*Id.* at 63–64). Therefore, even if an error has occurred, the error must still have “appreciably affected” the jury’s verdict to require reversal on appeal. (*Id.* at 63).

Gosuk v. State

In *Gosuk v. State*, 484 P.3d 130 (Alaska Ct. App. 2021), the court of appeals held that a police-citizen contact can become an investigative stop due to repeated accusatory questioning and that when the State claims a consent exception to the warrant requirement it has the burden of proving that consent was both actual and voluntary. (*Id.* at 135, 137). In October 2015, Gosuk was traveling by plane from Dillingham to Togiak. (*Id.* at 132). An Alaska state trooper approached her at the airport and asked if she was transporting alcohol into Togiak, where the sale, importation and possession of alcohol is banned. (*Id.* at 132–33). After repeated questioning, Gosuk allegedly consented to having her bag inspected and twenty-five bottles of alcohol were found. (*Id.* at 133–34). At the superior court, Gosuk’s motion to suppress all the evidence seized at the airport was denied, and she plead guilty. (*Id.* at 132). Gosuk appealed the superior court’s determination that no seizure had occurred and that Gosuk had consented to the search of her luggage. (*Id.*). The court of appeals found that the initial police-citizen contact possibly became an investigatory stop due to the repeated accusatory questioning and ordered the superior court to investigate this on remand. (*Id.* at 135–36). The court of appeals also found that the record was inconclusive as to whether Gosuk consented to the search and said that on remand the superior court should determine whether there was consent based on the place and tone of the interaction, the ambiguity of the trooper’s questions, the repetition of the request for consent, and Gosuk’s responses. (*Id.* at 136–38). The court of appeals vacated the denial of the motion to suppress and remanded, holding that a police-citizen contact can become an investigative stop due to repeated accusatory questioning and that when the State claims a consent exception to the warrant requirement it has the burden of proving that consent was both actual and voluntary. (*Id.* at 135, 137).

Lee v. State

In *Lee v. State*, 503 P.3d 811 (Alaska Ct. App. 2021), the court of appeals held that neither an Alaska statute requiring the conservation of biological material in homicide and sexual assault cases for later DNA testing nor due process are violated when non-DNA biological evidence is destroyed, but that the State should provide notice to the defendant before consuming the evidence or it risks a due process violation. (*Id.* at 816, 817–18, 821). Lee was convicted of second-degree sexual abuse of a minor for forcibly performing fellatio on him. (*Id.* at 812). The state crime lab took six penile swabs from the victim, and placed all the biological material into two vials, one of which was preserved for independent testing. (*Id.* at 813). Lee’s defense was that the minor had raped her, and he had made up his story to cover it up, so the Defense asked an independent lab to analyze the swabs for an enzyme found in saliva. (*Id.* at 813–14). However, the lab was unable to do so as the biological material containing bodily fluids had been consumed during DNA testing. (*Id.* at 813). On appeal, Lee argued that the crime lab’s actions in combining the swabs and consuming the biological material violated an Alaska statute requiring the State to preserve biological material for DNA testing and violated her due process rights. (*Id.* at 815). The court of appeals affirmed the lower court’s decision, reasoning that Alaska Statute § 13.36.200 only required that biological material be preserved so that a DNA profile can be developed, and does not require the State to preserve non-DNA biological evidence. (*Id.* at 817–18). The court further reasoned that federal due process was not violated, as there was no showing of bad faith, and state due process was not violated, as the State acted reasonably in combining the swabs and the evidentiary value of the consumed material was questionable. (*Id.* at 818–19). However, the court did note that the State should provide notice to defendants before consuming biological materials, as it could be a due process violation if the destruction impeded the defendant’s ability to present a defense. (*Id.* at 821). In affirming the lower court, the court of appeals held that the consumption of non-DNA biological evidence did not automatically violate an Alaska statute requiring conservation of biological materials for DNA testing or due process, but that the State should provide notice to the defendant before doing so. (*Id.* at 817–18, 821).

Mollica v. State

In *Mollica v. State*, 500 P.3d 1002 (Alaska Ct. App. 2021), the court held that when a defendant faces termination from a therapeutic court program, he or she is entitled to due process protections including written notice concerning the grounds for discharge, disclosure of the relevant evidence, and the chance to be heard to rebut the evidence and offer defenses or mitigating information. (*Id.* at 1015). In 2013 Robert Joel Mollica II pled guilty to a second-degree robbery and then in 2016, after two probation violations and a second criminal charge, he entered a plea agreement that required him to enter and complete the Palmer Wellness Court. (*Id.* at 1005). The Palmer Wellness Court is a therapeutic court and if he completed the program his probation would be terminated and his sentence for his second criminal charge would remain suspended. (*Id.* at 1006). Two months after starting at the Wellness Court Mollica was arrested for assaulting his girlfriend and, after the therapeutic court team used its discretion to allow him to remain in the program, he left his transitional housing program and was arrested and charged with a criminal trespass. (*Id.* at 1007–08). Following a hearing where Mollica and his counsel spoke, the court announced its decision that he should be discharged from the program. (*Id.* at 1008–09). Mollica appealed the decision and alleged that his due process rights were violated by a failure of the court to provide adequate notice of the allegations against him as well as a failure

of the court to provide him with a meaningful hearing. (*Id.* at 1010). The court noted that there is a lack of relevant Alaska case law in this area, but that appellate courts in other states have found that participants in therapeutic court programs are entitled to due process rights similar to those of parolees and probationers. (*Id.* at 1010). The court emphasized that the due process rights in such termination proceedings are more flexible and a failure to comply with one of them does not automatically mean that the decision must be reversed. (*Id.* at 1012). Here, the court concluded that Mollica received the required due process protections. (*Id.* at 1015). The court of appeals affirmed Mollica’s termination from the Wellness Court, holding that when a defendant faces termination from a therapeutic court program, he or she is entitled to due process protections including written notice concerning the grounds for discharge, disclosure of the relevant evidence, and the chance to be heard to rebut the evidence and offer defenses or mitigating information. (*Id.* at 1015).

Phornsavanh v. State

In *Phornsavanh v. State*, 481 P.3d 1145 (Alaska Ct. App. 2021), the court of appeals held that when trial courts rule on motions for a new trial based on the weight of the evidence, they must independently weigh the evidence and use their discretion to make their own credibility determination about whether a new trial is needed to prevent injustice. (*Id.* at 1158–59). A jury found Korakanh Phornsavanh guilty of first-degree murder for a fatal shooting outside an Anchorage nightclub. (*Id.* at 1148). At the close of the State’s case and after the jury reached a verdict, Phornsavanh filed a motion for judgment of acquittal under Alaska Criminal Rule 29. (*Id.* at 1153). In the alternative, Phornsavanh filed a motion for a new trial under Alaska Criminal Rule 33, arguing that the jury’s verdict was contrary to the weight of the evidence. (*Id.*). The superior court denied both motions. (*Id.*). On appeal, the State argues that the trial court applied the correct legal standard in denying the defendant’s motion for a new trial since the holding in *Hunter v. Philip Morris USA, Inc.*, 364 P.3d 439 (Alaska 2015) applies only to civil cases. (*Phornsavanh*, 481 P.3d at 1160). The court of appeals remanded the lower court’s decision, holding that *Hunter* applies to both criminal and civil cases, and the supreme court’s holding in *Hunter* corrects previous cases which have erroneously confused the standard for a motion for acquittal and a motion for a new trial against the weight of the evidence. (*Id.* at 1159–60). The court found that the trial court applied an incorrect legal standard in denying Phornsavanh’s motion because the trial court’s analysis was not a statement of the court’s personal view of the evidence and instead continually referred to an abstract fact-finder and what this fact-finder could “reasonably infer” from the evidence. (*Id.* at 1158–59). Remanding the case to superior court for reconsideration of the motion, the court of appeals held that the trial court must independently weigh the evidence and use their discretion to determine if a new trial is needed to prevent injustice based on the weight of the evidence. (*Id.* at 1161–62).

Smith v. State

In *Smith v. State*, 484 P.3d 610 (Alaska Ct. App. 2021), the court of appeals held that, where inordinate expenses for travel and housing would arise, a district judge may limit the radius for calling prospective jurors for a criminal case to a distance lower than the 50-mile radius established by Alaska Administrative Rule 15, including limiting to a 5-mile radius. (*Id.* at 619). Teddy Kyle Smith was convicted of a series of violent felonies based on conduct that occurred near the village of Kiana in the Second Judicial District. (*Id.* at 611–12). His trial therefore took place in Kotzebue, where a long-standing order pursuant to pre-2015 Alaska Administrative Rule

15 limited the juror venire radius to 5-miles outside of Kotzebue. (*Id.* at 612–13). Smith challenged the factual basis of the presiding judge’s conclusion that travel and housing expenses made the 5-mile radius a reasonable restriction of the jury venire pool. (*Id.* at 612). The appellate court first considered the rationale behind Administrative Rule 15, then turned to the history of the rule, citing a series of cases in which the supreme court had found variances from the default 50-mile radius to be reasonable. (*Id.* at 612–16). Smith argued that the trial court should not have placed the burden of proof on him to show that there was insufficient evidence to support the 5-mile radius. (*Id.* at 616–17). He also contended that it was an error to consider only the monetary costs of the jury pool radius, pointing to social and cultural considerations. (*Id.* at 617). The court however rejected Smith’s interpretation of the Rule 15 requirements, finding instead that “unreasonable expense” restriction may be based solely on monetary factors and that Smith’s factual comparisons to other Alaskan cities failed to consider the different reasons for requiring a larger or smaller jury pool radius. (*Id.* at 617–619). The court of appeals therefore held that, where inordinate expenses for travel and housing would arise, a district judge may limit the radius for calling prospective jurors for a criminal case to a distance lower than the 50-mile radius established by Alaska Administrative Rule 15, including limiting to a 5-mile radius. (*Id.* at 619).

State v. Azzarella

In *State v. Azzarella*, 483 P.3d 905 (Alaska Ct. App. 2021), the court of appeals held that a civil compromise is not effective unless and until it is approved by the court. (*Id.* at 906). The State charged Azzarella with four felony assault charges. (*Id.* at 905). However, at Azzarella’s preliminary hearing, the State did not present any evidence supporting the felony charges, dismissed two of those charges, and reduced the remaining two charges to misdemeanors. (*Id.*). Two days after the preliminary hearing, Azzarella’s attorney filed a notice of civil compromise (“compromise”) and requested a hearing at which the court could hear the evidence on the proposed compromise. (*Id.*). The attorney requested the hearing to be held as soon as possible, specifically by the next day, October 5. (*Id.*). Before the court ruled on the compromise, a grand jury indicted Azzarella on the four original felony charges. (*Id.* at 906.). The trial court dismissed the indictment, finding the compromise was completed after Azzarella filed the notice and further prosecution would violate double jeopardy. (*Id.*). The court of appeals reversed the trial court’s dismissal of the indictment. (*Id.*). Citing AS 12.45.140, the court found that a crime may not be compromised, nor may the prosecution be dismissed or stayed, “except as provided by law.” (*Id.*). A compromise only becomes effective if the court agrees to accept it. The filing of a notice of compromise does not qualify as acceptance by the court, so the prosecution of the indictment did not violate double jeopardy. (*Id.* at 907). Furthermore, the trial court did not have the authority to dismiss Azzarella’s indictment because Alaska law does not allow compromises of felony crimes. (*Id.* at 906). Finally, the court found that Azzarella’s filing of the notice did not automatically stay the proceedings. (*Id.* at 907). Reversing the superior court, the court of appeals held that double jeopardy did not prevent the State from seeking indictment on felony charges after a defendant files notice of civil compromise but before the court approved that compromise. (*Id.* at 906).

ELECTION LAW

Alaska Public Offices Commission v. Not Tammie

In *Alaska Public Offices Commission v. Not Tammie*, 482 P.3d 386 (Alaska 2021), the supreme court held that (1) the governor must explicitly, not implicitly, assign Alaska Public Offices Commission (APOC) hearing officers, and (2) the governor-appointed hearing officer may be an agency employee or commissioner. (*Id.* at 388–89). During an APOC enforcement action, APOC’s chairperson sat on the panel and acted as the panel’s hearing officer. (*Id.* at 387). The superior court ruled that it had been improper for the chairperson to act as the hearing officer because the governor had not appointed the APOC chairperson as hearing officer, and that the hearing officer could not be connected with APOC. (*Id.* at 387–88). APOC appealed, arguing that the governor may implicitly assign a hearing officer by appointing an otherwise-qualified person to serve on a quasi-judicial body, and therefore APOC could have a commissioner serve as the panel’s hearing officer without further input from the governor. (*Id.* at 388). The supreme court affirmed the lower court’s holding that the governor must explicitly assign APOC hearing officers, and that the governor’s appointment of an individual to a quasi-judicial body such as the APOC was not sufficient as an implicit appointment. (*Id.* at 388–89). However, the supreme court reversed the lower court regarding whether the governor-appointed hearing officer could be an agency employee or commissioner, holding that hearing officers could be APOC commissioners as long as they remained impartial. (*Id.* at 389). Affirming in part and reversing in part the lower court’s decision, the supreme court held that (1) the governor must explicitly, not implicitly, assign APOC hearing officers, and (2) the governor-appointed hearing officer may be an agency employee or commissioner. (*Id.* at 388–89).

Alaska Public Offices Commission v. Patrick

In *Alaska Public Offices Commission v. Patrick*, 494 P.3d 53 (Alaska 2021), the Alaska Supreme Court held that statutory contribution limits are unconstitutional in the context of independent expenditure groups (*Id.* at 60). Individual plaintiffs filed complaints with the Alaska Public Offices Commission (APOC), alleging that independent expenditure groups accepted contributions beyond the allowable amount under Alaska’s statutory contribution limits (*Id.* at 55). APOC rejected the complaints based on its findings in a 2012 advisory opinion and, on review, affirmed its decision to reject the complaints (*Id.*). The plaintiffs appealed APOC’s decision to the superior court, which reversed APOC’s rejection of the complaints (*Id.*). On appeal, the court asked both parties to address the constitutionality of the statutory contribution limits and APOC’s authority to refuse to enforce a law that it believes is unconstitutional (*Id.*). APOC argued the limits were unconstitutional and it had the authority to refuse to enforce the limits (*Id.* 55–56). The plaintiffs agreed that APOC has the authority to not enforce the statutory limits, but argued the limits were not unconstitutional (*Id.* at 56). The Alaska Supreme Court reversed the lower court’s decision, reasoning that federal precedent supports the argument that limits on contributions to independent expenditure groups are unconstitutional and the plaintiffs wrongly assumed that the United State Supreme Court would overturn its precedent (*Id.* at 57–60). Reversing the lower court’s decision, the Alaska Supreme Court held that statutory contribution limits are unconstitutional in the context of independent expenditure groups (*Id.* at 60).

Pruitt v. Office of Lieutenant Governor

In *Pruitt v. Office of Lieutenant Governor*, 498 P.3d 591 (Alaska 2021), the supreme court held the losing House candidate failed to meet his burden to sustain an election contest claim (*Id.* at 608). Pruitt, a losing House candidate, sued the Division of Elections, claiming that it committed malconduct that influenced the election results by moving a polling place without providing the public with sufficient notice, as required under the law (*Id.* at 594). After an evidentiary hearing, the lower court held that the Division’s partial compliance with the law did not amount to malconduct and Pruitt did not meet his burden of showing that the conduct would have changed the outcome of the election (*Id.* at 597). On appeal, Pruitt continued to argue that the Division of Elections’ conduct amounted to malconduct that was sufficient to change the results of the election (*Id.*). The supreme court affirmed the lower court’s decision, reasoning that the Division of Election did not commit malconduct because the Division did not have a legal duty to confirm polling places by a certain date, its conduct was not a sufficient deviation from the law, and Pruitt failed to prove bias or scienter on the part of the Division (*Id.* at 602–06). The court further reasoned that Pruitt’s assertions about the alternative outcomes of the election were mere speculation and, thus, Pruitt failed to show the malconduct was sufficient to change the outcome of the election (*Id.* at 608). Affirming the lower court’s decision, the supreme court held that the losing House candidate failed to meet his burden to sustain an election contest claim (*Id.* at 608).

Republican Governors Association v. Alaska Public Offices Commission

In *Republican Governors Association v. Alaska Public Offices Commission*, 485 P.3d 545 (Alaska 2021), the supreme court held that the Republican Governors Association violated a campaign finance registration statute that required registration prior to making “expenditures.” (*Id.* at 553). In advance of the 2018 gubernatorial primary race and before registering with the Commission, the Republican Governors Association reserved more than \$1 million in television advertising time. (*Id.* at 547). Alaska campaign finance law mandates that political organizations must register with the Commission before making a purchase intended to promote the election of a candidate. (*Id.*). The Republican Governors Association did not register with the Alaska Public Offices Commission before engaging an Alaska media consultant to reserve the television advertising time. (*Id.*). The superior court affirmed the Commission’s decision that the Republican Governor’s Association violated campaign finance law. (*Id.* at 549). On appeal, the Republican Governor’s Association argued that the Commission’s definition of “expenditure” was overly broad, their television advertisement buy did not constitute an “expenditure,” and the Association itself was not a group mandated to register with the Commission. (*Id.* at 553). The supreme court affirmed the lower court’s decision, reasoning that the Commission had a reasonable definition of “expenditure” and its finding that the Republican Governors Association’s purchase of television advertising time constituted an expenditure was supported by evidence. (*Id.* at 551 and 553). Finally, the court found that the Republican Governors Association was a group under the statute and, therefore, was not exempt from the statute’s registration requirement. (*Id.* at 553). Affirming the lower court’s decision, the supreme court held that the Republican Governors Association violated a campaign finance registration statute that required registration prior to making “expenditures.” (*Id.* at 553).

Resource Development Council for Alaska, Inc. v. Vote Yes for Alaska’s Fair Share

In *Resource Development Council for Alaska, Inc. v. Vote Yes for Alaska’s Fair Share*, 494 P.3d 541 (Alaska 2021), the supreme court held that the statute setting the petition circulator compensation at \$1 per signature was unconstitutional and, thus, the lieutenant governor properly certified the petitions collected by Vote Yes for Alaska’s Fair Share (*Id.* at 553–54). Vote Yes for Alaska’s Fair Share filed a petition to place its oil and gas production tax initiative on the ballot and circulated the petition booklets, obtaining the necessary signatures for filing (*Id.* at 544). Six entities, known as “Resource Development Council,” opposed the petition and challenged the placement of the petition on the ballot in court, alleging that the petition circulators were paid more than \$1 per signature in violation of an Alaska statute (*Id.*). On motion to dismiss, the lower court held that the statute requiring that compensation was capped at \$1 per signature violated free speech because it was not narrowly tailored to meet the State’s compelling interests (*Id.* at 545). On appeal, the Resource Development Council continued to argue that the lieutenant governor improperly allowed the initiative to appear on the ballot and Vote Yes for Alaska’s Fair Share argued that the compensation statute is not unconstitutional because the statute can be interpreted to permit compensation other than compensation per signature (*Id.*). Additionally, the State argued that the court did not need to reach the issue of the statute’s constitutionality (*Id.*). The supreme court affirmed the lower court’s decision, reasoning that the \$1 per signature compensation cap was a cap on all types of compensation and that the cap placed a significant burden on political speech without any narrow tailoring towards the State’s interests (*Id.* at 553). The court further reasoned that the petition was properly certified by the lieutenant governor because Vote Yes for Alaska’s Fair Share need not comply with an unconstitutional statute in its signature collection process (*Id.* at 554). Affirming the lower court’s decision, the supreme court held that the statute setting the petition circulator compensation at \$1 per signature was unconstitutional and, thus, the lieutenant governor properly certified the petitions collected by Vote Yes for Alaska’s Fair Share. (*Id.* at 553–54).

State v. Galvin

In *State v. Galvin*, 491 P.3d 325 (Alaska 2021), the supreme court held that when a preliminary injunction threatens the success of an election it should be denied to protect the public interest. (*Id.* at 339–40). Prior to the November 2020 general election, the Division of Elections (the Division) made the decision to omit voter registration information from the ballot. (*Id.* at 329). The Division did not notify the public of this decision until September 14, 2020, when it listed a sample ballot on its website. (*Id.* at 330). Galvin had won the Democratic Party nomination but was registered as a nonpartisan voter. (*Id.* at 328). When she learned of the new ballot design, she filed suit alleging that the ballot design violated a statutory provision as well as her right of political association under the Alaska Constitution. (*Id.* at 330). Galvin appealed the superior court’s decision to deny a preliminary injunction and argued that the Division could be adequately protected against harm caused by an injunction and that she had demonstrated probably success on the merits of her claims. (*Id.* at 331). While the court determined that Galvin faced irreparable harm if her claims were correct, the court affirmed the superior court’s conclusion that an injunction could possibly prevent a timely election and the Division could not be adequately protected from harm. (*Id.* at 333–34). While the court determined Galvin did not show a clear probability of success on the merits of her constitutional arguments, it declined to make a determination on her statutory claim. (*Id.* at 336–38). Instead, the court concluded that granting an injunction would imperil the public interest based on the superior court’s factual

finding that an injunction would make a timely, successful election difficult. (*Id.* at 339). The supreme court affirmed the denial of a preliminary injunction, holding that when a preliminary injunction threatens the success of an election it must be denied to protect the public interest. (*Id.* at 339–40).

State, Office of the Lieutenant Governor v. Arctic Village Council

In *State, Office of the Lieutenant Governor v. Arctic Village Council*, 495 P.3d 313 (Alaska 2021), the supreme court held that the health concerns of the pandemic outweighed the State interests behind the witness requirement for absentee ballots in elections. (*Id.* at 325–26). There is an Alaska statute that requires that absentee voters have an official or, if that is not possible, a person above 18 years old witness absentee ballots. (*Id.* at 315–16). The Arctic Village Council, the League of Women Voters, and two individuals filed suit on September 8, 2020, asking for a preliminary injunction among other relief from the requirement. (*Id.* at 316–17). They alleged that enforcing the witness requirement during the COVID-19 pandemic would violate the constitutional right of voters to equal protection of the laws as well as the right to vote. (*Id.* at 317). The State argued that either laches barred the suit or that the preliminary injunction standards were not met due the State’s interest in deterring fraud and promoting voter confidence in the integrity of the election. (*Id.* at 318). The superior court granted the preliminary injunction and the state appealed to the Alaska supreme court. (*Id.* at 318–19). The supreme court agreed with the superior court that laches did not bar the claim, because the pandemic was constantly shifting, and the injunction would not subject the State to unduly burdensome requirements. (*Id.* at 321). The supreme court also affirmed the superior court’s findings that the State’s reasons behind the witness requirement, deterring fraud and increasing voter confidence in elections, were not effective enough to outweigh the burden put on voters due to the pandemic and that, therefore, a preliminary injunction was a proper remedy. (*Id.* at 322–25). The supreme court affirmed the superior court’s decision to grant a preliminary injunction, holding that the health concerns of the pandemic outweighed the state interests behind the witness requirement for absentee ballots in elections. (*Id.* at 325–26).

State, Office of Lieutenant Governor v. Recall Dunleavy

In *State, Office of Lieutenant Governor v. Recall Dunleavy*, 491 P.3d 343 (Alaska 2021), the supreme court held that (1) recall petitions are subject to a notice pleading standard and (2) a petition to recall the governor met that liberal standard. (*Id.* at 357, 372). Recall Dunleavy filed a recall application with the Division of Elections, which the Division’s Director stated was insufficient and declined to certify. (*Id.* at 349–50). Recall Dunleavy challenged the Director’s decision in court, and the superior court held that all but one of the recall application’s allegations were legally sufficient for certification. (*Id.* at 350). The State appealed, arguing that a notice pleading standard was insufficient for recall applications and failed to satisfy statutory particularity requirements. (*Id.* at 358). The State also argued that the four statutory grounds for recall (lack of fitness, incompetence, neglect of duties, and corruption) had been defined too broadly by the lower court. (*Id.* at 359–62). The supreme court affirmed the lower court’s decision, expressing concerns that adopting an exacting standard for recall petitions would improperly limit citizen access to the constitutional recall process. (*Id.* at 357). The supreme court agreed with the State that the statutory grounds for recall were ambiguous, but declined to define the grounds narrowly out of concern for preserving citizen access to the recall process. (*Id.* at 359). Applying these standards to the four allegations of Recall Dunleavy’s recall

application, the supreme court found that each allegation was legally sufficient and satisfied the particularity requirement. (*Id.* at 362). Affirming the lower court's decision, the supreme court held that (1) recall petitions are subject to a notice pleading standard and (2) a petition to recall the governor met that liberal standard. (*Id.* at 357, 372).

State, Office of Lieutenant Governor v. Vote Yes for Alaska's Fair Share

In *State, Office of Lieutenant Governor v. Vote Yes for Alaska's Fair Share*, 478 P.3d 679 (Alaska 2021), the supreme court held that the lieutenant governor's summary of a ballot initiative was not true and impartial as required by law, and granted in part the lieutenant governor's request to insert a proposed replacement sentence to which the initiative sponsors had no objection. (*Id.* at 682). Initiative sponsors, Vote Yes for Alaska's Fair Share, filed suit against the state, challenging the lieutenant governor's summary of their ballot initiative as untrue and partial. (*Id.* at 684). The lower court ruled for the sponsors, holding the ballot summary was not true and impartial, and ordered the deletion of a particular sentence in the summary, denying the state's request to instead revise the sentence. (*Id.* at 685–86). On appeal, the state argued that the summary was fair and impartial, but requested that, if the supreme court affirmed the lower court, the lieutenant governor be allowed to insert a proposed replacement sentence. (*Id.* at 682). First, the supreme court affirmed the lower court's judgment that the summary was not true and impartial. (*Id.*). While the lieutenant governor is not necessarily excluded from stating an initiative's legal import in a ballot summary, a ballot summary cannot be misleading or partisan. (*Id.* at 690). The ballot summary, according to the court, misled voters because it did not disclose disputed or unripe implementation questions that other agencies would resolve; it was speculative and improperly weighed on its interpretation. (*Id.*). The supreme court declined to conduct pre-election interpretation of the initiative, noting that when an initiative petition meets formal filing requirements, the initiative ordinarily is not subject to interpretation until it is enacted. (*Id.* at 690–91). Second, the supreme court allowed the lieutenant governor to insert the first portion of the proposed replacement sentence, which was accurate and impartial. (*Id.* at 693). The lower court did not abuse its discretion by denying the lieutenant governor's request to revise the sentence. (*Id.* at 692). Affirming the lower court's decision, the supreme court held that the lieutenant governor's summary of the ballot initiative was not true and impartial, and granted in part the lieutenant governor's request to insert a proposed replacement sentence. (*Id.* at 693–94).

EMPLOYMENT LAW

Alaska State Commission for Human Rights v. United Physical Therapy

In *Alaska State Commission for Human Rights v. United Physical Therapy*, 484 P.3d 599 (Alaska 2021), the supreme court held that the Alaska Workers' Compensation Board acted reasonably when it interpreted the merits of a provider's claim to require a review of the underlying medical care. (*Id.* at 606–07). The case arose after a medical provider claimed that a state agency should pay the medical bills of a state employee injured in a workplace accident. (*Id.* at 601). Initially unrepresented by counsel, the medical provider's claims before the Board were somewhat ambiguous about whether they were challenging the state's ability to controvert the claim or the claim's underlying medical justification. (*Id.* at 602–04). Under Alaska law, the Board would not have jurisdiction to hear a challenge to controversion but would be able to award compensation for a contested payment after hearing evidence. (*See id.* at 606–07). The Board interpreted the

medical provider's claim as the latter, so it reviewed medical evidence presented and found the costs reasonable, ordering the state to pay. (*Id.* at 603–04). On appeal from the Alaska Worker's Compensation Appeals Commission's affirmance of the Board, the state argued that the Board impermissibly altered the merits of the provider's claim. (*Id.* at 606). The supreme court rejected this argument, emphasizing the governing statute's summary nature and the Board's duty to assist unrepresented litigants. (*Id.* at 607). Affirming the Alaska Workers' Compensation Appeals Commission's decision, the supreme held that the Alaska Workers' Compensation Board acted reasonably when it interpreted the merits of a provider's claim to require a review of the underlying medical care. (*Id.* at 606–07).

Buntin v. Schlumberger Technology Corp.

In *Buntin v. Schlumberger Technology Corp.*, 487 P.3d 595 (Alaska 2021), the supreme court held that an employer is required to prove an exemption to the overtime provisions of the Alaska Wage and Hour Act (AWHA) by preponderance of the evidence and that the court must give AWHA exemptions a fair reading, rather than a narrow one. (*Id.* at 609). Buntin sued Schlumberger, his former employer, in federal court for failure to pay overtime compensation in violation of the AWHA. (*Id.* at 598). Schlumberger argued that Buntin was not entitled to overtime compensation because the AWHA exempts individuals employed in an executive, administrative, or professional capacity from the overtime payment requirement. (*Id.*). The federal court certified two questions for the supreme court: 1) Which standard of proof applies to exemptions to the overtime provisions of the AWHA, and 2) Whether exemptions under the AWHA should receive a narrow or fair interpretation. (*Id.*). The supreme court noted that the previous standard of proof for AWHA exemptions, under *Dayhoff v. Temsco Helicopters*, 848 P.2d 1367 (Alaska 1993), was beyond a reasonable doubt. (*Buntin*, 487 P.3d at 601). However, the supreme court reasoned that this standard was originally erroneous because the loss of overtime pay did not result in the deprivation of liberty or fundamental rights. (*Id.* at 605–06). Instead, the supreme court held that a preponderance of the evidence was the more appropriate standard for proving that an employee was exempt from the overtime provisions of the AWHA. (*Id.* at 609). Then, the supreme court found that AWHA exemptions were expressly linked to exemptions under the Fair Labor Standards Act (FLSA), and therefore required the same reading as FLSA exemptions. (*Id.*). Because the FLSA required a fair reading, the AWHA also required a fair reading as opposed to a narrow one. (*Id.*). Therefore, the supreme court held that an employer is required to prove that an exemption to the overtime provisions of the AWHA by a preponderance of the evidence, and the court must give AWHA exemptions a fair reading. (*Id.*).

Burke v. Criterion General, Inc.

In *Burke v. Criterion General, Inc.*, 499 P.3d 319 (Alaska 2021), the supreme court held that amendments to the Alaska Workers' Compensation Act did not violate procedural or substantive due process in allowing project owners and contractors the use of the exclusive remedy defense. (*Id.* at 320). A worker's estate had received compensation for funeral expenses as part of the Workers' Compensation system, but as the deceased had no spouse or dependents, no other death benefits were available. The Estate brought a wrongful death claim against a general contractor and the company that hired it, challenging the 2004 amendments providing general contractors and project owners with the exclusive liability defense as violations of due process. (*Id.* at 321–22). The supreme court disagreed, explaining that procedural due process was not violated because the amendments did not deny access to courts, instead creating affirmative defenses.

(*Id.* at 323–24). Moreover, the Workers’ Compensation system must be considered as a whole for the purposes of a court-access challenge, and here, a remedy remained available, even though its amount was smaller than the Estate would deem appropriate. (*See id.* at 336). Similarly, a substantive due process challenge failed because the Estate was unable to prove that the amendments lacked a reasonable relationship to a legitimate government purpose. (*Id.* at 327). Affirming the ruling of the superior court, the supreme court held that amendments to the Alaska Workers’ Compensation Act did not violate procedural or substantive due process in allowing project owners and contractors the use of the exclusive remedy defense. (*Id.* at 320).

Kennedy v. Anchorage Police & Fire Retirement System

In *Kennedy v. Anchorage Police & Fire Retirement System*, 485 P.3d 1030 (Alaska 2021), the supreme court held that the Anchorage Municipal Codes require that court ordered damages or settlements be considered retroactive compensation in calculating retirement benefits; however, such retroactive compensation does not entitle retirees to accrue credited service for periods in which they actively withdrew retirement benefits. (*Id.* at 1038). Police officers Kennedy and Feliciano retired from the Anchorage Police Department in 2011 after submitting complaints of discrimination. (*Id.* at 1032). At this time, Kennedy and Feliciano began to withdraw retirement benefits. (*Id.*). In 2017 a jury found that this discrimination amounted to a constructive discharge, and awarded Kennedy and Feliciano lost past wages and benefits. (*Id.* at 1033). Kennedy and Feliciano subsequently sought a recalculation of their retirement benefits. (*Id.*). The Anchorage Police & Fire Retirement System (APFRS) calculates retirement benefits based on retirees’ final average compensation. (*Id.*). Kennedy and Feliciano argued that the lost wages and benefits awarded by the jury should be considered in evaluating their final average compensation. (*Id.* at 1037). The court first found that under the municipal codes, the APFRS is bound by the jury decision and must consider court ordered judgements or settlements when calculating final average compensation. (*Id.* at 1035–37). However, the court found that the lost wages awarded in the present case could not be considered in assessing Kennedy and Feliciano’s final average compensation. (*Id.* at 1038). The court reasoned that because Kennedy and Feliciano were already withdrawing retirement benefits during the period for which the lost wages were awarded, a recalculation of benefits would amount to Kennedy and Feliciano accruing credited service while also receiving retirement benefits. (*Id.*). The court found that this was not permitted under the Anchorage Municipal Codes. (*Id.*). Affirming the superior court, the supreme court held that while the municipal codes entitle retirees to a recalculation of benefits based on court orders or settlements, such retroactive compensation does not allow retirees to receive credited service while also receiving retirement benefits. (*Id.* at 1038).

Luong v. Western Surety Co.

In *Luong v. Western Surety Co.*, 485 P.3d 46 (Alaska 2021), the supreme court held that under the Little Miller Act, “labor” is defined as the work that is necessary to and forwards the project secured by the payment bond, and “notice” is effective the date the notice is sent, not the date it is received. (*Id.* at 48). After being hired in 2014, Luong performed labor for a municipal library remodeling project which was provided a surety bond by Western Surety Co. (*Id.*). By April 2015, Luong was no longer receiving payments, and after a concrete pour on October 9, 2015, he ceased working on the project. (*Id.*). Luong sent a request by registered and certified mail to the prime contractor for \$8,379.90 in back wages on January 6, 2016, 89 days after the concrete pour. (*Id.*). The request was received by the contractor on January 11, 2016, 94 days after the

concrete pour. (*Id.*). During trial, the district court excluded evidence of work completed by Luong after the October 9th concrete pour, concluding that supervisory tasks are only considered “labor” if they are performed on the job site. (*Id.* at 49). Additionally, the district court held that Luong failed to provide adequate notice since the notice was not received within 90 days of when labor was completed. (*Id.*). The supreme court reversed and remanded the lower court’s decision, finding that the district court’s definitions did not comport with the statutory purpose of Alaska’s Little Miller Act, to protect people who furnish labor or material for a state public works project from the risks of nonpayment. (*Id.* at 52, 56). Instead, the supreme court held that under the Little Miller Act, “labor” is defined as the work that is necessary to and forwards the project secured by the payment bond, and “notice” is effective the day the notice is sent, not the date it is received. (*Id.* at 48).

Metcalf v. State

In *Metcalf v. State*, 484 P.3d 93 (Alaska 2021), the supreme court held that repeal of the statutory reinstatement right for former members of the public employee retirement benefits system diminished those members’ accrued benefits, in violation of the Alaska Constitution. (*Id.* at 95). Metcalfe was a former state employee who left public employment in 1981, taking a refund of his retirement contributions and leaving membership in the state retirement system. (*Id.* at 95–96). At the time, a statute allowed former members of the state retirement system who re-entered state employment and repaid their refunded contributions plus interest to be reinstated in the retirement system. (*Id.* at 96). In 2005, the legislature revoked the reinstatement right, and Metcalfe filed a complaint alleging that the revocation of the reinstatement violated article XII section 7 of the Alaska Constitution, which requires that accrued retirement benefits of state employees not be diminished or impaired. (*Id.*). The superior court certified the case as a class action and granted the State’s motion for summary judgment. (*Id.* at 97). On appeal, the State argued that the relevant constitutional provision should only apply to retirement system members in their retirement, that Alaska should follow California case law on this matter, that the relevant constitutional provision applied to a contractual relationship which did not exist between the State and its former employees, and that former retirement system members should be distinguished from active members. (*Id.* at 99–100). The supreme court reasoned that Metcalfe and other former state employees reasonably relied upon the reinstatement statute when making employment decisions, and that the benefit was accrued as soon as Metcalfe enrolled in the retirement system. (*Id.* at 98–99). Therefore, the revocation of the reinstatement right was a diminishment of Metcalfe’s accrued benefits, in violation of the Alaska Constitution. (*Id.*). Reversing the lower court’s decision, the supreme court held that repeal of the statutory reinstatement right for former members of the public employee retirement benefits system diminished those members’ accrued benefits, in violation of the Alaska Constitution. (*Id.* at 102).

Murphy v. Fairbanks North Star Borough

In *Murphy v. Fairbanks North Star Borough*, 494 P.3d 556 (Alaska 2021), the supreme court held that, based on legislative history and intent, the two-year statute of limitations on disability claims under the Alaska workers’ compensation statute applies to impairment claims as well. (*Id.* at 566–69). A mechanic working for the Fairbanks North Star Borough injured his back in the course of his employment and received several surgeries in 2000. (*Id.* at 558–59). A doctor’s assessment first found him eligible for temporary total disability compensation and then, when he was deemed medically stable, permanent partial impairment benefits. (*Id.* at 559). The

following year, in 2001, a different doctor found that the injured worker had improved and suggested there was now a different level of impairment. (*Id.*) The Borough then filed an updated compensation report and had the injured worker’s benefits altered, which he did not challenge. (*Id.* at 560). In 2016, after the Borough controverted any care that exceeded the statutory frequency standards, the injured worker retained counsel and sued claiming his benefits had been incorrectly paid. (*Id.*) The Alaska Workers’ Compensation Board, and on appeal, the Alaska Workers’ Compensation Appeals Commission, agreed with the Borough that the two-year statute of limitations for claims for “compensation for disability” applies to impairments and therefore barred the suit. (*Id.* at 561–62). The supreme court evaluated the statute and, while noting that, if read plainly, the sentence discussing the statute of limitations only appears to apply to “disability,” its relationship to the following sentence makes it ambiguous. (*Id.* at 563–66). The court then affirmed the Commission’s decision, reasoning that based on legislative history and intent, the two-year statute of limitations on disability claims under the Alaska workers’ compensation statute applies to impairment claims as well. (*Id.* at 566–69).

State, Department of Corrections v. Wozniak

In *State, Department of Corrections v. Wozniak*, 491 P.3d 1081 (Alaska 2021), the supreme court held that an agency did not abuse its discretion in awarding attorneys’ fees as both a lump sum based on the attorney’s past work and ongoing statutory minimum fees based on future workers’ compensation benefits. (*Id.* at 1088). Wozniak, an Alaska corrections officer, was injured on the job, and the State disputed that he was permanently and totally disabled before ultimately conceding his disability status. (*Id.* at 1082). However, the parties were unable to agree on the amount of attorneys’ fees due to Wozniak’s attorney. (*Id.* at 1083). The Alaska Workers’ Compensation Board awarded attorneys’ fees two parts: a lump sum for actual hours billed during the dispute, and ongoing statutory minimum attorneys’ fees for the duration of Wozniak’s disability. (*Id.* at 1083–84). The State appealed to the Alaska Workers’ Compensation Appeals Commission, contending that the fee award was unreasonable. (*Id.* at 1084). The Commission affirmed the Board’s decision, and the State again appealed. (*Id.* at 1084–85). The supreme court affirmed the Commission’s decision, holding that the award of attorneys’ fees was not manifestly unreasonable given the amount of work performed by the attorney and the significant disability benefits Wozniak ultimately received. (*Id.* at 1086–87). Although the supreme court did not adopt all of the Commission’s reasoning, it noted that an award of attorneys’ fees above the statutory minimum was not unreasonable when considering the facts of the case and the objectives of the attorneys’ fee statute. (*Id.* at 1087). Affirming the Commission’s decision, the supreme court held that an agency did not abuse its discretion in awarding attorneys’ fees as both a lump sum based on the attorney’s past work and ongoing statutory minimum fees based on future workers’ compensation benefits. (*Id.* at 1088).

Sumpter v. Fairbanks North Star Borough School District

In *Sumpter v. Fairbanks North Star Borough School District*, 494 P.3d 505 (Alaska 2021), the Supreme Court held that workers’ compensation presumption analysis does not weigh the evidence presented during the first two stages of a workers’ compensation claim. (*Id.* at 514). Rather, the evidence a defendant introduces to rebut a presumption of compensability is assessed separately from the evidence a claimant used to establish the presumption. (*Id.*) Sumpter was employed as an intensive resource teacher aide. (*Id.* at 508). She reported an injury to her cervical spine after she repositioned a disabled student in his wheelchair (*Id.*) Sumpter had

serious preexisting cervical spine problems. (*Id.*). The Workers' Compensation Board determined that her work was not the substantial cause of her ongoing disability and need for medical care. (*Id.* at 513). The Appeals Commission affirmed the determination. (*Id.*). Sumpter appealed, arguing that the evidence relied upon by the Board should have been weighed against the conflicting evidence she provided. (*Id.* at 514). The Court determined that the test used to assess the evidence proffered by the defendant is whether "a reasonable mind" could reach the conclusion that the injury is not compensable if that reasonable mind credited the evidence. (*Id.* at 515). The Supreme Court thus held that workers' compensation presumption analysis does not weigh the evidence presented during the first two stages of a workers' compensation claim. (*Id.* at 514).

Werba v. Ass'n of Village Council Presidents

In *Werba v. Ass'n of Village Council Presidents*, 480 P.3d 1200 (Alaska, 2021), the supreme court held that (1) trial courts have the discretion to allow parties to cure deficiencies in summary judgment motions, and (2) testimony that a former employee may have been deceived about the temporary nature of a new position is not enough to establish parenthood-based discrimination. (*Id.* at 1206, 1210). The Association of Village Council Presidents (AVCP) hired a consulting firm which approached Werba regarding a work-from-home position shortly after she returned from maternity leave. (*Id.* at 1202–03). Werba gave up her position as Vice President of Finance to work-from-home as a Special Projects Accountant, but after eight months she was informed her position was terminated. (*Id.* at 1203). Werba sued AVCP, alleging parenthood discrimination as she was never informed the Special Projects Accountant position was temporary. (*Id.*). AVCP moved for summary judgment, but Werba argued it failed to meet its burden as the evidence included in the motion was unauthenticated. (*Id.*). AVCP filed a reply, including an affidavit from its general counsel authenticating the documents. (*Id.*). The supreme court affirmed the superior court's decision, reasoning that the trial court had discretion to allow parties to attempt to cure deficiencies by supplementing pending motions as long as the other party has an opportunity to respond. (*Id.* at 1206). The court further reasoned that the trial court did not err in granting summary judgment to AVCP, as testimony by AVCP's former human resource director that she believed Werba had been deceived about the temporary nature of the new position was insufficient to establish parenthood-based discrimination. (*Id.* at 1210). Affirming the lower court's decision, the supreme court held that (1) trial courts have the discretion to allow parties to cure deficiencies in summary judgment motions as long the other party has the chance to respond, and (2) testimony that a former employee may have been deceived about the temporary nature of a new position is insufficient to establish parenthood-based discrimination. (*Id.* at 1206, 1210).

Wilson v. State

In *Wilson v. State*, 478 P.3d 1217 (Alaska 2021), the supreme court held that neither public employees nor their counsel must be given notice of the privilege against self-incrimination in advance of an interview wherein employees' answers will be compelled under threat of the termination. (*Id.* at 1225–26). In March of 2016, the Department of Corrections (DOC) began investigating a complaint alleging that Wilson had forced a subordinate to provide him with prescription medications. (*Id.* at 1218). During interviews, Wilson was explicitly informed that the answers he provided would not be used against him in criminal proceedings. (*Id.* at 1219–20). Wilson made it clear that he understood this information. (*Id.*). Wilson was subsequently

terminated after refusing to answer questions. (*Id.*). Wilson sued the state for wrongful termination, arguing that the state violated his privilege against self-incrimination. (*Id.* at 1221). Wilson further argued that he was granted improper notice of his rights because notice was not provided to his attorney or provided in advance such that Wilson could consult with his attorney before interviews. (*Id.* at 1225). The court noted that there is a circuit split as to whether public employees must be explicitly informed of their privilege against self-incrimination when they are compelled to answer questions under threat of termination. (*Id.* at 1222). Here, the court reasoned it did not need to address this issue. (*Id.* at 1225). Wilson had been informed that his statements would not be used against him in criminal proceedings and had expressed his understanding of that privilege; therefore, the notice provided satisfied even the most protective standard. (*Id.* at 1225–26). Moreover, no circuit requires prior notice or notice to employees’ counsel. (*Id.* at 1226). Affirming the superior court’s grant of summary judgment to the State, the supreme court held that due process does not require notice of the privilege against self-incrimination be provided in advance of an interview to public employees or their counsel. (*Id.*).

ENVIRONMENTAL LAW

French v. State, Alaska Oil & Gas Conservation Commission

In *French v. Alaska Oil & Gas Conservation Commission*, 498 P.3d 1026 (Alaska 2021), the supreme court held that the Alaska Oil and Gas Conservation Commission (AOGCC) has jurisdiction over determining if a gas leak is waste and the AOGCC’s hearings must be supported by substantial evidence. (*Id.* at 1028). French petitioned the AOGCC for a hearing over a complaint of waste from a leaking gas line. (*Id.* at 1027). The AOGCC stated that it had already investigated the leak and found it was not waste because the gas line “had been ‘metered and severed from the property.’” (*Id.*). The AOGCC determined because the leak was not waste it, had no jurisdiction, and there could be no hearing. (*Id.*). The superior court affirmed. (*Id.*). The supreme court reversed, reasoning the AOGCC’s mission dictates its “jurisdiction over ‘all persons and property, public and private, necessary to’ investigate and identify oil and gas waste.” (*Id.* at 1028 (citing Alaska Stat. § 31.05.030(a) (2021))). The AOGCC cannot subvert the requirement under Alaska Statutes section 31.05.060(a) for hearings through conducting private investigations over whether a leak counts as waste. (*Id.*). Additionally, even if the AOGCC previously investigated a leak, its finding must be supported by substantial evidence, and here the administrative record contained no evidence. (*Id.*). Reversing the lower court’s decision, the supreme court held that the AOGCC has jurisdiction over determining if a gas leak is waste and the AOGCC’s hearings must be supported by substantial evidence. (*Id.*).

PLC, LLC v. State, Department of Natural Resources

In *PLC, LLC v. State, Department of Natural Resources*, 484 P.3d 572 (Alaska 2021), the supreme court held that a company that held an overriding royalty interest (ORRI) in a state oil and gas lease had standing to challenge a Department of Natural Resources (DNR) decision on the unit operator’s proposal for unit expansion. (*Id.* at 574). PLC held an ORRI in a state oil and gas lease operated by Hilcorp. (*Id.* at 575). Hilcorp applied to DNR to expand its unit including an 80-acre portion that PLC leased. (*Id.*). DNR reviewed Hilcorp’s application and proposed modifications to the application to remove the 80-acre PLC lease because DNR found it was not likely to produce natural gas in paying quantities. (*Id.*). Hilcorp agreed to the modification and DNR approved the unit expansion. (*Id.*). PLC appealed DNR’s decision to DNR’s Commissioner

arguing that Hilcorp’s original methodology to determine hydrocarbon presence was more accurate than DNR’s methodology. (*Id.*). The Commissioner denied PLC’s appeal finding PLC lacked standing because PLC held a nonpossessory interest in the unit and the superior court affirmed. (*Id.* at 575–76). The supreme court held PLC had standing, reasoning PLC had a sufficient personal stake in the DNR decision because if DNR granted the original unit expansion PLC would have benefited financially. (*Id.* at 577). Even though unit operators have the sole right to expand the unit, ORRI holders still have a stake in the boundaries of the unit. (*Id.*). Additionally, the court found DNR’s decision adversely affected PLC’s interest because DNR’s decision to exclude PLC’s lease led PLC to lose revenue. (*Id.* at 580–81). Reversing the superior court’s decision, the supreme court held an ORRI holder in a state oil and gas lease had standing to challenge a DNR decision on a unit operator’s proposal for expansion. (*Id.* at 583).

ETHICS & PROFESSIONAL RESPONSIBILITY

Disciplinary Matter Involving Chaobal

In *Disciplinary Matter Involving Chaobal*, 498 P.3d 617 (Alaska 2021), the supreme court held that a thirty-month suspension, with two years and one day to be served, is an appropriate sanction for an attorney’s misconduct when the attorney in separate cases has knowingly failed to follow nine different state ethics rules. (*Id.* at 629–30). Criminal defendants E.D., R.J., C.M., B.B., J.R., and civil plaintiffs P.B and H.H. all hired the attorney to represent them in their cases in both state and federal courts. (*Id.* at 619–26). During his representation, the attorney repeatedly failed to meet court deadlines, failed to make or respond to discovery requests, failed to take depositions, and failed to provide for fee arrangements. (*Id.*). With several clients, the attorney claimed he charged a flat fee but proceeded to request additional funds, sometimes in the middle of the night. (*Id.*). When several clients terminated services with the attorney, he refused to file the necessary pleadings, promptly turn over the client files, and refund their fees. (*Id.*). More than one client had to seek fee arbitration to recoup, and with one client the attorney was late paying the arbitration-awarded fee and later claimed a piece of art substituted for the monetary award. (*Id.* at 620–21). The Court found that the attorney violated the following Alaska Rules of Professional Conduct in at least one of the seven matters: Rule 1.3 (Diligence; R.J., B.B., and H.H.), Rule 1.4(a) (Communication: Case Status; E.D., B.B., J.R., and H.H.), Rule 1.4(c) (Communication: Notification if Lacking Malpractice Insurance; E.D., C.M., B.B., and J.R.), Rule 1.5(a) (Fees: Reasonableness; E.D., P.B., C.M., B.B., and J.R.), Rule 1.5(b) (Fees: Written Agreement if in Excess of \$1,000; E.D., C.M., B.B., and J.R.), Rule 1.15(d) (Safekeeping Property: Prompt Fund Delivery; E.D., P.B., B.B., C.M., J.R., and H.H.), Rule 1.16(d) (Declining or Terminating Representation; E.D., R.J., B.B., and H.H.), Rule 3.3 (Candor Towards the Tribunal; B.B.), Rule 8.1(b) (Bar Admission and Disciplinary Matters; P.B. and B.B.), as well as several Ethics Opinions. (*Id.* at 626–28). Per ABA Standards § 3.0, the Court weighed the duty violated, the lawyer’s mental state, the actual or potential injury caused by the lawyer’s misconduct, and the existence of aggravating or mitigating factors. (*Id.* at 628–30). The Court determined suspension for three years and one day was the appropriate discipline for Brown’s failure to meet the deadlines in two matters and failing to advance her clients’ matters without delay. (*Id.* at 683). The supreme court held that a thirty-month suspension, with two years and one day to be served, is an appropriate sanction for an attorney’s misconduct when the attorney in separate cases has knowingly failed to follow nine different state ethics rules. (*Id.* at 629–30).

Disciplinary Matter Involving Gayle Brown, Attorney

In *Disciplinary Matter Involving Gayle Brown, Attorney*, 481 P.3d 678 (Alaska 2021), the supreme court held that a three year and one day suspension with one year stay is an appropriate sanction for an attorney's misconduct when the attorney has failed to act with diligence and promptness in a postconviction case, failed to keep her client reasonably informed, and failed to make reasonable efforts to expedite litigation. (*Id.* at 678). Alaska appointed attorney Gayle Brown to represent client M.N. in a post-conviction relief action. (*Id.* at 679). Brown failed to respond to the State's motion to dismiss, and when the court re-opened the case on condition Brown would file an opposition to the State's motion, Brown also failed to meet that pleading deadline. (*Id.*). After M.N.'s multiple failed attempts to communicate with Brown, Brown finally filed a formal notice of appeal, more than one year late. (*Id.* at 680). According to M.N.'s affidavit, Brown never instructed M.N. that he had a right to appeal and did not explain the significance of the court's dismissal. (*Id.*). The Court found that Brown violated the following Alaska Rules of Professional Conduct in the M.N. matter: Rule 1.4(a) (Communication: Case Status) and Rule 3.2 (Expediting Litigation). (*Id.* at 681). Brown also represented client A.A. in a post-conviction relief action. (*Id.*). Brown repeatedly missed deadlines in A.A.'s proceedings, causing the court to dismiss the case. (*Id.*). The Court found Brown violated the following Alaska Rules of Professional Conduct in the A.A. matter: Rule 1.3 (Diligence), Rule 1.4(a) (Communication: Case Status), and Rule 3.2 (Expediting Litigation). (*Id.* at 682). Per ABA Standards § 3.0, the Court weighed the duty violated, the lawyer's mental state, the actual or potential injury caused by the lawyer's misconduct, and the existence of aggravating or mitigating factors. (*Id.*). The Court determined suspension for three years and one day was the appropriate discipline for Brown's failure to meet the deadlines in two matters and failing to advance her clients' matters without delay. (*Id.* at 683). The supreme court agreed with the legal analysis set out in stipulation and held that a three year and one day suspension with one year stay is an appropriate sanction for an attorney's misconduct when the attorney has failed to act with diligence and promptness in a postconviction case, failed to keep her client reasonably informed, and failed to make reasonable efforts to expedite litigation. (*Id.* at 678).

Geisinger v. State

In *Geisinger v. State*, 2021 Alas. App. LEXIS 97 (Alaska Ct. App. 2021), the court of appeals held that Alaska Professional Conduct Rule 3.3(a)(3) permits counsel to refuse to elicit witness testimony that counsel believes to be false, third-degree assault is not necessarily a lesser included offense of first-degree assault, and flawed jury instructions do not constitute structural error if a party's argument mitigates the error. (*Id.* at 6–7, 10–11, 18–19). Geisinger drove his car into the rear end of another car killing one person and injuring two others. (*Id.* at 1). The superior court convicted Geisinger “of six offenses: manslaughter, two counts of first-degree assault, driving under the influence, leaving the scene of an injury accident, and second-degree forgery.” (*Id.*). Geisinger appealed his sentence and the court of appeals affirmed. (*Id.*). Geisinger then applied for post-conviction relief, alleging his trial attorney and his appellate attorney represented him incompetently. (*Id.*). The superior court granted him relief on some claims and rejected his other claims. (*Id.*). The court of appeals rejected all of Geisinger's claims for post-conviction relief, reasoning his trial attorney properly excluded witness testimony that the attorney believed was false because Alaska Professional Conduct Rule 3.3(a)(3) authorizes attorneys to refuse to introduce evidence they know or reasonably believe to be false. (*Id.* at 6–7). The court of appeals found his trial attorney was not incompetent for failing to argue for a

jury instruction for a lesser offense of third-degree assault because the state’s theory alleging Geisinger committed a first-degree assault does not necessarily mean he committed a third-degree assault. (*Id.* at 10–11). Additionally, the court found Geisinger’s appellate attorney did not act incompetently for failing to argue reversal of Geisinger’s manslaughter and assault charges due to flawed jury instructions because the attorney corrected the error in the jury instructions by explaining the correct law to the jury during oral argument. (*Id.* at 18–19). Affirming in part and reversing in part, the court of appeals held that Alaska Professional Conduct Rule 3.3(a)(3) permits counsel to refuse to elicit witness testimony that counsel believes to be false, third-degree assault is not necessarily a lesser included offense of first-degree assault, and flawed jury instructions do not constitute structural error if a party’s argument mitigates the error. (*Id.* at 6–7, 10–11, 18–19, 27).

FAMILY LAW

Aubert v. Wilson

In *Aubert v. Wilson*, 483 P.3d 179 (Alaska 2021), the supreme court held that the superior court did not abuse its discretion in awarding a disproportionately high share of the marital estate to one spouse when the other spouse died after the divorce decree but before the distribution of marital property. (*Id.* at 191). Wilson filed for divorce from her husband, Aubert. (*Id.* at 183). The superior court granted Wilson’s motion to bifurcate proceedings, so that the parties became immediately divorced, and their property would be divided after trial. (*Id.*). After the court issued the divorce decree in Wilson’s favor, but before the property division trial, Aubert died, and his estate was substituted as a party. (*Id.*). The superior court found that Aubert’s death called for an unequal distribution of marital property, (*Id.* at 184), dividing the marital property 90% to 10% in favor of Wilson. (*Id.* at 183). Aubert’s estate appealed the court’s classification of several items as either premarital or marital property and the court’s disproportionate distribution of marital property. (*Id.* at 184). The supreme court found that the superior court committed several clear errors in its property classifications of the following items: a house and its related debt, (*Id.* at 186), a boat, (*Id.* at 188), two vehicles (*Id.* at 189), and credit card debt (*Id.* at 190). Regarding the disproportionate allocation of property to Wilson, the supreme court found that a trial court has broad latitude in dividing marital property and may consider each spouse’s future economic need in its distribution of marital property. (*Id.* at 191). Because the living spouse will encounter greater future economic need, it was not an abuse of discretion to award the living spouse a greater share of the marital estate. (*Id.* at 192). The supreme court held that the superior court did not abuse its discretion in awarding a disproportionately high share of the marital estate to one spouse when the other spouse died after the divorce decree but before the distribution of marital property. (*Id.*).

C.L. v. OPA

In *C.L. v. OPA*, 500 P.3d 995 (Alaska 2021), the supreme court held that the Alaska Rules of Professional Conduct are used to determine whether a guardian ad litem (GAL) has a disqualifying conflict of interest and the superior court must permit limited discovery for determining if a disqualifying conflict exists. (*Id.* at 996). In four Child in Need of Aid (CINA) cases, the superior court appointed Brenda Finley as GAL. (*Id.*). Finley disclosed that she is a foster parent in another CINA case, but she stated that this would not affect her ability to be an impartial GAL. (*Id.*). The parents in each of the CINA cases moved for an evidentiary hearing to

determine whether Finley should be disqualified as a GAL due to her relationship with the Office of Children’s Services (OCS) as a foster parent. (*Id.*). The supreme court affirmed the use of the Alaska Rules of Professional Conduct (specifically Rule 1.7(a)) for determining GAL disqualifying conflicts – instead of the Alaska Code of Judicial Conduct – reasoning that a GAL fulfills many of the same functions as a lawyer, and therefore, acts as an advocate in court. (*Id.* at 999–1000). The supreme court reversed the denial of the parents’ request for an evidentiary hearing, reasoning that the confidential nature of Finley’s ties to OCS as a foster parent permitted the parents to conduct limited discovery into the GAL’s potential conflicts of interest, as permitted by CINA Rule 8(f). (*Id.* at 1001). The supreme court held that the Alaska Rules of Professional Conduct are used to determine whether a guardian ad litem (GAL) has a disqualifying conflict of interest and the superior court must permit limited discovery for determining if a disqualifying conflict exists. (*Id.* at 996).

Christensen v. Seckin

In *Christensen v. Seckin*, 486 P.2d 181 (Alaska 2021), the supreme court held that Alaska lacked jurisdiction to modify child custody or support orders entered in a foreign country unless specific conditions were met. (*Id.* at 187). Seckin and Christensen married in 2012, Seckin gave birth to the couple’s child in Turkey in 2013, and while Seckin and the child were in Turkey the couple reached a mutual divorce agreement and the Turkish court awarded custody to Seckin. (*Id.* at 182). In 2017, Seckin and the child returned to Alaska, and in 2018 the Turkish divorce decree was registered in Alaska superior court and the couple filed a stipulation stating that Seckin had legal custody of the child. (*Id.* at 182–83). In 2019 Seckin and the child returned to Turkey, and Christensen subsequently filed a motion to modify the Turkish custody order. (*Id.* at 183). Christensen argued that Seckin agreed to Alaska jurisdiction when she registered the Turkish judgment in Alaska and when the couple filed a stipulation in Alaska court, but the superior court ruled that Alaska lacked jurisdiction to modify custody or support. (*Id.* at 184). The supreme court ruled that Seckin and Christensen’s stipulation did not modify the Turkish agreement, and therefore the stipulation did not transfer jurisdiction from Turkey to Alaska. (*Id.* at 185–86). Additionally, an Alaska court can only modify another jurisdiction’s order if Alaska has jurisdiction to make an initial determination and either the court of the other jurisdiction determines it no longer has jurisdiction or Alaska would be a more convenient forum, or neither the child nor a parent presently resides in the other jurisdiction. (*Id.* at 185 n.12). Since these conditions were not met, Alaska did not have jurisdiction to modify the Turkish custody order. (*Id.* at 186). Affirming the lower court’s decision, the supreme court held that Alaska lacked jurisdiction to modify child custody or support orders entered in a foreign country unless specific conditions were met. (*Id.* at 187).

Cynthia W. v. Department of Health & Social Services

In *Cynthia W. v. Department of Health & Social Services*, 497 P.3d 981 (Alaska 2021), the supreme court held that Alaska’s child-in-need-of-aid (CINA) laws for determining if a child is at substantial risk of sexual abuse do not require the superior court to distinguish a sexual abuse indictment from a conviction or make a finding that the underlying conduct of the indictment occurred. (*Id.* at 983). Office of Children’s Services (OCS) became aware that Cynthia W. had left her teen daughter in the custody of Joel, Cynthia’s boyfriend who was indicted by a grand jury on one count of sexual abuse of a minor in the first degree and two counts of sexual abuse of a minor in the second degree. (*Id.*). OCS, upon hearing that Cynthia was living with Joel,

attempted to remove the teen from the home and the superior court found that under AS 47.10.011(7), the teen was a child in need of aid based on substantial risk of sexual abuse. (*Id.* at 983–84). The supreme court, looking at the statutory language, rejected Cynthia’s argument that the court is required to weigh the probative value of an indictment in determining the statutory presumption outlined in AS 47.10.011(7). (*Id.* at 985). The court reasoned that the text does not distinguish between those convicted of a sex offense, those registered as a sex offender, and those that are under investigation for a sexual offense. (*Id.* at 984–85). The supreme court also rejected OCS’s argument that once the statutory presumption is established, the burden of proof then shifts to the parents to prove that the child isn’t at risk. (*Id.* at 985). The court reasoned that if OCS introduces sufficient evidence to establish the presumption under AS 47.10.011(7) and the parent sufficiently rebuts this evidence, it is for the superior court to weigh all the evidence and determine if the child is at substantial risk of danger. (*Id.*). The supreme court held that Alaska’s child-in-need-of-aid (CINA) laws for determining if a child is at substantial risk of sexual abuse do not require the superior court to distinguish a sexual abuse indictment from a conviction or make a finding that the underlying conduct of the indictment occurred. (*Id.* at 983).

In re Baron W.

In *In re Baron W.*, 498 P.3d 1045 (Alaska 2021), the supreme court held that the removal of a guardian is not a termination of parental rights nor a foster care placement under the Indian Child Welfare Act (ICWA), 21 U.S.C. §1912, and the standard used for removal of guardians of incapacitated persons applies to the removal of guardians of minors. (*Id.* at 1050–52). The state appointed the grandmother of an Indian child as the child’s guardian, but after drug use and other issues the superior court terminated the grandmother’s guardianship. (*Id.* at 1047). The grandmother appealed arguing the termination violated the ICWA because the state had not made active efforts to reunite the child with his family and the child would be substantially harmed if he was not returned to the grandmother. (*Id.* at 1050). She also argued the lower court abused its discretion in finding the child’s best interest was to remove her as guardian. (*Id.* at 1051). The supreme court affirmed, reasoning the requirements under the ICWA §1912 requiring active efforts to reunite the child with her family and serious harm from continued custody did not apply here because these sections only apply to termination of parental rights and foster care placement. (*Id.* at 1050). The grandmother was a guardian, not a parent nor a foster care placement, so the requirements under the ICWA §1912 do not apply. (*Id.* at 1050–51). Additionally, the superior court did not abuse its discretion because the standard for removal of guardians of incapacitated persons applied to the removal of guardians of minors and the superior court properly applied this standard. (*Id.* at 1052–54). Affirming the lower court’s decision, the supreme court held that the removal of a guardian is not a termination of parental rights nor a foster care placement under the Indian Child Welfare Act (ICWA), 21 U.S.C. §1912, and the standard used for removal of guardians of incapacitated persons applies to the removal of guardians of minors. (*Id.* at 1050–52).

In re Protective Proceedings of Nora D.

In *In re Protective Proceedings of Nora D.*, 485 P.3d 1058 (Alaska 2021), the supreme court held, under Alaska’s guardianship statute, Alaska Statute section 13.26.241(a), a respondent may refuse to answer questions in an interview other than questions about the respondent’s capacity to make personal medical decisions. (*Id.* at 1060). Nora’s grandson, Kevin, applied to be appointed as Nora’s legal guardian to replace her state conservatorship. (*Id.*). During a superior court

hearing regarding the guardianship, Kevin requested a mental examination conducted by his expert because Nora’s mental capacity was at issue. (*Id.*). The superior court granted the motion, ordered the mental examination, and forbid Nora from being silent during the examination. (*Id.* at 1061). Nora appealed to the supreme court. (*Id.*). The supreme court reversed the superior court, reasoning the text of section 13.26.241(a) supports a narrow exception to a respondent’s general right to refuse to respond to questions. (*Id.* at 1064–65). Common law, Supreme Court precedent, and the Alaska Constitution recognize a right to refuse medical treatment, so the state legislature created a requirement for respondent to answer questions to ensure there is sufficient evidence before a guardian takes over making decisions about respondent’s body. (*Id.* at 1066). The legislative history and policy support this reading because the legislature sought to increase due process protections and protect the rights of incapacitated persons with this statute. (*Id.* at 1066). Reversing the lower court decision, the supreme court held under Alaska Statute section 13.26.241(a) a respondent may only be compelled to answer questions about the respondent’s capacity to make personal medical decisions. (*Id.* at 1067).

Jordan v. Jordan

In *Jordan v. Jordan*, 480 P.3d 626 (Alaska 2021), the supreme court held that a lower court acted in error when it provided a “dollar for dollar” adjustment in a divorce asset distribution for non-divisible property instead of evaluating the financial condition of the parties holistically. (*Id.* at 638). During divorce proceedings, the superior court calculated an adjustment to the overall division of assets based on the husband’s VA disability pay. (*Id.* at 630) However, VA disability pay is not divisible by state courts. (*Id.* at 635) Nevertheless, the superior court adjusted the distribution of other assets to account for the husband’s disability pay to provide the wife a fair distribution. (*Id.* at 630). On appeal, the husband argued this was improper and that VA disability payments should not influence the equitable division of assets at all. (*Id.* at 638). The supreme court reversed the superior court’s award to the wife of compensation equivalent to a share of the husband’s VA disability benefits, reasoning that crafting a direct offset to this non-divisible asset is preempted by federal law. (*Id.*). Yet the court noted that these benefits can be considered for equitable division to assess the overall financial condition of the parties. (*Id.* at 637). Reversing the lower court’s decision, the supreme court held that a lower court acted in error when it provided a “dollar for dollar” adjustment in a divorce asset distribution for non-divisible property instead of evaluating the financial condition of the parties holistically. (*Id.* at 638).

Mariah B. v. Department of Health & Social Services

In *Mariah B. v. Department of Health & Social Services*, 499 P.3d 1021 (Alaska 2021), the supreme court held that the mother in a parental rights termination hearing did not waive her evidentiary objection by failing to raise the objection for each question during the hearsay testimony. (*Id.* at 1022). The Office of Children’s Services (OCS) called a supervisor as a witness at a termination hearing intended to terminate Mariah B.’s rights over her daughter. (*Id.*). Mariah B. objected on hearsay grounds to the supervisor’s testimony on the extent that it was based on the report of contact (ROC) notes logged by caseworkers in the OCS system and informal conversations with caseworkers. (*Id.* at 1022–23). The parties briefed the admissibility of the ROC notes and the supervisor’s hearsay testimony and after the briefing, the superior court stated that the testimony was temporarily deemed admissible, but the court reserved the right to rule otherwise after hearing more about the testimony. (*Id.* at 1023–24). OCS argues on appeal that the mother waived her objections by not objecting to each portion of the supervisor’s testimony

since the superior court only made a preliminary – not final – ruling on the admissibility of the evidence under Child in Need of Aid (CINA) Rule 18(f). (*Id.* at 1025). The supreme court found that the mother preserved her hearsay objections because the superior court ruled definitively on the admissibility of the supervisor’s testimony. (*Id.*). However, because the superior court did not detail in the trial record the reasons for or limitations on the admissibility of the testimony or how the testimony influenced the court’s termination of parental rights, the case was unreviewable and therefore remanded. (*Id.* at 1027–28). The supreme court held that the mother in a parental rights termination hearing did not waive her evidentiary objection by failing to raise the objection for each question during the hearsay testimony. (*Id.* at 1022).

Ronald H. v. Department of Health & Social Services, Office of Children’s Services

In *Ronald H. v. Department of Health & Social Services, Office of Children’s Services*, 490 P.3d 357 (Alaska 2021), the supreme court affirmed the lower court’s order to terminate a father’s parental rights, holding that the lower court did not err in finding that the Office of Children’s Services (OCS) had made sufficiently active efforts in providing services to prevent the breakup of the children’s family, as required by the Indian Child Welfare Act (ICWA). (*Id.* at 359–60). OCS petitioned to terminate the father’s parental rights because of his domestic violence and aggressive behavior. (*Id.* at 364). The lower court terminated his rights, and the father appealed, arguing that the lower court incorrectly found that OCS had met its active efforts burden. (*Id.*). The supreme court defined active efforts as when the state caseworker helps the parent meet the requirements of remedial and rehabilitative programs, rather than when the parent is required to meet them on his own. (*Id.* at 365). The court may consider a parent’s demonstrated lack of willingness to participate in treatment when determining whether OCS’s efforts were sufficiently active. (*Id.* at 366). The supreme court found that OCS made active efforts to help the father access rehabilitative services and psychological evaluation for medication, and that the father was unwilling and uncooperative in undertaking the tasks. (*Id.* at 367). Therefore, OCS met its active efforts burden, and the supreme court affirmed the lower court’s order to terminate the father’s parental rights. (*Id.* at 371).

HEALTH LAW

Beistline v. Footit

In *Beistline v. Footit*, 485 P.3d 39 (Alaska 2021), the supreme court held that a pharmacist’s expert testimony was insufficient to create a genuine issue of material fact about the prevailing standard of care for an internist, affirming the lower court’s decision to grant summary judgment to the medical providers in a medical malpractice case. (*Id.* at 40). A husband and wife, the Beistlines, sued medical providers after the wife suffered a seizure, allegedly due to the care of an internist. (*Id.* at 41). The medical providers moved for summary judgment, relying on the expert testimony of an internist. (*Id.*). The Beistlines relied on the expert testimony of a pharmacist. (*Id.* at 42). The lower court granted summary judgment to the medical providers, ruling that a pharmacist was unqualified to rebut the testimony of an internist about the standard of care for an internist. (*Id.*). The lower court relied on a statute governing professional negligence. (*Id.*). The Beistlines appealed. (*Id.*). The supreme court agreed with the lower court’s ruling, though its analysis was different. (*Id.* at 44). The supreme court relied on a statute governing the narrower field of medical malpractice. (*Id.* at 45). Affirming the lower court’s decision to grant summary judgment to the medical providers, the supreme court held that the

pharmacist's testimony was insufficient to create a genuine issue of material fact about the applicable standard of care for an internist. (*Id.* at 46).

Bohn v. Providence Health Services – Washington

In *Bohn v. Providence Health Services – Washington*, 484 P.3d 584 (Alaska 2021), the supreme court held that a healthcare provider was not immunized under Alaska's Health Care Decisions Act (HCDA) when the provider denied decisionmaking authority to a patient's agent and surrogate under the good faith belief that the patient's agent and surrogate were not acting in the patient's best interest. (*Id.* at 597). Bohn executed a power of attorney for healthcare, naming his parents as his healthcare agents with the authority to make medical decisions on his behalf in the event of his incompetence or incapacitation. (*Id.* at 586). Bohn was later hospitalized and placed in psychiatric observation after suffering from insomnia, disorientation, seizures, and hallucinations. (*Id.* at 587). Bohn's condition appeared to render him unable to make medical decisions for himself. (*Id.*). Bohn's healthcare providers administered to him various medications which his parents strongly and repeatedly objected to under their decisionmaking authority granted by the power of attorney. (*Id.* at 577–78). The providers continued with treatment after determining that Bohn's parents were not acting in his best interest, for which Bohn later filed suit. (*Id.* at 588–89). The supreme court reversed the lower court's determination that the HCDA granted immunity to healthcare providers that declined to comply with the medical decisions of a patient's agent or surrogate if, while acting in accordance with generally accepted health care standards, the providers determined in good faith that the agent or surrogate was not acting in the patient's best interest. (*Id.* at 596–97). Rather, the supreme court held that a healthcare provider seeking immunity under the HCDA in such circumstances must demonstrate two showings of good faith: the provider must act in good faith and in accordance with generally accepted healthcare standards, as well as have a separate good faith belief that the agent or surrogate lacked decisionmaking authority over the patient. (*Id.* at 594). Because the provider could not satisfy the second showing, it could not claim immunity for declining to comply with the parents' decisions on these grounds; notwithstanding, the court noted that other bases for immunity under the HCDA were potentially available. (*Id.* at 597). The supreme court thus held that a healthcare provider did not benefit from immunity under the HCDA when the provider denied decisionmaking authority to a patient's agent and surrogate under the good faith belief that the patient's agent and surrogate were not acting in the patient's best interest. (*Id.* at 597).

Bunton v. Alaska Airlines, Inc.

In *Bohn v. Providence Health Services – Washington*, 484 P.3d 584 (Alaska 2021), the supreme court held that a healthcare provider was not immunized under Alaska's Health Care Decisions Act (HCDA) when the provider denied decisionmaking authority to a patient's agent and surrogate under the good faith belief that the patient's agent and surrogate were not acting in the patient's best interest. (*Id.* at 597). Bohn executed a power of attorney for healthcare, naming his parents as his healthcare agents with the authority to make medical decisions on his behalf in the event of his incompetence or incapacitation. (*Id.* at 586). Bohn was later hospitalized and placed in psychiatric observation after suffering from insomnia, disorientation, seizures, and hallucinations. (*Id.* at 587). Bohn's condition appeared to render him unable to make medical decisions for himself. (*Id.*). Bohn's healthcare providers administered to him various medications which his parents strongly and repeatedly objected to under their decisionmaking authority granted by the power of attorney. (*Id.* at 577–78). The providers continued with treatment after

determining that Bohn’s parents were not acting in his best interest, for which Bohn later filed suit. (*Id.* at 588–89). The supreme court reversed the lower court’s determination that the HCDA granted immunity to healthcare providers that declined to comply with the medical decisions of a patient’s agent or surrogate if, while acting in accordance with generally accepted health care standards, the providers determined in good faith that the agent or surrogate was not acting in the patient’s best interest. (*Id.* at 596–97). Rather, the supreme court held that a healthcare provider seeking immunity under the HCDA in such circumstances must demonstrate two showings of good faith: the provider must act in good faith and in accordance with generally accepted healthcare standards, as well as have a separate good faith belief that the agent or surrogate lacked decisionmaking authority over the patient. (*Id.* at 594). Because the provider could not satisfy the second showing, it could not claim immunity for declining to comply with the parents’ decisions on these grounds; notwithstanding, the court noted that other bases for immunity under the HCDA were potentially available. (*Id.* at 597). The supreme court thus held that a healthcare provider did not benefit from immunity under the HCDA when the provider denied decisionmaking authority to a patient’s agent and surrogate under the good faith belief that the patient’s agent and surrogate were not acting in the patient’s best interest. (*Id.* at 597).

Matter of April S

In *Matter of April S*, 499 P.3d 1011 (Alaska 2021), the supreme court held that the Office of Children’s Services (OCS) could not admit a minor for voluntary commitment under the parental admission statute. (*Id.* at 1013). April, a minor in OCS custody, was brought to a hospital where staff placed her under emergency detention. (*Id.*). A social worker filed an order for involuntary commitment. (*Id.*). At the hearing, OCS argued that no hearing was necessary, as it had signed onto the commitment as April’s guardian and voluntary admissions do not require hearings. (*Id.* at 1014). At a later hearing, the court ruled that the initial thirty-day confinement was voluntary, and the next thirty days would be involuntary—only if the confinement extended beyond that would April be eligible for a jury trial or full evidentiary hearing. (*Id.* at 1015). The supreme court reversed the lower court’s decision, reasoning that OCS did not qualify under the voluntary admission statute. (*Id.* at 1019). The court relied on the statutory language, which authorizes a “parent or guardian” to commit children for mental health treatment, reasoning that OCS does not qualify as either a parent or guardian. (*Id.*). Therefore, OCS can only seek involuntary commitment, not voluntary. (*Id.* at 1020). Reversing the lower court, the supreme court held that OCS cannot admit a minor for voluntary commitment. (*Id.* at 1013).

Matter of Mabel B.

In the *Matter of Mabel B.*, 485 P.3d 1018 (Alaska 2021), the supreme court held that the substantive due process rights of involuntarily committed mental health patients are violated when procedural delays to patients’ release or extended hospitalization are caused by understaffed mental health hospitalization facilities. (*Id.* at 1026). State law allows for involuntary commitment of individuals suffering from mental illnesses who are reasonably believed to present a likelihood of serious harm to self or others or are gravely disabled as a result of mental illness. (*Id.* at 1019). Committed individuals must receive a mental health evaluation within 24 hours of arriving at an evaluation facility, after which a mental health professional can petition for an ex parte order authorizing hospitalization for evaluation at certain designated facilities. (*Id.* at 1020). The designated facility has 72 hours after the patient’s arrival to evaluate the individual and either release the patient or petition for extended hospitalization.

(*Id.*). There is no explicit statutory requirement regarding the amount of time that may pass between a facility receiving an ex parte order authorizing hospitalization and the facility completing the transfer of the committed individual to a designated facility. (*Id.*). Two women who were committed under state law were held without transfer to a designated facility for over two weeks. (*Id.* at 1020–23). Each petitioned for a review hearing to challenge their continued detention as a substantive due process violation. (*Id.* at 1023). The supreme court agreed and vacated orders from lower courts which had approved continued pre-transport detention at the evaluation facilities. (*Id.* at 1026). The supreme court determined that the State’s explanation for continued detention at the evaluation facility centered on problems arising from understaffed designated facilities. (*Id.*). The supreme court maintained that this did not satisfy the constitutional requirement of a reasonable relationship between the nature and duration of involuntary psychiatric commitment on the one hand, and the purpose for which an individual is committed on the other. (*Id.*). The supreme court thus held that the substantive due process rights of involuntarily committed mental health patients are violated when procedural delays to patients’ release or extended hospitalization are caused by understaffed mental health hospitalization facilities. (*Id.*).

Matter of Vern H.

In *Matter of Vern H.*, 486 P.3d 1123 (Alaska 2021), the supreme court held that (1) probable cause is the proper standard for review hearings when detaining an individual awaiting transportation for a civil commitment mental health evaluation, and (2) to detain the individual in jail while awaiting transport, the State must prove by clear and convincing evidence that detention is the least restrictive alternative. (*Id.* at 1125). Vern’s attorney petitioned the superior court for an order to hospitalize him for a mental health evaluation, as Vern had threatened to hang himself. (*Id.*). The next day, the police filed a notice stating they had placed Vern in jail as he had called the police and stated he was experiencing delusions and expressed a desire to kill himself and others. (*Id.*). The superior court found probable cause and granted the order, with Vern to remain in jail until transport to the hospital. (*Id.*). Vern then filed a motion for a review hearing, stating that detention must be reviewed under clear and convincing evidence, not probable cause, and that the State must prove by clear and convincing evidence that continued jailing was the least restrictive alternative. (*Id.*). The superior court held there was probable cause to conclude Vern had a mental illness and, given the probability he would harm himself, continued jailing was necessary. (*Id.* at 1128). In affirming the superior court’s decision, the supreme court reasoned procedural protections are adequate to guard an individual’s liberty interests and that a higher standard than probable cause could create a “revolving door.” (*Id.* at 1130). The court further reasoned that the State must prove continued detention is the least restrictive alternative by clear and convincing evidence. (*Id.* at 1130–31). While the State failed to meet this burden, the evidence at the hearing supported the superior court’s decision to not release Vern, so the error was harmless. (*Id.* at 1132). Affirming the lower court’s decision, the supreme court held that (1) probable cause is the applicable standard in review hearings for an individual detained while awaiting transportation for a mental health evaluation, and (2) the State must prove jail is the least restrictive alternative by clear and convincing evidence. (*Id.* at 1125).

Titus v. Department of Corrections

In *Titus v. Department of Corrections*, 496 P.3d 412, the supreme court held that “the matter at issue” in determining “whether an expert’s training, expertise, or certification is directly related to the matter at issue” in a medical malpractice action, refers to the underlying circumstances of the medical event or treatment giving rise to the action. (*Id.* at 412). Joel Titus died shortly after being treated for alcohol withdrawal syndrome in the emergency room at Fairbanks Memorial Hospital. (*Id.* at 414). Titus’s estate sued, among other parties, Golden Heart Emergency Physicians, PC “Golden Heart,” the company providing emergency room services at the hospital at the time of Titus’ treatment, for medical malpractice. (*Id.*). Golden Heart moved for summary judgment, relying on an affidavit from a board-certified emergency doctor stating that the doctors had not breached the relevant standard of care. (*Id.*). The estate opposed summary judgment with Dr. Lisa Lindquist’s affidavit stating that the Golden Heart doctors did in fact breach the standard of care. (*Id.*). Dr. Lindquist is not an emergency room doctor or certified in emergency medicine. (*Id.* at 415). Instead, Dr. Lindquist had learned about alcohol withdrawal in medical school and had participated in emergency medical clinical rotations. (*Id.*). The superior court granted Golden Heart’s summary judgment, finding that Dr. Lindquist was not qualified on the relevant standard of care for an emergency room physician. (*Id.*). The estate sought a motion in limine prohibiting the Department of Corrections, another defendant, from introducing any evidence blaming Golden Heart for Titus’s death, which the court denied. (*Id.*). The estate appealed, and the supreme court granted petition for appeal. (*Id.*). The supreme court found that while Dr. Lindquist was not certified in emergency care, the superior court had not addressed whether Dr. Lindquist’s certification was “directly related to the . . . matter at issue.” (*Id.* at 417). As a matter of first impression, the supreme court held that “matter at issue” in the medical malpractice context refers to the underlying circumstances of the medical event or treatment giving rise to the medical malpractice action. (*Id.* at 418). Therefore, whether an expert’s training, expertise, or certification is directly related varies depending on the facts and circumstances. (*Id.*). The supreme court then held it was error to not qualify Dr. Lindquist as an expert simply because she is not board certified in emergency medicine. (*Id.*). Therefore, it was error to grant summary judgment to Golden Heart because there is a dispute of fact as to whether the treating physicians adhered to the standard of care. (*Id.*). The “matter of issue” in medical malpractice suits refers to the underlying circumstances of the medical event at issue. (*Id.* at 412).

Trescot v. Foy

In *Trescot v. Foy*, 492 P.3d 1014 (Alaska 2021), the supreme court held that in reviewing a petition for new trial in a medical malpractice case, the trial court erred in admitting the affidavits of jurors as evidence supporting the petition, reversing the trial court’s grant of a mistrial for lack of evidence supporting the motion. (*Id.* at 1015). Foy brought a medical malpractice action against Dr. Trescot after Dr. Trescot prescribed a medication which allegedly caused Foy to suffer “uncontrolled body movements” diagnosed as “medication-induced dyskinesia.” (*Id.*). After the trial, the jury addressed two questions, each requiring ten out of twelve jurors to agree on an answer. (*Id.*). When polled at the request of Foy, all twelve jurors confirmed that they agreed with the verdict, but after the trial, three jurors signed affidavits that they disagreed with the verdict on one of the two questions. (*Id.* at 1015–16). Based on these affidavits, Foy moved for a mistrial, arguing that the jury has not reached a verdict on one of two necessary questions, and Dr. Trescot opposed the motion on the grounds that the affidavits were

inadmissible and that Foy waived the issue by failing to object to the manner of polling at the end of the trial. (*Id.* at 1016). The trial court admitted the affidavits at hearing and granted a mistrial. (*Id.*). The supreme court reasoned that juror affidavits could not be used to impeach a verdict outside of a few narrow exceptions, and those exceptions did not include inquiries into the final jury vote. (*Id.* at 1017 (citing Alaska Evid. R. 606(b))). Because the affidavits did “not contain extraneous prejudicial information or outside influences” that impacted the jury, and the jury was clearly instructed on the vote needed to render a verdict, the court declined to expand the exceptions to the rule against juror testimony. (*Id.* at 1018). The supreme court therefore held that in reviewing a petition for new trial in a medical malpractice case, the trial court erred in admitting the affidavits of jurors as evidence supporting the petition, reversing the trial court’s grant of a mistrial for lack of evidence supporting the motion. (*Id.* at 1015).

MARITIME LAW

State v. North Pacific Fishing, Inc.

In *State v. North Pacific Fishing, Inc.*, 485 P.3d 1040 (Alaska 2021), the supreme court held that a fishery resource landing tax imposed on two commercial fishing companies did not violate the Import-Export and Tonnage Clauses of the United States Constitution or 33 U.S.C. § 5(b). (*Id.* at 1045). The fishing companies did not catch or process fish in Alaska, but unloaded processed fish in Alaska ports and were thereby subject to a landing tax. (*Id.*). The companies sought a refund of the tax, arguing it was unconstitutional and a violation of 33 U.S.C. § 5(b). (*Id.* at 1046). The superior court held that the landing tax was unconstitutional under the Import-Export Clause because the companies’ fish product was in the export stream when the landing tax applied. (*Id.* at 1047). The superior court did not reach the companies’ other claims. (*Id.*). The supreme court held that the landing tax was constitutional under the Import-Export Clause because it did not prevent the federal government from speaking with one voice when regulating commercial relations with foreign governments, and because it did not disturb interstate harmony or tax goods merely flowing through Alaska’s ports. (*Id.* at 1049). Alternatively, under a different standard, the landing tax did not violate the Import-Export Clause because the tax was levied before the fish entered the stream of export commerce. (*Id.* at 1050). Nor did the landing tax violate the Tonnage Clause, because the tax was not imposed on the companies’ vessels or on the act of entering, trading in, or lying in Alaska’s ports, nor did it discriminate against vessels or impede commerce. (*Id.* at 1056). Finally, the landing tax did not violate 33 U.S.C. § 5(b) for the same reasons the tax did not violate the Import-Export or Tonnage Clauses. (*Id.* at 1057). Reversing the superior court’s decision, the supreme court held that the landing tax did not violate the Import-Export Clause, the Tonnage Clause, or 33 U.S.C. § 5(b). (*Id.* at 1058).

NATIVE LAW

Ahtna, Inc. v. Department of Natural Resources

In *Ahtna, Inc. v. Department of Natural Resources*, 2021 Alas. LEXIS 26 (Alaska, Mar. 12, 2021), the supreme court held that (1) the Alaska Native Claims Settlement Act (ANCSA), 43 U.S.C. §§ 1601–1629h extinguished aboriginal title and retroactively validated the State’s right of way over Native land, and (2) the right of way under Revised Statute 2477, 42 U.S.C. § 932 (repealed 1976) was limited to egress and ingress. (*Id.* at *13–15). Ahtna, Inc., a regional Alaska Native corporation, owned land through which a road travels. (*Id.* at *2). The State cleared land

along the road and removed a pay station that Ahtna, Inc. used to collect fees. (*Id.*). The State claimed it had obtained a 100-foot right of way under the since repealed R.S. 2477, which it argued included the use of the land for travel and recreational activities. (*Id.* at *2–3). Ahtna, Inc. sued, arguing the right of way did not apply and eventually sought summary judgment. (*Id.* at *6). The superior court granted partial summary judgment for the right of way only permitting ingress and egress, but denied Ahtna, Inc.’s claim that aboriginal title blocked the right of way. (*Id.*). Both parties appealed. (*Id.* at *7). The supreme court affirmed the lower court’s judgment, reasoning that precedent supported the conclusion that ANCSA extinguished aboriginal title and retroactively validated the conveyance of a right of way for the road. (*Id.* at *13–14). The court further reasoned that the right of way was limited to ingress and egress and therefore did not extend to recreational activities, as the term “right of way” in R.S. 2477 and its understanding at the time the law was in effect had a limited scope. (*Id.* at *17–18). Affirming the lower court’s decision, the supreme court held that (1) ANCSA extinguished aboriginal title and retroactively validated the State’s right of way to a road through Native land, and (2) the State exceeded the scope of its right of way under R.S. 2477 in clearing land for recreational activities, as it was limited to egress and ingress. (*Id.* at *13–15).

Clark J. v. State, Department of Health & Social Services, Office of Children’s Services

In *Clark J. v. State, Department of Health & Social Services, Office of Children’s Services*, 483 P.3d 896 (Alaska 2021), the supreme court reversed the Superior Court’s termination of parental rights, finding clear error where the Office of Children’s Services (OCS) had failed to make active efforts to reunite Indian children with their father. (*Id.* at 903–04). OCS took custody of three children in 2016 and for the following two years was unable to contact Clark J., the children’s father. (*Id.* at 898). During that time, OCS focused its efforts primarily on the children’s mother, but continued to attempt to contact Clark J. through his tribe, through friends and family, and by sending him a letter in jail. (*Id.* at 902). In early 2018, OCS successfully reached Clark through Facebook, though after attending one permanency hearing, Clark was incarcerated and contact again fell through; Clark initiated contact with OCS in 2019. (*Id.* at 898–99). For the two years following, an OCS caseworker worked with Clark, but failed to create a family contact plan, to personally coordinate phone calls with his children, or to set up drug testing or parenting classes. (*Id.* at 900). The supreme court reversed the superior court’s findings that OCS’s efforts in the first two years of the case were sufficient to satisfy the active efforts requirement, finding instead that the minimal efforts to assist Clark in maintaining contact with his children or to coordinate drug testing and parental services represented an extreme failure to meet its obligation during half of the time in question. (*Id.* at 904). The supreme court further clarified that it was an error for the superior court to rely upon the children’s mother’s stipulation to OCS’s adequate efforts as evidence of OCS’s efforts towards Clark where Clark had not participated in the stipulations. (*Id.* at 901–02). Reversing the decision of the superior court, the supreme court found clear error in terminating parental rights where OCS had failed to make active efforts to reunite Indian children with their father. (*Id.* at 903–04).

Scudero v. State

In *Scudero v. State*, 496 P.3d 381 (Alaska 2021), the supreme court held that an Alaska Native’s fishing rights did not exempt him from the State’s fishing regulations. (*Id.* at 383). Scudero, a member of the Metlakatla Indian Community, was charged with not having a fishing permit, fishing in closed waters, and unlawful possession of fish. (*Id.* at 384). At trial, Scudero argued

that under the reserved rights doctrine he was not violating the law, based on federal regulations and President Woodrow Wilson’s proclamation that the area around the island was part of the Reserve. (*Id.* at 383, 385). The jury found Scudero guilty on all three counts and he appealed to the court of appeals, which asked the supreme court to take jurisdiction as the case involved an important constitutional question. (*Id.* at 385). In affirming the trial court on Scudero’s convictions, the supreme court relied on the conservation necessity principle, which recognizes that while federal statutes generally control, when off-reservation hunting and fishing rights are reserved by federal treaties they are still subject to state regulation as long as the regulation is reasonable and necessary and its application to native populations is necessary for conservation. (*Id.* at 386–88). The court reasoned that Scudero’s convictions were covered by the conservation necessity principle as the purpose of the Limited Entry Act under which he was convicted has been recognized as conservation of resources and maintaining a robust fishing industry. (*Id.* at 388–89). Affirming the trial court, the supreme court held that aboriginal or reserved fishing rights did not exempt an Alaska Native from the State’s commercial fishing regulations. (*Id.* at 388).

Walker E. v. State, Department of Health & Social Services, Office of Children’s Services

In *Walker E. v. State, Department of Health & Social Services., Office of Children’s Services*, 480 P.3d 598, 607 (Alaska 2021), the supreme court upheld the termination of parental rights under the Indian Child Welfare Act (ICWA) and AS 47.10 where the Office of Children’s Services (OCS) had made sufficient active efforts to prevent breakup of the Indian family, (*Id.* at 607.), OCS presented sufficient evidence of the likelihood of future harm to the children, (*Id.* at 609–10.), and the “totality of the circumstances” indicated that termination was in the children’s best interests. (*Id.* at 611–12). OCS took Walker E.’s five children into custody after discovering that the children each suffered from some combination of staph infections, sores, drug exposure, poor hygiene, or lice, and the children also reported instances of domestic violence between their parents, which the parents admitted. (*Id.* at 602–03). From August of 2018 to the date of trial in February 2020, OCS communicated with Walker, referring him to substance abuse services, domestic violence classes, parenting classes, and drug-testing programs; he failed to meaningfully comply with any part of his reunification program, and only meaningfully participated in his visits with his children. (*Id.* at 603–05). At trial, OCS presented an expert with a master’s degree in social work and years of experience at OCS, including supervising the Anchorage unit of Alaska Native Family Services. (*Id.* at 609–10). The Supreme Court reviewed the record as a whole in concluding that OCS met its obligations, noting that while lapses in the effort had occurred, OCS’s overall commitment to overcoming communication barriers and offering services to aid Walker and his family demonstrated adequate effort to reunify the family. (*Id.* at 611). The Court found that OCS’s expert’s education and experience supported the inference that she was qualified as required by ICWA; her opinion, alongside independent evidence of domestic violence, substance abuse, and neglect, therefore provided adequate evidence. (*Id.* at 611–12). Lastly, the Supreme Court noted that the superior court had considered several of the statutory factors of “best interests,” concluding that there was no clear error in weighing Walker’s lack of effort, the likelihood of harm, and the history of harm more heavily than the children’s heritage or the death of their mother. (*Id.*). The Alaska Supreme Court upheld the termination of parental rights under the ICWA and AS 47.10 where OCS had made sufficient active efforts to prevent breakup of the Indian family, (*Id.* at 607.), OCS presented sufficient

evidence of the likelihood of future harm to the children, (*Id.* at 609–10.), and the “totality of the circumstances” indicated that termination was in the children’s best interests. (*Id.* at 611–12).

PROPERTY LAW

Dickson, Trustee of Kelly A. Dickson 2008 Trust v. State

In *Dickson, Trustee of Kelly A. Dickson 2008 Trust v. State*, 487 P.3d 584 (Alaska 2021), the supreme court held that the superior court did not abuse its discretion when it decided to uphold an unusually large attorney’s fee award after considering and rejecting factors relevant to reduction. (*Id.* at 594–95). Dickson, trustee of the Kelly A. Dickson 2008 Trust, and DeFusco filed a quiet title action to invalidate an RS 2477 right of way and a prescriptive easement over land they owned near Big Lake. (*Id.* at 588). Following a 27-day bench trial in 2016, the superior court found in favor of the State and awarded the State approximately \$205,000 in attorney’s fees. (*Id.*). Dickson and DeFusco appealed the decision, and the Alaska supreme court upheld the merits of the decision but remanded the attorney’s fees award for further consideration. (*Id.*). The superior court made specific findings under Rule 82(b)(3)(I) and (J) as directed but upheld the award. (*Id.* at 588–89). Dickson and DeFusco appealed this decision, and they argued that the superior court abused its discretion when it failed to conclude that factors (I) and (J) should result in a downward adjustment. (*Id.* at 589). The superior court considered the complexity and length of the case when determining, under factor (I), that similarly situated litigants would not be deterred by this attorneys’ fee award, and the supreme court did not find any error in this analysis. (*Id.* at 591). Under its factor (J) analysis, the superior court determined that the State had not used the case to set factual or legal precedent, did not address claims of neighboring properties, was not a case of first impression, and would not have been litigated if Dickson and DeFusco had not initiated it. Based on these considerations, the superior court concluded that the fees incurred had not been the result of considerations beyond the case, and the supreme court did not find error in this analysis. (*Id.* at 592–93). The supreme court affirmed the attorney’s fees award, holding that that the superior court did not abuse its discretion when it decided to uphold an unusually large attorney’s fee award after considering and rejecting factors relevant to reduction. (*Id.* at 594–95).

Griswold v. Homer Advisory Planning Commission

In *Griswold v. Homer Advisory Planning Commission*, 484 P.3d 120 (Alaska 2021), the supreme court held a city planning commission properly granted a business a conditional use permit for setback reductions. (*Id.* at 123–24). The Reynoldses, owners of a bicycle shop, applied to Homer’s Advisory Planning Commission (the Commission) for a conditional use permit to extend their store’s entryway into a setback required in the Homer City Code. (*Id.* at 124). Griswold, a local property owner, expressed opposition to the project, claiming the Commission could not grant the setback reduction because it did not count as a use, so it should be a request for a variance and the setback reduction may cause issues with snow removal. (*Id.* at 124–25). The Commission approved the conditional use permit application. (*Id.* at 125). Griswold appealed first to an administrative law judge, and then to the superior court, which both affirmed the grant of the conditional use permit. (*Id.*). Griswold appealed, raising similar arguments to his original opposition and claiming the superior court judge should be disqualified because of his comment that Griswold pursued the litigation based on “some old grudge.” (*Id.*). The supreme court found the Commission properly granted a setback reduction with a conditional use permit

rather than a variance because the City of Homer has legislative discretion in granting conditional use permits for setback reductions and the Commission properly applied the city code in granting the permit. (*Id.* at 126–28). Additionally, the staff report, support from the city planner, and testimony from neighbors provided substantial evidence to support the Commission’s findings. (*Id.* at 128–29). The supreme court denied the request to disqualify the superior court judge, reasoning the judge’s comments were reasonable opinions and not an improper bias. (*Id.* at 129–30). Affirming the superior court’s decision, the supreme court held a city planning commission properly granted a business a conditional use permit for setback reductions. (*Id.* at 123–24).

Happy Farmer, LLC v. Alaska State Fair

In *Happy Farmer v. Alaska State Fair*, 497 P.3d 568 (Alaska 2021), the supreme court held that a vendor’s entry into agreement with a fair organizer for use of a merchandise booth inside a fairground building did not create a constructive bailment or a bailment implied by fact that would impose liability upon the organizer. (*Id.* at 470, 472). Happy Farmer, LLC, doing business as Releaf Alaska (“Releaf”) entered into a lease with Alaska State Fair, Inc. (“Fair”). (*Id.* at 469). The lease incorporated a handbook, which explicitly stated that liability insurance did not cover merchandise and the Fair assumed no responsibility for theft of any type. (*Id.*). Releaf, having left some of its merchandise at the fairground overnight, discovered that a significant portion of its merchandise had been stolen. (*Id.*). Releaf sued Fair, alleging breach of contract and bailment claims. (*Id.*). Fair won at summary judgment because the lease did not obligate Fair to protect any vendor’s merchandise from theft. (*Id.*). Releaf appealed, contending that the superior court erred in failing to recognize a constructive or implied bailment. (*Id.*). The supreme court affirmed the superior court’s decision, finding that neither constructive nor implied bailment applied to the undisputed facts. (*Id.* at 470, 472). First, constructive bailment did not apply because Fair did not receive Releaf’s merchandise by mistake, and the supreme court was unaware of any circumstances that would have imposed legal obligations. (*Id.* at 470). Second, implied bailment did not apply because Fair did not have exclusive possession of Releaf’s merchandise after operating hours. (*Id.* at 471). Affirming the lower court’s decision, the supreme court held that a vendor who consents to a lease agreement with a fair organizer absolving the organizer of liability in instances of theft does not have either a constructive or implied bailment. (*Id.* at 470, 472).

Jigliotti Family Trust v. Bloom

In *Jigliotti Family Trust v. Bloom*, 497 P.3d 472 (Alaska 2021), the Supreme Court held that parties to a quiet title action are entitled to a final judgment quieting title separate from a trial court’s findings and conclusions. (*Id.* at 474). The Jigliotti Family Trust purchased property from an owner that had negotiated use of an access road from the neighboring owner. (*Id.* at 475). The neighboring owner later sold their property to the Blooms. (*Id.*). Over at least a decade, the Blooms dictated the terms of the Jigliotti Family Trust’s occasional use of the access road. (*Id.*). The Trust eventually sought to quiet title to the access road, though the lower court determined that the Blooms had partially extinguished the easement by prescription. (*Id.* at 480). While it affirmed the decision, the Court held that the parties were nonetheless entitled by Alaska Civil Rule 58 to a separate judgment addressing the legality of the original license and the validity of the easement up to the point on the Bloom’s property where it was now extinguished by

prescription. (*Id.*). The Supreme Court thus held that parties to a quiet title action are entitled to a final judgment quieting title separate from a trial court’s findings and conclusions. (*Id.* at 474).

Kimp v. Fire Lake Plaza II, LLC

In *Kimp v. Fire Lake Plaza II, LLC*, 484 P.3d 80 (Alaska 2021), the supreme court held that, barring ambiguity, the language of the lease controls when determining breach of lease claims, and that not paying rent is not the type of economic loss required for a promissory estoppel claim. (*Id.* at 88–90.). Fire Lake Plaza II, LLC (Fire Lake) and Quake! Brewing Company, LLC (Quake) entered into a 66-month lease, which included a provision holding Kimp personally liable if Quake violated the lease. (*Id.* at 84). The lease included a rent-free access period, but after that period expired Quake continued to not pay any rent and there was a dispute as to whether there was an oral agreement to extend the rent-free access period. (*Id.* at 83–85). A Fire Lake representative changed the locks on the property and sent Kimp a notice of default. (*Id.*). On appeal, Kimp argued that the superior court’s decision to grant Fire Lake’s motion for summary judgement, deny his motion for summary judgement, and award Fire Lake damages was improper. (*Id.* at 84–86). The court looked to the language of the lease and found that there was no ambiguity in the provision stating that failure to pay the rent was grounds for immediate default, so Fire Lake acted appropriately by not providing time to cure the default. (*Id.* at 88). The court also found that the lease clearly allowed Fire Lake to enter without notice and relet the unit as one of the possible remedies for a default of the lease. (*Id.* at 90). Finally, the court held that in order for Kimp to succeed on his promissory estoppel claim concerning the rent abatement period, he had to show “a reasonably foreseeable, substantial change in position” and, since his failure to pay rent was a positive financial gain for him, it did not qualify as such a change. (*Id.* at 88–89). The supreme court affirmed the decision below, holding that barring ambiguity, the language of the lease controls when determining breach of lease claims, and that not paying rent is not the type of economic loss required for a promissory estoppel claim. (*Id.* at 93, 88–90).

Randle v. Bay Watch Condominium Ass’n

In *Randle v. Bay Watch Condominium Ass’n*, 488 P.3d 970 (Alaska 2021), the supreme court affirmed the superior court’s grant of a preliminary injunction and declaratory order interpreting the governing documents of the condominium association. (*Id.* at 974–75). The defendant refused to allow representatives of the condominium association where he owned a unit to access a common crawl space through his unit – the only entry point available to inspect certain water pipes. (*Id.* at 972–73). The superior court ordered a preliminary injunction compelling the defendant to grant access to the association, which dropped one of its claims after finding that there was no water damage in the crawl space. (*Id.* at 973). The superior court then went on to interpret the association’s declaration and grant a declaratory judgment that the association had a limited right of entry into the defendant’s unit when needed to access the crawl space. (*Id.*). The supreme court found that the superior court’s grant of the preliminary injunction was not an abuse of discretion because it was reasonable to find that the risk for potential leaks and mold in the crawl space outweighed the defendant’s privacy interests. (*Id.* at 974). The supreme court further found that the superior court’s grant of declaratory relief was not in error because the association’s declaration of “Rights of Entry” reasonably conveyed a right to enter a private unit to the association, provided that the association gave the unit’s owner advance request for entry. (*Id.* at 975–76). Lastly, the supreme court found that the award of attorney’s fees to the

condominium association was not an abuse of discretion because the superior court fully considered the relative merit of the parties' claims and awarded less than half the presumptive statutory award. (*Id.* at 979). Therefore, the supreme court affirmed the superior court's grant of a preliminary injunction and declaratory order interpreting the governing documents of the condominium association. (*Id.* at 974–75).

Thomas v. Joseph P. Casteel Trust

In *Thomas v. Joseph P. Casteel Trust*, 496 P.3d 403 (Alaska 2021), the supreme court upheld a nonjudicial foreclosure because the junior lienholder was not prejudiced by a failure to provide supplemental notice, the sale price did not warrant the foreclosure being set aside, and there was not sufficient evidence of fraud. (*Id.* at 410–12). Elkins bought real property from Frelin with a promissory note to Frelin backed by a recorded deed of trust naming Frelin the beneficiary, Elkins the trustor, and Fidelity Title Agency of Alaska, LLC as the successor trustee. (*Id.* at 407). Elkins defaulted and Frelin allowed Fidelity to begin a nonjudicial deed of trust foreclosure. (*Id.*). The property was encumbered by delinquent property taxes, a condominium lien, a judgement lien held by Thomas, and a child support lien held by Alaska Child Support Services Division (CSSD) for Mary Elkins. (*Id.*). Fidelity gave all of the interested parties notice of the default and pending foreclosure, but it did not provide CSSD statutorily required supplemental notice. (*Id.* at 408). Casteel Trust was the only bidder at the foreclosure sale and purchased the property for approximately 9% of the property's estimated value. (*Id.*). Thomas filed suit arguing the foreclosure was voidable because Fidelity failed to provide supplemental notice, the sale price was “grossly inadequate,” and fraud, but the superior court dismissed Thomas's claims. (*Id.* at 409). The supreme court affirmed, reasoning Fidelity's failure to provide supplemental notice to CSSD did not impact the fundamental fairness of the transaction and this lack of notice did not prejudice Thomas. (*Id.* at 410). Additionally, the sale price was not so grossly inadequate that it indicated fraud. (*Id.* at 410-11). Affirming the lower court's decision, the supreme court upheld a nonjudicial foreclosure because the junior lienholder was not prejudiced by a failure to provide supplemental notice, the sale price did not warrant the foreclosure being set aside, and there was not sufficient evidence of fraud. (*Id.* at 410–12).

TAX LAW

Fairbanks Gold Mining, Inc. v. Fairbanks North Star Borough Assessor

In *Fairbanks Gold Mining, Inc. v. Fairbanks North Star Borough Assessor*, 488 P.3d 959 (Alaska 2021), the supreme court held that value accrued from waste stripping was not exempt from local revenue taxation. (*Id.* at 966). Under Alaska law, “natural resources in place” are exempt from local government taxation. (*Id.*). This case arose after a mining company disputed a local tax assessor's valuation of its mine, arguing that waste stripping—the process of removing “economically barren surface materials”—should not be considered in the valuation under this statute. (*Id.* at 962–63). After appealing unsuccessfully to the local Board of Equalization, the company appealed to the superior court, which ultimately affirmed the decision of the Board. (*Id.* at 964–65). On appeal to the supreme court, the company argued that any value attributable to waste stripping accrues to the ore deposit itself and is therefore tax exempt. (*Id.* at 966). The supreme court disagreed, likening waste stripping to any other physical improvement to a property. (*Id.*). Further, as a matter of statutory interpretation, the text seemed to more naturally countenance ores than waste rocks. (*Id.*). Affirming the decision of the superior court, the

supreme court held that value accrued from waste stripping was not exempt from local revenue taxation. (*Id.* at 966).

TORT LAW

Punches v. McCarrey Glen Apartments, LLC

In *Punches v. McCarrey Glen Apartments, LLC*, 480 P.3d 612 (Alaska 2021), the supreme court held that expert testimony is necessary to demonstrate personal injury from mold exposure and a tenant must make out a prima facie case that the property management company breached the habitability provision of the lease before conducting additional discovery. (*Id.* at 625, 622). Punches, a tenant in a building complex owned by of McCarrey Glen Apartments, LLC, sued McCarrey Glen Apartments, LLC for negligently failing to eradicate the mold in her apartment, resulting in personal injury and property damage. (*Id.* at 615). She argued this was a breach of the habitability provision of her lease. (*Id.* at 614). At trial, Punches did not produce expert testimony to support her claim that her personal injuries, including mucormycosis, a respiratory infection, skin abscesses, and chronic fatigue, resulted from exposure to mold. (*Id.* at 625). In fact, Punches did not provide sufficient evidence linking the mold to her injuries. (*Id.* at 622). The jury returned a verdict in favor of the apartment complex and the Superior Court entered judgment in accordance with the jury's verdict. (*Id.* at 619). On appeal, Punches argued it was an abuse of discretion for the court to deny her motion to compel discovery and the court erred by granting partial summary judgment on her personal injury claim to the apartment complex. (*Id.* at 624). The supreme court affirmed the lower court's decision, reasoning that Punches was required to make out her prima facie case in order to allow additional discovery and she needed to present expert testimony to overcome the motion for partial summary judgment. (*Id.* at 622, 624). Affirming the lower court's decision, the supreme court held that expert testimony is necessary to demonstrate personal injury from mold exposure and a tenant must make out a prima facie case that the property management company breached the habitability provision of the lease before conducting additional discovery (*Id.* at 625, 622).

TRUSTS & ESTATES LAW

Matter of Estate of Rodman

In *Matter of Estate of Rodman*, 498 P.3d 1054 (Alaska 2021), the supreme court held that that the statute of frauds barred enforcement of alleged contracts for the state of land and that the alternative remedy of restitution was not warranted in all but one property. (*Id.* at 1073). After Alexina Rodman ("Alexina") died and left a will disposing of several parcels of real property and two trailers, her ex-husband Glenn Rodman ("Glenn") filed claims against her estate for those proeptries. (*Id.* at 1060.). Glenn claimed that Alexina had transferred title to three of those propertie to him and that they had agreed on mutual life estates for two of the properties, which, after their deaths, would be sold and the proceeds given solely to their great-grandchild. (*Id.*). The estate rejected Glenn's claims, citing the statute of frauds and the absence of any written agreement. (*Id.*). The case first reached the supreme court, which remanded to the superior court to decide ownership of a contested trailer, believing that revealing who owned the trailer would distill ownership of the other contested property. (*Id.* at 1062.). On remand, the superior court issued an order describing key facts and legal issues left to be decided. (*Id.*). The order advised the parties to either request another opportunity to present evidence or allow the

court to decide based on the existing record. (*Id.*). However, due to an error by the clerk of court, Glenn never received the notice, and therefore never offered new evidence. (*Id.*) the superior court entered a final decision, denying all of Glenn's claims of ownership and for restitution. (*Id.*) Glenn appealed, arguing that the piecemeal process and lack of evidentiary hearings deprived him of his due process rights, and that the superior court misapplied the statute of frauds in not recognizing enforceable contracts between Alexina and Glenn. (*Id.*). The supreme court held that Glenn could not raise the issue of the clerk's error before first seeking relief under Alaska Rule of Civil Procedure 60(b)(1). (*Id.* at 1063). Glenn also waived his due process arguments because he never argued to the trial court that due process entitled him to specific procedures. (*Id.* at 1064.). The supreme court found that the superior court did not err in denying Glenn's claims to ownership of the contested lots and the trailer for two reasons. First, the superior court's findings regarding Glenn's credibility were not clearly erroneous. (*Id.* at 1067). Second, the superior court properly found that Glenn's evidence did not show clear and convincing evidence of a contract or his ownership over any of the contested lots or chattel. (*Id.* at 1068, 1069, 1070). Finally, the supreme court found that the superior court did not commit clear error in denying restitution for two of the lots and the trailer but remanded for additional findings regarding the third lot (named Lot 2). (*Id.* at 1073). Affirming in part and reversing and remanding for a sole issue, the supreme court found that a series of alleged oral agreements were not enforceable under the statute of frauds. (*Id.*).