

**ALASKA STATE LEGISLATURE  
HOUSE JUDICIARY STANDING COMMITTEE**

January 25, 2012

1:04 p.m.

**MEMBERS PRESENT**

Representative Carl Gatto, Chair  
Representative Steve Thompson, Vice Chair  
Representative Wes Keller  
Representative Bob Lynn  
Representative Max Gruenberg  
Representative Lindsey Holmes

**MEMBERS ABSENT**

Representative Lance Pruitt  
Representative Mike Chenault (alternate)

**COMMITTEE CALENDAR**

OVERVIEW(S): REVIEW OF SELECT 2011 COURT DECISIONS

- HEARD

**PREVIOUS COMMITTEE ACTION**

No previous action to record

**WITNESS REGISTER**

JEAN MISCHEL, Attorney  
Legislative Legal Counsel  
Legislative Legal and Research Services  
Legislative Affairs Agency (LAA)  
Juneau, Alaska

**POSITION STATEMENT:** During a review of select 2011 court decisions, discussed the Williams v. Barbee and the Christoffersen v. State cases.

DENNIS BAILEY, Attorney  
Legislative Legal Counsel  
Legislative Legal and Research Services  
Legislative Affairs Agency (LAA)  
Juneau, Alaska

**POSITION STATEMENT:** During a review of select 2011 court decisions, discussed the State v. Alyeska Pipeline Service

Company, the Calvert v. State, and the Monzulla v. Voorhees cases.

DON BULLOCK, Attorney  
Legislative Legal Counsel  
Legislative Legal and Research Services  
Legislative Affairs Agency (LAA)  
Juneau, Alaska

**POSITION STATEMENT:** During a review of select 2011 court decisions, discussed the Marathon Oil Company v. State case.

#### **ACTION NARRATIVE**

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**CHAIR CARL GATTO** called the House Judiciary Standing Committee meeting to order at 1:04 p.m. Representatives Gatto, Thompson, Gruenberg, Holmes, Lynn, and Keller were present at the call to order.

#### **OVERVIEW(S): Review of Select 2011 Court Decisions**

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CHAIR GATTO announced that the only order of business would be a review of select 2011 court decisions as presented by Legislative Legal and Research Services staff.

CHAIR GATTO noted that members' packets include a December 2011 legislative report prepared by Legislative Legal and Research Services containing information about the six cases the committee would be considering.

REPRESENTATIVE GRUENBERG, in response to a query, mentioned that legislation has been introduced to address concerns about the court's decision in Bridge v. State, one of the cases the committee considered last year and which is outlined on page 8 of the aforementioned report.

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JEAN MISCHER, Attorney, Legislative Legal Counsel, Legislative Legal and Research Services, Legislative Affairs Agency (LAA), began by explaining that under guidelines established in AS 24.20.065(a), the aforementioned report is published and disseminated yearly, thereby providing the legislature with an opportunity to address any concerns raised by particular court

decisions. When compiling the report, legislative attorneys review various legal opinions and then make determinations regarding whether courts and agencies are properly implementing legislative purposes; whether there are court or agency expressions of dissatisfaction with Alaska's statutes or common laws; whether opinions, decisions, or regulations indicate unclear or ambiguous statutes; and whether the courts have modified or revised common law.

MS. MISCHEL, referring to the decision in the Williams v. Barbee case and outlining some of the facts involved in Barbee, indicated that the Alaska Supreme Court ultimately held that in a custody-modification proceeding, applying the statutory presumption against awarding child custody to someone with a history of perpetrating domestic violence (DV) is appropriate, regardless that the statute addressing initial custody determinations and outlining the standard for what constitutes the best interests of the child, and the statute addressing modifications to custody determinations and containing a requirement that such a standard be applied, don't cross reference each other. The court additionally noted that both statutes serve the same legislative purposes - that of protecting children and serving their best interests. She then relayed that in 2010, legislation was passed that specifically added the presumption against awarding child custody to someone with a history of perpetrating DV to the statute addressing custody modifications, and thus further legislative action isn't necessary.

REPRESENTATIVE GRUENBERG concurred.

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MS. MISCHEL, referring to the decision in the Christoffersen v. State case and outlining some of the facts involved in Christoffersen, indicated that the Alaska Supreme Court ultimately held that court-appointed child-custody investigators are entitled to absolute quasi-judicial immunity during the performance of their duties, and that that same immunity extends vicariously to the State of Alaska as their employer. She further indicated that the court also held that the State of Alaska could not have been held vicariously liable even if the investigator hadn't been entitled to such immunity. In conclusion, she indicated that she was merely bringing this decision to the legislature's attention in case it wished to address [the issues of immunity and liability] further.

REPRESENTATIVE GRUENBERG opined that in Christoffersen, in affirming the dismissal of the case, the Alaska Supreme Court was following well-established legal principles, and surmised that because judicial immunity is absolute immunity, and because a court's custody investigators serve as an arm of the court, it logically follows that they should have the same immunity. This is the law in almost all other states. He offered his understanding, though, that such immunity would not be available to someone who was acting ultra vires.

MS. MISCHEL, in response to a question, confirmed that in Christoffersen, the court considered the ruling in Lythgoe v. Guinn.

REPRESENTATIVE GRUENBERG recommended that the committee take no action with regard to the Christoffersen decision.

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DENNIS BAILEY, Attorney, Legislative Legal Counsel, Legislative Legal and Research Services, Legislative Affairs Agency (LAA), referring to the decision in the State v. Alyeska Pipeline Service Company case and outlining some of the facts involved in Alyeska, indicated that the Alaska Supreme Court ultimately held that an owner-controlled insurance program written for ongoing maintenance is not prohibited by AS 21.36.475, and that the language of that statute was clear enough. He relayed that he was bringing this decision to the legislature's attention in case it wished to consider whether [AS 21.36.475 ought to apply] to an owner-controlled insurance program written for activities other than that of working on a construction project, and mentioned that the legislative history of that statute indicates that the legislature didn't intend for it to apply to an owner-controlled insurance program written for anything other than construction projects.

REPRESENTATIVE GRUENBERG recommended sending a letter to the House Labor and Commerce Standing Committee suggesting that it review the court's decision in Alyeska.

CHAIR GATTO indicated that the committee would do so.

MR. BAILEY, referring to the decision in the Calvert v. State case and outlining some of the facts involved in Calvert, indicated that the Alaska Supreme Court - relying heavily on the Department of Labor & Workforce Development's (DLWD's) benefit policy manual for interpretations of how the statutes would be

applied by the DLWD - ultimately held that for purposes of receiving unemployment benefits, reductions in work hours and pay do not constitute good cause for quitting. He indicated that he was bringing this decision to the legislature's attention in case it wished to consider whether the DLWD's manual is correctly interpreting the statutes with regard to the concepts of suitability and good cause, two factors that the court considered in Calvert.

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REPRESENTATIVE GRUENBERG made a motion that the court's decision in Calvert be referred to the House Labor and Commerce Standing Committee for review. There being no objection, it was so ordered.

MR. BAILEY, referring to the decision in the Monzulla v. Voorhees case and outlining some of the facts involved in Monzulla, indicated that the Alaska Supreme Court ultimately held that the Workers' Compensation Appeals Commission has an implied discretionary authority to review non-final orders of the Alaska Workers' Compensation Board; the court based its holding on the commission's quasi-judicial function and the effect that delaying some decisions would have. He indicated that he was bringing this decision to the legislature's attention in case it wished to consider whether the court properly interpreted legislative intent to include the commission's authority to conduct reviews of the board's non-final orders. He cautioned, though, that if the Workers' Compensation Appeals Commission is explicitly denied such authority, constitutional issues could arise.

REPRESENTATIVE GRUENBERG opined that the Workers' Compensation Appeals Commission should have that authority, and that the House Labor and Commerce Standing Committee has primary jurisdiction over workers' compensation matters.

REPRESENTATIVE THOMPSON concurred [with the latter point].

REPRESENTATIVE GRUENBERG made a motion that the court's decision in Monzulla be referred to the House Labor and Commerce Standing Committee for review. There being no objection, it was so ordered.

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DON BULLOCK, Attorney, Legislative Legal Counsel, Legislative Legal and Research Services, Legislative Affairs Agency (LAA), referring to the decision in the Marathon Oil Company v. State case and outlining some of the facts involved in Marathon, indicated that the Alaska Supreme Court ultimately upheld the DNR's interpretation that retroactive application of contract pricing is prohibited by both the statute's use of the word, "prospective" and the Alaska Land Act's purpose of maximizing revenue, based upon the fact that the DNR's determination was longstanding, was within the DNR's jurisdiction, and had a reasonable basis in statute, though the court also found the statute itself to be ambiguous. He indicated that he was bringing this decision to the legislature's attention in case it wished to consider whether the court's interpretation of the statute disallowing retroactive application of contract pricing is consistent with legislative intent.

REPRESENTATIVE GRUENBERG made a motion that the court's decision in Marathon be referred to the House Resources Standing Committee for review. There being no objection, it was so ordered.

Members then referred to the delayed repeals, enactments, and amendments outlined on pages 1-2 of the aforementioned report, and indicated that further research on those items would be conducted.

[2:02:00 PM](#)

#### **ADJOURNMENT**

There being no further business before the committee, the House Judiciary Standing Committee meeting was adjourned at 2:02 p.m.