STATE OF ALASKA

Legislative Affairs Agency

A

REPORT TO THE

THIRTY-FIRST STATE LEGISLATURE

Listing Alaska Statutes with
Delayed Repeals or Delayed Amendments
and
Examining Court Decisions
and Opinions of the
Attorney General
Construing Alaska Statutes

Prepared by
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DECEMBER 2019

A REPORT TO THE THIRTY-FIRST STATE LEGISLATURE

Listing Alaska Statutes with Delayed Repeals, Delayed Enactments, or Delayed Amendments and Examining Court Decisions and Opinions of the Attorney General Construing Alaska Statutes

The report lists Alaska Statutes that will be amended or repealed between February 29, 2020, and March 1, 2021, according to laws enacted before the 2020 legislative session.

The report also examines published cases construing Alaska Statutes that were decided by the courts and reported between October 1, 2018, and September 30, 2019,

and

Opinions of the Attorney General that were made available through Internet distribution between October 1, 2018, and September 30, 2019.

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INTRODUCTION

AS 24.20.065(a) requires that the Legislative Council annually examine administrative regulations, published opinions of state and federal courts and of the Department of Law that rely on state statutes, and final decisions adopted under the Administrative Procedure Act (AS 44.62) to determine whether or not

(1) the courts and agencies are properly implementing legislative purposes;
(2) there are court or agency expressions of dissatisfaction with state statutes or the common law of the state;
(3) the opinions, decisions, or regulations indicate unclear or ambiguous statutes;
(4) the courts have modified or revised the common law of the state.

Under AS 24.20.065(b) the Council is to make a comprehensive report of its findings and recommendations to the members of the legislature at the start of each regular session.

This edition of the review by the attorneys of the Legislative Affairs Agency examines the opinions of the Alaska Supreme Court, the Alaska Court of Appeals, the United States Court of Appeals for the Ninth Circuit, and the United States District Court for the District of Alaska. As in the past, those cases where the court construes or interprets a section of the Alaska Statutes are analyzed. Those cases where no statute is construed or interpreted or where a statute is involved but it is applied without particular examination by the court are not reviewed. In addition, those major cases that have already received legislative scrutiny are not analyzed. However, cases that reject well-established common law principles or reverse previously established case law that might be of special interest to the legislature are analyzed. Because the purpose of the report is to advise members of the legislature on defects in existing law, we have generally not analyzed those cases where the law, though it may have been criticized, has been changed since the decision or opinion was published.

The review also covers formal and informal opinions of the Attorney General. As with court opinions, we have only analyzed those opinions where a provision of the Alaska Statutes is construed or interpreted, or which might otherwise be of special interest to the legislature.

The review of administrative regulations is the responsibility of the Legislative Council and is not included in this report.

This report also includes a list of Alaska Statutes that, absent any action by the 2020 Legislature, will be repealed or amended before March 1, 2021, because of repealers or amendments enacted by previous legislatures with delayed effective dates.

Reviews of state court decisions, federal court decisions, and opinions of the Attorney General were prepared by Sandon Fisher, Linda Bruce, and Meera Caouette, Legislative Counsel, and Hilary Martin, Assistant Revisor of Statutes. Linda Bruce, Assistant Revisor of Statutes, prepared the list of delayed repeals and amendments.

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DELAYED REPEALS, ENACTMENTS OR AMENDMENTS

taking effect between February 29, 2020 and March 1, 2021 according to laws enacted before the 2020 legislative session

Laws enacted in 2008

Ch. 15, SLA 2008, sec. 2 -- Capstone Avionics Revolving Loan Fund

AS 44.33.650	Repealed July 1, 2020
AS 44.33.655	Repealed July 1, 2020
AS 44.33.660	Repealed July 1, 2020
AS 44.33.665	Repealed July 1, 2020
AS 44.33.670	Repealed July 1, 2020
AS 44.33.675	Repealed July 1, 2020
AS 44.33.680	Repealed July 1, 2020
AS 44.33.690	Repealed July 1, 2020

Laws enacted in 2013

Ch. 10, SLA 2013, sec. 34 -- Oil and Gas Competitiveness Review Board

AS 43.98.040	Repealed February 28, 2021
AS 43.98.050	Repealed February 28, 2021
AS 43.98.060	Repealed February 28, 2021
AS 43.98.070	Repealed February 28, 2021

Laws enacted in 2014

Ch. 61, SLA 2014, secs. 16, 22, and 23 -- Tax Credits and Indirect Expenditures

AS 43.75.035	Repealed December 31, 2020
AS 43.75.130(f)	Repealed December 31, 2020
AS 43.77.040	Repealed December 31, 2020
AS 43.77.050(b)	Amended December 31, 2020

Laws enacted in 2015

Ch. 3, SLA 2015, sec. 6 -- School Bond Debt Reimbursement

AS 14.11.014(d)	Repealed July 1, 2020
AS 14.11.100(s)	Repealed July 1, 2020
AS 14.11.102(c)	Repealed July 1, 2020

Laws enacted in 2016

Ch. 54, SLA 2016, sec. 23 -- School Accountability

AS 14.07.175	Repealed July 1, 2020

Laws enacted in 2018

Ch. 101, SLA 2018, secs. 3, 8, 13, 18, 23, 28, 32, and 34 -- Education Tax Credits

AS 21.96.070(b)	Amended January 1, 2021
AS 43.20.014(b)	Amended January 1, 2021

AS 43.55.019(b)	Amended January 1, 2021
AS 43.56.018(b)	Amended January 1, 2021
AS 43.65.018(b)	Amended January 1, 2021
AS 43.75.018(b)	Amended January 1, 2021
AS 43.77.045(a)	Amended December 31, 2020
AS 43.77.045(b)	Amended January 1, 2021

Laws enacted in 2019

Ch. 18, SLA 2019, secs. 1 - 4 -- Prescription Drugs

AS 08.64.101(a)	Amended March 1, 2020
AS 08.64.364(a), (b), and (c)	Amended March 1, 2020

Ch. 4, FSSLA 2019, secs. 123 - 129 and 131 -- Crimes and Criminal Procedure

AS 44.19.647(a)	Amended July 1, 2020
AS 44.23.020(k)	Enacted July 1, 2020
AS 44.23.040(b)	Enacted July 1, 2020
AS 44.41.065	Enacted January 1, 2020
AS 44.41.070(a) and (b)	Amended January 1, 2020
AS 44.41.070(e)	Enacted January 1, 2020
AS 47.17.020(a)	Amended September 1, 2020

PLEASE NOTE: "Sunsets" of boards and commissions under AS 08.03.010 and AS 44.66.010 are not reflected in the list above. Also, the list does not include repeals of uncodified law, including sunset of advisory boards and task forces, and pilot projects of limited duration created in uncodified law.

ANALYSIS OF COURT CASES AND OPINIONS OF THE ATTORNEY GENERAL

APPELLATE REVIEW OF RULINGS ON THE ADMISSIBILITY OF SCIENTIFIC EVIDENCE SHOULD BE CONDUCTED UNDER A HYBRID STANDARD.

Three defendants each sought to introduce the expert testimony of a polygraph examiner in their underlying criminal cases. In each case, the polygraph examiner was to testify that during a polygraph examination administered using the "comparison question technique" (CQT), the defendant answered truthfully when making exculpatory statements related to the charges against him. The respective superior courts reached differing conclusions regarding the admissibility of the expert testimony. In two cases, the courts determined that a polygraph examination conducted using CQT satisfies scientific evidence requirements established in the United States Supreme Court's decision in *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993), and the Alaska Supreme Court's decision in *State v. Coon*, 974 P.2d 386 (Alaska 1999). In contrast, the court in the third case determined that the evidence was inadmissible under the same standard. The Court of Appeals upheld the decisions that admitted the expert testimony, reviewing the decisions only for abuse of discretion. When faced with the appeal in the third case, the Court of Appeals recognized that applying the abuse of discretion standard of review could lead to inconsistent decisions across similar cases.

The Alaska Supreme Court granted review of the three cases, which were consolidated for appeal, to reconsider the applicable standard for appellate review of the admissibility of scientific evidence. On review, the Court reasoned that applying "a less deferential standard of review on appeal would allow trial courts and parties to avoid repeatedly relitigating the validity of scientific evidence" and would ensure consistency in the admissibility of scientific evidence throughout the state. The Court concluded that a hybrid standard of review should be applied to the admissibility of scientific evidence, in which the appellate court applies its independent judgment to whether the scientific theory or technique is "scientifically valid" under *Daubert* and *Coon*

and, "where proposed scientific evidence passes muster under that standard, the superior court's case-specific determinations and further evidentiary rulings are reviewed for abuse of discretion." Applying this hybrid standard, the Court ultimately held that CQT polygraph examinations are not "scientifically valid" under *Daubert* and *Coon* and are therefore not admissible.

State v. Sharpe, 435 P.3d 887 (Alaska 2019).

Legislative review is not recommended.

Art. I, sec. 1, Constitution of the State of Alaska
AS 47.07.068
7 AAC 160.900(d)(30)

AS 47.07.068 AND 7 AAC 160.900(D)(30), WHICH REDEFINE WHICH ABORTIONS QUALIFY AS "MEDICALLY NECESSARY" FOR THE PURPOSES OF MEDICAID FUNDING, VIOLATE THE ALASKA CONSTITUTION'S GUARANTEE OF EQUAL PROTECTION.

In 2013 the Department of Health and Social Services amended the definitions related to Medicaid regulations to require a more detailed certificate to obtain state Medicaid funding for an abortion. In 2014 the legislature enacted AS 47.07.068, which redefined which abortions qualify as "medically necessary" for the purposes of Medicaid funding, similar to the 2013 regulation. Specifically, AS 47.07.068(a) prohibits Medicaid payment for abortions "unless the abortion services are for a medically necessary abortion or the pregnancy was the result of rape or incest." Subsection (b)(3) defines a "medically necessary abortion" as one that, "in a physician's objective and reasonable professional judgment after considering medically relevant factors . . . must be performed to avoid a threat of serious risk to the life or physical health of a woman from continuation of the woman's pregnancy." Subsection (b)(4) then explains that "'serious risk to the life or physical health' includes, but is not limited to, a serious risk to the pregnant woman of (A) death; or (B) impairment of a major bodily function because of" any of 21 serious conditions or "another physical disorder, physical injury, or physical illness, including a life-endangering physical condition caused by or arising from the pregnancy that places the woman in danger of death or major bodily impairment if an abortion is not performed."

The Alaska Supreme Court found that the statute's text is ambiguous because "threat of a serious risk" is not defined.

The Court interpreted the term to mean "impending hazard consisting of a serious probability" of death, or of impairment from a listed harm. The Court determined that both the statute and the regulation impose different requirements for Medicaid funding eligibility upon women who choose to have abortions than upon women who choose to carry their pregnancies to term. Applying strict scrutiny to the equal protection claim, the Court concluded that the statute and regulation are not narrowly tailored to meet the state's interest of preserving Medicaid funds, and that the state did not show that the differences between the affected classes justify the discriminatory treatment imposed by AS 47.07.068 and 7 AAC 160.900(d)(30). Therefore, the Court held that the statute and regulation violated the Alaska Constitution's guarantee of equal protection.

State v. Planned Parenthood of the Greater Northwest, 436 P.3d 984 (Alaska 2019).

Legislative review is recommended to consider amending AS 47.07.068 in light of this decision.

Art. I sec. 7, Constitution of the State of Alaska
Art. I, sec. 22, Constitution of the State of Alaska

THE CONSTITUTIONAL STANDARDS ESTABLISHED FOR ORDERING INVOLUNTARY, NON-EMERGENCY ADMINISTRATION OF PSYCHOTROPIC MEDICATION ALSO APPLY TO INVOLUNTARY ADMINISTRATION OF ELECTROCONVULSIVE THERAPY.

Police officers found Lucy G. wet and shivering in a parking lot. Lucy was taken to a hospital where she was diagnosed with catatonia. Her psychiatrist petitioned the superior court to involuntarily commit Lucy for 30 days, and to order the involuntary administration of psychotropic medication and electroconvulsive therapy (ECT). The superior court granted the petition finding that Lucy suffered from mental illness, was gravely disabled, and lacked capacity to give informed consent. Lucy appealed only the ECT order.

The Alaska Supreme Court held that, like a patient's right to refuse to take psychotropic drugs, a patient's right to refuse ECT is fundamental. The Court stated that for psychotropic medicine, a court may not authorize administration of psychotropic medications to a non-consenting patient in non-emergency situations without first determining that the medication is in the patient's best interests and that no less

intrusive alternative treatment is available. The Court held that this same standard applies to ECT and rejected Lucy's argument that ECT is more intrusive than psychotropic medication.

In re Lucy G., 448 P.3d 868 (Alaska 2019).

Legislative review is not recommended.

Art. I, sec. 7, Constitution of the State of Alaska, Art. I, sec. 22, Constitution of the State of Alaska AS 12.63.010 - 12.63.100 AS 18.65.087

THE ALASKA SEX OFFENDER REGISTRATION ACT'S REGISTRATION REQUIREMENTS CAN CONSTITUTIONALLY BE APPLIED TO OUT-OF-STATE OFFENDERS; THE ACT VIOLATES DUE PROCESS, BUT THIS DEFECT MAY BE CURED BY PROVIDING A PROCEDURE FOR OFFENDERS TO ESTABLISH THEIR NON-DANGEROUSNESS.

Doe, who had been convicted of aggravated sexual battery in a different state, brought an action for declaratory and injunctive relief, alleging that the Department of Public Safety (department) lacked jurisdiction to impose the Alaska Sexual Offender Registration Act (ASORA) on Doe and that ASORA violates Doe's due process rights.

Considering the jurisdiction argument, the Alaska Supreme Court concluded that "Alaska is not barred by lack of jurisdiction from requiring out-of-state offenders who are present in the state from registering under ASORA." Therefore, the Court found that Doe must register under ASORA. Next, considering the due process argument, the Court concluded "that a sex offender may hold a legitimate and objectively reasonable privacy expectation that his conviction and personal information will not be disseminated as it is under ASORA." Because the right to privacy is a fundamental liberty interest, the Court applied strict scrutiny to the due process argument. The Court found that the publication of sex offender information under ASORA is justified by a compelling state interest. However, the Court concluded that ASORA does not use the least restrictive means available because it is "both too broad and arbitrary when it includes offenders who are not dangerous." The Court noted that because these offenders "pose no special risk to the public, their protected liberty interests plainly outweigh any public safety interests that might be furthered by requiring them to register." The Court stated that "the flaw in ASORA identified in this case is that it does not provide Doe with an opportunity

to be heard." The Court held that the defect in ASORA may be cured by providing a procedure for offenders to establish their non-dangerousness.

Doe v. State, Dep't of Pub. Safety, 444 P.3d 116 (Alaska 2019).

Legislative review is recommended to consider whether ASORA should be amended in light of this decision.

Art. I, sec. 9, Constitution of the State of Alaska

A DEFENDANT MAY ASSERT THE PRIVILEGE AGAINST SELF-INCRIMINATION IN A CIVIL PROCEEDING UNTIL THE CONVICTION IN A RELATED CRIMINAL PROCEEDING IS FINAL.

Graham pleaded guilty to second-degree murder after hitting and killing two pedestrians while driving under the influence. The victims' families subsequently sued Graham. Graham was thereafter sentenced in the criminal proceeding and he appealed the sentence, asking the court to vacate his sentence and remand the case for resentencing. While Graham's appeal was pending, he received discovery requests related to the civil proceeding. Graham refused to answer some of the discovery requests, asserting his privilege against self-incrimination guaranteed under the Fifth Amendment to the United States Constitution and art. I, sec. 9, Constitution of the State of Alaska. A party to the civil suit moved to compel Graham to respond and the superior court granted the motion, ruling that Graham could not invoke his privilege against self-incrimination because he was only appealing his sentence and would not be subject to additional criminal penalties as a result of the appeal. Graham appealed that decision to the Alaska Supreme Court for review.

The Alaska Supreme Court, relying on guidance from the U.S. Supreme Court and courts in other jurisdictions, reversed the order of the trial court and concluded that defendants appealing only their sentences may assert the privilege against self-incrimination until their convictions become final. The Court noted that while Graham's sentence could not be increased on resentencing under Alaska law, "his compelled testimony during the pendency of his appeal could result in a 'greater punishment' than he would receive *if he were permitted to invoke the privilege*." Thus, the Court found that Graham would be faced with a real and substantial hazard of incriminating himself in the civil proceeding and adversely affecting his criminal sentence if not permitted to invoke his privilege against self-incrimination.

Graham v. Durr, 433 P.3d 1098 (Alaska 2018).

Legislative review is not recommended.

Art. I, sec. 9, Constitution of the State of Alaska

SEPARATE CONVICTIONS AND SENTENCES MAY BE IMPOSED FOR EACH DISTINCT ACT OF NON-CONSENSUAL SEXUAL PENETRATION WHEN EITHER THE PENETRATED ORIFICE OR PENETRATING OBJECT OR BODY PART HAS CHANGED.

A defendant was convicted of multiple counts of first and second degree sexual abuse of a minor. The defendant argued that the superior court erred by failing to merge many of his convictions at sentencing. The Alaska Court of Appeals held that the defendant's convictions for digital penetration, penis-to-genital penetration, and penetration with an object during the same time period must merge because the same orifice was involved and the evidence was ambiguous as to whether each act accompanied the other acts.

On appeal to the Alaska Supreme Court, the state argued that separate convictions should be imposed for penetration with different objects or body parts, regardless of the time period. The defendant argued that sexual abuse of a minor cases differ from sexual assault cases, warranting different treatment for the purposes of merger. The defendant also argued that the unit of prosecution for merger purposes should be the "sexual episode" and that many of his convictions should therefore merge. The Alaska Supreme Court first determined that the same rules for merger apply to both sexual abuse of a minor and sexual assault convictions. The Court next considered the state and federal constitutional protections against double jeopardy and the legislative intent of the sexual abuse of a minor and sexual assault statutes and concluded that a separate act of penetration occurs each time the penetrated orifice or the penetrating object or body part changes. Thus, penetrations of the same orifice with different objects or body parts can support separate convictions. The Court reversed the Court of Appeals' holding that the defendant's convictions must merge and remanded for further proceedings.

State v. Thompson, 435 P.3d 947 (Alaska 2019).

Legislative review is not recommended unless the legislature does not want to allow separate convictions for each distinct act of non-consensual sexual penetration when either the penetrating object or body part or the penetrated orifice has changed.

Art. I, sec. 11, Constitution of the State of Alaska
AS 12.30.011(d)(2)

THE PRE-2018 VERSION OF AS 12.30.011(d)(2), WHICH ALLOWS THE COURT TO PRESUME THAT DEFENDANTS CHARGED WITH CERTAIN CLASSES OF FELONIES MAY NOT BE RELEASED ON BAIL, VIOLATES THE CONSTITUTIONAL PROVISION ENTITLING DEFENDANTS TO BAIL BEFORE CONVICTION.

A defendant charged with manslaughter and criminally negligent homicide was denied bail under the pre-2018 version of AS 12.30.011(d)(2), which provided that when a defendant is charged with certain types of offenses there is a rebuttable presumption that no conditions of bail will guarantee the defendant's appearance at future court proceedings and the safety of the victim and the public. The Alaska Court of Appeals considered art. I, sec. 11, Constitution of the State of Alaska, which guarantees that, "in all criminal prosecutions," the accused "is entitled ... to be released on bail, except for capital offenses when the proof is evident or the presumption great." The court noted that the constitution's guarantee of pre-conviction bail does not mean that all defendants are entitled to be released on bail, but does guarantee that the court must set reasonable conditions of bail release for a defendant who has not yet been convicted. The court held that the pre-2018 version of AS 12.30.011(d)(2), creating a presumption that a defendant charged with a certain type of offense should not be released on bail, was unconstitutional under art. I, sec. 11, Constitution of the State of Alaska.

Hamburg v. State, 434 P.3d 1165 (Alaska App. 2018).

Legislative review is recommended because the legislature used language that is similar to the pre-2018 version of the statute when the legislature repealed and reenacted AS 12.30.011(d)(2) in sec. 59, ch. 4, FSSLA 2019.

Art. I, sec. 14, Constitution of the State of Alaska

A SEARCH OF A LAPTOP VIOLATED A DEFENDANT'S RIGHT TO PRIVACY BECAUSE STATE TROOPERS DID NOT HAVE PROBABLE CAUSE TO BELIEVE THAT DEFENDANT'S LAPTOP CONTAINED EVIDENCE OF HER LANDLORD'S CRIMES.

Pohland, a former assistant attorney general, was convicted of official misconduct for using her position to benefit her friend and landlord, Skye McRoberts. Pohland rented a suite of rooms in McRoberts's house. A majority of the evidence against Pohland was obtained from a search of her personal laptop computer, which was seized from her apartment when state troopers executed a search warrant of McRoberts's home to search for evidence of McRoberts's financial and business crimes.

On appeal, Pohland argued that the search of her laptop violated her right to privacy under Art. I, sec. 14, of the Alaska Constitution and the Fourth Amendment to the United States Constitution. The Court of Appeals noted that the search warrant application did not explain why troopers believed that McRoberts could gain access to Pohland's laptop or, even if she could, why McRoberts would choose to store her business and financial documents on Pohland's laptop. Further, the court noted that the search warrant application did not assert that McRoberts's crimes were computer-based or that Pohland participated in McRoberts's crimes. The court therefore held that the search warrant application failed to establish probable cause to search Pohland's laptop. The court additionally found that troopers exceeded the scope of the warrant—which authorized troopers to search for digital business and financial records—by conducting a comprehensive search of Pohland's laptop, including backed-up text messages. The court concluded that the search of Pohland's laptop violated her rights under Art. I, sec. 14, of the Alaska Constitution, and the Fourth Amendment to the United States Constitution and ruled that the evidence against Pohland obtained from the search of her laptop must be suppressed.

Pohland v. State, 436 P.3d 1093 (Alaska App. 2019).

Legislative review is not recommended.

Art. II, sec. 15, Constitution of the State of Alaska
Art. IX, sec. 7 Constitution of the State of Alaska
Art. IX, sec. 12, Constitution of the State of Alaska
AS 37.07.020

AN APPROPRIATION OF FUTURE REVENUES FOR K-12 EDUCATION FOR A FUTURE FISCAL YEAR IS UNCONSTITUTIONAL.

The Alaska Attorney General provided a legal opinion to the governor concluding that the appropriation of future revenues for K-12 education for fiscal year 2020 contained in a 2018 appropriation bill is unconstitutional. Specifically, the Attorney General concluded that the appropriation violates art. IX, secs. 7 and 12, and art. II, sec. 15, of the Alaska Constitution and AS 37.07.020.

Art. IX, sec. 12, Constitution of the State of Alaska, requires the governor to "submit to the legislature, at a time fixed by law, a budget for the next fiscal year setting forth all proposed expenditures and anticipated income of all departments, offices, and agencies of the State." AS 37.07.020(a), a provision of the Executive Budget Act, further requires that the governor's budget for the succeeding fiscal year cover "all estimated receipts, including all grants, loans, and money received from the federal government and all proposed expenditures of the state government." Art. IX, sec. 7, Constitution of the State of Alaska, prohibits the "proceeds of any state tax or license" from being "dedicated to any special purpose." Under art. II, sec. 15, Constitution of the State of Alaska, the governor "may, by veto, strike or reduce items in appropriation bills."

Relying on several Alaska Supreme Court opinions that interpret the foregoing provisions, the Department of Law opined that an appropriation for education spending in a future fiscal year violates the annual budgeting process prescribed by the Constitution and the Executive Budget Act, improperly dedicates future revenues, and improperly circumvents the current governor's veto authority. The Department of Law concluded that "Alaska's constitutional framework is based on each legislature and governor assessing Alaska's yearly needs and the revenues available to meet those needs" and therefore advised the governor that the appropriation enacted in 2018 for education spending in fiscal year 2020 is unconstitutional.

2019 Op. Alaska Att'y Gen. (May 8).

Legislative review is not recommended as this issue is currently the subject of ongoing litigation.

Art. III, sec. 1, Constitution of the State of Alaska
Art. III, sec. 24, Constitution of the State of Alaska
AS 23.40.110
AS 23.40.220

THE U.S. SUPREME COURT'S DECISION IN *JANUS* SIGNIFICANTLY LIMITS THE MANNER BY WHICH THE STATE CAN DEDUCT UNION DUES AND FEES FROM ITS EMPLOYEES' WAGES.

The Alaska attorney general advised the governor that the U.S. Supreme Court's decision in *Janus v. American Federation of State, County, and Municipal Employees, Council 31* significantly limits the manner by which the State can deduct union dues and fees from employees' wages under Alaska's Public Employee Relations Act (PERA). The attorney general concluded that the *Janus* decision invalidated AS 23.40.110(b)(2), which authorizes public employers to enter into agreements with unions that require every employee in a bargaining unit, whether a member of the union or not, to pay an "agency fee" to the union as a condition of employment.

The attorney general opined that the state's payroll deduction process is constitutionally untenable after *Janus*, and to protect the First Amendment rights of employees, the state must revamp the payroll deduction process for union dues and fees to ensure that the state does not deduct funds from an employee's paycheck unless it has "clear and compelling evidence" of the employee's "freely given" consent to subsidize the union's speech.

2019 Op. Alaska Att'y Gen. (Aug. 27).

Legislative review is not recommended as this opinion is currently the subject of litigation.

Art. VIII, sec. 16, Constitution of the State of Alaska

RIPARIAN AND LITTORAL LANDOWNERS HAVE THE RIGHT OF REASONABLE USE TO LAND SO LONG AS THE USE DOES NOT UNREASONABLY INTERFERE WITH THE RIGHTS OF OTHER LANDOWNERS.

Property owners built a dock extending into Wasilla Lake from their upland property. Their neighbors sued them claiming that the dock unreasonably interfered with their riparian rights.

On appeal the Alaska Supreme Court extended the rule of reasonableness to riparian and littoral landowners. The Court determined that riparian and littoral landowners have the right

of reasonable access to and use of adjacent navigable and public waters of the state, as they are defined by the legislature, so long as the access or use is lawful and does not unreasonably interfere with the correlative rights of other riparian or littoral landowners.

The Court held that when one landowner's exercise of his or her right of reasonable use interferes with a neighboring landowner's exercise of the same, the court must compare the two uses, and must consider: (1) whether the injured landowner's allegedly interfered-with use is reasonable, and (2) whether the use causing the alleged interference is unreasonable. What is reasonable is a question of fact, to be determined by weighing a variety of factors.

McCavit v. Lacher, 447 P.3d 726 (Alaska 2019).

Legislative review is not recommended.

U.S. Const. Amend. 1
AS 15.13.072

ALASKA'S NONRESIDENT AGGREGATE CAMPAIGN CONTRIBUTION LIMIT VIOLATES THE FIRST AMENDMENT OF THE U.S. CONSTITUTION.

Plaintiffs challenged the following Alaska campaign contribution statutes on the grounds that they violate the First Amendment: (1) the $500 annual contribution limit on an individual contribution to a political candidate; (2) the $500 limit on an individual contribution to a non-political party group; (3) the annual limits on what a political party may contribute to a candidate; and (4) the annual aggregate limit on contributions a candidate may accept from nonresidents of Alaska. The Ninth Circuit Court of Appeals upheld the first three contribution limits but struck down the aggregate limit on nonresident contributions.

The Ninth Circuit first summarized the test for limits on campaign contributions. Such limits will be upheld if (1) the law furthers an "important state interest" and (2) the limits are "closely drawn." The Supreme Court has limited the type of state interest that justifies a First Amendment intrusion on political contributions. States must show that any such limitation serves to combat actual quid pro quo corruption or its appearance.

The Ninth Circuit found that the nonresident aggregate contribution limit did not target quid pro quo corruption or its

appearance. The Court pointed out that the state had failed to show why an out-of-state individual's early contribution was not corrupting but a later contribution (after the aggregate limit is reached) is corrupting. The Ninth Circuit therefore held that the nonresident aggregate contribution limit violated the First Amendment of the U.S. Constitution.

Thompson v. Hebdon, 909 F.3d 1027 (Ninth Cir. 2018).

Legislative review is recommended if the legislature wishes to amend the amount or manner of permissible nonresident political contributions.

Rule 12(b)(6), Alaska Rules of Civil Procedure

A PLAINTIFF MAY NOT MAINTAIN A CIVIL SUIT FOR DAMAGES WHEN JUDGMENT IN THE PLAINTIFF'S FAVOR WOULD NECESSARILY IMPLY THE INVALIDITY OF THE PLAINTIFF'S CONVICTION OR SENTENCE IN A CRIMINAL CASE.

A prisoner filed suit for damages alleging that his conviction and prison sentence for possession of child pornography violated various provisions of the Alaska Constitution. The superior court granted the state's motion to dismiss. On appeal, the Alaska Supreme Court considered whether the superior court properly dismissed the suit under Alaska Rule 12(b)(6). The Court determined that the prisoner's claims questioning the constitutionality of his conviction and sentence "should be resolved through a motion for post-conviction relief or appeal in the criminal case." The Court reasoned that permitting the prisoner to maintain the civil suit "would risk two conflicting resolutions arising out of the same . . . transaction — one in the criminal case and another in the civil case." (Internal quotations omitted). The Court held that a plaintiff may not maintain "a civil suit for damages allegedly caused by a criminal conviction or sentence . . . if judgment for the plaintiff would necessarily imply the invalidity of the conviction or sentence, unless the conviction or sentence has first been set aside in the course of the criminal proceedings."

Patterson v. Walker, 429 P.3d 829 (Alaska 2018).

Legislative review is not recommended.

Rule 17(c), Alaska Rules of Civil Procedure

A PARENT ACTING ON BEHALF OF AN INCOMPETENT ADULT CHILD CANNOT REPRESENT THE CHILD WITHOUT COUNSEL.

A mother brought a tort suit as her daughter's next friend for *in utero* injuries to the daughter, which the mother alleged were caused in a boating accident that occurred when she was pregnant. The mother asserted no claims on her own behalf.

The plaintiff's attorney moved to withdraw from the case, primarily due to a disagreement with the mother over the litigation and the best outcome for the daughter. The superior court granted the motion to withdraw and granted summary judgment to the defendants and the plaintiffs appealed.

The Alaska Supreme Court reversed, holding that a parent acting as an incompetent adult's next friend cannot represent the child without counsel. The Court stated that Rule 17(c), Alaska Rules of Civil Procedure equates "incompetent persons" with "infants," and that it governed the circumstances of this case. The Court reiterated that an incompetent person cannot represent themselves in court, and must bring and defend actions through a competent adult. The Court stated that pursuant to Rule 17(c), the superior court has a duty to appoint a guardian ad litem for an incompetent person and that it was error to rule against the incompetent person who had no legal representative.

Bravo v. Aker, 435 P.3d 908 (Alaska 2019).

Legislative review is not recommended.

Alaska Rule of Evidence 505
AS 18.66.990(3)
AS 18.66.990(5)

A MINOR VICTIM OF SEXUAL ABUSE MAY BE CONSIDERED A "HOUSEHOLD MEMBER" FOR PURPOSES OF THE DOMESTIC VIOLENCE EXCEPTION TO THE SPOUSAL IMMUNITY PRIVILEGE WHEN THE MINOR VICTIM AND THE DEFENDANT WERE ENGAGED IN A SEXUAL RELATIONSHIP.

The defendant, a former high school teacher, was charged with multiple counts of sexual abuse of a minor after a fifteen year old student alleged that she and the defendant repeatedly engaged in sexual intercourse over a four month period. The defendant's wife asserted her spousal immunity privilege to not testify against her husband at his trial. The superior court

concluded that the sexual abuse charges against the defendant fell within the domestic violence exception to the marital privileges and therefore rejected the wife's claim of privilege.

The Court of Appeals agreed with the superior court's conclusion and affirmed the decision. Rules 505(a)(2)(D) and 505(b)(2)(A), Alaska Rules of Evidence, describe several criminal proceedings in which the marital privileges do not apply. One such proceeding is a crime involving domestic violence as defined in AS 18.66.990. Under AS 18.66.990(3), a crime of domestic violence includes any crime against a person under AS 11.41—which includes sexual abuse of a minor—if one "household member" commits the crime against another "household member." Under AS 18.66.990(5), "household member" includes both "adults or minors who are dating or who have dated" and "adults or minors who are engaged in or who have engaged in a sexual relationship." Although the student was not legally able to consent to sexual activity with an adult, she believed she was dating the defendant and viewed their sexual relationship as consensual according to her grand jury testimony. The court therefore concluded that the student was a "household member" under AS 18.66.990(5) and that the crimes at issue were therefore crimes of domestic violence. Accordingly, the court found that the proceeding fell within the domestic violence exception to the marital privileges and affirmed the superior court's rejection of the wife's claim of privilege.

Importantly, the court noted that the case would have been easier to resolve if the rules governing marital privileges included an exception for a crime against any child, regardless of the child's relation to the defendant or the defendant's spouse. Other jurisdictions have adopted this type of exception to the marital privileges rules but no such exception exists under Alaska law.

Anderson v. State, 436 P.3d 1071 (Alaska App. 2018).

Legislative review is recommended if the legislature wishes to clarify application of the term "household member" with respect to a minor victim of sexual abuse or wishes to amend the exceptions to the marital privilege rules.

Alaska Rule of Professional Conduct 1.7
Alaska Rule of Professional Conduct 1.10(a)

A DEFENDANT IS ENTITLED TO CONFLICT COUNSEL IMMEDIATELY AFTER RAISING AN INEFFECTIVE ASSISTANCE OF COUNSEL CLAIM IN THE CONTEXT OF AN ATTEMPT TO WITHDRAW A PLEA.

A defendant moved to withdraw his guilty plea, claiming he had not understood the terms of the agreement and had received ineffective assistance of counsel from his Public Defender Agency attorneys. At the defendant's sentencing hearing, the defendant was represented by a different attorney from the same Public Defender Agency office. The superior court recognized that the Public Defender Agency had a conflict of interest which required the appointment of a lawyer without that conflict, but appointed new counsel only for any potential appellate and post-conviction relief proceedings. The superior court denied the defendant's request to withdraw his guilty plea and proceeded with sentencing over the defendant's objections that he wanted a representation hearing instead.

On appeal, the Alaska Supreme Court adopted a per se rule, under which a "mere allegation of ineffective assistance is sufficient to create a conflict of interest disqualifying the public defender." The Court held that a public defender has a conflict of interest that disqualifies that public defender from representing a defendant when the defendant raises a claim of ineffective assistance of counsel against another public defender in the same office. The Court further held that a defendant is entitled to conflict counsel immediately after raising an ineffective assistance of counsel claim in the context of an attempt to withdraw a plea. Thus, the Court determined that the superior court should have appointed conflict counsel before sentencing the defendant.

Nelson v. State, 440 P.3d 240 (Alaska 2019).

Legislative review is not recommended unless the legislature wants a public defender's conflict to only be imputed to others in the same office on a case-by-case basis.

AS 09.17.070

AN INJURED PARTY MAY INTRODUCE FULL, UNDISCOUNTED MEDICAL BILLS INTO EVIDENCE AT TRIAL; THE DIFFERENCE BETWEEN THE FULL AMOUNT BILLED BY A PROVIDER AND THE ACTUAL AMOUNT PAID TO THE PROVIDER IS SUBJECT TO THE COLLATERAL SOURCE RULE.

A woman was seriously injured when she slipped and fell on ice in a hotel parking lot. Medicare covered her medical expenses, settling the providers' bills by paying less than one-fifth of the amounts billed. When the woman later sued the hotel for negligence, the hotel sought to bar her from introducing her original medical bills as evidence of her damages, arguing that only the amount Medicare actually paid was relevant and admissible. On appeal, the Alaska Supreme Court adopted the "reasonable value" approach followed by the majority of courts, in which an injured party is allowed to introduce the full, undiscounted medical bills at trial as evidence of the medical services' reasonable value. The Court held that the difference between the amounts billed and the amounts paid is a collateral source benefit to the injured party that is subject to the collateral source rule. The collateral source rule states that damages may not be diminished or mitigated on account of payments received by a plaintiff from a source other than the defendant. As such, the Court found that evidence of the amounts actually paid to providers for medical services should be excluded from the jury's consideration at trial but is subject to post-trial proceedings under AS 09.17.070 for possible reduction of the damages award.

Weston v. AKHappytime, LLC, 445 P.3d 1015 (Alaska 2019).

Legislative review is not recommended unless the legislature wants to limit evidence introduced at trial to the amount actually paid to the medical provider.

AS 09.55.440(a)

FOR PURPOSES OF AWARDS OF PREJUDGMENT INTEREST UNDER AS 09.55.440(a), "THE AMOUNT FINALLY AWARDED" DOES NOT INCLUDE ATTORNEY'S FEES AND COSTS.

The Department of Transportation and Public Facilities (DOT) condemned a strip of property along the Parks Highway. DOT filed a declaration of taking, allowing it to take title to the property immediately, and deposited approximately $15,000 in

court as estimated compensation for the taking. The landowner challenged DOT's estimate and was eventually awarded approximately $24,000, as well as attorney's fees and costs. AS 09.55.440 provides in relevant part that the judgment of compensation for the taking "must include interest at the rate of 10.5 percent a year on the amount finally awarded that exceeds the amount paid into court under the declaration of taking." The superior court awarded prejudgment interest to the landowner at the rate of 10.5% on the difference between the amount of DOT's initial deposit and the amount the property was ultimately determined to be worth. The landowner appealed, arguing that "the amount finally awarded" for purposes of the award of prejudgment interest under AS 09.55.440(a) should have included attorney's fees and costs.

The Alaska Supreme Court considered the plain language of AS 09.55.440(a), in the context of the eminent domain statutes, and concluded that the "amount finally awarded" is equivalent to "compensation," which means the value of the property actually taken plus incidental damages but does not include attorney's fees and costs. After considering the statutory language and context, the legislative history, and the policy arguments advanced by the parties, the Court held that "for purposes of awards of prejudgment interest under AS 09.55.440(a), 'the amount finally awarded' does not include attorney's fees and costs."

Keeton III v. State, Dep't of Transp. and Pub. Facilities, 441 P.3d 933 (Alaska 2019).

Legislative review is not recommended unless the legislature wants to include attorney's fees and costs in "the amount finally awarded" for purposes of awards of prejudgment interest under AS 09.55.440(a).

AS 11.31.100(a)
AS 11.41.420(a)(1)

TO PROVE THAT A DEFENDANT COMMITTED THE CRIME OF ATTEMPTED SECOND-DEGREE SEXUAL ASSAULT, THE STATE MUST ESTABLISH THAT THE DEFENDANT (1) INTENDED TO ENGAGE IN SEXUAL CONTACT WITH THE VICTIM; (2) IS AWARE OF A SUBSTANTIAL AND UNJUSTIFIABLE RISK THAT THE VICTIM IS UNWILLING TO ENGAGE IN SEXUAL CONTACT; (3) INTENDS TO USE FORCE OR THREAT OF FORCE IF NECESSARY TO EFFECTUATE THEIR INTENDED GOAL OF SEXUAL

CONTACT; AND (4) TOOK A SUBSTANTIAL STEP TOWARDS ACHIEVEMENT OF THE COMPLETED CRIME.

A defendant indicted for attempted second-degree sexual assault moved to dismiss the indictment, arguing that the evidence presented to the grand jury was legally insufficient to establish attempted second-degree sexual assault. The testimony at the grand jury provided that the defendant put his fingertips between the victim's pants and leggings and that he only touched the victim on her hip. The Alaska Supreme Court held that "to prove that a defendant committed the crime of attempted second-degree sexual assault under AS 11.41.420(a)(1), the state must establish that: (1) the defendant intended to engage in sexual contact with the victim; (2) the defendant recklessly disregarded a substantial and unjustifiable risk that the victim was unwilling to engage in the sexual contact; (3) the defendant intended to use force or threat of force if necessary to achieve the sexual contact; and (4) the defendant took a substantial step toward achievement of the completed crime." The Court noted that, to support a conviction, the defendant's "substantial step" toward commission of the completed crime need not necessarily involve the actual use of force or threat of force. Rather, the state must prove that, given all the circumstances, the defendant's actions are "strongly corroborative" of the defendant's willingness to use force or threat of force if necessary to effectuate the intended sexual contact. The Court found that the evidence presented to the grand jury was insufficient to establish that the defendant took a substantial step toward completing the crime of second-degree sexual assault and affirmed the superior court's dismissal of the indictment.

State v. Mayfield, 442 P.3d 794 (Alaska 2019).

Legislative review is not recommended.

AS 11.41.320
AS 11.41.330
AS 11.41.370

A PARENT WHO IS AWARDED VISITATION UNDER A CUSTODY ORDER MAY BE CONSIDERED A LAWFUL CUSTODIAN DURING VISITATION PERIODS FOR PURPOSES OF DETERMINING WHETHER CUSTODIAL INTERFERENCE HAS OCCURRED.

A married couple with two children divorced and the superior court awarded the mother sole legal and primary physical custody of the children. The superior court awarded the father substantial periods of visitation, including the children's summer vacations. As a result of this order, the mother was required to facilitate the children's flight to Alaska, however, the children failed to go to Alaska for the visitation.

The superior court found that the mother had committed the crime of first-degree custodial interference, a crime of domestic violence, and used this fact to find that the mother had a history of perpetrating domestic violence and so awarded custody to the father.

On appeal to the Alaska Supreme Court, the mother argued that she could not have committed custodial interference because she had sole legal and primary physical custody of the children and therefore she, not the father, was the lawful custodian of the children. In interpreting the term "lawful custodian," the Court looked to AS 11.41.370(1), which defines the term as "a parent, guardian, or other person responsible by authority of law for the care, custody, or control of another." The Court found that the father fit the definition of a lawful custodian because the custody order made him responsible for the custody, care, and control of the children during periods of visitation and the superior court ordered the father's visitation to begin on July 6, 2016. Thus, when the mother failed to send the children to Alaska on July 6, 2016, the father was a lawful custodian of the children for purposes of the crime of custodial interference.

Regina C. v. Michael C., 440 P.3d 199 (Alaska 2019).

Legislative review is not recommended.

AS 11.81.335(b)(5)

THE "STAND YOUR GROUND" AMENDMENT TO THE SELF-DEFENSE STATUTE DOES NOT APPLY RETROACTIVELY.

Blalock was convicted of second-degree murder for fatally stabbing Tanape. At trial, Blalock claimed self-defense. Specifically, Blalock asked the superior court for a jury instruction on the "stand your ground" exception to the duty to retreat before using deadly force for self-defense. The superior court declined to give the jury such an instruction, concluding that the "stand your ground" exception, which was enacted in

2013, did not apply retroactively to Blalock's conduct that occurred in 2011.

On appeal, the Court of Appeals noted that the legislation enacting the "stand your ground" exception did not contain an applicability provision or otherwise indicate that the exception was to apply retroactively. Blalock argued that the 2013 "stand your ground" amendment clarified an existing exception to the duty to retreat and therefore should apply to his 2011 conduct. The Court of Appeals rejected this argument, finding that the legislative history supports that the "stand your ground" amendment expanded the right to use deadly force in self-defense and did not merely clarify the existing law. The Court of Appeals concluded that the legislature did not clearly intend to give the 2013 amendment retroactive effect and therefore affirmed the superior court's decision that the "stand your ground" amendment did not apply retroactively to Blalock's conduct.

Blalock v. State, 2019 WL 4725166 (Alaska App. Sept. 27, 2019).

Legislative review is not recommended.

AS 12.47.070

EXPERTS APPOINTED UNDER AS 12.47.070 TO EXAMINE A DEFENDANT WHO ASSERTS THE DEFENSE OF INSANITY OR DIMINISHED CAPACITY ARE THE COURT'S EXPERTS; ALASKA PSYCHIATRIC INSTITUTE MUST PERFORM PSYCHIATRIC EVALUATIONS UNDER AS 12.47.070 IF POSSIBLE, OTHERWISE THE COURT SYSTEM MUST APPOINT ANOTHER EXPERT AND BEAR THE COSTS.

A defendant notified the superior court that he might rely on a diminished capacity defense. When a criminal defendant asserts the defense of insanity or diminished capacity or the defendant's mental fitness otherwise is at issue, AS 12.47.070 requires the court to appoint two qualified psychiatrists or two psychologists certified by the American Board of Forensic Psychology to examine the defendant. The superior court determined that Alaska Psychiatric Institute (API) had no psychiatrist qualified under AS 12.47.070 to conduct the examination and announced that it would appoint two statutorily-qualified experts, that each party was entitled to its own expert, and that each party would bear its own expert

costs and fees. The State argued that the Office of Public Advocacy, which represented the defendant, should bear the costs of both experts. The defendant responded that the Alaska Court System should pay the entire cost of both experts. The Alaska Supreme Court considered the structure of AS 12.47.070, the statute's legislative history, and the commentary to the Model Penal Code from which the statute was derived, and held that experts appointed under AS 12.47.070 are experts for the superior court under the supervision of the court and are appointed to make statutorily-specified determinations. The Court further held that the superior court must appoint qualified psychiatrists or psychologists employed by API for examinations under AS 12.47.070 unless API provides a legitimate reason, at an evidentiary hearing, why API cannot provide qualified experts for these examinations. If API cannot provide qualified experts to complete these examinations then the superior court must appoint experts from outside API and the Alaska Court System must bear the costs for the experts.

State v. Groppel, 433 P.3d 1113 (Alaska 2018).

Legislative review is not recommended.

AS 12.55.027(d)

A DEFENDANT MAY NOT RECEIVE CREDIT FOR TIME SPENT ON ELECTRONIC MONITORING UNDER AS 12.55.027(d) WHEN THE CONDITIONS OF THE DEFENDANT'S ELECTRONIC MONITORING ALLOWED THE DEFENDANT TO LEAVE HOME TO GO GROCERY SHOPPING.

Following revocation of the defendant's probation and imposition of 90 days of previously suspended jail time, the defendant filed a motion seeking credit against this sentence for time spent on electronic monitoring. The State argued that conditions of the defendant's electronic monitoring were not restrictive enough to meet the requirements of AS 12.55.027(d) because the defendant was allowed to leave his home to go grocery shopping. Under AS 12.55.027(d), a defendant may receive credit for time spent on electronic monitoring only if "the court imposes restrictions on the [defendant's] freedom of movement and behavior while under the electronic monitoring program" and only if these restrictions include "requiring the [defendant] to be confined to a residence except for a (1) court appearance; (2) meeting with counsel; or (3) . . . employment, attending educational or

vocational training, performing community volunteer work, or attending a rehabilitative activity or medical appointment."

On appeal, the Alaska Court of Appeals distinguished grocery shopping from the activities listed under AS 12.55.027(d), which all require that someone is expecting a defendant to show up at a particular place at a particular time, and held that the statute did not contain an implicit exception for grocery shopping. The court, considering the plain meaning of the statute, further held that grocery shopping does not constitute a "rehabilitative activity" under AS 12.55.027(d). Thus, the court found that the defendant was not entitled to credit for time spent on electronic monitoring.

Tanner v. State, 436 P.3d 1061 (Alaska App. 2018).

Legislative review is not recommended.

AS 12.55.045(g)
AS 47.12.120(b)(4)(A)

A TRIAL COURT CAN CONSIDER A JUVENILE'S ABILITY TO PAY WHEN DETERMINING THE AMOUNT OF RESTITUTION IN A JUVENILE DELINQUENCY CASE.

A trial court adjudicated a juvenile as a delinquent minor and ordered the juvenile to pay restitution. The juvenile argued that the trial court erred in failing to consider the juvenile's ability to pay when it ordered the restitution amount. The State responded that AS 12.55.045(g), which prohibits trial courts from considering a criminal defendant's ability to pay when determining the amount of restitution in a criminal case, applies to juvenile delinquency cases. On appeal, the Alaska Court of Appeals stated that there is no provision equivalent to AS 12.55.045(g) in AS 47.12, which governs juvenile delinquency proceedings. However, the court noted that AS 47.12.120(b)(4) provides that a court shall order a minor and the minor's parents to make "suitable restitution" following the adjudication of a minor as delinquent. The court considered the plain language of the relevant statutes, the legislative history, and the underlying purposes of the juvenile justice system and held that trial courts are not prohibited from considering a juvenile's ability to pay when setting restitution amounts in juvenile delinquency cases. The court provided that trial courts are "authorized to consider all relevant factors when setting restitution orders in juvenile cases, including but not limited to the minor's ability to pay, the detrimental effect of setting restitution at an amount beyond what the minor could ever realistically be expected to pay, and

a victim's constitutional right to restitution." The court further stated that a court must consider a minor's limited ability to pay when setting the amount of restitution that the minor will personally be required to pay if a minor affirmatively presents evidence of inability to pay and the amount of damages is substantially beyond what could be paid anytime in the foreseeable future.

R.C. v. State, 435 P.3d 1022 (Alaska App. 2018).

Legislative review is not recommended unless the legislature does not want a court to consider a minor's ability to pay restitution in juvenile delinquency cases.

AS 12.55.110

THE 30-DAY SENTENCING CEILING FOR A PROBATIONER WHO ABSCONDS DOES NOT APPLY WHEN THE PROBATIONER HAS ALSO COMMITTED A FOURTH OR SUBSEQUENT TECHNICAL VIOLATION.

The legislature amended AS 12.55.110 in 2016 to place new limits on a court's ability to impose suspended jail time when a court revokes a defendant's probation. The amended version of AS 12.55.110 classifies some probation violations as technical violations and places a limit on the court's sentencing authority when a defendant commits only a technical violation of probation. The amended version of AS 12.55.110 also distinguishes between technical violations that constitute absconding and all other technical violations. Under AS 12.55.110(d), if a technical violation constitutes absconding, a court may impose no more than 30 days of the defendant's suspended jail time. With respect to all other technical violations, a court may impose no more than three days of a defendant's suspended jail time for a first probation revocation, five days for the second probation revocation, or ten days for the third probation revocation. Under AS 12.55.110(c)(4), the court may impose any or all of a defendant's remaining suspended jail time for a fourth or subsequent technical violation. The state's petition to revoke Simile's probation alleged that Simile had committed both a technical violation constituting absconding and a separate fourth technical violation of probation. The superior court ruled that its sentencing authority was limited to 30 days under AS 12.55.110(d) based on the allegation of absconding.

The Court of Appeals reversed the superior court's ruling, concluding that the superior court's interpretation of AS 12.55.110 was mistaken and inconsistent with the legislature's intent. The court reasoned that the superior court's interpretation of AS 12.55.110 would make absconding a mitigating factor when a defendant has also committed a fourth or subsequent technical violation and would encourage the state to refrain from including absconding allegations in petitions to revoke probation. The court therefore held that when a defendant has committed a fourth or subsequent technical violation as well as a technical violation constituting absconding, AS 12.55.110(d) does not limit the court's sentencing authority and the court can impose up to the defendant's remaining jail time.

State v. Simile, 440 P.3d 306 (Alaska App. 2019).

Legislative review is not recommended.

AS 12.55.255(c)(18)(A) **THE SENTENCING AGGRAVATOR IN AS 12.55.155(c)(18)(A) APPLIES WHEN A PERSON COMMITS A CRIME AGAINST A ROOMMATE.**

A man accidentally killed his roommate with a large knife while demonstrating martial arts moves. He pled guilty to criminally negligent homicide and stipulated to the applicability of the statutory aggravator set out in AS 12.55.155(c)(18)(A) that allows sentencing above the upper range when a crime is "committed against . . . a member of the social unit made up of those living together in the same dwelling as the defendant."

On appeal the defendant argued that the aggravator was inappropriate in the context of his case. The court of appeals agreed, concluding that the aggravator is limited to cases in which the defendant's conduct was specifically directed at the victim and had some source in the relationship between the victim and the defendant.

The Alaska Supreme Court reversed the court of appeals, concluding that the plain language of the statute applied to roommates. The Court also noted that the trial court judge can determine the weight to give the aggravator at sentencing, which is what the superior court did in this case.

State v. Tofelogo, 444 P.3d 151 (Alaska 2019).

Legislative review is recommended if the legislature does not intend for the sentencing aggravator to apply to roommates.

AS 12.72.020(a)(6)

A DEFENDANT IS ENTITLED TO BRING AN APPLICATION FOR POST-CONVICTION RELIEF EVEN IF A PREVIOUS APPLICATION HAS BEEN FILED IF THE DEFENDANT ESTABLISHES THAT THE SUBSEQUENT APPLICATION IS BASED ON NEWLY DISCOVERED EVIDENCE.

Hall was convicted of one count of first-degree murder and one count of second-degree murder for two fatal shootings, for which he claimed self-defense. Following his conviction, Hall filed two applications for post-conviction relief, both based on claims of ineffective assistance of counsel. Both applications were dismissed and both dismissals were affirmed by the Alaska Court of Appeals. Hall filed a third application for post-conviction relief, this time based on newly discovered evidence in the form of witness testimony that would support Hall's claim of self-defense. The superior court dismissed the application on the basis that it was statutorily barred by AS 12.72.020(a)(6), which precludes a defendant from applying for post-conviction relief if a previous application for post-conviction relief has been filed. Hall subsequently appealed the dismissal to the Court of Appeals.

In its review, the Court of Appeals noted that while AS 12.72.020(a)(6) seems to bar second or subsequent applications for post-conviction relief with no exceptions, the court has previously held, and the Alaska Supreme Court has affirmed, that "due process requires an exception to the statutory bar against successive petitions for ineffective assistance of counsel claims against the defendant's first post-conviction relief attorney." The Court of Appeals ultimately held that due process also requires an exception to AS 12.72.020(a)(6) for claims of newly discovered evidence.

Hall v. State, 446 P.3d 373 (Alaska App. 2019).

Legislative review is not recommended.

AS 13.26.132

FOR GUARDIANSHIP PURPOSES, A COURT SHOULD DETERMINE IF A PERSON'S PARENTAL RIGHTS HAVE BEEN SUSPENDED BY CIRCUMSTANCES BY DECIDING WHETHER THE PARENT IS ABLE TO

ACCEPT THE RIGHTS AND RESPONSIBILITIES OF PARENTHOOD, AND NOT ON THE POTENTIAL DETRIMENT TO THE CHILD'S WELFARE.

Michael W. and Mindy B. are the parents of Kevin. The Browns are Mindy's parents and Kevin's grandparents. In 2016, Mindy moved to Arizona to enter a rehabilitation program. Kevin stayed with the Browns in Alaska. In January, 2017, the Browns filed a petition to be appointed guardians of Kevin, pursuant to AS 13.26.132. Michael opposed the Brown's petition and moved to dismiss the case.

The superior court determined that the same standards that apply in a custody dispute between a parent and a non-parent applied to a guardianship proceeding. Therefore, the Browns were required to prove by clear and convincing evidence that all of Michael's and Mindy's rights of custody with respect to Kevin had been terminated by the circumstances because (i) they are unfit parents, (ii) it would be detrimental to Kevin's welfare not to be in the Browns' custody, or (iii) Michael and Mindy had abandoned Kevin. The court found on all three grounds that Mindy's parental rights were suspended by the circumstances.

The court also found that Michael's parental rights were suspended by the circumstances because it would be detrimental to Kevin's welfare if he was forced to leave the Browns' custody. The superior court then issued an order denying Michael's motion to dismiss and granting the Brown's petition for guardianship.

On appeal, the Alaska Supreme Court held that when a parent opposes a non-parent's petition for guardianship of a minor, a court should first apply the biological parent preference. The preference may be overcome only if all the parent's rights of custody have been "terminated or suspended by circumstances." The test for "suspended by circumstances" is different than a custody dispute between parents and non-parents where the court may consider detriment to the child. A court can find parental rights have been "suspended by circumstances" if there is "some set of circumstances which deprives a parent of the ability to accept the rights and responsibilities of parenthood." If the court finds by clear and convincing evidence that all custodial rights of the parent have been suspended, then the court must determine whether the appointment of a guardian would be in the best interests of the child.

Michael W. v. Brown, 433 P.3d 1105 (Alaska 2018).

Legislative review of AS 13.26.132 is recommended if the legislature wants to change the standard for appointment of a non-parent as a guardian for a minor child.

AS 13.33.211

A COURT CONSIDERING A CHALLENGE BY A JOINT ACCOUNT OWNER TO A CREDITOR'S LEVYING OF FUNDS FROM A JOINT ACCOUNT PRESUMPTIVELY MUST APPLY AS 13.33.211 AND CALCULATE THE NET CONTRIBUTIONS OF EACH ACCOUNT OWNER TO DETERMINE THE AMOUNT OF FUNDS SUBJECT TO LEVY.

A son opened joint checking and savings accounts with his father. A creditor of the father later levied the joint account and obtained approximately $90,000 — essentially all of it traceable to the son — in partial satisfaction of the creditor's judgment against the father. The son intervened in the collection action, arguing that the money should be returned to him because he was the equitable owner of the funds in the accounts. The superior court held that the creditor could levy the joint account in its entirety because the financial institution's account agreement the father and son signed provided that they each owned the accounts "jointly and equally . . . regardless of their net contributions."

AS 13.33.211(a) provides that "[d]uring the lifetime of all parties, an account belongs to the parties in proportion to the net contribution of each to the sums on deposit, unless there is clear and convincing evidence of a different intent." After reviewing this statute the Alaska Supreme Court held that "courts considering a challenge by a joint account owner to a creditor's levying of funds from a joint account presumptively must apply AS 13.33.211 and calculate the 'net contributions' of each account owner to determine the amount of funds subject to levy. A creditor can, in turn, rebut the presumption that joint owners own the account in accordance with their net contributions by providing 'clear and convincing evidence of a different intent.'" The case was remanded to superior court for further proceedings.

Schacht v. Kunimune, 440 P.3d 149 (Alaska 2019).

Legislative review is not recommended unless the legislature does not intend for AS 13.33.211 to apply to all controversies between beneficial account owners and creditors.

AS 18.07.031

ANCHORAGE AND WASILLA ARE NOT THE "SAME COMMUNITY" UNDER AS 18.07.031 AND "SERVICE AREA" IS NOT SYNONYMOUS WITH "COMMUNITY."

AS 18.07.031(a) requires a healthcare facility to obtain a certificate of need (CON) from the Department of Health and Social Services (DHSS) before beginning construction that will exceed a cost of $1,000,000. Under AS 18.07.031(c), DHSS may grant an exemption from the CON requirement to an existing ambulatory surgery facility that plans to relocate within the same community as long as the facility does not increase the services it offers. AS 18.07.031(c) does not define the term "same community." DHSS granted an exemption to Alaska Spine Center (Alaska Spine), an Anchorage facility that sought to relocate to Wasilla, after determining that Wasilla and Anchorage are within the same service area and are therefore considered the same community.

A separate facility located in the Mat-Su Valley challenged DHSS's determination in superior court, arguing that Wasilla and Anchorage are not the same community and, therefore, that Alaska Spine should not qualify for a CON exemption under AS 18.07.031(c). The superior court determined that Anchorage and Wasilla are not the same community. Alaska Spine appealed the superior court's decision.

The Alaska Supreme Court concluded that neither the plain language of the statute nor the legislative history support DHSS's determination that Anchorage and Wasilla are in the same community. In reaching this determination, the Court noted that Anchorage and Wasilla are each part of distinct local governments, are located 44 miles apart, have separate school districts, police forces, and elected officials, have independent hospitals, and have no tax overlap. The Court further reasoned that the term "service area," defined in DHSS regulations as "the geographic area to be served by the proposed activity, including the community where the proposed activity will be located," is clearly broader than the term "community." The Court therefore determined that the legislature would have used the term "service area" in AS 18.07.031(c) if it intended a broader application of the

exemption. Relying on the plain meaning of the term "community" along with the legislative history related to the statute, the Court affirmed the superior court's decision and held that Anchorage and Wasilla are not the same community for CON purposes.

Alaska Spine Ctr., LLC v. Mat-Su Valley Med. Ctr. LLC, 440 P.3d 176 (Alaska 2019).

Legislative review is not recommended unless the legislature wishes to clarify the meaning of "same community" within the context of the AS 18.07.031(c) exemption to AS 18.07.031(a).

AS 23.30.010(a)

AS 23.30.010(a) ALLOWS AN EMPLOYER TO SEEK TO IMPOSE FULL LIABILITY FOR AN INJURY ON AN EARLIER EMPLOYER, BUT DOES NOT ALLOW THE APPORTIONMENT OF LIABILITY BETWEEN TWO OR MORE EMPLOYERS.

A worker had surgery on his right knee in 2004 after injuring it while working for SKW Eskimos, Inc. His physician indicated the worker might later need treatment "for posttraumatic osteoarthritis." SKW Eskimos paid all workers' compensation claims related to the 2004 knee injury. The worker returned to work after the surgery and did not consult a doctor about that knee for almost ten years, until he again injured the knee in 2014 while working for Alaska Interstate Construction, Inc. (Interstate). Following the 2014 injury he sought to have arthroscopic surgery as his doctor recommended. Interstate disputed its liability for continued medical care, and the worker filed a written claim against Interstate. The Alaska Workers' Compensation Board (Board) joined SKW Eskimos to the claim and decided, after a hearing, that the 2014 work injury was the substantial cause of the worker's current need for medical care, requiring Interstate to pay the cost of treatment for the right knee. Interstate appealed to the Alaska Workers' Compensation Appeals Commission (Commission), which decided the Board misapplied the new compensability standard. The worker appealed the Commission's decision to the Alaska Supreme Court.

The Court held that amendments to AS 23.30.010 in 2005 modified prior court cases adopting the "last injurious exposure" rule. The Court found that the amended statute modifies the last injurious exposure rule to permit employers to try and shift liability to an earlier employer. However,

because the 2005 amendments to the Act did not modify AS 23.30.155(d), the statute directly related to the last injurious exposure rule, the Court found that the rule as modified by the 2005 amendments to the Act allows the Board to impose full liability for an injury on an earlier employer, but not to apportion liability between two or more employers.

Morrison v. Alaska Interstate Constr. Inc., 440 P.3d 224 (Alaska 2019).

Legislative review is not recommended unless the legislature wishes to modify the last injurious exposure rule.

AS 23.30.128

THE ALASKA WORKERS' COMPENSATION APPEALS COMMISSION'S AUTHORITY TO RECONSIDER ITS DECISIONS IS NOT LIMITED TO FINAL DECISIONS ON THE MERITS.

Warnke-Green was injured in a work related accident and was rendered tetraplegic. During his ongoing medical treatment, Warnke-Green filed a workers' compensation claim against his employer, Pro-West Contractors, LLC, for a new modified van for medical transportation. The Alaska Workers' Compensation Board (Board) denied Warnke-Green's claim, concluding that he was not entitled to a modified van as either a medical benefit or a transportation benefit. Warnke-Green appealed the decision to the Alaska Workers' Compensation Appeals Commission (Commission), which reversed the Board's decision, concluding that a modified van constituted a medical benefit, and remanded the case to the Board. Warnke-Green moved for attorney's fees under AS 23.30.008(d) based on his status as the successful party in the appeal. Pro-West argued, and the Commission agreed, that Warnke-Green was not clearly a successful party within the meaning of the statute because he was awarded the cost of a modified van less the value of his current vehicle, which was substantially less than the cost of the "new modified van" that he requested. The Commission therefore awarded Warnke-Green less than half of the attorney's fees he had requested. Warnke-Green asked the Commission to reconsider its attorney's fees decision and the Commission denied the request, stating that it was only authorized to reconsider its final decision on the merits of the appeal. Warnke-Green petitioned the Alaska Supreme Court for review.

The Alaska Supreme Court noted that while AS 23.30.128(f) addresses reconsideration of Commission decisions, the statute "is silent about reconsideration of any decisions other than the final decisions on appeal described in subsection (e)." The Court considered AS 23.30.128(d), which authorizes the Commission to "affirm, reverse, or modify a decision or order upon review and issue other orders as appropriate." The Court reasoned that the authority in subsection (d) gives the Commission broad authority to reconsider its non-final decisions and that doing so is a "necessary part of adjudication." The Court further reasoned that allowing the Commission to reconsider its non-final decisions advances the legislative intent to give those seeking review of Board decisions the same procedural rights they would have in superior court. The Court therefore held that the Commission has authority to reconsider its non-final decisions because such authority is "necessarily incident" to its authority to "issue other orders as appropriate" under AS 23.30.128(d).

Warnke-Green v. Pro-West Contractors, LLC, 440 P.3d 283 (Alaska 2019).

Legislative review is not recommended, unless the legislature wishes to limit the reconsideration authority of the Alaska Workers' Compensation Appeals Commission to its final decisions on the merits.

AS 25.24.150(g)
AS 25.24.150(h)

THE PHRASE "MORE THAN ONE INCIDENT OF DOMESTIC VIOLENCE" IN AS 25.24.150(h) REFERS TO HABITUAL OR RECURRING VIOLENCE.

A mother hit her 12-year-old daughter repeatedly with a belt over a 30-minute period. At one point the mother stopped hitting the child to review the contents of the child's cell phone and then resumed hitting her. The child's father sought a modification of custody, arguing that the superior court should apply the presumption in AS 25.24.150(g). Under AS 25.24.150(g), there is a rebuttable presumption that a parent who has a history of perpetrating domestic violence may not be awarded custody of a child. Under AS 25.24.150(h), "[a] parent has a history of perpetrating domestic violence under (g) of this section if the court finds that, during one incident of domestic violence, the parent caused serious physical injury or the court finds that the parent has engaged in more than one incident of domestic violence." The superior court declined to apply AS 25.24.150(g) to the

custody determination, finding, in part, that the mother's behavior constituted a single episode of domestic violence.

On appeal, the Alaska Supreme Court analyzed whether the mother's assault of her daughter constituted two or more distinct incidents of domestic violence. Considering the plain meaning and legislative history of the phrase "more than one incident of domestic violence," the Court found that the legislature intended the phrase to mean habitual or recurring violence. The Court stated that "[a]n episode of excessive corporal punishment lasting 30 minutes does not evince a 'pattern' of domestic violence." The Court concluded that, although the incident was arguably broken into two periods of violence, the 30-minute episode was a single episode of domestic violence for the purposes of applying the presumption under AS 25.24.150(g).

John E. v. Andrea E., 445 P.3d 649 (Alaska 2019).

Legislative review is not recommended.

AS 25.25.205(a)

UNDER AS 25.25.205(a), THE TERM "RESIDENCE OF THE OBLIGOR" MEANS THE OBLIGOR'S "DOMICILE" AND THE TERM "TRIBUNAL" REFERS TO BOTH THE SUPERIOR COURT AND THE CHILD SUPPORT SERVICES DIVISION.

Berry, a soldier who was stationed in Alaska, had a daughter with Coulman in May of 2010. Berry and Coulman never married and Berry was transferred to Fort Bragg, North Carolina shortly before their daughter was born. Coulman then sought help from Alaska's Child Support Services Division (CSSD) in obtaining child support from Berry. In May of 2011, CSSD entered an order that required Berry to pay Coulman $773 per month in child support. In September 2014, Berry filed suit in Fairbanks superior court to obtain sole legal and physical custody of the child and in his complaint asserted that Coulman and the child lived in Alaska. Coulman's answer to the complaint instead stated that she and the child lived in Germany. During the custody litigation, Coulman eventually filed a motion to modify child support. Berry asserted that under AS 25.25.205(a), only CSSD, the tribunal that issued the original child support order, had jurisdiction to modify the order. The superior court asserted that it had subject matter jurisdiction to modify the support order and ultimately entered an order modifying child support after issuing its final custody order in September 2017.

Berry appealed the superior court's order modifying child support, arguing that Alaska did not have jurisdiction because neither he nor the child lived in Alaska when the motion was filed. Berry further argued that even if Alaska had jurisdiction, only CSSD had jurisdiction to modify the order under AS 25.25.205(a). AS 25.25.205(a) provides a tribunal in the state with continuing, exclusive jurisdiction to modify its child support order if Alaska is the obligor's state of residence at the time the motion to modify support is filed. In defining the term "residence" as used in AS 25.25.205(a), the Alaska Supreme Court relied on guidance from courts in other states and ultimately concluded that "residence of the obligor" means the obligor's "domicile," or "the place where the obligor intends to remain or the place that is the obligor's legal residence." The Court held that Berry, who maintained Alaska as his state of residence for tax purposes and intended to return to Alaska after leaving the military, was a resident of Alaska for purposes of AS 25.25.205(a). The Court further construed the term "tribunal," as used in AS 25.25.205(a), to refer to both the superior court and CSSD, as both are referred to as "tribunals of this state" under AS 25.25.102(a). The Court therefore concluded that the superior court had jurisdiction to modify the 2011 child support order originally issued by CSSD.

Berry v. Coulman, 440 P.3d 264 (Alaska 2019).

Legislative review is not recommended.

AS 28.01.015
AS 29.25.070(g)

THE ENACTMENT OF AS 29.25.070(g) DID NOT IMPLIEDLY REPEAL AS 28.01.015.

Under AS 28.01.015, a municipality may adopt an ordinance providing for the impoundment or forfeiture of a motor vehicle, watercraft, or aircraft when a defendant commits certain offenses, even if this impoundment or forfeiture is harsher than the penalty for a corresponding state offense. This provision was enacted in 1983 as a statutory carve-out to AS 28.01.010(a), which provides that a municipality may not enact an ordinance that is inconsistent with the provisions of Title 28. In 2016, the legislature enacted AS 29.25.070(g), which prohibits a municipality from imposing a greater punishment for a violation of municipal law than the punishment imposed for a comparable state crime with similar elements.

The Alaska Court of Appeals considered whether the new provision, AS 29.25.070(g), impliedly repealed the long-standing statutory carve-out for impoundments and forfeitures. The court reviewed the legislative history of AS 28.01.015 and AS 29.25.070(g) and found that "while AS 29.25.070(g) was intended to expand sentencing uniformity throughout the state, it did not undercut the more specific statute governing impoundments and forfeitures that had existed as a carve-out to this uniformity for decades." The court concluded that there is no irreconcilable conflict between AS 28.01.015 and AS 29.25.070(g), and therefore held that AS 29.25.070(g) did not impliedly repeal AS 28.01.015.

Good v. Municipality of Anchorage, 450 P.3d 693 (Alaska App. 2019).

Legislative review is not recommended.

AS 34.08.470(h)

UNDER AS 34.08.470(h), AN OWNER IS NOT RELIEVED OF THE OBLIGATION TO PAY AN ASSESSMENT THAT IS OMITTED FROM A STATEMENT PROVIDED BY THE CONDOMINIUM ASSOCIATION WHEN THE OWNER HAS ACTUAL KNOWLEDGE OF THE ASSESSMENT.

Condominium owners Black and Brill (the Blacks) withheld portions of their condominium dues for several years, beginning in 2005, in protest of the condominium association's (association) dues structure. The Blacks eventually decided to end their protest and sent the association a check intended to cover the unpaid assessments from January 2010 through February 2014. Under AS 34.08.470(h), a condominium association "shall furnish to a unit owner a statement setting out the amount of unpaid assessments against the unit" upon request and the statement "is binding on the association, the executive board, and each unit owner." On October 31, 2016, the Blacks requested that the association provide them with a statement of their unpaid assessments. On November 1, 2016, the association imposed a $1,100 special assessment on all owners due on November 19. On November 7, the association sent the Blacks the requested statement, which did not include the $1,100 special assessment. The Blacks argued that they were not obligated to pay the special assessment because it was not included in the November 7th statement. The superior court rejected that argument and held that the Blacks were responsible for paying the special assessment.

On appeal, the Alaska Supreme Court noted that the legislative history of AS 34.08.470(h) showed an intent to protect unit owners by ensuring they could readily obtain information about their liability and preventing the association from collecting assessments of which the owners have no knowledge. The Court reasoned that when an owner has actual knowledge of an assessment, the protection provided by AS 34.08.470(h) is unnecessary. The Court concluded that "[i]t would be contrary to the purpose of AS 34.08.470 to allow a unit owner who already knows about an assessment to use its omission from a statement provided by the association as a means to relieve himself or herself of the obligation to pay it." The Court found that the Blacks had actual knowledge of the special assessment because Mr. Black was present at the November 1 meeting when the special assessment was announced and because he testified in superior court that he received an email announcing the special assessment. The Court therefore affirmed the superior court's decision that the Blacks were obligated to pay the special assessment despite its omission from the statement.

Black v. Whitestone Estates Condo. Homeowners' Ass'n, 446 P.3d 786 (Alaska 2019).

Legislative review is not recommended unless the legislature wishes to relieve unit owners that have actual knowledge of an assessment of the obligation to pay that assessment if it is omitted from a statement provided under AS 34.08.470(h).

AS 34.35.140

1. A "DUMP LIEN" UNDER AS 34.35.140 DOES NOT APPLY TO GAS STORED IN ITS NATURAL RESERVOIR;
2. WHETHER A "MINERAL DUMP" IS CREATED UNDER AS 34.35.140 AND AS 34.35.070(a)(1) WHEN NATURAL GAS IS RELEASED FROM THE NATURAL RESERVOIR IN WHICH THE GAS WAS FORMED AND IS TRANSPORTED THROUGH A PIPELINE TO THE POINT OF SALE IS DETERMINED ON A CASE BY CASE BASIS; AND
3. A DUMP LIEN CLAIMANT UNDER AS 34.35.140 MUST PROVE THAT THE PRODUCED GAS WAS THE PRODUCT OF THE CLAIMANT'S LABOR IN ORDER TO HAVE A VALID DUMP LIEN.

The Alaska Supreme Court answered the following certified questions from both the United States District Court for the district of Alaska and the United States Bankruptcy Court for the district of Alaska regarding the scope of AS 34.35.140 as applied to natural gas development.

1. Can a "dump lien" under AS 34.35.140 apply to gas stored in its natural reservoir?

The Alaska Supreme Court held that a "dump lien" under AS 34.35.140 does not apply to unextracted gas stored in its natural reservoir. The Court reasoned that the plain language of the dump lien statute and accompanying definition requires there to be a "dump" to which the lien can attach. The statute defines "dump" to require gas to be "extracted, hoisted, and raised." As unproduced gas has not been extracted, hoisted, or raised, the Court held that a dump lien cannot attach to the gas.

2. Is a mineral "dump" created under AS 34.35.140 and AS 34.35.070(a)(1) each time a company releases natural gas from the natural reservoir in which the gas was formed and transports that gas through a pipeline to the point of sale?

The Court stated that gas is a dump or mass if the gas 1) has been "extracted, hoisted, and raised from the mine or mining claim," 2) is "in mass," and 3) is "at the mine or on the mining claim." For natural gas in a pipeline, the Court held that the first two elements are met but that the third element must be determined on a case-by-case basis by the trier of fact.

3. Must a dump lien claimant under AS 34.35.140 prove, in order to have a valid dump lien, that the produced gas was, in whole or in part, the product of the claimant's labor?

The Alaska Supreme Court held that AS 34.35.140(a) plainly requires lien claimants show that the gas was a product of the claimant's labor, as the purpose of a dump lien is "to secure the amount due the laborer in the production of the minerals." The Court stated that whether a particular claimant's labor meets the requirements is a fact-specific inquiry to be decided on a case-by-case basis.

All Am. Oilfield, LLC v. Cook Inlet Energy, LLC, 446 P.3d 767 (Alaska 2019).

Legislative review is not recommended.

AS 45.50.537(a)

ALASKA COURTS CALCULATING "FULL REASONABLE ATTORNEY FEES" UNDER AS 45.50.537(a) SHOULD EMPLOY THE "MODIFIED LODESTAR" METHOD AND MAY NOT BASE THE CALCULATION ON A CONTINGENCY FEE AGREEMENT.

Collens contracted with Maxim to provide him with in-home care. Maxim and its Alaska office manager later made misrepresentations when discharging Collens from their care and, in doing so, violated Maxim's policies and procedures. Collens filed suit against Maxim under Alaska's Unfair Trade Practices and Consumer Protection Act (UTPA) and the superior court ruled for Collens and awarded him attorney fees under the UTPA fee-shifting provision in AS 45.50.537(a). In determining the amount of attorney fees, the superior court concluded that "full reasonable attorney fees" under AS 45.50.537(a) could be defined by the contingency agreement executed by Collens and his counsel.

On appeal, Maxim argued that "full reasonable attorney fees" under AS 45.50.537(a) cannot be based on a contingency fee agreement and must be calculated based on reasonable hours worked and a reasonable hourly rate. The Alaska Supreme Court agreed with Maxim in part and held that Alaska courts should employ the "modified lodestar" method in calculating "full reasonable attorney fees" under AS 45.50.537(a). Under the modified lodestar method, a court should first determine the baseline lodestar amount by multiplying the reasonable number of hours worked by a reasonable hourly rate and then the court may consider a variety of factors to determine whether to adjust the calculated amount. The Court therefore concluded that the superior court's calculation of attorney fees based on the contingency fee agreement did not constitute "full reasonable attorney fees" under AS 45.50.537(a).

Adkins v. Collens, 444 P.3d 187 (Alaska 2019).

Legislative review is not recommended unless the legislature intended to allow "full reasonable attorney fees" to be calculated based on a contingency fee agreement.

AS 47.10.113

A COURT MAY TAKE JUDICIAL NOTICE OF MATTERS FROM PREVIOUS CUSTODY-RELATED PROCEEDINGS IN A CHILD IN NEED OF AID CASE IF THE INFORMATION IS OFFERED IN COMPLIANCE WITH APPLICABLE RULES OF EVIDENCE.

A mother appealed a superior court decision adjudicating her child as a child in need of aid (CINA), arguing that the court relied on the record from her prior custody proceeding without giving her prior notice and therefore the court violated her due process rights.

On appeal the Alaska Supreme Court held that AS 47.10.113 does not require the court to take judicial notice of matters from previous custody related proceedings in a CINA case. The Court further held that, while not required by AS 47.10.113, a court may take judicial notice of matters from previous custody-related proceedings if the information is offered in compliance with applicable rules of evidence. The Court affirmed the superior court's decision holding that the child was a child in need of aid.

Amy S. v. State, Dep't of Health & Soc. Servs., Office of Children's Servs., 440 P.3d 273 (Alaska 2019).

Legislative review is not recommended.

AS 47.15.010

THE INTERSTATE COMPACT FOR JUVENILES DOES NOT AUTHORIZE THE HOLDING STATE TO CONDUCT A BEST-INTERESTS ANALYSIS BEFORE ORDERING THE RETURN OF A JUVENILE RUNAWAY.

Jessica, a juvenile, left her home state of Iowa to spend the summer in Alaska with family friends. Jessica's mother, who had primary physical custody of Jessica and shared legal custody with Jessica's father, permitted Jessica to go to Alaska but later revoked her permission and instructed Jessica to return home to Iowa. Jessica refused to return and her mother subsequently reported Jessica as missing to Iowa police. Jessica's mother filed a petition in an Iowa court to force Jessica's return to Iowa under the Interstate Compact for Juveniles (ICJ). The Iowa court found that Jessica's continued absence from her legal custodian was not in her best interest. Upon receiving the ICJ requisition paperwork from Iowa, the

Alaska superior court notified Jessica of the action and held several hearings. The superior court ultimately concluded that its authority was limited to determining whether the requisition paperwork was in order and that it had no authority under ICJ to conduct a best-interests analysis. The superior court then determined that the requisition paperwork was in order and ordered Jessica's return to Iowa. Jessica appealed the decision to the Alaska Supreme Court.

In her appeal, Jessica argued that Alaska, as the holding state, was required to conduct a best-interests hearing before ordering her to return to her home state. The Court held that the ICJ does not authorize the holding state to make a best-interests determination because the home state is required to make a best-interests determination in completing the requisition paperwork. In reaching its decision, the Court relied on the plain language of the ICJ, the relevant legislative history, and the decisions of courts in other jurisdictions. The Court reasoned that permitting only the home state to conduct a best-interests analysis promotes the ICJ's goals of reciprocity and cooperation among member states. The Court further noted that Jessica would still have legal recourse and could challenge the Iowa court's determination that returning her to Iowa was in her best interest.

Jessica J. v. State, 442 P.3d 771 (Alaska 2019).

Legislative review is not recommended.

AS 47.30.700

A COURT MUST EITHER CONDUCT A SCREENING INVESTIGATION OR APPOINT A LOCAL MENTAL HEALTH PROFESSIONAL TO DO SO AFTER A PETITION FOR INVOLUNTARY COMMITMENT IS FILED UNDER AS 47.30.700.

A psychologist petitioned to have a patient involuntarily hospitalized. The superior court held a hearing on the petition at which only the psychologist testified. The court relied on testimony by the psychologist about the patient's condition before the filing of the petition and did not conduct a screening investigation or order one be done following the filing of the petition. The superior court granted the petition and the patient was hospitalized under AS 47.30.700. The patient appealed the order.

AS 47.30.700 provides a non-emergency avenue to initiate involuntary hospitalization for a mental health evaluation.

AS 47.30.700 states in relevant part: "Upon petition of any adult, a judge shall immediately conduct a screening investigation or direct a local mental health professional . . . to conduct a screening investigation of the person alleged to be mentally ill . . . ."

On appeal, the Alaska Supreme Court held that AS 47.30.700 requires the court to either conduct a screening investigation with the respondent or appoint a local mental health professional to do so. This screening investigation must include post-petition interviews with the person(s) making the allegations, other significant witnesses, and, if possible, the respondent. The Court reversed the superior court's decision denying the patient's motion to vacate her hospitalization order.

In re Paige M., 433 P.3d 1182 (Alaska 2018).

Legislative review is not recommended unless the legislature wants to clarify when a screening investigation should be conducted.

AS 47.30.765

APPEALS OF INVOLUNTARY ADMISSIONS FOR TREATMENT AND INVOLUNTARY MEDICATION ARE CATEGORICALLY EXEMPT FROM THE MOOTNESS DOCTRINE.

The Alaska Supreme Court consolidated two separate appeals from involuntary commitment orders, one of which also appealed an involuntary medication order. Although the Alaska Supreme Court had previously held that most appeals of involuntary commitment orders are moot, the Court overruled those prior cases. The Court was persuaded that its previous rulings with regard to mootness in the context of involuntary commitment were mistaken and that more good than harm would come from overturning them.

The Court concluded that appeals from involuntary commitment orders and involuntary medication orders are categorically subject to the public interest exception, whether the appeal is premised on a question of statutory or constitutional interpretation or on an evidence-based challenge.

In re Naomi B., 435 P.3d 918 (Alaska 2019).

Legislative review is not recommended.

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