

Magistrate Mark A. Huberman, President
Mahoning County Domestic Relations Court
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Ms. Barbara S. Carter
Family Law Program Manager, Specialized Docket Section
Office of Judicial and Court Services
Supreme Court of Ohio
65 South Front Street, 6th Floor
Columbus, Ohio 43266-0419

Dear Ms. Carter:

I am writing on behalf of the Ohio Association of Magistrates to comment on the proposed revisions to the Supreme Court's Domestic Violence and Anti-Stalking Protection Order forms.

Since the inception of the use of these forms, all final entry forms, including Full Hearing forms and Consent Agreements for both Domestic Violence and Anti-Stalking, have included lines for Magistrate's signatures. By having lines for both Magistrates and Judges to sign, the forms were easily adapted to the individual, and differing, procedures used by various courts around the state. For instance, if the final hearing on either a domestic violence civil protection order or an anti-stalking protection order is heard before a Magistrate and that Magistrate takes a consent agreement, the Magistrate can then sign the form, signaling to the assigned Judge that all necessary due process steps were taken and that the agreement, in fact, reflects the desires of the parties. If the Magistrate conducts the final hearing on a petition for either a domestic violence civil protection order or an anti-stalking protection order and there is no consent to an agreement, the Magistrate can then use the mandatory form as a Magistrate's Decision, add the mandatory Civ. R. 53 waiver language, sign the form, and send it on to the assigned judge for final signature. This procedure has been approved by at least one appellate court. See Burke v. Brown (September 27, 2002), Adams App. No. 01CA731, unreported. Conversely, in those courts where judges conduct the final hearings or magistrates conduct the final hearings but write separate magistrate's decisions, the magistrate signature lines can be ignored. In short, having these signature lines on the forms made them adaptable to the differing ways in which courts around the state have chosen to address petitions filed under both R.C. 3113.31 and R.C. 2913.214.

We are very concerned that the effect of deleting the Magistrate's signature would mean either that the Magistrate would be required to prepare and file a separate Decision or that the Judge would have to preside over that Full Hearing. Both of these options would place enormous practical burdens on already crowded dockets and make it extremely difficult to meet the statutory mandate of having these orders heard and adjudicated in an expedited manor.

In addition to leaving the signature lines as they currently exist, it is essential that the “waiver language” at the beginning of the substantive sections of the Consent Agreement remain as presently written. The sentence, “The parties agree to waive their notice and hearing rights and their rights under Civil Rule 53, including the right to request findings of fact and conclusions of law and to file objections to the Magistrate’s Decision in this matter.” should be allowed to remain and not be deleted as proposed.

We simply see no rational basis for preventing a Magistrate from approving and signing off on Consent Agreements, any more than a Magistrate signs off and approves on Agreed Judgment Entries that come before the Court on a myriad of issues every single day.

There are no cases known to our Association whereby an appellate court has questioned the use of these forms with the present signature lines included. We also know of no significant questions about the current use of the forms that would give reason for this proposed change.

We find it noteworthy, and troubling, that your committee does not address the Magistrate signature deletion or the deletion of the waiver language in the preliminary comments that accompany the published forms which characterizes them as “primarily nonsubstantive in nature and are designed to clarify, primarily for *pro se* users of the forms, certain language on the existing forms”.

As an Association representing over 450 Magistrates, we feel this to be a **significant** change that will affect court procedures around the state and may, in fact, result in adaptations to the form on a county-by-county basis that will affect the Supreme Court’s desire to have these forms remain uniform around the state.

Finally, I can report that our concerns are shared by members of the Family Law Committee of the Ohio State Bar Association who considered this issue and passed a resolution in support of our position at its recent Annual Meeting in Cleveland.

In closing, the Ohio Association of Magistrates urges you not to change the way in which the forms presently provide for lines for Magistrate’s signatures and permit the parties to waive their rights to a Decision in Consent Agreement situations.

Sincerely,

Mark Huberman, President
Ohio Association of Magistrates

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