

Introduced: 3/17/76
Referred: Judiciary

1 IN THE HOUSE

BY THE RULES COMMITTEE

2 FCCSSCS

HOUSE BILL NO. 873

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 NINTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the summary dissolution of marriage
7 and changing Rules 3, 7, 11, and 76, Rules of Civil
8 Procedure."

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

10 * Section 1. AS 09.55 is amended by adding new sections to read:

11 ARTICLE 3A. SUMMARY DISSOLUTION OF MARRIAGE.

12 Sec. 09.55.231. SUMMARY DISSOLUTION OF MARRIAGE. (a) A husband
13 and wife together may maintain an action in superior court for the dis-
14 solution of their marriage under secs. 231 - 237 of this chapter if the
15 following conditions exist at the time of filing the petition:

16 (1) incompatibility of temperament has caused the irremediable
17 breakdown of the marriage;

18 (2) if there are minor children of the marriage or the wife
19 is pregnant, the spouses have agreed on which spouse or third party
20 shall be awarded custody of each minor child of the marriage and the
21 extent of visitation and support to be provided on the children's behalf;

22 (3) the spouses have agreed as to the distribution of all
23 jointly owned real and personal property and the payment of spousal
24 support, if any;

25 (4) the spouses have agreed as to the payment of all unpaid
26 obligations incurred by either or both of them, and as to payment of
27 obligations incurred jointly in the future; and

28 (5) the spouses have both agreed to submit themselves to the
29 jurisdiction of the court.

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1 (b) A husband or wife may separately maintain an action for
2 dissolution of their marriage under secs. 231 - 237 of this chapter if
3 the following conditions exist at the time of filing the petition:

4 (1) incompatibility of temperament has caused the irremediable
5 breakdown of the marriage;

6 (2) one spouse has been unable to ascertain the other spouse's
7 position in regard to the dissolution of their marriage and in regard to
8 the division of property, payment of debts, and custody, support and
9 visitation because the whereabouts of the other spouse is unknown to
10 that spouse; and

11 (3) the other spouse cannot be personally served with process
12 inside or outside the state.

13 (c) The action created under this section is separate from the
14 action created by sec. 70 of this chapter. The procedures prescribed by
15 secs. 231 - 237 of this chapter do not apply to an action brought under
16 sec. 70 of this chapter, nor do procedures prescribed under secs. 70 -
17 230 of this chapter apply to an action brought under this section,
18 except as specifically provided.

19 Sec. 09.55.232. PETITION FOR DISSOLUTION. (a) The caption in a
20 petition for dissolution of marriage under secs. 231 - 237 of this
21 chapter shall be styled substantially "In the Matter of the Dissolution
22 of the Marriage of _____ and _____."

23 (b) The petition shall be filed with the superior court and shall
24 either:

25 (1) recite that the conditions enumerated under sec. 231(a)
26 exist and shall be signed and verified by both of the parties, or

27 (2) recite that the conditions enumerated under sec. 231(b)
28 exist and be signed and verified by one of the parties.

29 (c) The petition shall state that the spouses executing the peti-

1 tion consent to the jurisdiction of the court.

2 (d) The petition shall request that the marriage be dissolved and
3 that the prior name of a spouse be restored, if desired by that spouse.

4 (e) If the petition is brought by both spouses under sec. 231(a)
5 of this chapter, the petition shall state in detail the terms of agree-
6 ment as between the spouses with regard to the custody of children,
7 child support, visitation, spousal support, division of property, and
8 allocation of debts, and, in addition, shall state:

- 9 (1) the respective ages of the spouses;
- 10 (2) the respective occupations of the spouses;
- 11 (3) the income of the respective spouses at the time of filing
12 the petition;
- 13 (4) the date of the marriage;
- 14 (5) the name, date of birth, and current custodial status of
15 each minor child born of the marriage; and
- 16 (6) whether the wife is pregnant.

17 Sec. 09.55.233. HEARING. (a) After a petition for dissolution is
18 filed under the provisions of sec. 232 of this chapter, the court shall
19 set a time and place for hearing.

20 (b) If the petition is brought by both spouses under sec. 231(a)
21 of this chapter, both the husband and wife are required to attend the
22 hearing personally and not through counsel unless the court, for good
23 cause, requires otherwise.

24 (c) If the petition is brought by one spouse under sec. 231(b)
25 of this chapter, that spouse shall make an affidavit stating that after
26 diligent inquiry, the other spouse cannot be personally served with
27 process inside the state. The petitioning spouse shall proceed to give
28 the spouse whose whereabouts is unknown notice by publication. The
29 inquiry into the whereabouts of the absent party, notice by publication,

1 and the form and contents of the notice and the proof of publication and
2 mailing shall be as prescribed by the Alaska Rules of Civil Procedure.

3 If the petition is filed by one spouse under sec. 231(a) of this chapter,
4 the court may not schedule a hearing on the petition until the period of
5 time in which the absent spouse may respond to the published notice has
6 expired without the absent spouse contacting the court or the other
7 spouse.

8 (d) If the petition is brought by both spouses under sec. 231(a)
9 of this chapter, the court shall consider whether

10 (1) the spouses fully understand the nature and consequences
11 of their action;

12 (2) the agreements between the spouses concerning child
13 custody, child support, and visitation are fair, just, and equitable as
14 between the spouses and in the best interests of the children of the
15 marriage;

16 (3) the agreements between the spouses relating to the divi-
17 sion of property, spousal support, and the allocation of obligations are
18 fair, just, and equitable; and

19 (4) the conditions in sec. 231(a) of this chapter have been
20 met.

21 (e) If the petition is brought by one spouse under sec. 231(b)
22 of this chapter, the court shall consider whether the spouse present at
23 the hearing fully understands the nature and consequences of his or her
24 action and whether the conditions in sec. 231(b) of this chapter have
25 been met.

26 (f) The court may appoint a guardian ad litem to represent the
27 best interests of the child. Appointment of a guardian ad litem or
28 attorney for the child shall be made under the terms of AS 09.65.130.

29 (g) The court may amend the agreements between the parties relating

1 to child custody, child support, visitation, spousal support, division
2 of the property, and allocation of obligations, but only if both parties
3 concur or substantial injustice would otherwise occur.

4 Sec. 09.55.234. JUDGMENT. (a) If the petition is brought by both
5 spouses under sec. 231(a) of this chapter, the court may grant the
6 spouses a final decree of divorce and restore to either spouse his or
7 her prior name, if so requested, if the court, upon consideration of the
8 information contained in the petition and the testimony of the spouses
9 at the hearing, finds that

10 (1) the spouses understand fully the nature and consequences
11 of their action;

12 (2) the agreements between the spouses concerning child cus-
13 tody, child support, visitation, spousal support, division of property,
14 and allocation of obligations are not grossly unfair, unjust, or in-
15 equitable and in the best interests of the children of the marriage, if
16 any; and

17 (3) the conditions in sec. 231(a) of this chapter have been
18 met.

19 (b) If the petition is brought by one spouse under sec. 231(b) of
20 this chapter, the court may grant the spouses a final decree of divorce
21 and restore to the petitioner his or her prior name, when so requested,
22 if the court, upon consideration of affidavits supplied by the spouse
23 and the testimony of the spouse at the hearing, finds that

24 (1) the spouse present at the hearing understands fully the
25 nature and consequences of his or her action, and

26 (2) the conditions in sec. 231(b) of this chapter have been
27 met.

28 (c) The court shall dismiss or continue an action brought under
29 secs. 231 - 237 of this chapter before findings are made if

1 (1) a representative of the minor children objects to a term
2 of any of the agreements between the spouses;

3 (2) either of the spouses withdraws from any of the agree-
4 ments required under sec. 231(a) of this chapter; or

5 (3) the petition alleges that the conditions in sec. 231(b)
6 of this chapter exist, but the whereabouts of the absent spouse becomes
7 known to the other spouse or the court before findings are made.

8 (d) The court shall deny the relief sought in an action brought
9 under secs. 231 - 237 of this chapter if the court does not make the
10 findings requisite under (a) and (b) of this section.

11 (e) If the petition is brought by both spouses under sec. 231(a)
12 of this chapter the court shall fully and specifically set out in the
13 decree the agreements of the spouses relating to child custody, child
14 support, visitation, spousal support, division of property, and the
15 allocation of the obligations of the spouses; and the court shall direct
16 the spouses to perform those agreements. If the petition is brought by
17 one spouse under sec. 231(b) of this chapter, the decree shall state
18 that it does not bar future action on the issues incidental to the
19 dissolution of the marriage, including child custody, child support,
20 spousal support and division of property.

21 (f) Notwithstanding any other provision of secs. 231 - 237 of this
22 chapter, the court may not award as between the spouses any real or
23 personal property acquired by the spouses before the date of the mar-
24 riage.

25 Sec. 09.55.235. EFFECT AND MODIFICATION OF DECREE. (a) A decree
26 of dissolution issued under secs. 231 - 237 of this chapter shall have
27 the same force and effect as a decree granted under secs. 70 - 230 of
28 this chapter.

29 (b) A decree of dissolution granted under secs. 231 - 237 of this

1 chapter may be modified or enlarged as prescribed by secs. 205 - 220 of
2 this chapter.

3 Sec. 09.55.236. FORMS. (a) The Department of Law shall prepare
4 forms and instructions for use by persons wishing to obtain a dissolu-
5 tion of their marriage under secs. 231 - 237 of this chapter. These
6 forms shall conform to the requirements of the Alaska Rules of Civil
7 Procedure, except that information appearing on the forms in legible
8 handwriting shall be acceptable.

9 (b) Forms prepared under (a) of this section shall be made avail-
10 able to the public at each office of the division of social services of
11 the Department of Health and Social Services, and every superior court,
12 and wherever else deemed necessary by the Department of Law.

13 Sec. 09.55.237. MISCELLANEOUS. No party may be precluded from
14 filing an action for divorce under secs. 70 - 230 of this chapter upon
15 dismissal or denial of a petition filed under secs. 231 - 237 of this
16 chapter.

17 * Sec. 2. Section 1 of this Act has the effect of changing Alaska Rule of
18 Civil Procedure Number 76 by allowing the courts to accept for filing plead-
19 ings which are handwritten in part. Sec. 1 of this Act also has the effect
20 of changing Alaska Rule of Civil Procedure Number 3 by allowing courts to
21 proceed upon the filing of a petition rather than a complaint, and Alaska
22 Rule of Civil Procedure Number 7 by allowing the filing of an agreed petition.
23 Section 1 of this Act also amends Alaska Rule of Civil Procedure Number 11 by
24 requiring the petition to be verified in all situations.
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