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SUPREME COURT OF ARKANSAS

IN RE ADOPTION OF FINAL
ORDER OF PROTECTION
FORM

Opinion Delivered September 20, 2018

DISSENTING OPINION.

JOSEPHINE LINKER HART, Justice

I dissent from the adoption of a new “Final Order of Protection” form for use in the circuit courts of this state. I am troubled by the lack of notice of its adoption, the lack of an opportunity for public comment, and by the tacit endorsement by the judiciary of a very questionable provision of substantive law that was passed by the legislature in 2017.

Pursuant to amendment 80 to the Arkansas Constitution and Arkansas Supreme Court Administrative Order No. 12, this court has the authority to promulgate all official forms. Ordinarily, the process is quite deliberate and transparent and involves the publication of materials in a per curiam that solicits public comment. The new “Final Order of Protection” form did not follow this process, either prior to adoption or even after.

The new form originated in the Arkansas Judicial Council and was apparently approved by that body. It was approved by the supreme court without input from the bar or the public. Importantly, the decision to adopt it was not even promulgated by a per

curium. Accordingly, the first notice of the changes to the form will be sprung on respondents when the order is served.

This problem is of paramount concern because one of the changes reflects an untested 2017 statute under which a respondent is “assessed an additional cost of twenty-five dollars (\$25.00)” to be paid to the “Domestic Violence Shelter Fund.” A respondent can be ordered to pay this “cost” pursuant to Arkansas Code Annotated section 9-15-202(d)(1) (Supp. 2017), just because he is named a respondent and does not contest the order of protection. Potential constitutional infirmity of this statute is patent. It could be considered an illegal fine or penalty, an illegal tax, and/or an illegal appropriation inasmuch as the designated recipients are unidentified private entities.

More troubling still is the fact that this form was adopted by the Arkansas Judicial Council, of which nearly all judges in this state are members. If the statute is tested in court, who will preside over the trial? Is not the approval by the Arkansas Judicial Council an indication that the judges of this state have prejudged the constitutionality of section 9-15-202(d)(1)? Is this not at least an appearance of bias requiring recusal?

There is no exigent circumstance that dictates that this court adopt as written this new form without at least publishing it for public comment. Act in haste and repent at leisure.

I respectfully dissent.