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Alaska Court System
State of Alaska

OFFICE OF ADMINISTRATIVE DIRECTOR

CHARLES S. CHRISTENSEN III
Staff Counsel

February 15, 1991

303 K Street
Anchorage, AK 99501
(907) 264-8228

The Honorable Georgianna Lincoln
Co-Chairman, House HESS Committee
P.O. Box V
Juneau, Alaska 99811

Dear Representative Lincoln:

I am writing to request that the HESS Committee schedule a hearing on House Bill 93, relating to the factors for consideration in awarding shared child custody, at its earliest convenience. This bill was introduced at the request of the Alaska Court System.

In December, 1988, Chief Justice Warren Matthews created the Task Force on Mediation in response to an instruction from the Fifteenth Legislature. The purpose of the task force was to evaluate the potential benefits of mediation to consumers and to the court system. In its report, issued in June, 1990, the task force recommended the statutory change contained in HB 93.

Currently, AS 25.20.090 reads in pertinent part:

In determining whether to award shared custody of a child the court shall consider

. . . .

(7) any findings and recommendations of a neutral mediator;

. . . .

After study, the task force concluded that this statute as currently written endangers the mediation process and runs

Court system correspondence

The Honorable Pat Carney
February 15, 1991
Page 2

contrary to the majority view that mediation communications be kept confidential. The majority view also does not envision a mediator making a recommendation about the resolution of a dispute, should mediation be terminated without agreement. The mediator's role is to guide the parties to a mutual decision, and not to impose a decision (even in the form of a recommendation) upon the parties if they cannot reach a decision.

To correct this problem, HB 93 would substitute the term "custody investigator appointed by the court" for the term "neutral mediator." The court system currently employs custody investigators who are appointed in specific cases to assist the court in obtaining the facts needed to make custody decisions. The findings and recommendations of a custody investigator are more appropriate for a court's consideration than are the findings of a neutral mediator.

Thank you for your courtesy. Please contact me if you have any questions or comments concerning this legislation.

Very truly yours,



C. S. Christensen III
Staff Counsel

CSC:bh

Task Force on Mediation
for the Supreme Court of Alaska

June 8, 1990

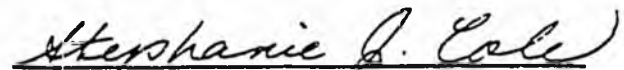
Chief Justice Warren W. Matthews
Alaska Supreme Court
303 K Street
Anchorage, Alaska 99501


Dear Chief Justice Matthews:

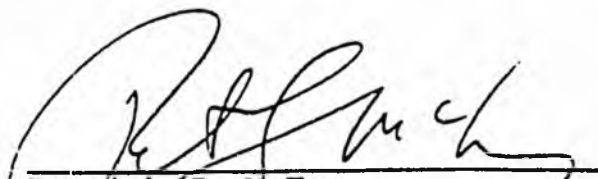
We are pleased to transmit to you the final report of the
Mediation Task Force.

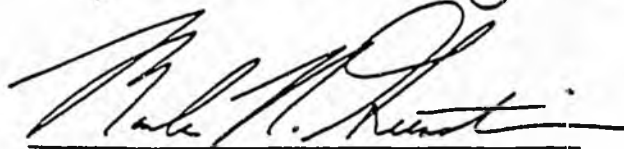
Sincerely,

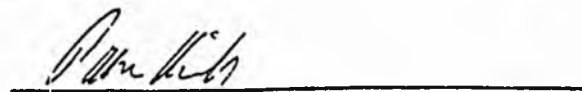

Honorable Niesje Steinkruger
Co-Chair

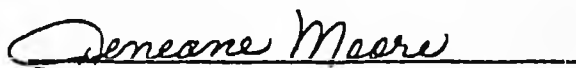

Stephanie J. Cole
Co-Chair


Honorable Michael I. Jeffery


Patrick J. McKay


Marla N. Greenstein


Pam Kirk


Jejeane Moore

Executive Summary

In the Alaska Court System's fiscal year 1989 budget appropriation document (May 1988), the Alaska State Legislature inserted the following provision:

It is the legislature's intent that the court system educate judges, attorneys and the public on the potential benefits of mediation. The court system should evaluate and quantify the potential benefits to the consumers as well as the court system of mediation, as an option.

In December 1988, Chief Justice Warren Matthews appointed a Task Force on Mediation, and asked the task force members to focus on the uses, availability and limits of mediation, and to issue a report on the subject to the supreme court. Fairbanks Superior Court Judge Niesje Steinkruger and Deputy Administrative Director Stephanie Cole were designated co-chairs for the task force. Other members were Patrick J. McKay, an attorney in private practice; Pam Kirk, representing the Alaska Dispute Settlement Association; Marla N. Greenstein, an attorney with research administrative experience in alternate dispute resolution programs; Barrow Superior Court Judge Michael I. Jeffery; and Jeneane Moore, serving as task force reporter.

The task force held seven meetings between February 24, 1989 and May 29, 1990. The task force's final report includes the history of mediation in Alaska and current practices within the court system, and makes 10 recommendations to the supreme court:

1. The Alaska Court System should undertake a mediation pilot project.
2. Efforts should be made to provide for a wider distribution of an existing public information pamphlet about mediation, and the Alaska Court System should ask the Alaska Bar Association to form a standing committee on Alternative Dispute Resolution. The Alaska Court System should consider preparing public service announcements about mediation for radio broadcasts in rural Alaska.
- * 3. The Alaska Court System should seek a statutory change to AS 25.20.090 to ensure the confidentiality of the mediation process.
4. The Alaska Court System should adopt a new court rule allowing for expanded use of mediation.
5. The Alaska Court System should make training about mediation available to judges.

6. The Alaska Court System should encourage judges to utilize mediation settlement techniques.
7. The Alaska Court System should consider imposing a requirement in pretrial orders that attorneys advise their clients of available alternative dispute resolution services.
8. A system should be developed which allows for the provision of mediation services to indigents.
9. The Alaska Court System should support local efforts throughout Alaska to establish and implement mediation and conciliation programs.
10. The Alaska Supreme Court should appoint a standing committee on mediation.

The task force also recommends that the court system ask the Alaska Bar Association to form a standing committee on Alternate Dispute Resolution, consisting of attorney members who are interested in fostering mediation services in Alaska.

The task force recommends that the court system consider preparing public service announcements for radio broadcasts in rural Alaska, suggesting mediation as an alternative to court action.

3. Confidentiality in mediation

Currently, AS 25.20.090 ("Factors for consideration in awarding shared child custody") reads, in pertinent part:

In determining whether to award shared custody of a child the court shall consider....
(7) any findings and recommendations of a neutral mediator;...

The task force suggests that this statute as currently written endangers the mediation process and runs contrary to the majority view that mediation communications be kept confidential. The majority view also does not envision a mediator making a recommendation about the resolution of a dispute, should mediation be terminated without agreement. The mediator's role is to guide the parties to a mutual decision, and not to impose a decision (even in the form of a recommendation) upon the parties if they cannot reach a decision.

The task force recommends that the court system seek a statutory change which would substitute the term "custody investigator" for the term "neutral mediator." The findings and recommendations of a custody

investigator are more appropriate for the court's consideration.

In the future it may be necessary to adopt statutes to provide specifically for the confidentiality of mediation sessions.

4. Expanded authority for mediation

Currently, references in state statutes to the court's authority to refer cases to mediation are limited to specific types of cases (for example, divorces.) The task force recommends that the supreme court adopt the following court rule, which would enable courts to refer to mediation all types of civil cases when a judge determines that such a referral would be appropriate:

Proposed Civil Rule 10
Mediation

(a) Application. At any time after a complaint is filed, a party may file a motion with the court requesting mediation of the action for the purpose of achieving mutually agreeable settlement. The motion must address how the mediation should be conducted as specified in paragraph (b), including the names of any acceptable mediators. The court may order mediation in response to such a motion, or on its own motion, whenever it determines that mediation may result in a settlement of the action.

(b) Order. A court order of mediation must state:



Alaska Court System
State of Alaska

OFFICE OF ADMINISTRATIVE DIRECTOR

CHARLES S. CHRISTENSEN III
Staff Counsel

303 K Street
Anchorage, AK 99501
(907) 264-8228

March 19, 1991

The Honorable Dave Donley
Chairman, House Judiciary Committee
P.O. Box V
Juneau, Alaska 99811

Dear Representative Donley:

I respectfully request that the Judiciary Committee schedule a hearing on the following legislation at its earliest convenience:

HB 92 "An Act establishing an exemption for the
Judicial Retirement System."

HB 93 "An Act relating to the factors to be
considered when awarding shared child
custody."

Thank you for your courtesy.

Very truly yours,

A handwritten signature in cursive script, appearing to read "C.S. Christensen III", is written over the typed name.

C.S. Christensen III

RECEIVED MAR 22 1991



Alaska Court System
State of Alaska

OFFICE OF ADMINISTRATIVE DIRECTOR

CHARLES S. CHRISTENSEN III
Staff Counsel

March 20, 1991

303 K Street
Anchorage, AK 99501
(907) 264-8228

The Honorable Dave Donley
Chairman, House Judiciary Committee
P.O. Box V
Juneau, Alaska 99811

Dear Representative Donley:

I am writing to request that the Judiciary Committee schedule a hearing on CSHB 93 (HES), relating to the findings and recommendations of a neutral mediator when awarding shared child custody, at its earliest convenience. This bill was introduced at the request of the Alaska Supreme Court.

In December, 1988, Chief Justice Warren Matthews created the Task Force on Mediation in response to an instruction from the Fifteenth Legislature. The purpose of the task force was to evaluate the potential benefits of mediation to consumers and to the court system. In its report, issued in June, 1990, the task force recommended the statutory change contained in HB 93.

Currently, AS 25.20.090 reads in pertinent part:

In determining whether to award shared custody of a child the court shall consider

. . . .

(7) any findings and recommendations of a neutral mediator;

. . . .

After study, the task force concluded that this statute as written endangers the mediation process and runs contrary to the

The Honorable Dave Donley
March 20, 1991
Page 2

majority view that mediation communications be kept confidential. The majority view also does not envision a mediator making a recommendation about the resolution of a dispute, should mediation be terminated without agreement. The mediator's role is to guide the parties to a mutual decision, and not to impose a decision upon the parties, even in the form of a recommendation, if they cannot reach a decision.

To correct this problem, CSHB 93 (HES) would simply delete from the statute the requirement that the findings and recommendations of a neutral mediator be considered by the court.

Thank you for your courtesy. Please contact me if you have any questions or comments concerning this legislation.

Very truly yours,



C. S. Christensen III
Staff Counsel

CSC:bh

FISCAL NOTE

STATE OF ALASKA
1991 LEGISLATIVE SESSION

No. 1
Bill Version: CSHB 93 (HES)
(H) Publish Date: 3/11/91

Revision Date: _____ Department Affected: Alaska Court System
Title: An Act relating to factors to be BRU: Trial Courts
considered when awarding shared child custody Components: _____
Sponsor: By Judiciary Committee by request
Requestor: HESS COMPONENT SERIAL NO. 000 | 000 | 000 | 768

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS & CLAIMS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUNDS	0.0	0.0	0.0	0.0	0.0	0.0
FEDERAL FUNDS						
OTHER						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year impact: None

ANALYSIS: (Attach a separate page if necessary)

No fiscal impact.

RECEIVED
MAR - 7 P.M.

Prepared by: C. S. Christensen III, Staff Counsel *[Signature]* Phone: 264-8228
Division: Alaska Court System Date: 03/04/91

Approved by: Arthur H. Snowden, II, Administrative Director *[Signature]* Date: 03/04/91
Agency: Alaska Court System

Distribution (by preparer): Legislative Finance, Legislative Sponsor, Requestor, OMB, & Impacted Agency(ies).

COMMITTEE COPY

HOUSE COMMITTEE REPORT

(7)

Date Referred: February 1, 1991

FURTHER REFERRALS:

Judiciary

Date of Committee Action: 3-8-91

The HEALTH, EDUCATION AND SOCIAL SERVICES Committee considered:

HB 93

HOUSE BILL NO. 93

CHILD CUSTODY INVESTIGATORS

"An Act relating to the factors to be considered when awarding shared child custody."

RECOMMENDATIONS:

be replaced with CS HB93 (HES) the same title

a new title

have attached amendments(s)

do pass

do not pass

no recommendations

individual recommendations

additional referral to the _____ Committee

ADOPTS: _____ letter of Intent

ATTACHES NEW FISCAL NOTE(S): (Dept)

APPROVES PREVIOUS: (Dept/Date)

fiscal impact _____

fiscal note(s) _____

zero fiscal note AK Court System

zero fiscal note(s) _____

SIGNING DO PASS:

SIGNING OTHER RECOMMENDATIONS:

	Check appropriate column:	Do Not Pass	No Rec	Amend
Patricia Carney (CARNEY)				
Betty Davis	J. G. Gonzales (GONZALES)		✓	
	Mark Hanley (HANLEY)		✓	
Cheri Davis	Mary Miller		✓	

[Signature] (LINCOLN)
CO-Chairman's Signature

HOUSE COMMITTEE REPORT

(7)

Date Referred: March 11, 1991

FURTHER REFERRALS:

Date of Committee Action: 4-8-91

The JUDICIARY Committee considered:

HB 93

HOUSE BILL NO. 93

CHILD CUSTODY INVESTIGATORS

"An Act relating to the factors to be considered when awarding shared child custody."

RECOMMENDATIONS:

be replaced with CS HB 93 (Jun) the same title
 a new title

have attached amendments(s)

do pass

do not pass

no recommendations

individual recommendations

additional referral to the _____ Committee

ADOPTS: _____ letter of Intent

ATTACHES NEW FISCAL NOTE(s): (Dept) _____

APPROVES PREVIOUS: (Dept/Date) _____

fiscal impact _____

fiscal note(s) _____

zero fiscal note _____

zero fiscal note(s) Alaska Court System 3-11-91

SIGNING <u>DO PASS</u>	DP	OTHER RECOMMENDATIONS	DNP	NR	AM
<i>[Signature]</i>		<i>[Signature]</i>		✓	
<i>[Signature]</i>		<i>[Signature]</i>		✓	
<i>[Signature]</i>		<i>[Signature]</i>		✓	
<i>[Signature]</i>		<i>[Signature]</i>		✓	

[Signature]
 CHAIRMAN'S SIGNATURE