

Protection Order Committee
Judicial Conference of Indiana

Minutes
January 25, 2013

The Protection Order Committee met at the Indiana Judicial Center on Friday, January 25, 2013, from 12:00 noon – 3:00 p.m.

1. Members present. David C. Bonfiglio, David L. Chidester, Barbara L. Cook Crawford, Thomas P. Hallett, Jose D. Salinas, and Christopher M. Goff, Chair.
2. Staff present. Jeffrey Bercovitz, Tom Jones and Loretta Oleksy provided the committee with staff assistance.
3. Guests. LaJuan Epperson, and Mary DePrez, JTAC, Division of State Court Administration were also present.
4. Minutes approved. The minutes for the meeting on August 24, 2012 were approved.
5. Chapter 6 Deskbook. Committee members revised and approved amendments to Chapter 6. They agreed to seek assistance of the Juvenile Justice Improvement Committee for development of a form No Contact Order for use with Ind. Code § 31-32-13.
6. Protection Order Questions.
 - a. Members of the committee agreed to replace the outline of domestic violence and criminal cases related to protection orders in the Protection Order Deskbook by Ruth Reichard with her updated outline.
 - b. The Division of State Court Administration received a request to remove a dismissed protection order from the registry. Removal of the case from the registry is different from the court record. The Division requested an expungement order. Mary DePrez suggested the person making the request petition the court for “restricted access” under Administrative Rule 9 (H). Judge Chidester agreed to prepare language for the Protection Order Deskbook about the restrictive access procedure under AR 9 (H) and potentially draft a form order for use by courts.
 - c. An excerpt from a brief in the *Cook v. Cook* case was distributed, which challenged the constitutionality of the public access registry for protection orders.
 - d. Jeffrey Bercovitz distributed SB 198 and HB 1299. This legislation would prevent discrimination in unemployment benefits when a person is fired for missing work in order to prosecute a protection order case.
 - e. Mary DePrez reported HB 1393 was introduced to increase the JTAC fee. It would provide additional funds to deploy the registry and keep over 20 INCITE applications up to date. She asked all courts for support.
 - f. Jeffrey Bercovitz distributed a recent inquiry from Laura Berry which expressed concern by some prosecutors that Protection Orders could be readily dismissed by petitioners. Committee members agreed the present statutory dismissal language should remain unchanged.
 - g. Mag. Cook, Allen County, recently recommended language be added to the Notice to Appear form based on Trial Rule 72(D). Committee members indicated TR 72 (D) requires CCS entries on rulings, motions or judgments, to be distributed to the parties. It only

requires Clerks to make this distribution, and if not done, does not affect the ruling. They did not agree the suggested language should appear on the Notice to Appear form.

h. Jeffrey Bercovitz distributed a request from Judge Morris asking whether the Title IV-D offices in other counties requested a separate order when a judge terminates a protection order which had required child support to be paid. No committee members had encountered such a request by their local IV-D office.

i. Jeffrey Bercovitz distributed a question from a local clerk about whether to accept the filing of a petition for an ex parte protection order when the divorce/paternity of the parties is pending in another county. He advised the clerk the filing should be accepted. After the court ruled on the ex parte order, if granted, the order should be transferred to the court with the other judicial action pending.

j. Committee members discussed whether or not an automatic change of judge was available when the wife filed a petition for a protection order before a magistrate of the court which had the dissolution case. Committee members discussed the possible use of Trial Rule 81.1 which places all cases concerning the family together in the same court.

7. Future meeting dates.

a. Committee members agreed to meet on February 22, March 22, June 28, and August 23, 2013 from 12:00 Noon – 3:30 p.m. at the Indiana Judicial Center. They agreed to discuss the juvenile portion of chapter 6, a form for Ind. Code § 31-32-13, and new language for the public access registry.

b. Loretta Oleksy reported she will be leaving the Division of State Court Administration and working for JLAP.

Respectfully submitted,

Jeffrey Bercovitz, Director
Juvenile and Family Law

Protection Order Committee
Judicial Conference of Indiana

Minutes
March 22, 2013

The Protection Order Committee met at the Indiana Judicial Center on Friday, March 22, 2013, from 12:00 noon – 2:15 p.m.

1. Members present. David C. Bonfiglio, David L. Chidester, Elizabeth Ann Cure, Julie A. Fox, Matthew B. Gruett, Thomas P. Hallett, and Christopher M. Goff, Chair.
2. Staff present. Jeffrey Bercovitz and Tom Jones provided the committee with staff assistance.
3. Guests. Wendy Bollenbacher, Marshall County Clerk's Office was also present.
4. Minutes approved. The minutes for the meeting on January 25, 2013 were approved.
5. New member. Judge Goff introduced Julie A. Fox, Clerk, Marshall County, as a new member of the committee.
6. Meeting with Juv. Benchbook. Magistrate Gettinger, Chair, Juvenile Benchbook Committee and Magistrate Boyer, Juvenile Benchbook Committee met with the Protection Order Committee members to discuss the need for a No Contact Order form under Ind. Code § 31-32-13. They agreed there was no need for a No Contact Order form under this statute. Committee members agreed there may be some need for an explanation in the juvenile benchbook about the use of the orders under Ind. Code § 31-32-13, which are more akin to injunctive relief.
7. Protection Order Deskbook, Chapter 6. Referee Gruett presented a revised portion of Chapter 6 on the use of No Contact Orders in juvenile cases. Members of the committee suggested revisions including (1) noting that a No Contact Order in a juvenile case can be requested to be issued against a person, but may only be issued against a party, (2) adding language to explain the NCO in a delinquency case does not keep the juvenile away from the victim, but keeps the victim away from the juvenile, and (3) if there is no unique identifier, the NCO can still be ordered, but kept locally under Ind. Code § 5-2-9-5.
8. Protection Order Deskbook, Chapter 9. Judge Chidester distributed a draft addition to Chapter 9 on expungement of protection orders, based in part on **Cook v. Cook**, ___ N.E.2d ___ No. 49A04-1207-PO-370 (Ind. Ct. App. 2013) and Administrative Rule 9(H). Committee members believe there may have been incidents where the respondent in a PO case has faced employment discrimination because the employer fears hiring the respondent may create a possible workplace violence situation by hiring a respondent in a protective order case. Committee members discussed revisions including (1) the court that issued the original protective order should be the court that handles the petition to restrict access, (2) the hearing for the petition to restrict access should be held under the same PO case number of the original case rather than creating a new filing under a MI case number, (3) the language in the form order should allow both the respondent and the defendant in the PO case to seek to restrict access if the case is dismissed.

9. Future meeting dates. Committee members agreed to meet again on June 28, and August 23, 2013 from 12:00 Noon – 3:30 p.m. at the Indiana Judicial Center. They agreed to discuss the revisions to juvenile portion of chapter 6 and chapter 9 of the Protection Order Deskbook.

Respectfully submitted,

Jeffrey Bercovitz, Director
Juvenile and Family Law

Protection Order Committee
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Minutes
June 28, 2013

The Protection Order Committee met at the Indiana Judicial Center on Friday, June 28, 2013, from 12:00 noon – 3:30 p.m.

1. Members present. David L. Chidester, Barbara L. Cook Crawford, Elizabeth Ann Cure, Julie A. Fox, Thomas P. Hallett, Jose D. Salinas, Ronald T. Urdal and Christopher M. Goff, Chair.
2. Staff present. Jeffrey Bercovitz, Tom Jones and Ruth Reichard provided the committee with staff assistance.
3. Guests. LaJuan Epperson, Division of State Court Administration, and Wendy Bollenbacher, Marshall County Clerk's Office was also present.
4. Minutes approved. The minutes for the meeting on March 22, 2013 were approved.
5. Introductions. Committee members introduced themselves. New staff member Ruth Reichard, Family Violence Resource Attorney also introduced herself.
6. Protection Order Deskbook, Chapter 6.
 - a. Members of the committee reviewed the combined portions of Chapter 6 from Judge Goff and Referee Gruett and made revisions. The revised Chapter 6 was printed and distributed to committee members. Magistrate Hallett moved to approve the chapter as revised. Judge Cure seconded the motion. The motion was passed.
 - b. Members of the committee noted CHPO-0100 and CHPO-0101 need to be removed from the Protection Order website since the statute which permits their use was repealed. Committee members agreed by consensus to recommend the use of NCO-0103 in CHINS cases.
7. Expungement of Ex Parte Protection Orders. Judge Chidester distributed a revised draft concerning expungement of protection orders, based in part on **Cook v. Cook**, 983 N.E.2d 622 (Ind. Ct. App. 2013) and Administrative Rule 9. Committee members agreed to place a revised summary of this case in chapter 3 on Ex Parte Protection Orders. Judge Chidester agreed to review Chapter 3 to determine where this case summary should be placed.
8. Name Change. Mr. Bercovitz distributed **In Re: Name Change of Jane Doe**, No. 49A02-1211-MI-894 (Ind. Ct. App. June 13, 2013) for review and discussion by the committee.
9. Combination of PO-0112 and PO-0113. LaJuan Epperson reported the Protection Order Registry wished to combine PO-0112 and PO-0113 in the revised Protection Order Registry. She reported the only difference was the parenting time provisions. Committee members drafted a combined form PO-0113 which preserved the parenting time provisions as options for choices by the court. They agreed to note this on the Protection Order website.

10. Notice to Respondent when *Ex Parte* Protection Order Petition is denied. The committee recently received a question concerning whether a court should give notice to the respondent when a petition for an *ex parte* protection petition is denied. Members of the committee agreed with the Protection Order Deskbook which indicates a copy of the order denying the petition for an *ex parte* Protection Order should not be given to the respondent. They agreed the issuance of an *ex parte* order is a statutorily created proceeding and no notice needs to be given to the respondent if the petition to issue the *ex parte* order is denied.
11. Notice to Appear and Order to Appear. LaJuan Epperson asked the committee about the use of the Notice to Appear, PO-0106 and the Order to Appear, PO-0128. Committee members explained the Sheriff is required to serve the respondent personally for contempt proceedings, which is why PO-0128 was developed and requires personal service by the Sheriff. PO-0106 was developed for use in protection order proceedings and personal service is not required. LaJuan Epperson indicated the language permitting service by the Sheriff was added to the Notice to Appear by the Registry upon request by courts and asked whether this additional Sheriff service language could continue to be contained in the Notice to Appear in the new Protection Order Registry. Committee members agreed by consensus this Sheriff service language could continue to appear as an option on PO-0106.
12. Future meeting dates. Committee members agreed to meet again on August 23, 2013 and October 23, 2013 from 12:00 Noon – 3:30 p.m. at the Indiana Judicial Center. They also agreed to meet on January 31, February 28, March 28, June 27 and August 22, 2014 from 12:00 noon – 3:30 p.m. at the Indiana Judicial Center.

Respectfully submitted,

Jeffrey Bercovitz, Director
Juvenile and Family Law

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Minutes

August 23, 2013

The Protection Order Committee met at the Indiana Judicial Center on Friday, August 23, 2013, from 12:00 noon – 3:30 p.m.

1. Members present. David C. Bonfiglio, Julie A. Fox, Matthew B. Gruett, Thomas P. Hallett, J. David Holt, Ronald T. Urdal and Christopher M. Goff, Chair.
2. Staff present. Jeffrey Bercovitz, Tom Jones and Ruth Reichard provided the committee with staff assistance.
3. Guests. LaJuan Epperson, Division of State Court Administration, Wendy Bollenbacher, Marshall County Clerk's Office; and Michelle Bumgarner, Deputy Attorney General was also present.
4. Minutes approved. The minutes for the meeting on June 28, 2013 were approved.
5. Protection Order Deskbook, Chapter 3. Members of the committee reviewed the revisions from the last meeting and approved them by consensus.
6. Protection Order form. Committee members reviewed the combined PO-0112 and PO-0113. They approved the form and agreed to remove the notes on the form to strike the inapplicable section since the forms are generated by the Protection Order Registry and not on paper.
7. Expungement of Ex Parte Protection Orders. Members of the committee reviewed the revisions to Chapter 3 concerning the **Cook** case and expungement of Ex Parte Protection Orders and approved them by consensus.
8. Presentation by LaJuan Epperson.
 - a. LaJuan Epperson showed the draft version of the Protection Order Registry 2 to members of the committee and gave them a report on the comments of the working group on the new Registry. Committee members made suggestions about its use to Ms. Epperson. They agreed to list spouse and former spouse separately on the petition so it could be listed as separate categories in the Protection Order and POR. In addition, they agreed to revise the Protection Order petition to permit, not require the petitioner to list other household members and their dates of birth. They also agreed to revise the Protected Person portion on the Case Summary Screen of the new registry to permit Condition #2 exceptions of the Protection Order, when checked, to be shown under the heading of "Contact allowed, except: [listing the exceptions from the protection order]. Committee members made suggestions about the pull down "relationships" menu (e.g. remove "other" from relationship list for protection orders) and agreed to review the list of relationships for PO's, NCO's, and WVRO's.
 - b. Jeffrey Bercovitz distributed a proof of notice under TR 72 (D) from Allen County with a request to include it in the Protection Order Registry. Committee members agreed there was no need for a standard Protection Order form in this area.
 - c. Members of the committee discussed the wording in a pretrial release NCO which indicates it remains in effect until the case has been tried and Defendant has been sentenced if

found guilty. They agreed the defendant may enter into a guilty plea, and if so, it should be the responsibility of someone named in the agreement to file a termination of the pretrial release No Contact Order.

d. Committee members looked at a suggestion that an indicator be used in the Protection Order to note when a case transferred into a county needs a hearing. The committee members agreed by consensus that judges already look at cases transferred to their court and schedule hearings if needed for a particular form of relief. The indicator for a hearing was not needed. In addition, some courts may wish to indicate when a case is transferred out of the county in the POR in addition to the CCS. This is permitted in the POR 2.

e. Members of the committee discussed whether the Protection Order Registry 2 should use only a PO case number or permit the use of a MI case number as is permitted now for WVRO's. They agreed the PO case type was preferred, but an MI case type should be accepted for a WVRO. They also agreed Judicial Administration Committee should look at recommending the use of a PO case type only as part of weighted caseload.

9. Notice to Appear and Order to Appear. Committee members reconsidered the use of language permitting personal service by the Sheriff to be added to the Notice to Appear by the Registry on a permissive basis. Committee members agreed to continue reconsideration of this form at the next meeting.
10. Presentation by Michelle Bumgarner. Michelle Bumgarner, Deputy Attorney General, distributed materials about the Hope Card program from her office, which permits a card the size of credit card to be used to indicate the petitioner has a protection order, rather than a protection order copy. She reported sending information to Clerks about this program and said she is training advocates statewide about its use. She agreed to contact Vicki Davis, Education Director, about distribution of materials at the Sept. Conference in an effort to get judges to give out information about this program.
11. Future meeting dates. Committee members agreed to meet again on October 23, 2013 from 12:00 Noon – 3:30 p.m. at the Indiana Judicial Center. They agreed to discuss the placement of use of an alias of the respondent on the cover sheet, and the renewal/refiling of protection orders. They also agreed to meet on January 31, February 28, March 28, June 27 and August 22, 2014 from 12:00 noon – 3:30 p.m. at the Indiana Judicial Center.

Respectfully submitted,

Jeffrey Bercovitz, Director
Juvenile and Family Law

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Minutes

October 25, 2013

The Protection Order Committee met at the Indiana Judicial Center on Friday, October 25, 2013, from 12:00 noon – 3:30 p.m.

1. Members present. David L. Chidester, Barbara L. Cook Crawford, Elizabeth Ann Cure, J. David Holt, Justin H. Hunter, John D. Kitch, Robert E. Ross, Ronald T. Urdal and Christopher M. Goff, Chair.
2. Staff present. Jeffrey Bercovitz, Tom Jones and Ruth Reichard provided the committee with staff assistance.
3. Guests. LaJuan Epperson and Nadisha Cook, Division of State Court Administration, and Wendy Bollenbacher, Marshall County Clerk's Office was also present.
4. New members. Judge Goff reviewed the purposes of the Protection Order Committee. New members Justin Hunter and Robert Ross introduced themselves.
5. Minutes approved. The minutes for the meeting on August 23, 2013 were approved.
6. Protection Order Registry.
 - a. Jeffrey Bercovitz distributed the "Case Type Quick Reference Guide, updated 8/27/2013" from the Division of State Court Administration. He reported that WVRO's should only be listed as in the PO case type under this guide, contrary to the discussion at the last meeting. Committee members agreed by consensus to use the Reference Guide to assign case numbers.
 - b. LaJuan Epperson discussed use of matching a NCO with the underlying CHINS, Delinquency or Status Delinquency case type. She reviewed this portion of the new protection order registry with the committee.
 - c. LaJuan Epperson asked the committee about the caption use in a protection order case which was filed on behalf of a minor. Members of the committee agreed by consensus the caption should be like the one in the petition filed on behalf of a minor, where the minor is the petitioner and the protected party.
 - d. Members of the committee discussed the petition filed on behalf of a minor, and wording the respondent is, or used to be, my spouse and the child lived with us. The petitioner is a minor, not the next friend. The petition needs to clarify who is the "I" of the petition form. Judge Cure, Ruth Reichard and LaJuan Epperson agreed to work on revisions to the petition form for the next meeting.
 - e. LaJuan Epperson discussed the use of an alias for the respondent in the Protection Order Registry. She reported the alias is taken from the petition for a protection order and kept in the Registry. It is available to law enforcement officers through their use of the Registry. However, it is not on the printed Protection Order. The committee members agreed by consensus that since the name is available to law enforcement there was no need to change the present form.
 - f. Jeffrey Bercovitz distributed the NCIC Protection Order File Toolkit for Control Terminal Operators dated October 2005. This is in response to a recent question to the Protection Order Registry about whether Indiana Protection Orders included a condition

about the award of custody in out-of-state protection orders. Indiana does not include custody provisions in Protection Orders since this is not permitted by Indiana statute. However, foreign Protection Orders may include a provision of this nature. LaJuan Epperson and Judge Crawford agreed to work on revisions of PO-0119 and PO-0120, which are used to place foreign Protection Orders into the registry, to permit the inclusion of custody provisions if found in orders from other states.

g. LaJuan Epperson reported a recent call from a court about NC-O102, which does not consistently use the phrase “probation or executed sentence” when applying the conditions applicable to Defendants. Members of the committee approved by consensus revisions to this form, to consistently apply all the conditions of the order to probation or an executed sentence.

7. PO-0106. Committee members agreed by consensus to continue to use the changes in this form earlier in the year, which permit courts, but do not require courts, to request personal service of the Notice to Appear, PO-0106.
8. Expungement of Ex Parte Protection Orders. Ruth Reichard distributed a case law summary, a summary of list serve responses and individual cases from other states on expungement of protection orders. She discussed her research with members of the committee. She recommended no further action by the committee at this time. Committee members thanked her for the information distributed.
9. PO-0100. Members of the committee reviewed a revised PO-0100, which lists the current spouse and former spouse separately on the petition so it could be listed as separate categories in the Protection Order and the Registry. They approved the revisions by consensus.
10. Protection Orders for animals. Jeffrey Bercovitz distributed two emails from Kathy Williams, legislative analyst for the ASPCA. She requested support for an amendment to Indiana law which would permit a judge to enter a protection order on behalf of an animal. Committee members agreed by consensus Indiana’s existing law already permits courts to protect animals, agreed to remain neutral on potential legislation in this area, and believed there would be a cost involved to revise the Protection Order Registry and forms to accommodate this legislation.
11. Update Memo. Members of the committee reviewed and revised a memorandum to all courts and clerks about revisions to protection order and no contact order forms and the Protection Order Registry.
12. Future meeting dates. Committee members agreed to meet again on January 31, 2014 from 12:00 Noon – 3:30 p.m. at the Indiana Judicial Center. They also agreed to meet on February 28, March 28, June 27 August 22, and October 24, 2014 from 12:00 noon – 3:30 p.m. at the Indiana Judicial Center.

Respectfully submitted,

Jeffrey Bercovitz, Director
Juvenile and Family Law