

Original sponsor: Bradner, H. Beirne,
Bowman, et al

Offered: 4/25/75
Referred: Rules

1 IN THE HOUSE

BY THE FINANCE COMMITTEE

2 CS FOR HOUSE BILL NO. 238 (Finance)

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

28 * Sec. 3. AS 18.85.100(b) is amended to read:
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(b) The attorney services and facilities and the court costs shall
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1 be provided at public expense to the extent that the person, at the time
2 the court determines indigency, is unable to provide for payment without
3 undue hardship. Appointment of any guardian ad litem or attorney shall
4 be made under the terms of AS 09.65.130, to the extent that that section
5 is not inconsistent with the requirements of this chapter.

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

7 (j) Appointment of a guardian ad litem or attorney for a person to
8 be adopted who is a minor shall be made under the terms of AS 09.65.130.

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

10 Sec. 47.10.050. APPOINTMENT OF GUARDIAN AD LITEM OR ATTORNEY.

11 Whenever in the course of proceedings instituted under this chapter it
12 appears to the court that the welfare of a minor will be promoted by the
13 appointment of a guardian ad litem or attorney, the court may make the
14 appointment. Appointment of a guardian ad litem or attorney shall be
15 made under the terms of AS 09.65.130.

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