

# MINUTES

## AD HOC COMMITTEE AUTOMATIC TEMPORARY ORDERS

Family Law Section

### TELEPHONIC MEETING

March 19, 2009

#### 1. WELCOME AND CALL TO ORDER:

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The meeting was called to order by Chair, G.M. Robert Jones, at 12:17 p.m. and welcomed members.

#### 2. IN ATTENDANCE:

Robert Jones  
David Manz  
Maria Gonzalez  
JJ Dahl  
Carin Porras  
Alex Caballeros  
Evan Marks

#### 3. DISCUSSION:

JJ moved to approve Minutes of January 22, 2009. DAVID seconded, and the Minutes were unanimously approved.

The members discussed their views and comments regarding the 2d revised draft of a proposed Automatic Temporary Injunction Statute which was prepared by Rob and incorporated comments received from DAVID, JJ AND ALEX. JJ was not in agreement with the "priority language" in paragraph 11 which expedites a hearing on a motion for enforcement, modification or dissolution of the automatic temp. injunction. ROB and MARIA were in support of the need for the "priority language" because of the nature of what the order does.

Discussion regarding Paragraph 7 and the concept of the ability of the parties to modify aspects of the automatic temp. injunction. DAVID and MARIA suggested we consider the need of a form. Should there be a check-off like form allowing the parties to waive some, but not all of the injunctions?

The group agreed that the concept of the length of the overall injunction language within the summons should not be too lengthy.

Agreed to have a concept vote of the entire committee regarding the following:

1. Should we have a statute on automatic temporary injunctions?
2. Should it include only children's issues?
3. Should it include only property issues?

EVAN raised the issue that in these economic times, what used to be considered conduct or expenses “in the usual course of business” has been turned up side down and concern that we may be inviting more litigation as a result.

DAVID stated that at first, he was against these automatic injunctions being used in his Circuit as related to property provisions, but he ultimately concluded that he sees these temp. orders are very useful. He advises his clients generally what reasonable expenditures will be considered by the court. He ultimately concluded that having the automatic injunctions reduced litigation. Anti dissipation is in the law anyway. Use of the phrase “disposing of” he would agree to delete. In Monroe County, the order is really an “anti dissipation” clause and it serves as a prophylactic order which is stronger than what he tells his client not to do.

CARIN - still has reservations about automatic temporary injunctions on property issues and not sure it is the right thing to do. There is still vagueness. She liked the language re: changing beneficiaries on health insurance and life insurance policies, etc. She still has an issue with restrictions re: the regular bank accounts. MARIA echoed CARIN's concerns.

MARIA referred to the 2d draft we were reviewing as including the “kitchen sink” as far as being inclusive of all potential children’s issues and all potential property issues for the committee to consider and then decide what stays in and what goes out. MARIA is not in favor of the “kitchen sink” proposal.

JJ - is in support of the “kitchen sink.” She worked with a judge who either drafted such orders or enforces them and she strongly believes it will cut down on the problems we face in our cases and reduce litigation.

MARIA - observed that it was interesting that those members who practice in circuits that have such automatic temporary orders in place (DAVID and JJ) favor the concept of keeping and using these orders across the State.

EVAN is pro children’s issues and finds it good, but is not in the camp of the property issues. He would agree with including the health insurance issues also. He would propose recommended stipulations between attorneys re: the financial issues rather than automatic injunction orders.

ROB noted that MARIA raised the concern at the last meeting as to whether we should have uniformity throughout the State? If we approve an automatic temporary order which is limited to children’s issues, will those Circuits that currently have temporary orders as to both parenting issues and property issues start to use the mandated order as to parenting, but nevertheless continue to use "ad hoc orders" relating to property issues? This is a valid concern the committee should consider if it votes to implement a uniform statute which is **not** comprehensive (ie., includes both children and property issues).

CARIN moved to take a concept vote whether we support an automatic temporary injunction with respect to children's issues, MARIA seconded. 6 voted in favor, motion carried.

EVAN - as far as the language itself and children's issues, raised the issue of the no disparaging language - problem with the degree of disparaging comments - in the beginning of the case, the fire is hot. Advisory and codes of conduct - the attorney advises the client how to conduct themselves. ROB raised the issue of whether there is any difference between this and the court approving an MSA which has the same no disparaging clause in it.

ROB - 65%-85% of the cases have one or more pro se litigants and they see the non disparaging language in an automatic order right off the bat and they will abide by it. ROB does not see it as a major issue.

CARIN - some of these things are easier to quantify. We all tell our clients what conduct to avoid. She agrees with EVAN.

ROB - Do we want the order to have teeth or be advisory in nature? Most of the members who attended the meeting said with teeth for such things as relocation.

EVAN raised concern that (g) and (h) may be subject to being stricken - but did not realize that this is proposed statutory language, not a rule.

ROB did the first draft of the statute to raise discussion and concerns for our committee to consider.

ROB asked us each to make changes and have our individual proposals to circulate to all members and to also provide it to Peter, the incoming Section Chair, for the purpose of asking him to reestablish our Ad Hoc committee for the next Bar year. If Peter sees multiple proposals, he may be more inclined to reestablish our Ad Hoc committee. This also reflects a lot of work being done and we are making progress.

We agreed to provide ROB with our individual redrafts of the Statute by April 20<sup>th</sup>. Members are to email their drafts directly to ROB. This request will go out to all our members.

Meeting adjourned at 1:25 p.m.

Submitted by,  
Maria C. Gonzalez,  
Secretary