

MINUTES

Family Law Section

AD HOC COMMITTEE AUTOMATIC TEMPORARY ORDERS

LIVE MEETING - Disney's Grand Floridian Resort

January 22, 2009

1. WELCOME AND CALL TO ORDER:

The meeting was called to order by Chair, G.M. Robert Jones at 12:30 p.m. and welcomed members.

2. IN ATTENDANCE:

Robert Jones
David Manz
Maria C. Gonzalez
Carin Porras
Robin Scher
Barbara Beilly
Scott Rubin
Douglas Greenbaum
Alex Caballeros
Eric Bruce
JJ Dahl

3. DISCUSSION:

DAVID moved to approve Minutes of January 8, 2009 telephonic meeting. BARBARA seconded. Motion carried and Minutes were approved.

ROB read the article which CARIN previously provided to the Committee which was of assistance. He reminded members that we have a website page where all documents to be reviewed are posted. He would like to have another telephonic committee meeting in late March. Looking at this project as a 2 yr. project beyond June of this year and if possible would like to come up with draft proposals from our members to circulate and to seriously consider at the June meeting. Requested that each one of us look at the case law, the issues we need to address, and propose a form, statute and/or rule, and be prepared to circulate the drafts for discussion. Seems like breakdown of the content of the orders will be either children issues and /or property issues.

SCOTT – if the Ad Hoc Committee feels that it needs to work beyond June, then the Ad Hoc committee needs to give a recommendation in June to assist the incoming Section Chair with regard to whether the committee should be continued for another year.

ROBIN- we have many issues to consider and resolve and break it down. What can we consider because of some of the constitutional issues raised. We are far from a product stage at this point. Raised the issue of budget cuts and difficulty of getting hearings. We may be in a mandatory timeframe for mediation in the beginning of the case? Temporary relief because the problem is the system right now is difficult to get temporary relief.

1st Subcommittee report:

Chair: ALEX - the subcommittee needs to review the various state orders they discovered to determine which address only children issues versus personal property protection issues.

2nd Subcommittee report:

Current Orders used within the State of Florida:

Chair: LUIS – was not present. ROB advised that this subcommittee posted all the orders that were located and numerous circuits are using these orders now despite lack of statutory or rule authority to do so. They are there. Some of what we see out there now is very broad.

ROB – is there any rule of judicial administrative that gives priority to certain cases or matters over other types of cases or matters? Should there be a provision in the court rules that require a priority for hearings on motions to dissolve or modify these temporary automatic orders?

ROBIN- advised SCOTT that the committee as a whole was surprised to locate so many states and circuits implementing such orders.

SCOTT – advised that contempt hearings are routinely done in Monroe County on these type orders.

DAVID - had a standing order entered in a case and client then took out equity line on home and used \$75,000 to retain criminal atty. Atty claims dissipation/marital waste. He is arguing against it. Very complicated and dealing with bad order. DAVID suggested circulating something by April to present to EC. Should EC consider giving us more time to work on this project? ROBIN suspects a lot of explaining to the EC will be necessary regardless of which proposal we come up with.

ROB believes we can better focus when the committee has a product to consider rather than just dealing with concepts. He will try to draft something and will circulate to all members. The committee agreed it was a good idea to proceed in this manner.

SCOTT- review those orders which decide parent's conduct was Ok (benign) but lacked statutory basis although the judges had good motivations. It may be appropriate to draft an order on these types of issues – and the basis that they could pass constitutional muster. On the children issues – timesharing issues are not considered emergencies now.

BARBARA- the committee had much debate over the issue of which way to go.

DAVID – other than the benign children/parenting clause, it is protecting waste of property.

ROB asked whether it would help us in our practice for the discussion conceptually– if there was enforceability, we can stress it to the client. You will be held in contempt if you do “X”. Most clients will be cautious and comply when they see it in writing.

ALEX- we don't want different forms from all circuits. Clean up what is out there.

BARBARA- raised the issue of what will the courts do once we approve and implement a uniform order?

MARIA- raised further point of clarification following up on what BARBARA said. Will those circuits that have temporary orders as to both parenting issues and property issues start to use the mandated order as to parenting, but nevertheless not discontinue using their orders which include property issues?

As of today, the committee has not yet agreed on the concept of how narrow or broad such an order should be.

ROB promised to get the product out by end of February and Scott pointed out it is not a leap year.

JJ- saw an admin. order from another circuit (It was an individual standing order from a judge) and believes it provided relief and that case had 4 less hearings than other cases. No one contested the judge. JJ will send that order form to ROBIN.

ROB asked members to read all the caselaw we now have. Look at necessities of life language. Federal court said it was sufficient notice. He encouraged all members to draft and circulate individual proposals.

JJ joined the committee today.

We will want to schedule a telephone meeting during the 3rd week March. We will email all proposed dates for the next meeting. ROB wants input from all members.

Adjourned- 1:20p.m.

Submitted by
Maria C. Gonzalez
Secretary

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