



STATE OF NEW YORK
UNIFIED COURT SYSTEM
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A. GAIL PRUDENTI
Chief Administrative Judge

JOHN W. MCCONNELL
Counsel

MEMORANDUM

April 9, 2012

TO: All interested persons

FROM: John W. McConnell, Esq.

SUBJECT: Proposed amendment of 22 NYCRR § 202.16-a (Automatic Orders in Matrimonial Actions).

The Administrative Board of the Courts seeks public comment on a proposed amendment of 22 NYCRR § 202.16-a, providing that courts may exercise powers of civil contempt to enforce automatic orders authorized by Domestic Relations Law § 236(B)(2). A summary of the proposed amendment is attached as Exhibit A. Proposed revisions to section 202.16-a are attached as Exhibit B.

Persons wishing to comment on this proposal should send their submissions by email to OCARule202-16-acomment@nycourts.gov or by regular mail to: John W. McConnell, Esq., Counsel, Office of Court Administration, 25 Beaver Street, 11th Fl., New York, New York 10004.

A 45-day public comment period expires on May 24, 2012.

EXHIBIT A

Summary of Proposed Amendment to 22 NYCRR 202.16-a

The Matrimonial Practice Advisory Committee recommends an amendment to 22 NYCRR §202.16-a to make clear the remedy for violation of automatic orders in matrimonial proceedings.

The New York Legislature enacted automatic orders legislation in 2009 by amending § 236(B)(2)(b) of the Domestic Relations Law to “prevent a party in a matrimonial action commenced in Supreme Court from dissipating assets in order to deprive his or her spouse of the property to which that spouse may be entitled.” The corresponding court rule adopted to implement the statute requires the Plaintiff to serve the automatic orders in a notice to the Defendant at the commencement of the action that substantially conforms to the notice attached to the rule (22 NYCRR 202.16-a). The legislation does not expressly state the remedy for violation of the orders. The statute merely provides that the orders are “binding” on the Plaintiff upon filing of the summons and binding on the Defendant upon service of the summons. The court rule in its present form does not make clear that the notice is an order of the court or the remedy for failure to comply.

Courts are divided on the issue of enforcement of such orders through a finding of contempt based on the current language of the statute and the court rule. In *Buoniello v. Buoniello*, No. 35948/09 [Sup Ct Suff. Co., May 7, 2010], the court held that the automatic orders are “statutory mandates” for which a remedy of civil contempt is not available under the courts’ civil contempt power as codified in Judiciary Law §753. More recently, a New York County Supreme Court has held that the promulgation and publication of NYCRR §202.16-a designated automatic orders as a “lawful mandate of the court,” for which the civil contempt remedy is available (See *P.S. v. R.O.*, 31 Misc. 3d 373, 376 [Sup Ct N.Y. Co. 2011]). Also holding automatic orders lawful mandates of the court, see *Sykes v Sykes*, 2012 NY Slip Op 22049 [Sup Ct N.Y. Co. Feb. 29, 2012].

The Committee recommends clarification of either the statute or the court rule to declare expressly that (1) though statutorily authorized, automatic orders are directives of the Chief Administrative Judge; and (2) that violations of such orders are subject to civil contempt. Such clarification will effectuate the legislative intent of the statute as expressed in the 2009 Bill Memo in Support of A02574, where the legislature referred to “adoption of the automatic orders at the very commencement of a matrimonial action” as a means of saving on legal fees and judicial time (which would be expended if the order was issued by the court in each case separately to prevent dissipation of marital assets pending equitable distribution). By amending the court rule rather than the statute, the Committee’s proposal follows the example of other states such as Massachusetts (see Massachusetts Supplemental Probate and Family court Rule 411: Automatic Restraining Order at <http://www.lawlib.state.ma.us/source/mass/rules/probate/srpc411.html>).

March 19, 2012

EXHIBIT B

Proposed Revised Section 202.16a Matrimonial Actions; Automatic Orders

1. (a) Applicability. This section shall be applicable to all matrimonial actions and proceedings in the Supreme Court authorized by section 236, Part B, Section (2) of the Domestic Relations Law.

(b) Service. The plaintiff in a matrimonial action shall cause to be served upon the defendant, simultaneous with the service of the summons, a copy of the automatic orders set forth in this section in a notice that substantially conforms to the notice contained in Appendix F. **The notice shall state legibly on its face that automatic orders have been entered against the parties named in the summons or in the summons and complaint pursuant to this rule, and that failure to comply with these orders may be deemed a contempt of court.** The automatic orders shall be binding upon the plaintiff immediately upon filing of the summons, or summons and complaint, and upon the defendant immediately upon service of the automatic orders with the summons. **These orders shall remain in full force and effect during the pendency of the action unless terminated, modified or amended by further order of the court or upon written agreement between the parties.**

(c) Automatic Orders.

~~[The automatic orders served with the summons shall provide as follows:]~~

Upon service of the summons in every matrimonial action, it is hereby automatically:

(1) **ORDERED, that** neither party shall sell, transfer, encumber, conceal, assign, remove or in any way dispose of, without the consent of the other party in writing, or by order of the court, any property (including, but not limited to, real estate, personal property, cash accounts, stocks, mutual funds, bank accounts, cars and boats) individually or jointly held by the parties, except in the usual course of business, for customary and usual household expenses or for reasonable attorney's fees in connection with this action.

(2) **ORDERED, that** neither party shall transfer, encumber, assign, remove, withdraw or in any way dispose of any tax deferred funds, stocks or other assets held in any individual retirement accounts, 401K accounts, profit sharing plans, Keogh accounts, or any other pension or retirement account, and the parties shall further refrain from applying for or requesting the payment of retirement benefits or annuity payments of any kind, without the consent of the other party in writing, or upon further order of the court, except that any party who is already in pay status may continue to receive such payments thereunder.

(3) **ORDERED, that** neither party shall incur unreasonable debts hereafter, including but not limited to further borrowing against any credit line secured by the family residence, further encumbering any assets, or unreasonably using credit cards or cash advances against credit cards, except in the usual course of business or for customary or usual household expenses, or for reasonable attorney's fees in connection with this action.

(4) **ORDERED, that** neither party shall cause the other party or the children of the marriage to be removed from any existing medical, hospital and dental insurance coverage, and each party shall maintain the existing medical, hospital and dental insurance coverage in full force and effect.

(5) **ORDERED, that** neither party shall change the beneficiaries of any existing life insurance

policies, and each party shall maintain the existing life insurance, automobile insurance, homeowners and renters insurance policies in full force and effect; and it is further ORDERED, that these orders shall remain in full force and effect during the pendency of the action unless terminated, modified or amended by further order of the court or upon written agreement between the parties; and it is further

ORDERED, that failure to obey these orders may be deemed a contempt of court.

Dated: New York, New York
_____, 2012

Chief Administrative Judge

Historical Note

Added 202.16a on [Sep. 1, 2009](#).

Amended (c)(2) on [Jul. 1, 2010](#), effective nunc pro tunc as of [Sep. 1, 2009](#).

[Notice of Automatic Orders \(D.R.L. 236\)](#)

AMENDED _____, 2012

NOTICE OF ENTRY OF AUTOMATIC ORDERS (D.R.L. 236)
FAILURE TO COMPLY WITH THESE ORDERS MAY BE DEEMED
A CONTEMPT OF COURT

PURSUANT TO **NYCRR § 202.16(a), Uniform Rules of the Trial Courts, and DOMESTIC RELATIONS LAW § 236, Part B, Section 2**, both you and your spouse (the parties) are bound by the following **AUTOMATIC ORDERS**, which have been entered against you and your spouse in your divorce action by order of the Chief Administrative Judge, and which shall remain in full force and effect during the pendency of the action unless terminated, modified or amended by further order of the court or upon written agreement between the parties:

- (1) **ORDERED:** Neither party shall transfer, encumber, assign, remove, withdraw or in any way dispose of, without the consent of the other party in writing, or by order of the court, any property (including, but not limited to, real estate, personal property, cash accounts, stocks, mutual funds, bank accounts, cars and boats) individually or jointly held by the parties, except in the usual course of business, for customary and usual household expenses or for reasonable attorney's fees in connection with this action.
- (2) **ORDERED:** Neither party shall transfer, encumber, assign, remove, withdraw or in any way dispose of any tax deferred funds, stocks or other assets held in any individual retirement accounts, 401K accounts, profit sharing plans, Keogh accounts, or any other pension or retirement account, and the parties shall further refrain from applying for or requesting the payment of retirement benefits or annuity payments of any kind, without the consent of the other party in writing, or upon further order of the court ; except that any party who is already in pay status may continue to receive such payments thereunder.
- (3) **ORDERED:** Neither party shall incur unreasonable debts hereafter, including, but not limited to further borrowing against any credit line secured by the family residence, further encumbrancing any assets, or unreasonably using credit cards or cash advances against credit cards, except in the usual course of business or for customary or usual household expenses, or for reasonable attorney's fees in connection with this action.
- (4) **ORDERED:** Neither party shall cause the other party or the children of the marriage to be removed from any existing medical, hospital and dental insurance coverage, and each, and each party shall maintain the existing medical, hospital and dental insurance coverage in full force and effect.
- (5) **ORDERED:** Neither party shall change the beneficiaries of any existing life insurance policies and each party shall maintain the existing life insurance, automobile insurance, homeowners and renters insurance policies in full force and effect.

IMPORTANT NOTE: After service of the Summons with Notice or Summons and Complaint for divorce, if you or your spouse wishes to modify or dissolve the automatic orders, you must ask the court for approval to do so, or enter into a written modification agreement with your spouse duly signed and acknowledged before a notary public.