



LAWS OF ALASKA

1984

Source

CSSB 312 (Jud)

Chapter No.

55

AN ACT

Creating the office of public advocacy; and providing for an effective date.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

THE ACT FOLLOWS ON PAGE 1, LINE 9

UNDERLINED MATERIAL INDICATES TEXT THAT IS BEING ADDED TO THE LAW AND BRACKETED MATERIAL IN CAPITAL LETTERS INDICATES DELETIONS FROM THE LAW; COMPLETELY NEW TEXT OR MATERIAL REPEALED AND RE-ENACTED IS IDENTIFIED IN THE INTRODUCTORY LINE OF EACH BILL SECTION.

Approved by the Governor: May 18, 1984
Actual Effective Date: July 1, 1984

AN ACT

Creating the office of public advocacy; and providing
for an effective date.

* Section 1. AS 44.21 is amended by adding new sections to read:

ARTICLE 8. OFFICE OF PUBLIC ADVOCACY.

Sec. 44.21.400. PUBLIC ADVOCACY OFFICE ESTABLISHED. There is
created in the Department of Administration the office of public advoca-
cacy.

Sec. 44.21.410. POWERS AND DUTIES OF PUBLIC ADVOCACY OFFICE.

(a) The office of public advocacy shall

(1) perform the duties of the public guardian under AS 13.-
26.360 - 13.26.410;

(2) provide visitors and experts in guardianship proceed-
ings under AS 13.26.131;

(3) provide guardian ad litem services to children in child
protection actions under AS 47.17.030(e) and to wards and respondents
in guardianship proceedings who will suffer financial hardship or
become dependent upon a government agency or a private person or
agency if the services are not provided at state expense under AS 13.-
26.112;

(4) provide legal representation in guardianship proceed-
ings to respondents who are financially unable to employ attorneys
under AS 13.26.106(b), to indigent parties in cases involving child
custody in which the opposing party is represented by counsel provided

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by a public agency, and to indigent parents or guardians of a minor respondent in a commitment proceeding concerning the minor under AS 47.30.775;

(5) provide legal representation and guardian ad litem services under AS 25.24.310; in cases arising under the Uniform Interstate Compact on Juveniles (AS 47.15); in cases involving petitions to adopt a minor under AS 25.23.100(j); in cases involving petitions to remove the disabilities of a minor under AS 09.55.590; in children's proceedings under AS 47.10.050(a); and in cases involving indigent persons who are entitled to representation under AS 18.85.100 and who cannot be represented by the public defender agency because of a conflict of interests.

(b) The commissioner of administration may

(1) adopt regulations that the commissioner considers necessary to implement AS 44.21.400 - 44.21.440;

(2) report on the operation of the office of public advocacy when requested by the governor or legislature or when required by law;

(3) solicit and accept grants of funds from the federal government and from private foundations, and allocate or restrict the use of those funds as required by the grantor.

Sec. 44.21.420. EMPLOYMENT OF OFFICE PERSONNEL. (a) The commissioner of administration may employ guardians ad litem, public guardians, clerical staff, and other assistants that the commissioner determines are needed to perform the duties set out in AS 44.21.410. Employees under this subsection are in the classified service under AS 39.25.100.

(b) The commissioner of administration may employ attorneys needed to perform the duties set out in AS 44.21.410. Attorneys

employed by the commissioner of administration in the office of public advocacy are in the partially exempt service under AS 39.25.120.

(c) The commissioner of administration may contract for services of court-appointed visitors and experts needed to perform the duties set out in AS 44.21.410. The commissioner may contract with attorneys to provide legal representation, and with other persons to provide guardian ad litem services, as needed to perform the duties set out in AS 44.21.410. The commissioner may determine the rate of compensation for contractual services, taking into account the time involved, the skill and experience required, and other pertinent factors.

Sec. 44.21.430. ATTORNEYS ENGAGED BY PUBLIC ADVOCACY OFFICE.

(a) Only an attorney admitted to the practice of law in this state may be employed or retained under contract by the office of public advocacy to provide legal representation.

(b) An attorney employed by the office of public advocacy may not engage in the private practice of law unless the attorney provides services to the office as an independent contractor.

Sec. 44.21.440. CONFLICTS OF INTERESTS. Services and legal representation rendered by the office of public advocacy, whether performed by a person under contract or by an employee of the office, shall be provided in a manner that avoids conflicts of interests.

* Sec. 2. AS 09.55.590(e) is amended to read:

(e) The court may appoint an attorney or a guardian ad litem to represent the interests of the petitioner at the hearing. Appointment of an attorney or guardian ad litem shall be made in accordance with AS 25.24.310.

* Sec. 3. AS 13.26.106(b) is amended to read:

(b) The respondent is entitled to be represented by an attorney in the proceedings. If the respondent is financially unable to employ

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an attorney [TO REPRESENT HIM], the court shall appoint the office of public advocacy (AS 44.21.400) under AS 13.26.131 [AN ATTORNEY] to represent the respondent in the proceedings.

* Sec. 4. AS 13.26.106 is amended by adding a new subsection to read:

(d) Appointment of the visitor and the expert under (c) of this section must be made through the office of public advocacy (AS 44.-21.400) under AS 13.26.131.

* Sec. 5. AS 13.26.112(b) is amended to read:

(b) The guardian ad litem shall assist the ward or respondent in determining the ward's or respondent's [HIS] interests in regard to the legal proceedings [IN] which involve the ward or respondent [HE IS INVOLVED]. If the ward or respondent is entirely incapable of determining those [HIS OWN] interests, the guardian ad litem shall make that determination and advise the court and counsel for all parties accordingly. The guardian ad litem shall

(1) inquire thoroughly into all the circumstances that a prudent [INDIVIDUAL IN THE POSITION OF THE] ward or respondent would consider in determining the ward's or respondent's [HIS] own interests in the proceedings; and

(2) encourage the ward or respondent to participate, to the maximum extent possible [OF HIS CAPABILITY], in all decisions and to act on the ward's or respondent's [HIS] own behalf on all matters in which the ward or respondent [HE] is able.

* Sec. 6. AS 13.26.112 is amended by adding a new subsection to read:

(d) The office of public advocacy shall provide guardian ad litem services to persons who would suffer financial hardship or become dependent upon a government agency or a private person or agency if the services are not provided at state expense.

* Sec. 7. AS 13.26.360 is amended to read:

Sec. 13.26.360. PURPOSE. The legislature recognizes that many Alaskans, for reasons of incapacity or minority, are in need of a guardian or conservator. Often these persons cannot find a person able and willing to serve as guardian or conservator. The legislature intends through AS 13.26.360 - 13.26.410 to establish the function [OFFICE] of public guardian for the purpose of furnishing guardianship and conservatorship services. It further intends by establishing this function [OFFICE] to provide assistance to guardians throughout the state in securing necessary services for their wards and to assist the courts, attorneys, visitors, respondents, and proposed guardians in the orderly and expeditious handling of guardianship proceedings.

* Sec. 8. AS 13.26.370(a) is amended to read:

(a) The office of public advocacy (AS 41.21.400) shall serve as the public guardian [PUBLIC ADMINISTRATOR (AS 22.15.310) SHALL ALSO ACT AS THE PUBLIC GUARDIAN FOR THE JUDICIAL DISTRICT FOR WHICH HE IS APPOINTED].

* Sec. 9. AS 18.85.110(d) is amended to read:

(d) If a court determines that the person is entitled to be represented by an attorney at public expense, it shall promptly notify the agency or the office of public advocacy [OR ASSIGN A PRIVATE ATTORNEY FOR HIM UNDER AS 18.85.130].

* Sec. 10. AS 18.85.110(e) is amended to read:

(e) Upon notification or assignment under this section, the agency or the office of public advocacy [OR ASSIGNED PRIVATE ATTORNEY] shall represent the person with respect to whom the notification or assignment is made.

* Sec. 11. AS 18.85.130 is amended to read:

Sec. 18.85.130. CONTRACTS WITH PRIVATE ATTORNEYS [SUBSTITUTE DEFENDER]. When [(a) FOR CAUSE, THE COURT MAY, ON ITS OWN MOTION OR

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UPON THE APPLICATION OF THE PUBLIC DEFENDER, APPOINT AN ATTORNEY OTHER THAN THE PUBLIC DEFENDER TO REPRESENT THE INDIGENT PERSON AT ANY STAGE OF THE PROCEEDINGS OR ON APPEAL. THE ATTORNEY SHALL BE AWARDED REASONABLE COMPENSATION ACCORDING TO A SCHEDULE OF FEES PROMULGATED BY THE SUPREME COURT AND REIMBURSEMENT FOR EXPENSES NECESSARILY INCURRED. THIS SHALL BE PAID BY THE COURT SYSTEM.

(b) IN ADDITION TO SUBSTITUTION UNDER (a) OF THIS SECTION, WHEN] the public interest requires, and a person is entitled to representation by the agency under this chapter, the public defender may contract with one or more private attorneys to assist the public defender [HIM]. The public defender shall pay for these services out of appropriations to the agency.

* Sec. 12. AS 22.15.310 is amended to read:

Sec. 22.15.310. APPOINTMENT. When authorized by the supreme court, the presiding judge in each judicial district shall appoint a person to act as public administrator of the estates of deceased persons and [,] as coroner [, AND AS PUBLIC GUARDIAN].

* Sec. 13. AS 22.15.350 is amended to read:

Sec. 22.15.350. OTHER DUTIES. In addition to the other duties of a public administrator, the public administrator shall perform the duties set out in AS 22.15.110 and AS 12.65.020 - 12.65.110 [AND SHALL PERFORM THE DUTIES OF PUBLIC GUARDIAN AS SET OUT IN AS 13.26.360 - 13.26.410].

* Sec. 14. AS 25.24.310 is amended to read:

Sec. 25.24.310. REPRESENTATION OF MINOR. (a) In an action involving a question of the custody, support, or visitation of a minor, the [THE] court may, upon the motion of a [EITHER] party to the action or upon its own motion, appoint an attorney or the office of public advocacy to represent a minor with respect to the custody,

support, and visitation of the minor or in any other legal proceeding involving the minor's welfare. When custody, support, or visitation is [ARE] at issue in a divorce, it is the responsibility of the parties or their counsel to notify the court that such a matter is [THOSE MATTERS ARE] at issue. Upon notification, the court shall determine whether the minor [CHILD] should have legal representation or other services and shall make a finding on the record before trial. If the parties are indigent or temporarily without funds, the court shall appoint the office of public advocacy. The court shall notify the office of public advocacy if the office is required to provide legal representation or other services. The court shall enter an order for costs, fees, and disbursements in favor of the state [CHILD'S ATTORNEY] and may further order that other services be provided for the protection of the minor [CHILD].

(b) If custody, support, or visitation is at [AN] issue, the order for costs, fees, and disbursements shall be made against either or both parents, except that, if one of the parties responsible for the costs is indigent, the costs, fees, and disbursements for that party shall be borne by the state. If the [EITHER OR BOTH] parents are only temporarily without funds, [AS DETERMINED BY THE COURT,] the office of public advocacy shall provide [COURT MAY ADVANCE PAYMENT FOR] legal representation or other services required by the court [RENDERED TO THE CHILD; HOWEVER, NO REPAYMENT MAY BE REQUIRED FOR THOSE WHO ARE RECEIVING LEGAL SERVICES FOR THE INDIGENT]. The attorney general is responsible for enforcing collections owed the state. Repayment [COURT, AND REPAYMENT] shall be made [DIRECTLY] to the Department of Revenue under AS 37.10.050 for deposit in the general fund [COURT UNDER THE PROVISIONS OF RULES GOVERNING THE ADMINISTRATION OF THE COURTS]. The court shall, if possible, avoid assigning costs

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1 to only one party by ordering that costs of the minor's [CHILD'S]
2 legal representation or other services be paid from proceeds derived
3 from a sale of property belonging jointly or individually to both
4 parties, before a division of property is made.

5 (c) Instead of, or in addition to, appointment of an attorney
6 under (a) of this section, the court may, upon the motion of either
7 party or upon its own motion, appoint an attorney or other person or
8 the office of public advocacy to provide [SERVE AS] guardian ad litem
9 services to [REPRESENT THE BEST INTERESTS OF] a minor in any legal
10 proceedings involving the minor's welfare. The court shall require
11 [APPOINT] a guardian ad litem when, in the opinion of the court,
12 representation of the minor's [CHILD'S] best interests, to be distin-
13 guished from preferences, would serve the welfare of the minor
14 [CHILD]. [THE PERSON APPOINTED UNDER (a) OF THIS SECTION MAY ALSO BE
15 APPOINTED AS GUARDIAN AD LITEM UNDER THIS SUBSECTION.] The court in
16 its order appointing a guardian ad litem shall limit the duration of
17 the appointment of the guardian ad litem to the pendency of the legal
18 proceedings affecting the minor's [CHILD'S] interests, and shall
19 outline the guardian ad litem's responsibilities and limit the author-
20 ity to those matters related to the guardian's effective representa-
21 tion of the minor's [CHILD'S] best interests in the pending legal
22 proceeding. The court shall make every reasonable effort to appoint a
23 guardian ad litem from among persons in the community where the
24 minor's [CHILD'S] parents or the person having legal custody or
25 guardianship of the minor's [CHILD'S] person reside. When custody,
26 support, or visitation is [ARE] at issue in a divorce, it is the
27 responsibility of the parties or their counsel to notify the court
28 that such a matter is [THESE MATTERS ARE] at issue. Upon notifica-
29 tion, the court shall determine if the minor's [CHILD'S] best

interests need representation or if the minor [CHILD] needs other services and shall make a finding on the record before trial. If one or both of the parties is indigent or temporarily without funds the court shall appoint the office of public advocacy. The court shall notify the office of public advocacy if the office is required to provide guardian ad litem services. The court shall enter an order for costs, fees, and disbursements in favor of the state [CHILD'S GUARDIAN AD LITEM] and may further order that other services be provided for the protection of the minor [CHILD].

* Sec. 15. AS 39.25.120(c) is amended to read:

(c) The following positions in the state service constitute the partially exempt service:

(1) deputy and assistant commissioners of the principal departments of the executive branch, including the assistant adjutant general of the Department of Military Affairs;

(2) the directors of the major divisions of the principal departments of the executive branch and the regional directors of the Department of Transportation and Public Facilities;

(3) attorney members of the staff of the Department of Law, [AND] of the public defender agency, and of the office of public advocacy in the Department of Administration;

(4) one private secretary for each head of a principal department in the executive branch;

(5) employees of councils, boards, or commissions established by statute in the Office of the Governor or the office of the lieutenant governor, unless a different classification is provided by statute;

(6) the executive director, deputy director, hearing officers, and administrative law judges of the Alaska Public Utilities

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Commission;

(7) the director, deputy director, staff legal counsel, and hearing officers of the Alaska Transportation Commission;

(8) not more than two special assistants to the commissioner of each of the principal departments of the executive branch, but the number may be increased if the partially exempt service is extended under AS 39.25.130 to include the additional special assistants;

(9) the principal executive officer of the following boards, councils, or commissions:

(A) Alaska Public Broadcasting Commission;

(B) Professional Teaching Practices Commission;

(C) Parole Board;

(D) Board of Nursing;

(E) Real Estate Commission;

(F) Alaska Royalty Oil and Gas Development Advisory

Board;

(G) Alaska Historical Commission;

(H) Alaska State Council on the Arts;

(I) Alaska Police Standards Council;

(J) Council on Science and Technology;

(K) Older Alaskans Commission;

(10) Alaska Pioneers' Home managers;

(11) hearing examiners in the Department of Revenue;

(12) the comptroller in the division of treasury, Department of Revenue;

(13) investment officers in the Department of Revenue;

(14) airport managers in the Department of Transportation

and Public Facilities employed at the Anchorage and Fairbanks

International Airports;

(15) the deputy director of the division of tourism and the deputy director of the division of insurance in the Department of Commerce and Economic Development;

(16) the executive director and staff of the Alaska Public Offices Commission;

(17) the director, deputy director, personnel analysts II, labor relations analysts I, labor relations analysts II, senior negotiators, and research directors of the division of labor relations in the Department of Administration;

(18) the rehabilitation administrator of the Workers' Compensation Board.

* Sec. 16. AS 47.15.050 is amended to read:

Sec. 47.15.050. FEES. Appointment of an attorney [A COUNSEL] or guardian ad litem [APPOINTED] under the provisions of this compact shall be made in accordance with AS 25.24.310 or AS 44.21.400 - 44.21.440 [MAY BE PAID AS PROVIDED IN THE RULES GOVERNING THE ADMINISTRATION OF ALL COURTS].

* Sec. 17. AS 47.17.030(e) is amended to read:

(e) In all actions taken by the department or a health and social services agency of a local government under this chapter that result in a judicial proceeding, the child shall be represented by a guardian ad litem in that proceeding. Appointment of a guardian ad litem shall be made in accordance with AS 25.24.310.

* Sec. 18. AS 47.30.775 is amended to read:

Sec. 47.30.775. COMMITMENT OF MINORS. The provisions of AS 47.-30.700 - 47.30.815 apply to minors. However, all notices required to be served on the respondent in AS 47.30.700 - 47.30.815 shall also be served on the parent or guardian of a respondent who is a minor, and

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1 parents or guardians of a minor respondent shall be notified that they
2 may appear as parties in any commitment proceeding concerning the
3 minor and that as parties they are entitled to retain their own attor-
4 ney or have the office of public advocacy [ONE] appointed for them by
5 the court. A minor respondent has the same rights to waiver and in-
6 formed consent as an adult respondent under AS 47.30.660 - 47.30.915;
7 however, the minor [HE] shall be represented by counsel in waiver and
8 consent proceedings.

9 * Sec. 19. This Act takes effect July 1, 1984.
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