EXHIBIT 1
DATE 3/3/2011
SB 26

Montana Code Annotated 2009

40-4-121. Temporary order for maintenance or support, temporary injunction, or temporary restraining order. (1) In a proceeding for dissolution of marriage or for legal separation or in a proceeding for disposition of property or for maintenance or support following dissolution of the marriage by a court that lacked personal jurisdiction over the absent spouse, either party may move for temporary maintenance, temporary support of a child of the marriage entitled to support, or a temporary family support order. When a party is receiving public assistance, as defined in 40-5-201, for the minor children at issue or when a party receives public assistance during the life of a temporary family support order, the temporary family support order must designate separately the amounts of temporary child support and temporary maintenance, if any. The temporary child support order or the designated child support portion of the family support order must be determined as required in 40-4-204. The motion must be accompanied by an affidavit setting forth the factual basis for the motion, the amounts requested, a list of marital estate liabilities, a statement of sources of income of the parties and of a child of the marriage entitled to support, and, in the case of a motion for a temporary family support order, a proposal designating the party responsible for paying each liability. If ordered by a court, a temporary family support order must, without prejudice, direct one or both parties to pay, out of certain income sources, liabilities of the marital estate during the pendency of the action, including maintenance liabilities for a party or support of a child of the marriage entitled to support. If income sources are insufficient to meet the marital estate periodic liabilities, the temporary family support order may direct that certain liabilities be paid from assets of the marital estate. At any time during the proceedings, the court may order any temporary family support payments to be designated as temporary maintenance, temporary child support, or partial property distribution, retroactive to the date of the motion for a temporary family support order. When a party obtains public assistance, as defined in 40-5-201, or applies for services under Title IV-D of the Social Security Act, after the court has issued a temporary family support order, the petitioner shall promptly move the court for designation of the parts, if any, of the temporary family support order that are maintenance and child support and the court shall promptly so designate, determining the child support obligation as required in 40-4-204.

(2) As a part of a motion for temporary maintenance, temporary support of a child, or a temporary family support order or by independent motion accompanied by affidavit, either party may request that the court issue a temporary injunction for any of the following relief:

(a) restraining a person from transferring, encumbering, concealing, or otherwise disposing of any property, except in the usual course of business or for the necessities of life, and if so restrained, requiring the person to notify the moving party of any proposed extraordinary expenditures made after the order is issued;

(b) 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 coverage held for the benefit of a party or a child of a party for whom support may be ordered;

(c) enjoining a party from molesting or disturbing the peace of the other party or of any family member or from stalking, as defined in 45-5-220;

(d) excluding a party from the family home or from the home of the other party upon a showing that physical or emotional harm would otherwise result;

(e) enjoining a party from removing a child from the jurisdiction of the court;

(f) ordering a party to complete counseling, including alcohol or chemical dependency counseling or

treatment;

(g) providing other injunctive relief proper in the circumstances; and

(h) providing additional relief available under Title 40, chapter 15.

(3) When the clerk of the district court issues a summons pursuant to this chapter, the clerk shall issue and include with the summons a temporary restraining order:

(a) restraining both parties from transferring, encumbering, hypothecating, concealing, or in any way disposing of any property, real or personal, whether jointly or separately held, without either the consent of the other party or an order of the court, except in the usual course of business or for the necessities of life. The restraining order must require each party to notify the other party of any proposed extraordinary expenditures at least 5 business days before incurring the expenditures and to account to the court for all extraordinary expenditures made after service of the summons. However, the restraining order may not preclude either party from using any property to pay reasonable attorney fees in order to retain counsel in the proceeding.

(b) 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 coverage held for the benefit of a party or a child of a party for whom support may be ordered. However, nothing in this subsection (3) adversely affects the rights, title, or interest of a purchaser, encumbrancer, or lessee for value if the purchaser, encumbrancer, or lessee does not have actual knowledge of the restraining order.

(4) A person may seek the relief provided for in subsection (2) without filing a petition under this part for a dissolution of marriage or legal separation by filing a verified petition requesting relief under Title 27, chapter 19, part 3. Any temporary injunction entered under this subsection must be for a fixed period of time, not to exceed 1 year, and may be modified as provided in Title 27, chapter 19, part 4, and 40-4-208, as appropriate.

(5) The court may issue a temporary restraining order for a period not to exceed 20 days without requiring notice to the other party only if it finds on the basis of the moving affidavit or other evidence that irreparable injury will result to the moving party if an order is not issued until the time for responding has elapsed.

(6) The party against whom a temporary injunction is sought must be served with notice and a copy of the motion and is entitled to a hearing on the motion. A response may be filed within 20 days after service of notice of motion or at the time specified in the temporary restraining order.

(7) At the time of the hearing, the court shall:

(a) inform both parties that the temporary injunction may contain a provision or provisions that limit the rights of one or both parties relating to firearms under state law or a provision or provisions that may subject one or both parties to state or federal laws that limit their rights relating to firearms; and

(b) determine whether good cause exists for the injunction to continue for 1 year.

(8) On the basis of the showing made and in conformity with 40-4-203 and 40-4-204, the court may issue a temporary injunction and an order for temporary maintenance, temporary child support, or temporary family support in amounts and on terms just and proper in the circumstance.

(9) A temporary order or injunction, entered pursuant to Title 40, chapter 15, or this section:

(a) may be revoked or modified on a showing by affidavit of the facts necessary to revocation or modification of a final decree under 40-4-208;

(b) terminates upon order of the court or when the petition is voluntarily dismissed and, in the case of a temporary family support order, upon entry of the decree of dissolution; and

(c) when issued under this section, must conspicuously bear the following: "Violation of this order is a criminal offense under 45-5-220 or 45-5-626."

(10) When the petitioner has fled the parties' residence, notice of the petitioner's new residence must be withheld except by order of the court for good cause shown.

History: En. 48-318 by Sec. 18, Ch. 536, L. 1975; R.C.M. 1947, 48-318; amd. Sec. 1, Ch. 180, L. 1981; amd. Sec. 4, Ch. 526, L. 1985; Sec. 40-4-106, MCA 1983; redes. 40-4-121 by Code Commissioner, 1985; amd. Sec. 1, Ch. 259, L. 1991; amd.