

Original sponsor: Bradner, Beirne,
Bowman, et al

Offered: 3/26/75
Referred: Finance

1 IN THE HOUSE

BY THE JUDICIARY COMMITTEE

2 CS FOR HOUSE BILL NO. 238

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 NINTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the custody and representation of
7 a child in court proceedings; and adding to the court's
8 authority under Rule 17(b), Rules of Civil Procedure,
9 and Rules 11(a) and 15, Rules of Children's Procedure."

10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

11 * Section 1. AS 09.55.205 is amended to read:

12 Sec. 09.55.205. JUDGMENTS FOR CUSTODY. In an action for divorce
13 or for legal separation the court may, during the pendency of the
14 action, or at the final hearing or at any time thereafter during the
15 minority of any child of the marriage, make an order for the custody of
16 or visitation with the minor child which may seem necessary or proper
17 and may at any time modify or vacate the order. Appointment of any
18 guardian ad litem or attorney for the child shall be made under the
19 terms of AS 09.65.130. In awarding custody the court is to be guided
20 by the following considerations:

21 (1) by what appears to be for the best interests of the child
22 and if the child is of a sufficient age and intelligence to form a pre-
23 ference, the court may consider that preference in determining the
24 question;

25 (2) as between parents adversely claiming the custody neither
26 parent is entitled to it as of right.

27 * Sec. 2. AS 09.65 is amended by adding a new section to read:

28 Sec. 09.65.130. REPRESENTATION OF CHILD. (a) The court may,
29 upon the motion of either party or upon its own motion, appoint an

1 attorney or guardian ad litem to represent the interests of a minor or
2 dependent child with respect to his custody, support, and visitation or
3 in any other legal proceeding involving his welfare. When custody,
4 support, or visitation are at issue in a divorce, it is the responsi-
5 bility of the parties or their counsel to notify the court that those
6 matters are at issue. Upon notification, the court shall determine
7 whether the child should have legal assistance or other services and
8 shall make a finding on the record before trial. The court shall enter
9 an order for costs, fees, and disbursements in favor of the child's
10 attorney or guardian ad litem and may further order that other services
11 be provided for the protection of the child.

12 (b) If custody, support, or visitation is an issue, the order
13 for costs, fees, and disbursements shall be made against either or both
14 parents, except that, if the responsible party is indigent, the costs,
15 fees, and disbursements shall be borne by the state. If either or both
16 parents are only temporarily without funds, as determined by the court,
17 the court may advance payment for legal representation or other services
18 rendered to the child. The attorney general is responsible for en-
19 forcing collections owed the court, and repayment shall be made directly
20 to the court under the provisions of rules governing the administration
21 of the courts. The court shall, if possible, avoid assigning costs to
22 only one party by ordering that costs of the child's legal representa-
23 tion or other services be paid from proceeds derived from a sale of
24 property belonging to both parties, before a division of property is
25 made. No repayment may be required for those who are receiving legal
26 services for the indigent.

27 * Sec. 3. AS 18.85.100(b) is amended to read:

28 (b) The attorney services and facilities and the court costs
29 shall be provided at public expense to the extent that the person, at
CSHB 238

1 the time the court determines indigency, is unable to provide for pay-
2 ment without undue hardship. Appointment of any guardian ad litem or
3 attorney shall be made under the terms of AS 09.65.130, to the extent
4 that that section is not inconsistent with the requirements of this
5 chapter.

6 * Sec. 4. AS 20.15.100 is amended by adding a new subsection to read:

7 (j) Appointment of any guardian ad litem or attorney for a person
8 to be adopted who is a minor shall be made under the terms of AS 09.65.-
9 130.

10 * Sec. 5. AS 47.10.050 is amended to read:

11 Sec. 47.10.050. APPOINTMENT OF GUARDIAN AD LITEM OR ATTORNEY.
12 Whenever in the course of proceedings instituted under this chapter
13 it appears to the court that the welfare of a minor will be promoted
14 by the appointment of a guardian ad litem or attorney, the court may
15 make the appointment. Appointment of any guardian ad litem or attorney
16 shall be made under the terms of AS 09.65.130.

17 * Sec. 6. Section 1 of this Act has the effect of adding to the discre-
18 tionary authority of the court to appoint a guardian ad litem or attorney
19 to represent the interests of a minor child in legal proceedings under
20 Rule 17(b), Alaska Rules of Civil Procedure, and Rules 11(a) and 15, Alaska
21 Rules of Children's Procedure, by allowing the court to appoint an attorney
22 to represent the interests of a child in a legal proceeding either on the
23 court's own motion or on the motion of either party, and by providing for
24 advances for legal representation and payment of costs from the sale of joint
25 property before property settlement.
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