SB
592

COMMITTEE REPORT

SENATE

6/3/81 FURTHER: None

Date: MARCH 22, 1982

Mr. President:

The Committee on JUDICIARY has had SB 592

parents of delinquent minors and children in need of aid have the right to counsel in certain proceedings under AS 47.10

under consideration and (a majority of the committee) (the committee) reports it back with the following recommendations:

[ ] do pass [ ] do not pass

[ ] do pass with attached amendments(s)

[X] replace with CS for ______ [ ] same title [X] new title

and recommends ______

[ ] AND attaches a "Letter of Intent" [ ] New Fiscal Note

[ ] reports it back without recommendation

[ ] referred to the ______ Committee

MEMBERS SIGNING DO PASS

MEMBERS HAVING OTHER RECOMMENDATIONS:

______ CHAIRMAN

S 60 (Rev. 12/78)

Official Business

Alaska State Legislature

Senate

Committee on Judiciary

Pouch V
State Capitol
Juneau, Alaska 99811

MINUTES OF THE SENATE JUDICIARY COMMITTEE

OF

MARCH 22, 1982

Butrovich Committee Room, State Capitol Juneau, Alaska

Legislation Before Committee:

SB 845 - "An Act to provide for reinstatement of certain dissolved Alaska Native Claims Settlement Act village corporations to corporate status."

SB 592 - "An Act providing that the parents of delinquent minors and children in need of aid have the right to counsel in certain proceedings under AS 47.10."

SB 473 - "An Act relating to urban renewal and development projects of municipalities; and providing for an effective date."

HB 640 - "An Act relating to games of chance and contests of skill; and providing for an effective date."

The meeting of the Senate Judiciary Committee was called to order by Chairman Rodey at 1:35 P.M. Committee members present were: Senators Rodey, Ray, Parr, and Anderson. Senator Bennett was absent.

003 - Chairman Rodey called the meeting to order.

005 - The first item of business, SB 845, was brought before the committee.

015 - James Kohler, Department of Community and Regional Affairs, testified in favor of the bill, stating that several corporations were disolved at no fault of their own.

209 - Mr. Kirkpatrick, Director of Banking Securities Corporations, testified stating neither support nor opposition. He only wanted to see clarification of fees due.

443 - Senator Anderson moved that the bill be passed with individual recommendations. There was no objection and the bill was passed with Senators Anderson, Parr, and Rodey signing do pass, Senator Ray signed no recommendation.

463 - Next Chairman Rodey brought HB 640 before the committee.

470 - Chairman Rodey gave the amendments made to the bill.

552 - Chairman Rodey suggested moving the bill from committee and directed staff to prepare a committee substitute to include the new amendments previously adopted by the committee. There was no objection and the committee subsitute was passed with Senators Parr, Ray, and Anderson signing do pass. Senator Rodey signed no recommendation.

650 - Chairman Rodey brought SB 473 before the committee.

727 - After discussion, Senator Ray moved that the committee substitute be passed with individual recommendations. There was no objection and the bill was passed with Senators Parr, Rodey, and Anderson signing do pass. Senator Ray signed no recommendation.

730 - The last item on the agenda was SB 592.

745 - Francis Still, representing herself, testified in favor of SB 592.

780 - Senator Parr moved that on Page 1, Line 12, the following be deleted: [to transfer custody, or to appoint a person other than the parent of a child as guardian of the child,]. There was no objection.

795 - Senator Parr moved that the committee pass SB 592 with a committee substitute to be drafted to include the new amendment. There was no objection and the bill was passed with Senator Parr signing do pass. Senators Ray, Rodey, and Anderson signed no recommendation.

802 - Chairman Rodey adjourned the meeting at 2:20 P.M.

SRS 592 file (my bill)

STATE OF ALASKA
THE LEGISLATURE
LEGISLATIVE AFFAIRS AGENCY

POUCH Y · STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800

M E M O R A N D U M June 8, 1981

SUBJECT: Appointment of counsel
(Work Order No. 12-1840)

TO: Senator Charles H. Parr

FROM: Thomas A. Sofo, TAS
Legislative Counsel

Since drafting Work Order No. 12-1840 concerning appointment of counsel in parental termination cases, I ran across a very recent decision of the United States Supreme Court which I have attached for your information. Apparently, they have held that, at least in the absence of a statute, there is not necessarily a constitutionally recognized right to such representation.

TAS:ljb

Attachment

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SUMMARY AND ANALYSIS

Supreme Court Limits District Courts' Discretion In Class Action Gag Orders

A unanimous Supreme Court finds court-ordered limits on communications between named class action plaintiffs or their counsel and potential class members, when entered without a record and specific findings of need, to be an abuse of discretion. The opinion, written by Justice Powell, declines to reach First Amendment issues posed by such orders. (Gulf Oil Co. v. Bernard, 6/1/81)

The order before the Court barred any contacts directly or indirectly, orally or in writing, "without the consent and approval of the proposed communication and proposed addressees" by the court. It contained several exceptions, including communications between attorney and client, communications between attorney and prospective client when initiated by the prospective client, and communications in the regular course of business. It also required post-communication filing with the court of any communication asserted to be constitutionally protected. The lower court apparently adopted in toto a model order suggested by the Manual for Complex Litigation, a publication widely used by federal judges.

Justice Powell says that any communications ban "should be based on a clear record and specific findings that reflect a weighing of the need for a limitation and the potential interference with the rights of the parties. ***In addition, such a weighing — identifying the potential abuses being addressed — should result in a carefully drawn order that limits speech as little as possible***." Because the district court in this case failed to provide any record or findings at all, Justice Powell concludes, it abused its discretion. (Page 4604)

→ Indigents Not Always Entitled To Lawyer In Parental Termination Cases

Appointment of counsel on an ad hoc basis is revived by the U.S. Supreme Court as it holds, 5-4, that the Constitution does not require the appointment of counsel for indigent parents in every parental status termination proceeding. (Lassiter v. Department of Social Services of Durham County, N.C., 6/1/81)

Mathews v. Eldridge, 424 U.S. 319 (1976), propounds three elements to be used in deciding what due process requires. Justice Stewart, writing for the Court, applies these factors to the present case: The mother's interest is an extremely important one; the state has an interest in a correct decision, a relatively weak pecuniary interest, and possibly a stronger interest in informal procedures; and the complexity of the proceedings and the incapacity of the uncounseled parent could be great enough to make the risk of an erroneous deprivation of the parent's rights insupportably high.

If the parent's interests were at their strongest, the state's interests were at their weakest, and the risks of error were at their peak, the Eldridge factors would overcome the presumption — derived from the Court's own cases — that there is a right to appointed counsel only for the indigent who may lose his personal freedom. However, since the Eldridge factors will not always be so distributed, the Court says that the appointment of counsel for indigent parents in termination proceedings must be answered in the first instance by the trial court, subject to appellate review.

In this case, several factors convince the Court that denial of counsel to the indigent mother did not deny her due process. The petition to terminate her parental rights contained no allegations of neglect or abuse upon which criminal charges could be based; no expert witness testified; the case presented no specially troublesome points of law; counsel could not have made a determinative difference for her; she expressly declined to appear at an earlier child custody hearing; and her failure to contest the present termination proceeding was without cause.

Justice Blackmun is joined in dissent by Justices Brennan and Marshall; Justice Stevens dissents separately. (Page 4586)

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