

# Mutual Temporary Injunctions in Divorce Cases

By Amy J. Amundsen

The Tennessee Bar Association Family Law commission reviewed a statute drafted by the Memphis Bar Association family law section that required mutual injunctions when a divorce was filed and served on a litigant. Out of this commission, the statute was passed and became law on

May 22, 2001.

This article will address the mechanics of the statute *Tenn. Code Ann.* §36-4-106 and will provide a sample of the injunction to be used with the summons when filing a complaint for divorce or complaint for a legal separation. The purpose for enacting such a statute was threefold: (1) to eliminate the need to address the judge about to maintain the "status quo" through the divorce, (2) to reduce the costs to the litigants in having to obtain a court order for the issuance of an injunction, and (3) to require the parties to act in a reasonable and rational manner throughout the proceedings. There are a number of states that already have injunctions issued upon the commencement and service of the complaint on the defendant, however, the Tennessee statute provides litigants a "code of good conduct" by which to live that goes beyond keeping the monies in the bank accounts.

All litigants in the state of Tennessee who file for a divorce or a legal separation and those served with a complaint for divorce or legal separation shall be enjoined from doing certain acts. This mutual injunction does not apply when the sole ground in the complaint for divorce is irreconcilable differences. *Tenn. Code Ann.* §36-4-106 (d).

This mutual injunction becomes effective for the plaintiff once the complaint is filed and for the defendant once the complaint is served on the defendant. The clerk's office will not have the language of the statute in the summons, therefore, the attorney for the plaintiff must draft the mutual temporary injunction and attach the injunction to the complaint and summons. When an attorney files a complaint for divorce or a complaint for legal sep-

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aration, the attorney need not seek a judge's signature for the injunction to be effective because it becomes automatic upon service of the injunction on the defendant.

The statute does not prohibit either party from seeking broader injunctive relief by petitioning the court or in seeking a modification or revocation of the temporary injunction.

Once the defendant is served with notice of injunction it becomes an order of the court. The temporary injunctions are in effect until the occurrence of one of the following events:

(1) A final decree of divorce or order of legal separation is entered;

(2) the complaint is dismissed;  
(3) the parties reach an agreement; or  
(4) the court modifies or dissolves the injunction.

Attorneys should be mindful that if the parties enter into a Consent Order on Reconciliation, then the injunctions remain in effect unless and until the parties agree or the court rules otherwise.

The statute allows a party who has separate property to do as he/she wishes. However, the statute prohibits either party from transferring, assigning, borrowing against, concealing or in any way dissipating or disposing of any marital property, without first obtaining the consent of the other party or the approval of

the court. In other words, litigants in a divorce action must communicate with one another before they change any of their marital financial portfolios or move any marital property out of the house. *Tenn. Code Ann. §36-4-106 (d)(1)(A).*

The statute requires the parties to live off of their current income and to account for their expenditures. This statute prevents litigants from stating in their discovery answers that they do not retain their bank statements and credit card statements because now they are placed on notice at the beginning of the case to retain all of their records for proof of all expenditures. Copies of these

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## Legislation began with TBA Family Law Section

The Tennessee Bar Association's Family Law Section Code Commission, together with the Family Law Section, proposed this act and developed a draft that was presented to legislative sponsors Rep. Kim McMillan and Sen. Steve Cohen. The logic behind the statute was to remind participants in the emotionally charged arena of divorce litigation that there were certain rules of conduct that they should follow. For example, they should not attempt to dissipate marital assets, threaten their spouse or disparage him or her in front of the children, seek to have the spouse fired or the like.

These have long been the rules and if someone violates them, parties can seek a restraining order upon application to the court and a recitation of the "bad acts" of the other party. The problem was that one had to accuse the other of violations to get protection. These accusations, often made in the heat of the fight and sometimes in ex parte situations, often served to inflame the situation. The TBA thought that it would be better to remind everyone that they were not to do certain things without the necessity of having to accuse them of having done something wrong. Prevention seemed better

than waiting until one of the parties thought problems had occurred.

It was also hoped that there could be some savings in time and money. If attorneys did not have to prepare motions and affidavits and sit through long motion dockets, clients could be saved substantial sums and the courts could be freed up to some degree to deal with other matters.

There was some initial resistance in the legislature on the theory that the old system of filing motions and affidavits worked well, and it would be unjust to place those who had done no wrong under an injunction. The TBA suggested that the injunction it was proposing did not forbid anything that wasn't already forbidden under the law. The effect of this statute would be to bring these rules forcibly to the attention of the parties without inflaming the situation by accusing either party of misconduct. Further the act provided that any party could file a motion for additional injunctive relief or for relief from the blanket injunction where necessary.

— Steve Cobb, TBA legislative counsel

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records must be made available to the other party upon request. *Tenn. Code Ann.* §36-4-106(d)(1)(B).

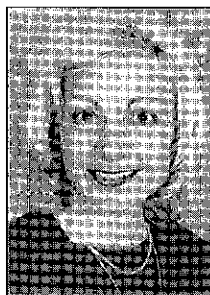
The statute prohibits the parties from voluntarily changing the beneficiary status of any insurance policy without either the parties' consent or the court's approval. Further, it prohibits a party from voluntarily causing the insurance policy to lapse for nonpayment. Therefore, it is incumbent on the attorneys to specify clearly in a temporary support order what policies are in existence and which party is responsible for the payment of said premiums. Otherwise, a party who typically wrote the checks for the policies during the marriage may be held accountable to the court if the policy lapses, even though that party did not have or receive the funds to pay for the premiums during the pendency of the divorce. *Tenn. Code Ann.* §36-4-106(d)(2).

Another aspect of the injunction enjoins the parties from harassing each

other, but more importantly from making disparaging remarks about the other to or in the presence of children of the parties, or to either party's employer. *Tenn. Code Ann.* §36-4-106(3).

The statute is designed to model the language of the relocation statute, *Tenn. Code Ann.* §36-6-108, that prohibits the party relocating a child outside Tennessee, or more than 100 miles from the marital home, without the court's

permission or approval of the other party, unless a well-founded fear of physical abuse against either parent or child is alleged. If the plaintiff has already moved and files for divorce, then the defendant can request an expedited hearing. The court may conduct the hearing by telephone conference to determine the reason for the relocation and to make such other orders as it deems appropriate. *Tenn. Code Ann.* §36-4-106(4). □



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