

Original sponsor: Rules Committee

Offered: 4/12/76
Referred: Rules

1 IN THE HOUSE

BY THE JUDICIARY COMMITTEE

2 CS FOR 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 petition the superior court for the dissolution of
14 their marriage under secs. 231 - 237 of this chapter if the following
15 conditions exist at the time of filing the petition:

16 (1) incompatibility of temperament has caused the irremedi-
17 able 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 be-
22 half;

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

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

29 (5) the spouses have both agreed to submit themselves to the

1 jurisdiction of the court.

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

5 (1) incompatibility of temperament has caused the irremedi-
6 able breakdown of the marriage;

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

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

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

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

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

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

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

1 (c) The petition shall state that the spouses executing the peti-
2 tion consent to the jurisdiction of the court.

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

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

10 (1) the respective ages of the spouses;

11 (2) the respective occupations of the spouses;

12 (3) the income and assets of the respective spouses at the
13 time of filing the petition;

14 (4) the date and place of the marriage;

15 (5) the name, date of birth, and current custodial status of
16 each minor child born of the marriage;

17 (6) whether the wife is pregnant; and

18 (7) any other relief sought by the spouses.

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

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

26 (c) If the petition is brought by one spouse under sec. 231(b) of
27 this chapter, that spouse shall submit proof of diligent inquiry and
28 provide notice by publication, posting, or other means as ordered by the
29 court in accordance with the Alaska Rules of Civil Procedure.

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

3 (1) the spouses fully understand the nature and consequences
4 of their action;

5 (2) the agreements between the spouses concerning child
6 custody, child support, and visitation are fair, just, and equitable as
7 between the spouses and in the best interests of the children of the
8 marriage;

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

12 (4) the conditions in sec. 231(b) of this chapter have been
13 met.

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

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

22 (g) The court may amend the agreements between the parties relat-
23 ing to child custody, child support, visitation, spousal support,
24 division of the property, and allocation of obligations, but only if
25 both parties concur.

26 Sec. 09.55.234. JUDGMENT. (a) If the petition is brought by both
27 spouses under sec. 231(a) of this chapter, the court may grant the
28 spouses a final decree of divorce and restore to either spouse his or
29 her prior name, if so requested, if the court, upon consideration of the

1 information contained in the petition and the testimony of the spouses
2 at the hearing, finds that

3 (1) the spouses understand fully the nature and consequences
4 of their action;

5 (2) the agreements between the spouses concerning child cus-
6 tody, child support, visitation, spousal support, division of property,
7 and allocation of obligations are not grossly unfair, unjust, or in-
8 equitable and are in the best interests of the children of the marriage,
9 if any; and

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

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

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

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

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

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

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

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

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

4 (e) If the petition is brought by both spouses under sec. 231(a)
5 of this chapter the court shall fully and specifically set out in the
6 decree the agreements of the spouses relating to child custody, child
7 support, visitation, spousal support, division of property, and the
8 allocation of the obligations of the spouses; and the court shall direct
9 the spouses to perform those agreements. If the petition is brought by
10 one spouse under sec. 231(b) of this chapter, the decree shall state
11 that it does not bar future action on the issues not resolved in the
12 decree.

13 (f) Notwithstanding any other provisions of secs. 231 - 237 of
14 this chapter, the court may not award as between the spouses any real or
15 personal property acquired by the spouses before the date of the mar-
16 riage, unless the parties expressly agree otherwise or the court deter-
17 mines that such property should be made available, by sale or other
18 conveyance, to ensure that the children's best interests are provided
19 for.

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

24 (b) A decree of dissolution granted under secs. 231 - 237 of this
25 chapter may be modified or enlarged as prescribed by secs. 205 - 220 of
26 this chapter.

27 Sec. 09.55.236. FORMS. (a) The Department of Law, in cooperation
28 with the administrator of the Alaska Court System, shall prepare forms
29 and instructions for use by persons wishing to obtain a dissolution of

1 their marriage under secs. 231 - 237 of this chapter. These forms shall
2 conform to the requirements of the Alaska Rules of Civil Procedure,
3 except that information appearing on the forms in legible handwriting
4 shall be acceptable.

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

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

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