

Introduced: 6/9/83
Referred: Judiciary
and Finance

BY THE RULES COMMITTEE BY
REQUEST OF THE GOVERNOR

1 IN THE SENATE

2 SENATE BILL NO. 312

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 THIRTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act creating the office of public advocacy; and
7 providing for an effective date."

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

9 * Section 1. AS 44.21 is amended by adding new sections to read:

10 ARTICLE 8. OFFICE OF PUBLIC ADVOCACY.

11 Sec. 44.21.400. PUBLIC ADVOCACY OFFICE ESTABLISHED. There is
12 created in the Department of Administration an office of public advo-
13 cacy.

14 Sec. 44.21.410. POWERS AND DUTIES OF PUBLIC ADVOCACY OFFICE.

15 (a) The office of public advocacy shall

16 (1) perform the duties of the public guardian, under
17 AS 13.26.360 -- 13.26.410;

18 (2) provide visitors and experts in guardianship proceed-
19 ings, under AS 13.26.131;

20 (3) provide guardian ad litem services to children in child
21 protection actions, under AS 47.17.030(e), and to wards and respon-
22 dents in guardianship proceedings who will suffer financial hardship
23 or become dependent upon a government agency or a private person or
24 agency if the services are not provided at state expense, under
25 AS 13.26.112;

26 (4) provide legal representation to respondents in guardi-
27 anship proceedings who are financially unable to employ attorneys
28 (AS 13.26.106(b)), to indigent parties in cases involving child cus-
29 tody where the opposing party is represented by counsel provided by a

1 public agency, and to indigent parents or guardians of a minor respon-
2 dent in a commitment proceeding concerning the minor (AS 47.30.775);

3 (5) provide legal representation and guardian ad litem
4 services, under AS 09.65.130; in cases arising under the Uniform
5 Interstate Compact on Juveniles (AS 47.15); in cases involving pe-
6 titions to adopt a minor (AS 25.23.100(j)); in cases involving pe-
7 titions to remove the disabilities of a minor (AS 09.55.590); in
8 children's proceedings (AS 47.10.050(a)); and in cases involving
9 indigent persons who are entitled to representation under AS 18.85.100
10 and who cannot be represented by the public defender agency because of
11 a conflict of interests.

12 (b) The commissioner of administration may

13 (1) adopt regulations that the commissioner considers
14 necessary to implement AS 44.21.400 -- 44.21.440;

15 (2) make such reports of the office's operation as the
16 governor or legislature from time to time requests, or as may be
17 required by law;

18 (3) solicit and accept grants of funds from the federal
19 government and from private foundations, and allocate or restrict the
20 use of those funds as may be required by the grantor.

21 Sec. 44.21.420. EMPLOYMENT OF OFFICE PERSONNEL. (a) The com-
22 missioner of administration may employ guardians ad litem, public
23 guardians, clerical staff, and other assistants considered necessary
24 by the commissioner to perform the duties set out in AS 44.21.410.
25 Employees under this subsection are in the classified service under
26 AS 39.25.100.

27 (b) The commissioner of administration may employ attorneys as
28 required to perform the duties set out in AS 44.21.410. Attorneys
29 employed by the commissioner of administration in the office of public

1 advocacy are in the partially exempt service under AS 39.25.120.

2 (c) The commissioner of administration may contract for services
3 of court-appointed visitors and experts required to perform the duties
4 of AS 44.21.410. The commissioner may contract with attorneys to
5 provide legal representation and with other persons to provide guardi-
6 an ad litem services, as required to perform the duties set out in
7 AS 44.21.410. The commissioner may determine the rate of compensation
8 for contractual services, taking into account the time involved, the
9 skill and experience required, and other pertinent factors.

10 Sec. 44.21.430. ATTORNEYS ENGAGED BY PUBLIC ADVOCACY OFFICE.

11 (a) Attorneys employed by the office or retained under contract to
12 provide legal representation must be admitted to the practice of law
13 in this state.

14 (b) Attorneys employed by the office may not engage in the
15 private practice of law. This prohibition does not apply to attorneys
16 who provide services to the office as independent contractors.

17 Sec. 44.21.440. CONFLICTS OF INTERESTS. All services and legal
18 representation rendered by the office of public advocacy, whether
19 performed under contract or by employees of the office, must be pro-
20 vided in a manner that avoids conflicts of interests.

21 * Sec. 2. AS 09.55.590(e) is amended to read:

22 (e) The court may appoint an attorney or a guardian ad litem to
23 represent the interests of the petitioner at the hearing. Appointment
24 of an attorney or guardian ad litem must be made under the terms of
25 AS 09.65.130.

26 * Sec. 3. AS 09.65.130 is amended to read:

27 Sec. 09.65.130. REPRESENTATION OF MINOR [CHILD]. (a) In an
28 action involving a question of the custody, support, or visitation of
29 a minor, the [THE] court may, upon the motion of a [EITHER] party to

1 the action or upon its own motion, appoint the office of public advo-
2 cacy [AN ATTORNEY] to represent the minor with respect to [HIS] custo-
3 dy, support, and visitation or in any other legal proceeding involving
4 the minor's [HIS] welfare. When custody, support, or visitation is
5 [ARE] at issue in a divorce, it is the responsibility of the parties
6 or their counsel to notify the court that such a matter is [THOSE
7 MATTERS ARE] at issue. Upon notification, the court shall determine
8 whether the minor [CHILD] should have legal representation or other
9 services and shall make a finding on the record before trial. The
10 court shall notify the office of public advocacy if legal representa-
11 tion or other services are required. The court shall enter an order
12 for costs, fees, and disbursements in favor of the state [CHILD'S
13 ATTORNEY] and may further order that other services be provided for
14 the protection of the minor [CHILD].

15 (b) If custody, support, or visitation is at [AN] issue, the
16 order for costs, fees, and disbursements must [SHALL] be made against
17 either or both parents, except that, if one of the parties responsible
18 for the costs is indigent, the costs, fees, and disbursements for that
19 party must [SHALL] be borne by the state. If either party or both
20 parents are only temporarily without funds, [AS DETERMINED BY THE
21 COURT,] the office of public advocacy shall provide [COURT MAY ADVANCE
22 PAYMENT FOR] legal representation or other services required by the
23 court [RENDERED TO THE CHILD]; however, no repayment may be required
24 of a party who is [FOR THOSE WHO ARE] receiving legal services for the
25 indigent. The attorney general is responsible for enforcing collec-
26 tions owed the state [COURT], and repayment must [SHALL] be made
27 [DIRECTLY] to the Department of Revenue under AS 37.10.050 for deposit
28 in the general fund [COURT UNDER THE PROVISIONS OF RULES GOVERNING THE
29 ADMINISTRATION OF THE COURTS]. The court shall, if possible, avoid

1 assigning costs to only one party by ordering that costs of the mi-
2 nor's [CHILD'S] legal representation or other services be paid from
3 proceeds derived from a sale of property belonging to both parties,
4 before a division of property is made.

5 (c) Instead of, or in addition to, appointment of an attorney
6 under (a) of this section, the court may, upon the motion of either
7 party or upon its own motion, appoint the office of public advocacy
8 [AN ATTORNEY OR OTHER PERSON] to provide [SERVE AS] guardian ad litem
9 services to [REPRESENT THE BEST INTERESTS OF] a minor in any legal
10 proceedings involving the minor's [HIS] welfare. The court shall
11 require [APPOINT] a guardian ad litem when, in the opinion of the
12 court, representation of the minor's [CHILD'S] best interests, to be
13 distinguished from the minor's [HIS] preferences, would serve the
14 welfare of the minor [CHILD]. [THE PERSON APPOINTED UNDER (a) OF THIS
15 SECTION MAY ALSO BE APPOINTED AS GUARDIAN AD LITEM UNDER THIS SUB-
16 SECTION.] The court in its order appointing the office of public
17 advocacy [A GUARDIAN AD LITEM] shall limit the duration of the
18 appointment of the guardian ad litem to the pendency of the legal
19 proceedings affecting the minor's [CHILD'S] interests, and shall
20 outline the guardian ad litem's responsibilities and limit the guard-
21 ian ad litem's [HIS] authority to those matters related to [HIS]
22 effective representation of the minor's [CHILD'S] best interests in
23 the pending legal proceeding. The office of public advocacy [COURT]
24 shall make every reasonable effort to provide [APPOINT] a guardian ad
25 litem from among persons in the community where the minor's [CHILD'S]
26 parents or the person having legal custody or guardianship of the
27 minor's [CHILD'S] person reside. When custody, support, or visitation
28 is [ARE] at issue in a divorce, it is the responsibility of the
29 parties or their counsel to notify the court that such a matter is

1 [THESE MATTERS ARE] at issue. Upon notification, the court shall
2 determine if the minor's [CHILD'S] best interests need representation
3 or if the minor [CHILD] needs other services and shall make a finding
4 on the record before trial. The court shall notify the office of
5 public advocacy if guardian ad litem services are required. The court
6 shall enter an order for costs, fees, and disbursements in favor of
7 the state [CHILD'S GUARDIAN AD LITEM] and may further order that other
8 services be provided for the protection of the minor [CHILD].

9 * Sec. 4. AS 13.26.106(b) is amended to read:

10 (b) The respondent is entitled to be represented by an attorney
11 in the proceedings. If the respondent is financially unable to employ
12 an attorney [TO REPRESENT HIM], the court shall appoint the office of
13 public advocacy (AS 44.21.400), under AS 13.26.131, [AN ATTORNEY] to
14 represent the respondent in the proceedings.

15 * Sec. 5. AS 13.26.106 is amended by adding a new subsection to
16 read:

17 (d) Appointment of the visitor and the expert under (c) of this
18 section must be made through the office of public advocacy (AS 44.-
19 21.400), under AS 13.26.131.

20 * Sec. 6. AS 13.26.112(b) and (c) are amended to read:

21 (b) The office of public advocacy shall provide guardian ad
22 litem services to persons who would suffer financial hardship or
23 become dependent upon a government agency or a private person or
24 agency if the services are not provided at state expense.

25 (c) The guardian ad litem shall assist the ward or respondent in
26 determining his or her interests in regard to the legal proceedings in
27 which he or she is involved. If the ward or respondent is entirely
28 incapable of determining his or her own interests, the guardian ad
29 litem shall make that determination and advise the court and counsel

1 for all parties accordingly. The guardian ad litem shall

2 (1) inquire thoroughly into all the circumstances that a
3 prudent individual in the position of the ward or respondent would
4 consider in determining his or her own interests in the proceedings;
5 and

6 (2) encourage the ward or respondent to participate, to the
7 maximum extent of his or her capability, in all decisions and to act
8 on his or her own behalf on all matters in which the ward or respon-
9 dent [HE] is able.

10 (d) [(c)] The attorney of the ward or respondent may also be the
11 guardian ad litem for the ward or respondent if there is no other
12 party readily available and able to serve as a guardian ad litem and
13 whose interests would not conflict with those of the ward or respon-
14 dent.

15 * Sec. 7. AS 13.26.360 is amended to read:

16 Sec. 13.26.360. PURPOSE. The legislature recognizes that many
17 Alaskans, for reasons of incapacity or minority, are in need of a
18 guardian or conservator. Often these persons cannot find a person
19 able and willing to serve as guardian or conservator. The legislature
20 intends through AS 13.26.360 -- 13.26.410 to establish the function
21 [OFFICE] of public guardian for the purpose of furnishing guardianship
22 and conservatorship services. It further intends by establishing this
23 function [OFFICE] to provide assistance to guardians throughout the
24 state in securing necessary services for their wards and to assist the
25 courts, attorneys, visitors, respondents, and proposed guardians in
26 the orderly and expeditious handling of guardianship proceedings.

27 * Sec. 8. AS 13.26.370(a) is amended to read:

28 (a) The office of public advocacy (AS 41.21.400) shall serve as
29 the public guardian [PUBLIC ADMINISTRATOR (AS 22.15.310) SHALL ALSO

1 ACT AS THE PUBLIC GUARDIAN FOR THE JUDICIAL DISTRICT FOR WHICH HE IS
2 APPOINTED].

3 * Sec. 9. AS 18.85.110(d) is amended to read:

4 (d) If a court determines that the person is entitled to be
5 represented by an attorney at public expense, it shall promptly notify
6 the agency or the office of public advocacy, or assign a private
7 attorney to represent the person [FOR HIM] under AS 18.85.130.

8 * Sec. 10. AS 18.85.110(e) is amended to read:

9 (e) Upon notification or assignment under this section, the
10 agency, office of public advocacy, or assigned private attorney shall
11 represent the person with respect to whom the notification or assign-
12 ment is made.

13 * Sec. 11. Sec. AS 18.85.130(a) is amended to read:

14 (a) For cause, the court may, on its own motion or upon the
15 application of the public defender or the office of public advocacy,
16 appoint an attorney other than the public defender or the office of
17 public advocacy to represent the indigent person at any stage of the
18 proceedings or on appeal. [THE PRIVATE ATTORNEY SHALL BE AWARDED REA-
19 SONABLE COMPENSATION ACCORDING TO A SCHEDULE OF FEES PROMULGATED BY
20 THE SUPREME COURT AND REIMBURSEMENT FOR EXPENSES NECESSARILY INCURRED.
21 THIS SHALL BE PAID BY THE COURT SYSTEM.]

22 * Sec. 12. AS 22.15.310 is amended to read:

23 Sec. 22.15.310. APPOINTMENT. When authorized by the supreme
24 court, the presiding judge in each judicial district shall appoint a
25 person to act as public administrator of the estates of deceased
26 persons and [,] as coroner [, AND AS PUBLIC GUARDIAN].

27 * Sec. 13. AS 22.15.350 is amended to read:

28 Sec. 22.15.350. OTHER DUTIES. In addition to the other duties
29 of a public administrator, the public administrator shall perform the

1 duties set out in AS 22.15.110 and AS 12.65.020 -- 12.65.110 [AND
2 SHALL PERFORM THE DUTIES OF PUBLIC GUARDIAN AS SET OUT IN AS 13.26.360
3 -- 13.26.410].

4 * Sec. 14. AS 39.25.120(c)(3) is amended to read:

5 (3) attorney members of the staff of the Department of Law,
6 [AND] of the public defender agency, and of the office of public
7 advocacy in the Department of Administration;

8 * Sec. 15. AS 47.15.050 is amended to read:

9 Sec. 47.15.050. ATTORNEY OR GUARDIAN AD LITEM [FEES]. Appoint-
10 ment of an attorney [A COUNSEL] or guardian ad litem [APPOINTED] under
11 the provisions of this compact [MAY BE PAID AS PROVIDED IN THE RULES
12 GOVERNING THE ADMINISTRATION OF ALL COURTS] must be made under AS 09.-
13 65.130 or AS 44.21.400 -- 44.21.440.

14 * Sec. 16. AS 47.17.030(e) is amended to read:

15 (e) In all actions taken by the department or a health and
16 social services agency of a local government under this chapter that
17 result in a judicial proceeding, the child must [SHALL] be represented
18 by a guardian ad litem in that proceeding. Appointment of a guardian
19 ad litem must be made under AS 09.65.130.

20 * Sec. 17. AS 47.30.775 is amended to read:

21 Sec. 47.30.775. COMMITMENT OF MINORS. The provisions of AS 47.-
22 30.700 -- 47.30.815 apply to minors. However, all notices required to
23 be served on the respondent in AS 47.30.700 -- 47.30.815 must [SHALL]
24 also be served on the parent or guardian of a respondent who is a
25 minor, and parents or guardians of a minor respondent must [SHALL] be
26 notified that they may appear as parties in any commitment proceeding
27 concerning the minor and that as parties they are entitled to retain
28 their own attorney or have the office of public advocacy [ONE] ap-
29 pointed for them by the court. A minor respondent has the same rights

1 to waiver and informed consent as an adult respondent under AS 47.-
2 30.660 -- 47.30.915; however, the minor must [HE SHALL] be represented
3 by counsel in waiver and consent proceedings.

4 * Sec. 18. This Act takes effect July 1, 1984.