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## Alaska Court System

State of Alaska

303 "K" STREET  
ANCHORAGE, ALASKA  
99501

ARTHUR H. SNOWDEN II  
ADMINISTRATIVE DIRECTOR

(907) 274-8111

February 22, 1990

Senator Jan Faiks  
Alaska State Legislature  
P. O. Box V  
Juneau, Alaska 99811

RE: Mediation Pilot Project Bill

Dear Senator Faiks:

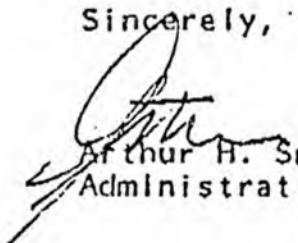
The Alaska Court System supports proposed legislation which would create a pilot project in mediation in Anchorage and Fairbanks. For a one year period, certain contested domestic relations cases in Anchorage and Fairbanks would be channelled into a mediation program annexed to the court, rather than onto the traditional path which leads directly to the courtroom for an adversarial determination of the issues by a judge. At the end of the one year period, the pilot project will be evaluated. This evaluation, which will explore the program's efficiency, cost-effectiveness and litigant satisfaction, will help the court and the legislature determine if a permanent mediation program would be worthwhile.

According to the Report of the National Conference on Dispute Resolution and the State Courts (held in late 1988), dispute resolution procedures such as mediation are credited with reducing judicial workload and court overcrowding, reducing disputants' costs and lowering barriers to their access to justice, and achieving more satisfactory resolution of disputes than is likely to happen from traditional courtroom battle and settlement on the courthouse steps.



The pilot project has received an endorsement from the Task Force on Mediation appointed by the Chief Justice in 1988. The task force consists of state court judges and judicial administrative staff, a private sector mediator and a private sector attorney.

Sincerely,



Arthur H. Snowden, II  
Administrative Director

### Pilot Project in Mediation

A pilot project for mediation of domestic relations cases will be implemented in the court system in Anchorage and Fairbanks.

In the Custody Investigator's offices in Anchorage and Fairbanks, a staff mediator will be hired. During the course of the first year of the project, a certain number of domestic relations cases (chosen in accord with established guidelines) will be referred to the mediators, who will attempt to resolve the disputes. Records will be kept on the resolution of the cases, and on the impressions of the parties and their attorneys about the process. At the end of the first year, the project will be evaluated for its cost-effectiveness, its efficacy and "customer satisfaction" with the process.

If the program is funded for three years, the staff mediators may also develop an expanded mediation program which will utilize volunteer mediators. The staff mediators will be responsible for recruitment, training, assignment and evaluation of the volunteer mediators.

The Alaska Judicial Council may be asked to monitor and evaluate the pilot project.

POSITION TITLE: Mediator				RANGE/STEP 18A	BARG. UNIT X	FORM C100 PAGE/LINE PAGE/LINE
TYPE OF POSITION Permanent Full-time	STAFF NO. 12	CHS	PCN NUMBER	BRU PRIORITY	LOCATION Anchorage	ELECTION DISTRICT 7
CONTINUATION LEVEL		ADDITION X		JUSTIFICATION		
TYPE OF EXPENDITURE		AMOUNT				
Personal Services						
Salary		37,548				
Variable Benefits		5,831				
Supplemental Benefits		2,429				
Fixed Costs		4,640				
Total Personal Services			50,448			
Travel						
Contractual						
Supplies						
Equipment	(1)		1,635			
Other						
Total Cost			52,083			
RECEIPT CODE	FUNDING SOURCE					
1002	Federal Receipts					
1003	G.F. Match					
1004	General Funds		52,083			
1005	GF/Prog. Rec.					
1007	I-A Receipts					
	Other					
(1) File cabinet, typewriter and dictating machine						

**C190** New Position Request

Agency ALASKA COURT SYSTEM

BRU TRIAL COURTS

Component THIRD DISTRICT

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POSITION TITLE: Mediator			RANGE/STEP 18A	BARG. UNIT X	FORM C100 PAGE/LINE
TYPE OF POSITION Permanent Full-time	STAFF MONTHS 12	PCN NUMBER	BRU PRIORITY	LOCATION Fairbanks	ELECTION DISTRICT 20
CONTINUATION LEVEL		ADDITION	JUSTIFICATION		
TYPE OF EXPENDITURE			X		
Personal Services			AMOUNT		
Salary		42,984			
Variable Benefits		6,675			
Supplemental Benefits		2,781			
Fixed Costs		4,640			
Total Personal Services			57,080		
Travel					
Contractual					
Supplies					
Equipment (1)			1,635		
Other					
Total Cost			58,715		
RECEIPT CODE	FUNDING SOURCE				
1002	Federal Receipts				
1003	G.F. Match				
1004	General Funds		58,715		
1005	GF/Prog. Rec.				
1007	I-A Receipts				
	Other				
(1) File cabinet, typewriter and dictating machine					

**C190** New Position Request

Agency ALASKA COURT SYSTEM

BRU TRIAL COURTS

Component FOURTH DISTRICT

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Award of custody of child when contest is between natural parent and step-parent, 10 ALR4th 767.

Right of incarcerated mother to return

custody of infant in penal institution, 14 ALR4th 748.

Propriety of awarding joint custody of children, 17 ALR4th 1013.

**Sec. 25.20.070. Temporary custody of the child.** Unless it is shown to be detrimental to the welfare of the child, the child shall have, to the greatest degree practical, equal access to both parents during the time that the court considers an award of custody under AS 25.20.060 — 25.20.130. (§ 6 ch 88 SLA 1982)

**Editor's notes.** — For legislative intent behind the 1982 change in the child custody law, see editor's note to AS 25.20.060.

**Collateral references.** — Necessity of notice of application for temporary custody of child, 31 ALR3d 1378.

**Sec. 25.20.080. Mediation of child custody matter.** (a) At any time within 30 days after a petition for child custody is filed under AS 25.20.060 the court may order the parties to submit to mediation. Each party shall have the right to challenge peremptorily one mediator appointed.

(b) Mediation shall be conducted informally as a conference, or by telephone, or series of conferences, as determined by the mediator. The parties to the action and a court-appointed representative of the minor children shall attend.

(c) If the mediator determines that mediation efforts are unsuccessful, the mediator shall terminate mediation and notify the court that mediation efforts have failed. The custody proceeding shall proceed in the usual manner.

(d) Upon submission of the parties to mediation under this section, a pending child custody proceeding shall be stayed for a period of 30 days or until the court is notified that mediation efforts have failed. All court orders made during the pending custody proceeding remain in effect during the period of mediation.

(e) Costs of mediation shall be paid as ordered by the court by one party, by both parties, or by the state if both parties are indigent. (§ 6 ch 88 SLA 1982)

**Sec. 25.20.090. Factors for consideration in awarding shared child custody.** In determining whether to award shared custody of a child the court shall consider

- (1) the child's preference if the child is of sufficient age and capacity to form a preference;
- (2) the needs of the child;
- (3) the stability of the home environment likely to be offered by each parent;
- (4) the education of the child;

**Collateral references.** — Desertion as affected by remonstrance or resistance, 3 ALR 503.

Abuse by relatives of other spouse as cruelty constituting grounds for divorce, 3 ALR 993.

Conduct amounting to treatment endangering life within statute defining grounds for divorce, 5 ALR 712.

Discretion as to denial of divorce or separation where statutory grounds are established, 74 ALR 271.

Knowledge of offense as condition of condonation, 109 ALR 683.

What amounts to habitual intemperance, drunkenness, etc., within statute relating to substantive grounds for divorce, 120 ALR 1176; 29 ALR2d 925.

Act, character or nature of crime contemplated by statute as substantive ground for divorce, 135 ALR 851.

Children's testimony as to grounds of divorce of parents, 2 ALR2d 1329.

Antenuptial knowledge relating to alleged grounds as barring right to divorce, 15 ALR2d 670.

What constitutes duress sufficient to warrant divorce, 16 ALR2d 1430.

Conviction in another jurisdiction as within statute making conviction of crime a ground of divorce, 19 ALR2d 1047.

Racial, religious or political differences as grounds for divorce, separation or annulment, 25 ALR2d 928.

Written separation agreement as bar to divorce on ground of desertion, 34 ALR2d 954.

What constitutes reconciliation of separated spouses, 35 ALR2d 746.

What amounts to incompatibility or inability of parties to live together within statute relating to substantive grounds for divorce, 58 ALR2d 1218.

Concealed premarital unchastity or parenthood as ground of divorce, 64 ALR2d 742.

What constitutes impotency as ground for divorce, 65 ALR2d 776.

Homosexuality as ground for divorce, 78 ALR2d 807.

Time of pendency of former suit for divorce, annulment, alimony, or maintenance as included in period of desertion, 80 ALR2d 855.

Mistreatment of children as ground for divorce, 82 ALR2d 1361.

Acts occurring after commencement of suit for divorce as ground for decree under original complaint, 98 ALR2d 1264.

Fault of spouse as affecting right to divorce under statute making separation a substantive ground of divorce, 14 ALR3d 502.

Retrospective effect of statute prescribing grounds of divorce, 23 ALR3d 626.

Separation within statute making separation a substantive ground for divorce, 35 ALR3d 1238.

Refusal of sexual intercourse as justifying divorce or separation, 32 ALR3d 660.

Transvestism or transsexualism of spouse as justifying divorce, 82 ALR3d 725.

What constitutes contract between husband or wife and third person promotive of divorce or separation, 93 ALR3d 523.

**Sec. 25.24.060. Mediation.** (a) At any time within 30 days after a complaint or cross-complaint in a divorce action is filed, a party to the action may file a motion with the court requesting mediation, for the purpose of achieving a mutually agreeable settlement in termination of the marriage. When a party moves for settlement mediation, the other party shall answer the motion on the record, and the judge may order mediation. When no request for mediation is made, the court may at any time order the parties to submit to mediation if it determines that mediation may result in a more satisfactory settlement between the parties.

(b) The court appoints the mediator. The court may appoint any person the court finds suitable to act as mediator. Each party shall have the right once to challenge peremptorily any mediator appointed.

(c) Mediation shall be conducted informally as a conference or series of conferences. The parties to the action and a court-appointed representative of any minor children of the marriage shall attend. Counsel for the parties may attend all such conferences.

(d) After the first conference, either party may withdraw, or the mediator may terminate mediation if the mediator determines that mediation efforts are unsuccessful. Upon withdrawal by either party or termination by the mediator, the mediator shall notify the court that mediation efforts have failed, and the divorce action shall proceed in the usual manner.

(e) Upon submission of the parties to mediation under this section, divorce proceedings then pending shall be stayed for a period of 30 days or until the court is notified that mediation efforts have failed. All court orders made under AS 25.24.140 remain in effect during the period of mediation. (§ 2 ch 188 SLA 1975)

Revisor's notes. — Formerly AS 09.55.115. Renumbered in 1983. intent, see § 1, ch. 188, SLA 1975 in the Temporary and Special Acts.

Cross references. — For legislative

**Sec. 25.24.070. Confession of adultery.** — In an action for divorce on the ground of adultery, a confession of adultery is not alone sufficient to justify a judgment of divorce. (§ 3.18 ch 101 SLA 1962)

Revisor's notes. — Formerly AS 09.55.120. Renumbered in 1983.

**Sec. 25.24.080. Residence requirements for action to declare marriage void.** When a marriage has been solemnized and the plaintiff is a resident of the state, an action to declare the marriage void may be brought at any time. (§ 12.06 ch 101 SLA 1962; am § 8 ch 67 SLA 1983)

Revisor's notes. — Formerly AS 09.55.130. Renumbered in 1983. following "solemnized" and deleted the former second sentence, which set a

Effect of amendments. — The 1983 amendment deleted "in the state" one-year residency requirement for marriages not solemnized in the state.

#### NOTES TO DECISIONS

Editor's notes. — The cases cited in the notes below were decided under former AS 09.55.140, which specified a one-year residence requirement for divorce.

The court has no jurisdiction of the action where the plaintiff was not a resident of Alaska. Cutting v. Cutting, 11 Alaska 255 (1946).

Residence means a place of abode, and within the meaning of this section it is

the place where the plaintiff resides. Terrill v. Terrill, 2 Alaska 475 (1905).

And has the same meaning as domicile. — See Wilson v. Wilson, 10 Alaska 616 (1945).

But domicile is not the sole jurisdictional basis for divorce unless made so by statute. Lauterbach v. Lauterbach, Sup. Ct. Op. No. 219 (File No. 425), 392 P.2d 24 (1964).