

Offered: 3/21/86
Referred: Finance

Original sponsor: Rules/Governor

1 IN THE HOUSE BY THE JUDICIARY COMMITTEE
2 CS FOR HOUSE BILL NO. 496 (Judiciary)
3 IN THE LEGISLATURE OF THE STATE OF ALASKA
4 FOURTEENTH LEGISLATURE - SECOND SESSION
5 A BILL
6 For an Act entitled: "An Act relating to divorce, dissolution, and annul-
7 ment; and amending Rule 84(a), Alaska Rules of Civil
8 Procedure."
9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:
10 * Section 1. AS 25.24.140 is repealed and reenacted to read:
11 Sec. 25.24.140. ORDERS DURING ACTION. (a) During the pendency
12 of the action, upon application a spouse may, in appropriate circum-
13 stances, be awarded expenses, including
14 (1) attorney fees and costs that reasonably approximate the
15 actual fees and costs required to prosecute or defend the action;
16 (2) reasonable spousal support, including medical expenses;
17 and
18 (3) reasonable support for minor children in the care of
19 the spouse, if there is a legal obligation of the noncustodial spouse
20 to provide support.
21 (b) During the pendency of the action, upon application a spouse
22 is entitled to necessary protective orders, which may include orders
23 (1) providing for the freedom of each spouse from the
24 control of the other spouse;
25 (2) restraining each spouse from subjecting the other
26 spouse or another person living in the household to domestic violence,
27 as defined in AS 25.35.060;
28 (3) directing one spouse to vacate the marital residence or
29 the home of the other spouse;

1 (4) restraining a spouse from communicating directly or
2 indirectly with the other spouse;

3 (5) restraining a spouse from entering a propelled vehicle
4 in the possession of or occupied by the other spouse; and

5 (6) prohibiting a spouse from disposing of the property of
6 either spouse or marital property without the permission of the other
7 spouse or a court order.

8 (c) After a hearing, the court may also order that the parties
9 engage in personal or family counseling or mediation if both parties
10 agree. The court shall provide in the order for the payment of the
11 costs of counseling or mediation.

12 * Sec. 2. AS 25.24.160 is amended to read:

13 Sec. 25.24.160. JUDGMENT. In a judgment in an action for di-
14 vorce or action declaring a marriage void or at any time after judg-
15 ment, the court may provide

16 (1) for the payment by either or both parties of an amount
17 of money or goods, in gross or installments that may include cost-
18 of-living adjustments, as may be just and proper for the parties to
19 contribute toward the nurture and education of their children, and the
20 court may order the parties to arrange with their employers for an
21 automatic payroll deduction each month or each pay period, if the
22 period is other than monthly, of the amount of the installment; if the
23 employer agrees, the installment shall be forwarded by the employer to
24 the clerk of the superior court which entered the judgment or to the
25 court trustee, and the amount of the installment is exempt from exe-
26 cution;

27 (2) for the recovery by one party from the other of an
28 amount of money for maintenance, in gross or in installments, as may
29 be just and necessary without regard to which of the parties is in

1 fault;

2 (3) for the delivery to either party of that party's per-
3 sonal property in the possession or control of the other party at the
4 time of giving the judgment;

5 (4) for the division between the parties of their property,
6 whether joint or separate, acquired only during coverture, in the
7 manner as may be just, and without regard to which of the parties is
8 in fault; however, the court, in making the division, may invade the
9 property of either spouse acquired before marriage when the balancing
10 of the equities between the parties requires it; and to accomplish
11 this end the judgment may require that one or both of the parties
12 assign, deliver, or convey any of their real or personal property to
13 the other party [;

14 (5) TO CHANGE THE NAME OF ONE OF THE PARTIES].

15 * Sec. 3. AS 25.24 is amended by adding a new section to read:

16 Sec. 25.24.165. CHANGE OF NAME IN DIVORCE. (a) In a judgment
17 in an action for divorce or action declaring a marriage void, the
18 court may change the name of either of the parties.

19 (b) If a party seeks a change of name to a name other than a
20 prior name, the court shall set a date for hearing not less than 40
21 days after filing of the action. Notice of the application for a
22 change of name to a name other than a prior name and the date of the
23 hearing shall be published once each week for four consecutive calen-
24 dar weeks before the hearing in a newspaper of general circulation in
25 the judicial district. At the hearing, the court shall by judgment
26 authorize the party to assume the new name in not less than 30 days
27 after issuance of the judgment, if the court is satisfied that no
28 reasonable objection exists to assumption of the new name. Within 10
29 days after issuance of the judgment the party shall publish notice of

1 the approval of the name change in a newspaper of general circulation
2 in the judicial district.

3 * Sec. 4. AS 25.24.200(a) is amended to read:

4 (a) A husband and wife together may petition the superior court
5 for the dissolution of their marriage under AS 25.24.200 - 25.24.260
6 if the following conditions exist at the time of filing the petition:

7 (1) incompatibility of temperament has caused the irremedi-
8 able breakdown of the marriage;

9 (2) if there are minor children of the marriage or the wife
10 is pregnant, the spouses have agreed on which spouse or third party
11 shall be awarded custody of each minor child of the marriage and the
12 extent of visitation, including visitation by grandparents and other
13 persons, and support to be provided on the children's behalf, whether
14 the payments are to be made through the child support enforcement
15 agency, and the tax consequences of that agreement;

16 (3) the spouses have agreed as to the distribution of all
17 jointly owned real and personal property, including retirement bene-
18 fits and other career assets, and the payment of spousal support, if
19 any, and the tax consequences resulting from these distributions and
20 payments; and

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

24 * Sec. 5. AS 25.24.200(b) is amended to read:

25 (b) A husband or wife may separately petition for dissolution of
26 their marriage under AS 25.24.200 - 25.24.260 if the following con-
27 ditions exist at the time of filing the petition:

28 (1) incompatibility of temperament, as evidenced by extend-
29 ed absence or otherwise, has caused the irremediable breakdown of the

1 marriage;

2 (2) the petitioning spouse has been unable to ascertain the
3 other spouse's position in regard to the dissolution of their marriage
4 and in regard to the division of property, including retirement bene-
5 fits and other career assets, payment of debts, and custody, support,
6 and visitation because the whereabouts of the other spouse is unknown
7 to the petitioning spouse after reasonable efforts have been made to
8 locate the absent spouse; and

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

11 * Sec. 6. AS 25.24.200(c) is amended to read:

12 (c) Except as provided in AS 25.24.220(i), nothing [NOTHING] in
13 AS 25.24.200 - 25.24.290 [THIS SECTION] prohibits a spouse who has
14 been personally served with a copy of a petition made under (a) of
15 this section from executing an appearance, waiver of time to answer,
16 and waiver of notice of hearing. The appearance and waivers shall
17 include an acknowledgment signed before an officer authorized to
18 administer an oath or affirmation that the spouse being served has
19 read the petition; assents to the terms relating to custody of the
20 children, child support, visitation, spousal support and resultant tax
21 consequences, division of property, including retirement benefits and
22 other career assets, and allocation of debts; agrees that the condi-
23 tions otherwise required by (a) of this section exist; agrees that the
24 petition constitutes the entire agreement between the parties; under-
25 stands fully the nature and consequences of the action; and is not
26 signing the appearance and waivers under duress or coercion.

27 * Sec. 7. AS 25.24.210(d) is amended to read:

28 (d) The petition shall request that the marriage be dissolved
29 and that the [PRIOR] name of a spouse be changed [RESTORED], if

1 desired by that spouse.

2 * Sec. 8. AS 25.24.210(e) is amended to read:

3 (e) If the petition is brought by both spouses under AS 25.24.-
4 200(a), the petition shall state in detail the terms of agreement as
5 between the spouses with regard to the custody of children, child
6 support, visitation, spousal support and tax consequences, if any,
7 division of property, including retirement benefits and other career
8 assets, and allocation of debts, and, in addition, shall state

9 (1) the respective occupations of the spouses;

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

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

13 (4) the name, date of birth, and current custodial status
14 of each minor child born of the marriage or adopted by the petition-
15 ers;

16 (5) whether the wife is pregnant;

17 (6) other facts and circumstances which the petitioners
18 believe should be considered; [AND]

19 (7) that the petition constitutes the entire agreement
20 between the parties; and

21 (8) any other relief sought by the spouses.

22 * Sec. 9. AS 25.24.220(b) is repealed and reenacted to read:

23 (b) Both spouses shall attend the hearing personally and not
24 through counsel. However, if the petition is brought by both spouses
25 under AS 25.24.200(a) and if the petition is not subject to (i) of
26 this section, a spouse may comply with AS 25.24.200(c); in that case
27 only the spouse filing the petition is required to attend. Either
28 spouse may have counsel at the hearing.

29 * Sec. 10. AS 25.24.220(d) is amended to read:

1 (d) If the petition is brought by both spouses under AS 25.24.-
2 200(a), the court shall examine the petitioners or petitioner present
3 and consider whether

4 (1) the spouses fully understand the nature and conse-
5 quences of their action;

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

10 (3) the written agreements between the spouses relating to
11 the division of property, including retirement benefits and other
12 career assets, spousal support, and the allocation of obligations are
13 fair, just, and equitable; [AND]

14 (4) the written agreements constitute the entire agreement
15 between the parties; and

16 (5) the conditions in AS 25.24.200(a) have been met.

17 * Sec. 11. AS 25.24.220(g) is amended to read:

18 (g) The court may amend the written agreements between the
19 spouses relating to child custody, child support, visitation, spousal
20 support, division of the property, including retirement benefits and
21 other career assets, and allocation of obligations, but only if both
22 petitioners concur in the amendment in writing or on the record.

23 * Sec. 12. AS 25.24.220 is amended by adding new subsections to read:

24 (h) In its examination of the petitioner or petitioners under
25 (d) of this section, the court shall use a heightened level of scruti-
26 ny of agreements if

27 (1) one party is represented by counsel and the other is
28 not;

29 (2) an unusually high or low amount of child support will

1 be awarded;

2 (3) a domestic violence complaint has been filed during the
3 marriage;

4 (4) there are unusual child custody provisions; or

5 (5) there is a patently inequitable division of the marital
6 estate.

7 (i) If the court finds that a higher level of scrutiny is re-
8 quired by (h) of this section, the court shall examine the written
9 agreements between the spouses to determine that they are fair, just,
10 and equitable, that they constitute the entire agreement between the
11 parties, and that the agreements concerning child custody, child
12 support, and visitation are in the best interest of the children of
13 the marriage, if any. The court shall require the presence of both
14 spouses at a hearing for this purpose unless the court finds on the
15 record that it would constitute a significant hardship on one of the
16 spouses to appear, and that a fair, just, and equitable agreement has
17 been reached.

18 * Sec. 13. AS 25.24.230(a) is amended to read:

19 (a) If the petition is brought by one or both spouses under
20 AS 25.24.200(a), the court may grant the spouses a final decree of
21 dissolution and shall order [PROVIDE THE] other relief as provided in
22 this section if the court, upon consideration of the information
23 contained in the petition and the testimony of the spouse or spouses
24 at the hearing, finds that

25 (1) the spouses understand fully the nature and conse-
26 quences of their action;

27 (2) the written agreements between the spouses concerning
28 child custody, child support, and visitation are in the best interest
29 of the children of the marriage, constitute the entire agreement of

1 the parties on child custody, child support, and visitation, and are
2 not grossly unfair, unjust, or inequitable as between the spouses;

3 (3) the written agreements between the spouses concerning
4 [CHILD CUSTODY, CHILD SUPPORT, VISITATION,] spousal support and tax
5 consequences, if any, division of property, including retirement
6 benefits and other career assets, and allocation of obligations are
7 not grossly unfair, unjust, or inequitable and constitute the entire
8 agreement between the parties [AND ARE IN THE BEST INTERESTS OF THE
9 CHILDREN OF THE MARRIAGE, IF ANY]; and

10 (4) [(3)] the conditions in AS 25.24.200(a) have been met.

11 * Sec. 14. AS 25.24.230(e) is amended to read:

12 (e) If the petition is brought by both spouses under AS 25.24.-
13 200(a), the court shall change [RESTORE] either spouse's [PRIOR]
14 name, if the spouse seeking a change of name to a name other than a
15 prior name complies with AS 25.24.165(b), [SO REQUESTED, AND] shall
16 fully and specifically set out in the decree the written agreements of
17 the spouses, [RELATING TO CHILD CUSTODY, CHILD SUPPORT, VISITATION,
18 SPOUSAL SUPPORT, DIVISION OF PROPERTY, AND THE ALLOCATION OF THE
19 OBLIGATIONS OF THE SPOUSES;] and [THE COURT] shall order the perfor-
20 mance of those written agreements. The court shall also state, in the
21 decree, whether child support payments are to be made through the
22 child support enforcement agency. If the petition is brought by one
23 spouse under AS 25.24.200(b), the decree shall state that it does not
24 bar future action on the issues not resolved in the decree.

25 * Sec. 15. AS 25.24.250 is amended by adding a new subsection to read:

26 (c) Forms or instructions prepared under (a) of this section
27 must specify that the dissolution petition constitutes the entire
28 agreement between the parties and provide examples of kinds of proper-
29 ty and obligations that are subject to distribution.

1 * Sec. 16. AS 25.24 is amended by adding a new section to article 2 to
2 read:

3 Sec. 25.24.290. DEFINITION. In AS 25.24.200 - 25.24.290 "career
4 assets" means tangible and intangible assets and obligations resulting
5 from a spouse's education, profession, or employment that were ac-
6 quired at least in part as a result of direct or indirect contribu-
7 tions made by the other spouse. A division of career assets shall
8 take into consideration the extent to which each spouse contributed to
9 the acquisition of the career assets.

10 * Sec. 17. AS 25.24.165 as added by sec. 3 of this Act, AS 25.24.210(d)
11 as amended by sec. 7 of this Act, and AS 25.24.230(e) as amended by sec. 14
12 of this Act have the effect of amending Rule 84(a), Alaska Rules of Civil
13 Procedure, to allow a change of name to a name other than a prior name to
14 be commenced in a complaint for divorce or annulment or a petition for
15 dissolution of marriage.