
# Alaska Appellate Update

Thursday, May 5, 2011
2:00 p.m. – 3:00 p.m.
Edgewater Room
Fairbanks, AK
Alaska Bar Convention

CLE #2011-705 1.0 General CLE Credits

## FACULTY

**Erwin Chemerinsky**, Dean and Distinguished Professor of Law, University of California, Irvine, School of Law. Prior to assuming this position in July 2008, was the Alston & Bird Professor of Law and Political Science, Duke University. Joined the Duke faculty in July 2004 after 21 years at the University of Southern California Law School, where he was the Sydney M. Irmas Professor of Public Interest Law, Legal Ethics, and Political Science. Before that he was a professor at DePaul College of Law from 1980-83. Practiced law as a trial attorney, United States Department of Justice, and at Dobrovir, Oakes & Gebhardt in Washington, D.C. Received a B.S. from Northwestern University and a J.D. from Harvard Law School.

Author of six books and over 100 law review articles that have appeared in journals such as the Harvard Law Review, Michigan Law Review, University of Pennsylvania Law Review, Stanford Law Review and Yale Law Journal. Writes a regular column on the Supreme Court for California Lawyer, Los Angeles Daily Journal, and Trial Magazine, and is a frequent contributor to newspapers and other magazines. Regularly serves as a commentator on legal issues for national and local media.

In April 2005, was named by Legal Affairs as one of "the top 20 legal thinkers in America." Named by the Daily Journal in 2008 and 2009 (and many prior years) as one of the 100 most influential lawyers in California. In 2006, received the Duke University Scholar-Teacher of the Year Award. Has received many awards from educational, public interest, and civic organizations.

Frequently argues appellate cases, including in the United States Supreme Court and the United States Courts of Appeals. Testified many times before congressional and state legislative committees.

Elected by the voters in April 1997 to serve a two year term as a member of the Elected Los Angeles Charter Reform Commission. Served as Chair of the Commission which proposed a new Charter for the City which was adopted by the voters in June 1999. Also served as a member of the Governor's Task Force on Diversity in 1999-2000. In September 2000, released a report on the Los Angeles Police Department and the Rampart Scandal, which was prepared at the request of the Los Angeles Police Protective League. Served as Chair of the Mayor's Blue Ribbon Commission on City Contracting, which issued its report in February 2005.

# Alaska Constitutional Cases

Alaska Conference
Fairbanks, Alaska
May 5, 2011

Erwin Chemerinsky
Dean and Distinguished Professor of Law
University of California, Irvine School of Law

## I. Due process

*Nash v. Matanuska-Susitna Borough*, 239 P.3d 692 (Alaska 2010). An individual's due process rights are violated when an agency, during an administrative hearing bars the individual from presenting witnesses and relevant material evidence that is essential for a fair trial.

*Armstrong v. Tanaka*, 228 P.3d 79 (Alaska 2010). A balancing test is required to weigh the parties' interests and to determine whether a stay is appropriate when an individual facing criminal charges brings a civil action and either party requests a stay of civil proceedings pending resolution of criminal charges.

*Krause v. Matanuska-Susitna Borough*, 229 P.3d 168 (Alaska 2010). Damages are not available for constitutional claims, but declaratory and injunctive relief are appropriate remedies for an unconstitutional statute. A motion for leave to amend a complaint to apply equitable tolling should be granted unless the claim is legally insufficient on its face.

*Alvarez v. State, Dept. of Admin., Division of Motor Vehicles*, ___ P.3d ___, 2011 WL 923224 (March 18, 2011). Two and a half year delay between arrest for drunk driving and license suspension hearing did not violate due process.

II. Elections

*Kirk v. Carpeneti*, 623 F.3d 889 (9th Cir. 2010). The nomination of state judges by a judicial commission that is not elected does not violate equal protection.

*Croft v. Parnell*, 236 P.3d 369 (Alaska 2010). A ballot initiative that proposes a new government program and a new tax violates Article II, section 13 of the Alaska Constitution when the only connection between the program and the tax is the "soft dedication" of the tax to fund the program.

*Kohlhaas v. State, Office of the Lieutenant Governor*, 223 P.3d 105 (Alaska 2010). A ballot initiative may be denied if either seeks secession from the Union or a change to the Alaska Constitution to allow secession.

*Miller v. Treadwell*, 736 F.Supp.2d 1240 (D. Alaska 2010). Counting ballots that misspell a candidate's name does not violate the Elections Clause of the Constitution and the failure to create uniform rules for counting ballots does not violate the equal protection clause when is done uniformly by the same panel of officials.

III. Procedure

*Law Project for Psychiatric Rights, Inc. v. State*, 239 P.3d 1252 (Alaska 2010). A public interest law firm lacked standing to sue on behalf of minors who were compelled to take psychotropic drugs. The plaintiff failed to demonstrate that the issues raised were of public significance or that it was an appropriate litigant.

*State v. Carlin*, ___ P.3d. ___, 2011 WL 1086470 (March 25, 2011). When a criminal defendant dies after filing an appeal, or a petition for hearing which has been granted, the defendant's conviction will stand unless the defendant's personal representative elects to continue the appeal.

## IV. Criminal procedure

### A. Searches and seizures

*Chase v. State*, 243 P.3d 1014 (Alaska Ct. App. 2010). Alaska's mandatory seatbelt law was supported by a sufficient public interest and it is not an unconstitutional means of providing a pretext for police stops.

*Clark v. State*, 231 P.3d 366 (Alaska Ct. App. 2010). Police properly seized and opened property left in a stolen vehicle based on the owner's consent to the search and the property owner's reduced privacy interest in the item left in the car.

*State v. Siftsoff*, 229 P.3d 214 (Alaska Ct. App. 2010). The hot pursuit warrant exception did not apply when a police officer followed a speeder home and entered his home without showing a compelling need for immediate action.

*Majaev v. State*, 223 P.3d 629 (Alaska 2010). A peace officer's simple hand gesture directing an individual driver to stop, or come back to the officer, is a seizure when it would compel a reasonable individual not to leave.

*Anderson v. State*, 246 P.3d 930 (Alaska Ct. App. 2011). Although police illegally arrested individual and mistakenly told him that he was required to submit to blood and alcohol testing, his consent to this was voluntary and thus allowed admission of the evidence.

### B. Self-incrimination

*Marshall v. State*, 238 P.3d 590 (Alaska 2010). The right against self-incrimination requires a trial court to hold a hearing on the affirmative defense of entrapment even when the defendant fails to submit evidence supporting each element of the defense.

*Forster v. State*, 236 P.3d 1157 (Alaska Ct. App. 2010). One illegally obtained statement does not taint future legal interrogations were *Miranda* rights were waived.

C. Confrontation Clause

*Vann v. State*, 229 P.3d 197 (Alaska Ct. App. 2010). A lab employee testifying about a genetic test performed in part by another technician does not violate the Confrontation Clause of the Sixth Amendment even though the other employee did not testify. An expert cannot act as a mere conduit for another's opinion, but can offer an independent analysis based on another person's work.

D. Ineffective assistance of counsel

*Wilson v. State*, 244 P.3d 535 (Alaska Ct. App. 2010). A prima facie case of ineffective assistance of counsel is established when an individual is advised that entering a no-contest plea in a criminal trial will not prejudice a later civil suit against the defendant.

*Ferguson v. State*, 242 P.3d 1042 (Alaska Ct. App. 2010). The failure of an attorney to adequately convey the implications of a plea agreement that a defendant accepts constitutes incomplete legal advice and the defendant is entitled to withdraw the plea.

*Lindoff v. State*, 224 P.3d 152 (Alaska Ct. App. 2010). A defendant requesting to withdraw a previously accepted plea of guilty or no contest by arguing that he was not advised on the consequences of the plea must, at minimum, unequivocally assert that he would not have entered the plea if he had been told the consequences.

E. Remedies for failure to disclose

*Evans v. State*, 231 P.3d 918 (Alaska Ct. App. 2010). A defendant is entitled to a mistrial when the State discloses information mid-trial that should have been disclosed earlier and fails to prove that the late disclosure was not prejudicial to the defendant.

F. Sentencing

*B.F.L. v. State*, 233 P.3d 1118 (Alaska Ct. App. 2010). When the superior court determines that a minor in a juvenile delinquency proceeding needs ongoing government supervision, the superior court must impose the least restrictive alternative that will satisfy the minor's rehabilitative needs and protect the public.

*Starkweather v. State*, 244 P.3d 522 (Alaska Ct. App. 2010). When a criminal defendant is convicted of both first degree assault and attempted murder, the crimes must be merged for sentencing purposes.

G. Expungement of criminal records

*Farmer v. State*, 235 P.3d 1012 (Alaska 2010). Judicial expungement of criminal records, if allowed at all, requires extraordinary circumstances.