

MINUTES
Family Law Section

**AD HOC COMMITTEE AUTOMATIC TEMP. ORDERS
TELEPHONIC MEETING**

January 8, 2009

1. WELCOME AND CALL TO ORDER:

The meeting was called to order by Chair, G.M. Robert Jones, at 12:05 p.m. and welcomed members.

2. IN ATTENDANCE:

Robert Jones
Maria Gonzalez
Carin Porras
Luis Insignares
Robin Scher
Barbara Beilly

3. DISCUSSION:

CARIN moved to approve Minutes of the last two meetings, on September 3, 2008 and August 27, 2008, LUIS seconded, and Minutes were approved.

ROB mentioned that our Ad Hoc Committee meeting in Orlando on January 22nd conflicts with lunch. CARIN advised that arrangements were made for the committee to have lunch during the meeting either in the same room or adjacent room.

MARIA gave the report in place of ALEX of the subcommittee on "Other States." The members divided the various states for which we did not have information on regarding statutes and/or forms relating to automatic restraining orders. Whatever forms or statutes were obtained were placed on our committee's website. The group obtained forms for 9 states in addition to those states for which we already had forms or statutes. The group was surprised with the large number of states with automatic orders on the books. Some states that have statutory authority, do not necessarily have approved forms for the orders. The group has not done an analysis yet to determine whether or not those states that have statutes also have approved forms. MARIA suggested the subcommittee look into this and report back to the whole committee. ROB agreed and requested a one page report list the states and whether or not they have approved forms. ROB further requested the group continue to investigate to see if there are any additional states.

MARIA advised that all remaining states were researched and if we did not produce a copy, that meant we did not find that particular state had such orders. ROB noted that it appears most states either have a statute or other rule authority on the topic and some include the restraining order within the summons itself. MARIA advised that an attempt to adopt such orders was defeated in NY. CARIN advised that such orders were also defeated in Illinois and was found unconstitutional based on lack of due process issues. ROB requested that CARIN pull the case so the committee can review it.

ROBIN advised she was also surprised so many states have such automatic restraining orders.

ROB noted that as long as a party has a right and means of seeking a modification or dissolution of the automatic injunction, it may eliminate the due process issue since the state has a legitimate interest to protect children, etc. Some states have very limited areas covered and others have more expanded

MARIA advised that it may be helpful to review and analyze each of the states automatic orders to determine how broad or how narrow each state addresses these types of orders. Do they address only children issues or personal property protection issues. CARIN agreed and ROBIN stated that the language would become very relevant. Also, see how the states worked around the due process arguments/problems. ROB requested that the "other states" subcommittee do some additional follow up work and look into these 2 issues.

- 1] look at which orders address children issues vs. personal property protection issues and
- 2] check to see if the other states addressed the constitutionality of their orders

MARIA advised that she determined that the ABA did not have a standing position on the issue of automatic orders, but she located an article from an attorney out of Arkansas which reflects that the ABA held a conference called the ABA Fifty States Program where there was a debate on the issue of automatic orders with representation from all 50 states. The article does a good job of considering the various constitutional and other issues involved. MARIA will forward it to the committee to review. ROB requested MARIA also transmit it to Summer to post on the website.

ROBIN has saved all the Florida form orders and she will check to make sure they are all posted on the website. ROB requested that she email the entire committee before the next meeting confirming that she has done this.

LUIS gave a report on his subcommittee relating to orders within the State of Florida. He provided prior orders used in other counties at the last meeting. The 20th circuit was already posted to our website. The consensus is that the enforceability varies from circuit to circuit. Sometimes they are enforced and sometimes they are not. The judge in the 20th circuit concedes that the orders are unconstitutional. Some G. Magistrates

will nevertheless enforce them by way of contempt. ROB requested LUIS have each of his subcommittee members contact their individual circuits to see if they use any orders and if so, to produce a copy.

ROBIN noted that due to the current budget cuts and the state of financial difficulties and the delay in getting hearings, there may be a necessity to offer some form of relief or protection to parties although she was not in agreement with automatic orders. She recognizes that there will be a need for this and will be forced to address this issue - can this be done with allowances for hearings, modifications, and passing constitutional issues.

CARIN found the Illinois case and emailed it to the committee. It is being posted to the website.

BARBARA noted we have a due process problem which we need to continue to analyze.

ROB requested the committee review all of the orders, summons posted thus far for further discussion. Our live meeting in Orlando is on January 22nd from 12:30 to 1:30 p.m.

Meeting adjourned at 12:45 p.m.

Submitted by,
Maria C. Gonzalez,
Secretary