

Original sponsor: Rules Committee

Offered: 5/30/76
Referred: Rules

1 IN THE HOUSE

BY THE JUDICIARY COMMITTEE

2 SENATE CS FOR 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 dissolution of marriage; and
7 changing Rules 3, 7, 11, 76, and 84, 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. DISSOLUTION OF MARRIAGE.

12 Sec. 09.55.231. DISSOLUTION OF MARRIAGE. (a) A husband and wife
13 together may petition the superior court for the dissolution of their
14 marriage under secs. 231 - 237 of this chapter if the following condi-
15 tions 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 behalf
22 and the tax consequences of that agreement;

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, and the tax consequences resulting from these payments;
26 and

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

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

4 (1) incompatibility of temperament, as evidenced by extended
5 absence or otherwise, has caused the irremediable breakdown of the
6 marriage;

7 (2) the petitioning spouse has been unable to ascertain the
8 other spouse's position in regard to the dissolution of their marriage
9 and in regard to the division of property, payment of debts, and cus-
10 tody, support and visitation because the whereabouts of the other spouse
11 is unknown to the petitioning spouse after reasonable efforts have been
12 made to locate the absent spouse; and

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

15 (c) Nothing in this section prohibits a spouse who has been
16 personally served with a copy of a petition made under (a) of this
17 section from executing an appearance, waiver of time to answer, and
18 waiver of notice of hearing. The appearance and waivers shall include
19 an acknowledgment signed before an officer authorized to administer an
20 oath or affirmation that the spouse being served has read the petition;
21 assents to the terms relating to custody of the children, child support,
22 visitation, spousal support and resultant tax consequences, division of
23 property, and allocation of debts; agrees that the conditions otherwise
24 required by (a) of this section exist; understands fully the nature and
25 consequences of the action; and is not signing the appearance and
26 waivers under duress or coercion.

27 (d) The action created under this section is separate from the
28 action created by sec. 70 of this chapter. The procedures prescribed by
29 secs. 231 - 237 of this chapter do not apply to an action brought under

1 sec. 70 of this chapter, nor do procedures prescribed under secs. 70 -
2 230 of this chapter apply to an action brought under this section,
3 except as specifically provided.

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

8 (b) The petition shall be filed with the superior court and shall
9 either

10 (1) recite that the conditions enumerated under sec. 231(a)
11 of this chapter exist and shall be signed and verified by both of the
12 petitioners or by one petitioner, if that petitioner personally serves
13 the petition on his spouse in accordance with the Alaska Rules of Civil
14 Procedure in anticipation that the spouse will comply with sec. 231(c)
15 of this chapter;

16 (2) recite that the conditions enumerated under sec. 231(b)
17 of this chapter exist and be signed and verified by one of the peti-
18 tioners.

19 (c) The petition shall state that the spouse or spouses executing
20 the petition consent to the jurisdiction of the court.

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

23 (e) If the petition is brought by both spouses under sec. 231(a)
24 of this chapter, the petition shall state in detail the terms of agree-
25 ment as between the spouses with regard to the custody of children,
26 child support, visitation, spousal support and tax consequences, if any,
27 division of property, and allocation of debts, and, in addition, shall
28 state

29 (1) the respective occupations of the spouses;

1 (2) the income, assets, and liabilities of the respective
2 spouses at the time of filing the petition;

3 (3) the date and place of the marriage;

4 (4) the name, date of birth, and current custodial status of
5 each minor child born of the marriage or adopted by the petitioners;

6 (5) whether the wife is pregnant;

7 (6) other facts and circumstances which the petitioners
8 believe should be considered; and

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

10 Sec. 09.55.233. HEARING. (a) After a petition for dissolution is
11 filed under the provisions of sec. 232 of this chapter, a hearing shall
12 be scheduled in accordance with the Alaska Rules of Civil Procedure.

13 (b) If the petition is brought by both spouses under sec. 231(a)
14 of this chapter, both the husband and wife are required to attend the
15 hearing personally and not through counsel unless the court, for good
16 cause, provides otherwise, or unless a spouse has complied with sec.
17 231(c) of this chapter, in which case only the spouse filing the peti-
18 tion is required to attend. Either spouse may have counsel at the
19 hearing.

20 (c) If the petition is brought by one spouse under sec. 231(b) of
21 this chapter, that spouse shall submit proof of diligent inquiry as to
22 the whereabouts of the absent spouse and provide notice by publication,
23 posting, or other means as ordered by the court in accordance with the
24 Alaska Rules of Civil Procedure.

25 (d) If the petition is brought by both spouses under sec. 231(a)
26 of this chapter, the court shall examine the petitioners or petitioner
27 present and consider whether

28 (1) the spouses fully understand the nature and consequences
29 of their action;

1 (2) the agreements between the spouses concerning child
2 custody, child support, and visitation are fair, just, and equitable as
3 between the spouses and in the best interests of the children of the
4 marriage;

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

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

10 (e) If the petition is brought by one spouse under sec. 231(b) of
11 this chapter, the court shall examine the petitioner and consider
12 whether he or she fully understands the nature and consequences of his
13 or her action and whether the conditions in sec. 231(b) of this chapter
14 have been met.

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

18 (g) The court may amend the agreements between the spouses relat-
19 ing to child custody, child support, visitation, spousal support,
20 division of the property, and allocation of obligations, but only if
21 both petitioners concur in the amendment.

22 Sec. 09.55.234. JUDGMENT. (a) If the petition is brought by one
23 or both spouses under sec. 231(a) of this chapter, the court may grant
24 the spouses a final decree of dissolution and shall provide the other
25 relief as provided in this section if the court, upon consideration of
26 the information contained in the petition and the testimony of the
27 spouse or spouses at the hearing, finds that

28 (1) the spouses understand fully the nature and consequences
29 of their action;

1 (2) the agreements between the spouses concerning child cus-
2 tody, child support, visitation, spousal support and tax consequences,
3 if any, division of property, and allocation of obligations are not
4 grossly unfair, unjust, or inequitable and are in the best interests of
5 the children of the marriage, if any; and

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

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

13 (1) the spouse present at the hearing understands fully the
14 nature and consequences of his or her action; and

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

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

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

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

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

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

29 (e) If the petition is brought by both spouses under sec. 231(a)

1 of this chapter, the court shall restore to either spouse his or her
2 prior name, if so requested, and shall fully and specifically set out in
3 the decree the agreements of the spouses relating to child custody,
4 child support, visitation, spousal support, division of property, and
5 the allocation of the obligations of the spouses; and the court shall
6 order the performance of those agreements. If the petition is brought
7 by one spouse under sec. 231(b) of this chapter, the decree shall state
8 that it does not bar future action on the issues not resolved in the
9 decree.

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

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

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

26 Sec. 09.55.236. FORMS. (a) The Department of Law, in cooperation
27 with the administrator of the Alaska Court System, shall prepare forms
28 and instructions for use by persons wishing to obtain a dissolution of
29 their marriage under secs. 231 - 237 of this chapter. These forms shall

1 conform to the requirements of the Alaska Rules of Civil Procedure,
2 except that information appearing on the forms in legible handwriting
3 shall be acceptable.

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

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

12 * Sec. 2. Section 1 of this Act has the effect of changing Alaska Rule of
13 Civil Procedure Number 76 by allowing the courts to accept for filing plead-
14 ings which are handwritten in part. Section 1 of this Act also has the
15 effect of changing Alaska Rule of Civil Procedure Number 3 by allowing courts
16 to proceed upon the filing of a petition rather than a complaint, and Alaska
17 Rule of Civil Procedure Number 7 by allowing the filing of an agreed peti-
18 tion. Section 1 of this Act also has the effect of amending Alaska Rule of
19 Civil Procedure Number 11 by requiring the petition to be verified in all
20 situations and Alaska Rule of Civil Procedure Number 84 by excluding the
21 restoration of a prior name in a divorce or dissolution.
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