FAMILY LAW SECTION

THE STATE BAR OF CALIFORNIA

PROPOSAL TO EXPAND COURT'S ABILITY TO PROTECT INSURANCE COVERAGE WHEN ISSUING ORDERS UNDER THE DOMESTIC VIOLENCE PREVENTION ACT

LEGISLATIVE PROPOSAL (FL-2013-09)

TO: Office of Governmental Affairs

FROM: Michelene Insalaco, Chair of Affirmative Legislation
     Ana Storey, Vice-Chair of Affirmative Legislation

DATE: July 17, 2012

RE: Add Section 6325.1 to the Family Code to Expand the Court's Ability to Protect Insurance Coverage in Domestic Violence Proceedings

SECTION ACTION AND CONTACTS:

Date of Approval by Section Executive Committee: April 13, 2012
Approval vote: 17-0-0

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SUMMARY OF PROPOSAL: To permit courts to protect insurance coverage when issuing orders under the Domestic Violence Prevention Act.

ISSUES AND PURPOSE:

In proceedings for the dissolution of marriage, for nullity of marriage, or for legal separation of the parties ("dissolution proceedings") certain Automatic Temporary Restraining Orders ("ATROS") apply to both parties. One of those ATROS, contained in Family Code Section 2040(a)(3), provides for an order: "Restraining both parties from cashing, borrowing against, canceling, transferring, disposing of, or changing the beneficiaries of any insurance or other

coverage, including life, health, automobile, and disability, held for the benefit of the parties and their child or children for whom support may be ordered." In addition, Family Code Section 2045 permits courts to issue personal conduct protective orders and orders to protect property on an ex parte basis in dissolution proceedings.

Family Code Sections 6300 et seq. provide for the issuance of restraining orders in proceedings under the Domestic Violence Prevention Act ("DVPA"). Section 6325, for example, permits issuance of orders to protect property as per Family Code Section 2045, where the DVPA case is between two married persons. The DVPA does not, however, contain insurance protection provisions that are parallel to Family Code Section 2040(a)(3). This proposed legislation would expand the provisions of the DVPA to include the issuance of orders protecting insurance coverage, by adding language parallel to Section 2040(a)(3).[1] These changes are needed because insurance, especially health insurance, can be as important in the DVPA context as property restraints and child or spousal support. A key reason property restraints and support orders are important in DV matters is because they improve economic stability. This helps victims remain free of abusers instead of returning to them for economic reasons.[2]

HISTORY: We are not aware of any similar legislation being introduced.

IMPACT ON PENDING LITIGATION: This proposal will impact pending litigation in that it will permit a Petitioner/Applicant for a restraining order to enjoin her/his spouse from making any changes to an existing insurance policy without the Petitioner's written consent or a court order.

LIKELY SUPPORT & OPPOSITION: It is anticipated the domestic violence community will support this bill, as it provides for maintenance of insurance coverage for abused spouses and children of the marriage in domestic violence proceedings, with or without the initiation of dissolution proceedings. Others may oppose the bill because it seeks to expand relief under the DVPA.

FISCAL IMPACT: None known, except for any cost that may be associated with the modifications to the Judicial Council forms that would need to follow the proposed statutory amendments.

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[1] The proposed statutory language is the same as the current language in Section 2040(a)(3) except for two places. First, in dissolution proceedings, the ATROS automatically restrain "both parties." Given the different nature of proceedings under the DVPA, the proposed statutory language would permit the court to restrain "any party." Second, it is not clear why the language in Section 2040(a)(3) covers insurance "held for the benefit of the parties and their child or children for whom support may be ordered," when there may be no children. The proposed statutory language for the new code provision therefore inserts "if any" after the word "children."

[2] If the proposed statutory changes are enacted, the following Judicial Council forms will need to be modified, to conform to the new statutory provisions: DV-100 (Request for Domestic Violence Restraining Order); DV-110 (Temporary Restraining Order); and DV-130 (Restraining Order After Hearing).

GERMANENESS: The subject matter of this proposed legislation falls within the unique and special knowledge, training, experience and technical expertise of the members of the Executive Committee of the Family Law Section because it amends the Family Code and concerns an issue which impacts the practice of family law.

DISCLAIMER:

This position is only that of the Family Law Section of the State Bar of California. This position has not been adopted by either the State Bar's Board of Trustees or overall membership, and is not to be construed as representing the position of the State Bar of California.

Membership in the Family Law Section is voluntary and funding for section activities, including all legislative activities, is obtained entirely from voluntary sources.

TEXT OF PROPOSAL:

SECTION 1. Section 6325.1 is added to the Family Code, to read:

[Inserted text begins] 6325.1 The court may issue an ex parte order restraining any party from cashing, borrowing against, canceling, transferring, disposing of, or changing the beneficiaries of any insurance or other coverage, including life, health, automobile, and disability, held for the benefit of the parties and their child or children, if any, for whom support may be ordered.[Inserted text ends]