

Original sponsor: Rules/Governor

1 IN THE HOUSE BY THE FINANCE COMMITTEE
2 CS FOR HOUSE BILL NO. 195 (Finance)
3 IN THE LEGISLATURE OF THE STATE OF ALASKA
4 SIXTEENTH LEGISLATURE - FIRST 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 25.24.100 is amended to read:
11 Sec. 25.24.100. RESIDENCY OF MILITARY PERSONNEL. A person
12 serving in a military branch of the United States government who has
13 been continuously stationed at [IN] a military base or installation in
14 the state for at least 30 days is considered [A PERIOD OF ONE YEAR
15 SHALL BE DEEMED] a resident [IN GOOD FAITH] of the state for the
16 purposes of this chapter [AS 25.24.010 - 25.24.180].
17 * Sec. 2. AS 25.24.140 is repealed and reenacted to read:
18 Sec. 25.24.140. ORDERS DURING ACTION. (a) During the pendency
19 of the action, a spouse may, upon application and in appropriate
20 circumstances, be awarded expenses, including
21 (1) attorney fees and costs that reasonably approximate the
22 actual fees and costs required to prosecute or defend the action; in
23 applying this paragraph, the court shall take appropriate steps to
24 ensure that the award of attorney fees does not contribute to an
25 unnecessary escalation in the extent to which attorneys are used;
26 (2) reasonable spousal maintenance, including medical
27 expenses; and
28 (3) reasonable support for minor children in the care of
29 the spouse, if there is a legal obligation of the other spouse to

1 provide support.

2 (b) During the pendency of the action, upon application, a
3 spouse is entitled to necessary protective orders, including orders

4 (1) providing for the freedom of each spouse from the
5 control of the other spouse;

6 (2) restraining each spouse from subjecting the other
7 spouse or another person living in the household to domestic violence,
8 as defined in AS 25.35.060;

9 (3) directing one spouse to vacate the marital residence or
10 the home of the other spouse;

11 (4) restraining a spouse from communicating directly or
12 indirectly with the other spouse;

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

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

18 (c) After a hearing, if both parties agree, the court may also
19 order that the parties engage in personal or family counseling or
20 mediation. In the order, the court shall provide for the payment of
21 the costs of the counseling or mediation.

22 * Sec. 3. AS 25.24.160(a) is amended to read:

23 (a) In a judgment in an action for divorce or action declaring a
24 marriage void or at any time after judgment, the court may provide

25 (1) for the payment by either or both parties of an amount
26 of money or goods, in gross or installments that may include cost-
27 of-living adjustments, as may be just and proper for the parties to
28 contribute toward the nurture and education of their children, and the
29 court may order the parties to arrange with their employers for an

1 automatic payroll deduction each month or each pay period, if the
2 period is other than monthly, of the amount of the installment; if the
3 employer agrees, the installment shall be forwarded by the employer to
4 the clerk of the superior court that [WHICH] entered the judgment or
5 to the court trustee, and the amount of the installment is exempt from
6 execution;

7 (2) for the recovery by one party from the other of an
8 amount of money for maintenance, in gross or in installments, as may
9 be just and necessary without regard to which of the parties is in
10 fault; an award of maintenance must take into consideration the extent
11 to which each spouse contributed to the acquisition of career assets;

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

15 (4) for the division between the parties of their property,
16 including retirement benefits, whether joint or separate, acquired
17 only during marriage [COVERTURE], in a just [THE] manner [AS MAY BE
18 JUST,] and without regard to which of the parties is in fault; howev-
19 er, the court, in making the division, may invade the property, in-
20 cluding retirement benefits, of either spouse acquired before marriage
21 when the balancing of the equities between the parties requires it;
22 and to accomplish this end the judgment may require that one or both
23 of the parties assign, deliver, or convey any of their real or person-
24 al property, including retirement benefits, to the other party; a
25 division of property must take into consideration the extent to which
26 each spouse contributed to the acquisition of career assets

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

28 * Sec. 4. AS 25.24 is amended by adding a new section to read:

29 Sec. 25.24.165. CHANGE OF NAME IN DIVORCE OR ANNULMENT. (a) In

1 a judgment in an action for divorce or action declaring a marriage
2 void, the court may change the name of either of the parties.

3 (b) If a party seeks a change of name to a name other than a
4 prior name, the court shall set a date for hearing not less than 40
5 days after filing of the action. Notice of the application for a
6 change of name to a name other than a prior name and the date of the
7 hearing shall be published once each week for four consecutive calen-
8 dar weeks before the hearing in a newspaper of general circulation in
9 the judicial district. The court may also require posting of the
10 notice at locations it considers appropriate. The court shall by
11 judgment authorize the party to assume the new name not less than 30
12 days after issuance of the judgment, if the court is satisfied that no
13 reasonable objection exists to assumption of the new name. Within 10
14 days after issuance of the judgment the party shall publish notice of
15 the approval of the name change in a newspaper of general circulation
16 in the judicial district. The court may also require the posting of a
17 copy of the judgment.

18 * Sec. 5. AS 25.24.200 is amended to read:

19 Sec. 25.24.200. DISSOLUTION OF MARRIAGE. (a) A husband and
20 wife together may petition the superior court for the dissolution of
21 their marriage under AS 25.24.200 - 25.24.260 if the following con-
22 ditions exist at the time of filing the petition:

23 (1) incompatibility of temperament has caused the irremedi-
24 able breakdown of the marriage;

25 (2) if there are minor children of the marriage or the wife
26 is pregnant, and the spouses have agreed on which spouse or third
27 party is to [SHALL] be awarded custody of each minor child of the
28 marriage and the extent of visitation, including visitation by grand-
29 parents and other persons, if in the child's best interests, and

1 support to be provided on the children's behalf, whether the payments
2 are to be made through the child support enforcement agency and the
3 tax consequences of that agreement;

4 (3) the spouses have agreed as to the distribution of all
5 jointly owned real and personal property, including retirement bene-
6 fits, and the payment of spousal maintenance [SUPPORT], if any, and
7 the tax consequences resulting from these payments; the agreement must
8 be fair and just and take into consideration career assets; and

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

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

15 (1) incompatibility of temperament, as evidenced by extend-
16 ed absence or otherwise, has caused the irremediable breakdown of the
17 marriage;

18 (2) the petitioning spouse has been unable to ascertain the
19 other spouse's position in regard to the dissolution of their marriage
20 and in regard to the fair and just division of property, including
21 retirement benefits, spousal maintenance, payment of debts, and
22 custody, support and visitation because the whereabouts of the other
23 spouse is unknown to the petitioning spouse after reasonable efforts
24 have been made to locate the absent spouse; the division of property
25 and spousal maintenance must take into consideration career assets;
26 and

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

29 (c) Except as provided in AS 25.24.220(i), [NOTHING IN THIS

1 SECTION PROHIBITS] a spouse who has been personally served with a copy
2 of a petition filed [MADE] under (a) of this section may execute [FROM
3 EXECUTING] an appearance, waiver of time to answer, and waiver of
4 notice of hearing. The appearance and waivers must [SHALL] include an
5 acknowledgment signed before an officer authorized to administer an
6 oath or affirmation that the spouse being served has read the peti-
7 tion; assents to the terms relating to custody of the children, child
8 support, visitation, spousal maintenance taking into consideration
9 career assets, [SUPPORT] and [RESULTANT] tax consequences, division of
10 property, including retirement benefits and taking into consideration
11 career assets, and allocation of debts; agrees that the conditions
12 otherwise required by (a) of this section exist; agrees that the
13 petition constitutes the entire agreement between the parties;
14 understands fully the nature and consequences of the action; and is
15 not signing the appearance and waivers under duress or coercion.

16 (d) The action created under this section is separate from the
17 action created by AS 25.24.010. The procedures prescribed by AS 25.-
18 24.200 - 25.24.260 do not apply to an action brought under AS 25.24.-
19 010, nor do procedures prescribed under AS 25.24.010 - 25.24.180 apply
20 to an action filed [BROUGHT] under this section, except as specifical-
21 ly provided.

22 * Sec. 6. AS 25.24.200 is amended by adding a new subsection to read:

23 (e) A division of property, and spousal maintenance, must take
24 into consideration career assets.

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

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

29 * Sec. 8. AS 25.24.210(e) is repealed and reenacted to read:

1 (e) If the petition is filed by both spouses under AS 25.24.-
2 200(a), the petition must state in detail the terms of the agreement
3 between the spouses concerning the custody of children, child support,
4 visitation, spousal maintenance and tax consequences, if any, and fair
5 and just division of property, including retirement benefits. Agree-
6 ments on spousal maintenance and property division must take into
7 consideration career assets. In addition, the petition must state

8 (1) the respective occupations of the petitioners;

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

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

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

15 (5) whether the wife is pregnant;

16 (6) whether either petitioner requires medical care or
17 treatment;

18 (7) whether a domestic violence complaint has been filed
19 during the marriage by a member of the household;

20 (8) whether either petitioner has received the advice of
21 legal counsel regarding a divorce or dissolution;

22 (9) other facts and circumstances that the petitioners
23 believe should be considered;

24 (10) that the petition constitutes the entire agreement
25 between the petitioners; and

26 (11) any other relief sought by the petitioners.

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

28 (b) Except as provided in (i) of this section, if the petition
29 is filed by both spouses under AS 25.24.200(a), both spouses shall

1 attend the hearing personally and not through counsel. However, if
2 the petition is not subject to (i) of this section, a spouse who
3 complies with AS 25.24.200(c) is not required to attend the hearing.
4 Either spouse may have counsel at the hearing.

5 * Sec. 10. AS 25.24.220(c) is amended to read:

6 (c) If the petition is filed [BROUGHT] by one spouse under
7 AS 25.24.200(b), that spouse shall submit proof of diligent inquiry as
8 to the whereabouts of the absent spouse and provide notice by publica-
9 tion, posting, or other means as ordered by the court under [IN ACCOR-
10 DANCE WITH] the Alaska Rules of Civil Procedure.

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

12 (d) If the petition is filed [BROUGHT] by both spouses under
13 AS 25.24.200(a), the court shall examine the petitioners or petitioner
14 present and consider whether

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

17 (2) the written agreements between the spouses concerning
18 child custody, child support, and visitation are [FAIR,] just [, AND
19 EQUITABLE] as between the spouses and in the best interests of the
20 children of the marriage;

21 (3) the written agreements between the spouses relating to
22 the division of property, including retirement benefits, spousal
23 maintenance [SPOUSAL SUPPORT], and the allocation of obligations are
24 [FAIR,] just; the division of property and spousal maintenance must
25 take into consideration career assets; [, AND EQUITABLE; AND]

26 (4) the written agreements constitute the entire agreement
27 between the parties; and

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

29 * Sec. 12. AS 25.24.220(e) is amended to read:

1 (e) If the petition is filed [BROUGHT] by one spouse under
2 AS 25.24.200(b), the court shall examine the petitioner and consider
3 whether the petitioner fully understands the nature and consequences
4 of the action and whether the conditions in AS 25.24.200(b) have been
5 met.

6 * Sec. 13. AS 25.24.220(g) is amended to read:

7 (g) The court may amend the written agreements between the
8 spouses relating to child custody, child support, visitation, [SPOUSAL
9 SUPPORT,] division of the property, including retirement benefits,
10 spousal maintenance, and allocation of obligations, but only if both
11 petitioners concur in the amendment in writing or on the record.
12 Division of property and spousal maintenance must take into consid-
13 eration career assets.

14 * Sec. 14. AS 25.24.220 is amended by adding new subsections to read:

15 (h) In its examination of a petitioner under (d) of this sec-
16 tion, the court shall use a heightened level of scrutiny of agreements
17 if

18 (1) one party is represented by counsel and the other is
19 not;

20 (2) a domestic violence complaint has been filed during the
21 marriage by a member of the family or there is evidence of domestic
22 violence during the marriage;

23 (3) there is a minor child of the marriage; or

24 (4) there is a patently inequitable division of the marital
25 estate.

26 (i) If the court finds that a higher level of scrutiny is re-
27 quired by (h) of this section, the court shall examine the written
28 agreements between the spouses to determine that they are just, that
29 they constitute the entire agreement between the parties, and that the

1 agreements concerning child custody, child support, and visitation are
2 in the best interest of the children of the marriage, if any. The
3 court shall require the presence of both spouses at a hearing for this
4 purpose unless the court finds on the record that it would constitute
5 a significant hardship on one of the spouses to appear and that a just
6 agreement has been reached. If one of the spouses cannot attend the
7 hearing because it would constitute a significant hardship, the court
8 may require that spouse to be available by telephone to answer ques-
9 tions, at that spouse's expense.

10 (j) If the court exercises a higher level of scrutiny under (h)
11 of this section because one party is represented by counsel and the
12 other is not, and the court is uncertain whether the agreement between
13 the parties is just, the court shall resolve its uncertainty by making
14 a finding that gives priority to the interests of the party that is
15 not represented by counsel if the facts presented and the law applica-
16 ble to the proceeding permit the finding.

17 * Sec. 15. AS 25.24.230 is repealed and reenacted to read:

18 Sec. 25.24.230. JUDGMENT. (a) If the petition is filed under
19 AS 25.24.200(a), and is not subject to AS 25.24.220(h), the court may
20 grant the spouses a final decree of dissolution and shall order other
21 relief as provided in this section if the court, upon consideration of
22 the information contained in the petition and the testimony of the
23 spouse or spouses at the hearing, finds that

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

26 (2) the written agreements between the spouses concerning
27 spousal maintenance and tax consequences, if any, division of proper-
28 ty, including retirement benefits, and allocation of obligations are
29 fair and just and constitute the entire agreement between the parties;

1 division of property and spousal maintenance must take into consid-
2 eration career assets;

3 (3) each spouse entered into the agreement voluntarily and
4 free from the coercion of another person; and

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

6 (b) If the petition is filed under AS 25.24.200(a) and is sub-
7 ject to AS 25.24.220(h), the court may grant the spouses a final
8 decree of dissolution and shall order other relief as provided in this
9 section if the court, upon consideration of the information contained
10 in the petition and the testimony of the spouse or spouses at the
11 hearing, finds that

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

14 (2) the written agreements between the spouses concerning
15 child custody, child support, and visitation are in the best interest
16 of the children of the marriage, constitute the entire agreement of
17 the parties on child custody, child support, and visitation, and, as
18 between the spouses, are just;

19 (3) the written agreements between the spouses concerning
20 spousal maintenance and tax consequences, if any, division of proper-
21 ty, including retirement benefits, and allocation of obligations are
22 just and constitute the entire agreement between the parties; division
23 of property and spousal maintenance must take into consideration
24 career assets;

25 (4) each spouse entered the agreement voluntarily and free
26 from the coercion of another person; and

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

28 (c) If the petition is filed by one spouse under AS 25.24.-
29 200(b), the court may grant the spouse a final decree of dissolution

1 and change the petitioner's name, if so requested, if the court, upon
2 consideration of affidavits supplied by the spouse and the testimony
3 of the spouse at the hearing, finds that

4 (1) the spouse present at the hearing understands fully the
5 nature and consequences of the action;

6 (2) the conditions in AS 25.24.200(b) have been met; and

7 (3) the requirements of AS 25.24.165(b) have been sat-
8 isfied, if a change of name is requested.

9 (d) The court shall dismiss a petition or continue action on a
10 petition filed under AS 25.24.200 - 25.24.260 before findings are made
11 if

12 (1) a representative of the minor children objects to a
13 term of an agreement between the spouses;

14 (2) either of the spouses withdraws from an agreement
15 required under AS 25.24.200(a); or

16 (3) the petition alleges that the conditions in AS 25.24.-
17 200(b) exist, but the whereabouts of the absent spouse becomes known
18 to the other spouse or the court before findings are made.

19 (e) The court shall deny the relief sought in a petition filed
20 under AS 25.24.200 - 25.24.260 if the court does not make the findings
21 required under (a) - (c) of this section.

22 (f) If the petition is filed by both spouses under AS 25.24.-
23 200(a), the court shall change either spouse's name, if the spouse
24 seeking a change of name to a name other than a prior name complies
25 with AS 25.24.165(b), and shall fully and specifically set out in the
26 decree the written agreements of the spouses and shall order the
27 performance of those written agreements. The court shall also state,
28 in the decree, whether child support payments are to be made through
29 the child support enforcement agency. If the petition is filed by one

1 spouse under AS 25.24.200(b), the decree must state that it does not
2 bar future action on the issues not resolved in the decree.

3 (g) Notwithstanding other provisions of AS 25.24.200 - 25.24.-
4 260, the court may not award to one spouse real or personal property
5 acquired by the other spouse before the date of the marriage, unless
6 the spouses expressly agree otherwise or the court determines that the
7 property should be made available, by sale or other conveyance, to
8 ensure that the best interests of the children are provided for. If
9 the court determines that the best interests of the children require
10 an award of premarital property, but the spouses do not agree, the
11 court shall dismiss or continue the action.

12 (h) If a judgment under this section distributes benefits to an
13 alternate payee under AS 14.25, AS 22.25, AS 26.05.222 - 26.05.226, or
14 AS 39.35, the judgment must meet the requirements of a qualified
15 domestic relations order under the definition of that phrase that is
16 applicable to those provisions.

17 * Sec. 16. AS 25.24.250 is amended by adding a new subsection to read:

18 (c) Forms or instructions prepared under (a) of this section
19 must specify that the dissolution petition constitutes the entire
20 agreement between the parties and must provide examples of kinds of
21 property and obligations that are subject to distribution.

22 * Sec. 17. AS 25.24 is amended by adding a new section to read:

23 ARTICLE 4. GENERAL PROVISIONS.

24 Sec. 25.24.400. DEFINITION. In this chapter, "career assets"
25 means the ability of a spouse to earn money resulting from that
26 spouse's education, profession, or employment that was acquired at
27 least in part as a result of the direct or indirect contribution,
28 including the value of homemaking and child rearing services, provided
29 by the other spouse.

1 * Sec. 18. AS 25.24.165, as added by sec. 4 of this Act, AS 25.24.-
2 210(d) as amended by sec. 7 of this Act, and AS 25.24.230(c) and 25.24.-
3 230(f) as amended by sec. 15 of this Act, have the effect of amending Rule
4 84(a), Alaska Rules of Civil Procedure, to allow a change of name to a name
5 other than a prior name to be commenced in a complaint for divorce or
6 annulment or a petition for dissolution of marriage.