Divorce & Family Law

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Divorce & Family Law

Who Has The Legal Right When Things Go Terribly Wrong?

by

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Contents

PART I: DIVORCE AND FAMILY LAW

Will the Divorce be Contested or Uncontested? 9
Uncontested Divorce....10
Contested Divorce....11
Grounds for Divorce 12
Property Rights 13
Division of the Marital Home 14
Maintenance 15
Child Support Calculation Guidelines....17
Deviation from Child Support Guidelines....18
Failure to Pay Child Support 19
Child Support Non-Compliance Penalties....20
Determining Net Income 23
Child Support Q & A 24
Purposes of Discovery....27
Requests for Production of Documents 28
Interrogatories 29
Sample Matrimonial Interrogatories 30
Elements of Trial 42
Parentage....45
Annulment....57
Prohibited Marriages 58
Mediation 59
Parental Alienation 61
Sample Joint Parenting Agreement 62

PART II: CHILD CUSTODY

Illinois Divorce and Child Custody Law 71
Jurisdiction to Decide Child Custody Matters....73
Criteria Considered In Custody Evaluations....75
Best Interest of the Child Standard....77
Evaluation of Child's Best Interest 79

Custody Factors Include the Mental Health of the Parties 80
Mediating A Custody Dispute.....81
Custody Hearings.....82
Custody Investigations And Reports.....83
Preference of the Child in Awarding Custody.....84
Separation of Siblings.....86
Tender Years Doctrine 87
What Happens In a Custody Evaluation? 89
Joint Custody – Parental Powers.....90
Affairs And Custody 92
Impact of Parental Conduct And Misconduct 93
Protecting Children in Custody Cases 94
Relocation of Children 95
Modification of a Custody Judgment 96
Custody Judgment Modifications Within Two Years 97

PART III: CHILD SUPPORT

Child Support Guidelines.....98
Legal Obligation To Provide Support 100
What if the Guidelines for Child Support are
Not Adequate or Appropriate? 101
Calculating "Net Income" In Relation to Child Support 103
Deductions the Court Allows for the Purpose
of Determining Child Support 105
How is Support Calculated if There Are
Multiple Support Orders? 106
How Does Standard of Living Influence Support? 107
Defining Parent's Financial Resources & How They
Factor into Support 108
Children's Right To Be Supported 109
Payment of Child Support 110
Modifications to a Child Support Order 111
Is Child Support Tax Deductible? 112
How Long is a Parent Obligated to Pay Child Support? 113
Expenses Covering Education, Physical Needs and
Emotional Needs 115

Medical Coverage Factored into Support 116
Enforcement of Child Support 118
Child Support Enforcement Agencies 119
Split Custody and its Impact on Child Support 120
If and When does Child Support Include
Post High School Education? 121
Does Joint Custody or Frequent Visitation Lessen the Support
Obligations of the Non-Custodial Parent? 122

PART IV: VISITATION

The Law on Visitation.....123
Best Interests of the Child in Visitation Cases (Case Summaries)..124
Obtaining Visitation Rights 126
Visitation Schedules 127
"Reasonable Visitation" too Vague For Most Judges.....129
Reluctance or Refusal to Visit a Parent 130
Denial of Visitation in Extreme Circumstances 131
Interference with Contact/Visitation Abuse.....132
Helping Children Deal with Visitation 133
Child Representation.....134
Supervised Visitation.....135
Enforcement of Visitation 136
Modification of Visitation (Case Summaries) 137
When Should You Request a Modification to
Your Visitation Order? 139
Cost of Visitation (Case Summaries) 140
How to Avoid Parental Abduction.....141

PART V: GLOSSARY

Glossary 142
About the Authors..... 154

Will the Divorce be Contested or Unconstested?

THERE is often confusion over whether a divorce case is going to be contested or uncontested. Many think that an uncontested divorce is one in which the parties both agree that there should be a divorce. In reality, to have an uncontested divorce, there must be a total agreement on all of the issues surrounding the divorce. For example, there must be an agreement on custody, support, visitation, division of property, allocation of debt and many other issues. To simply agree that the parties should divorce is far from having an uncontested case.

A contested case is where there is no agreement as to how the issues should be resolved. In a contested case, a Petition for Dissolution is filed with the Clerk of the Court. A Sheriff or other process server is then hired to serve the non-filing party with a copy of the summons and petition. The Respondent then has thirty (30) days from the date of service to file an appearance and get involved in the case. From that point forward, the case can last months or years. It all depends upon the issues involved, the reasonableness and willingness of the parties to reach a settlement and quite frankly, the parties' respective legal counsel. Some attorneys are swift in bringing a resolution where others simply delay, protract issues and generate fees.

In summary, simply agreeing that there should be a divorce does not constitute an uncontested divorce case. There must be a total agreement regarding all of the issues involved.

Uncontested Divorce

An Uncontested Divorce is a divorce case where both parties are in total agreement on all issues. This allows for the case to be finalized in one court date. A typical uncontested divorce case can be completed within four to six weeks. All required documents are prepared and sent out for signatures. Once the documents have been returned, they are filed with the Clerk of the Circuit Court. A court date can then be set where the proposed Judgment and attached Agreements can be submitted before a Judge for approval. Once the Judge signs the Judgment for Dissolution, the court order for divorce is official.

Uncontested Divorces are more common than many people may think. Some are surprised to learn that parties can mutually agree upon the terms of their dissolution. Not every case involves a highly contested custody battle. To the contrary, many couples often have no children, little property to divide and little joint debt. In those cases, an uncontested divorce is the best option for both parties. It brings a quick and swift resolution to a broken relationship. It saves the parties time, money and heartache and it takes the decision making out of the hands of Judges. It effectively allows the parties to decide how to complete their divorce on their terms.

The most common ground that is alleged in an uncontested divorce is irreconcilable difference. The parties must have been living separate and apart for a period in excess of two years. However, that two year waiting period can be reduced down to six months if the parties stipulate to that fact in writing.

Contested Divorce

A Contested Divorce is one in which the parties are not in agreement as to the terms of the divorce. A contested divorce can take months or years to settle. Some contested cases will eventually lead to a trial.

Often, the parties are in agreement as to the necessity of a divorce; however, they are not willing to cooperate in finalizing the process. Attorneys for the parties and the court will make reasonable efforts to resolve the case and bring it to Judgment. Ultimately, it is the parties themselves who must stipulate to complete the case.

Contested divorce cases can be quite expensive as attorneys typically charge by the hour for office time and for court time. Many a small fortune has been spent on legal fees over a failed marriage. It is usually in the parties' best interests to bring a swift resolution to the case.

Grounds for Divorce

THERE are several grounds for divorce. In Illinois, they include, but are not limited to:

Extreme and repeated mental cruelty
Extreme and repeated physical cruelty
Adultery
Desertion
Habitual drunkenness
Conviction of a felony or other infamous crime
Party has infected the other with a sexually transmitted disease
Irreconcilable differences

The most common ground is Irreconcilable Differences

Irreconcilable differences are differences that have caused the irretrievable breakdown of the marriage. The court determines that efforts at reconciliation have failed and that future attempts at reconciliation would be impracticable and not in the best interests of the parties. Further, that the parties have lived separate and apart for a continuous period in excess of two years prior to the entry of judgment. That the parties may stipulate in writing to waive the two year separation requirement and instead choose the six month separation period.

Property Rights

Marital Property

750 ILCS 5/503 (a)(b) presumes that all property acquired during the marriage is in fact, marital property and therefore, subject to equitable allocation by the court. This presumption may only be rebutted by clear and convincing evidence

Non-Marital Property

Non-marital property is property that was typically acquired prior to the marriage and never converted to marital property. This includes property acquired by a spouse through gift, inheritance or prior to the marriage and kept in the owner's sole name.

Placing non-marital property into a form of co-ownership between the spouses raises a presumption that a gift of the non-marital property has been made to the marital estate.

Dissipation of Property

Dissipation arises when property is improperly used for the sole benefit of one spouse, for a purpose unrelated to the marriage at a time when the marriage is undergoing an irreconcilable breakdown. Expenditures held to constitute dissipation are extraordinary expenses that clearly do not further common marital interests. Most cases hold that the party charged with dissipation has the burden of proving by clear and convincing evidence that he or she did not dissipate the assets at issue. Two examples of dissipation included gambling losses and the payment of legal fees from marital assets.

Division of the Marital Home

THERE are several different ways to tackle the issue of what happens to the marital home. First and most obvious, the home can be sold with the equity being split in some fashion by the parties. Secondly, a party can buy-out the interest of the other party. This can be done by acquiring the fair market value from three reputable realtors and taking the average. The party who is going to remain as the sole owner should re-finance the mortgage debt to remove the non-owner from any liability. Additionally, the party being bought-out should quit claim deed whatever interest he or she has in the property at the time of refinancing. The quit claim deed should then be properly recorded with the County Recorder. Thirdly, the parties can agree to remain joint owners of the property until some specific date or time frame (for example, when the youngest child completes high school). Upon the happening of that date or time frame, it can be dictated as to what will happen with the property. It is possible that one party will receive one-half of the equity that was present at the time of dissolution. Or, it is possible that one party will receive one-half of the equity at the time of sale or re-finance. As you can see, the possibilities are endless and they are only limited by the imagination of the parties and their attorneys. Regardless of what is ultimately decided, make sure that the Settlement Agreement is highly detailed. There should be no confusion as to who shall pay the mortgage, taxes, insurance and utilities until the property is effectively divided.

Maintenance

Maintenance is an award of spousal support, which may be permanent or temporary, in an amount which the court deems just, regardless of marital misconduct.

There are several relevant factors which the court will consider when deciding if maintenance is appropriate. These include, but are not limited to:

1. The income and property of each spouse, including marital and non-marital property;
2. The needs of each party;
3. The present and future earning capacity of each party;
4. Any impairment of the present or future earning capacity due to the party devoting time to domestic duties or having foregone or delayed education, training, employment, or career opportunities due to the marriage;
5. The time necessary to enable the party seeking maintenance to acquire appropriate education, training and employment;
6. The standard of living established during the marriage;
7. The duration of the marriage;
8. The age and physical and emotional condition of both parties;
9. The tax consequences of the property division upon the respective economic circumstances of the parties;
10. Contributions and services by the party seeking maintenance to the education, training, career potential, or license of the other spouse;
11. Any valid agreement of the parties;
12. Any other factor that the court expressly finds to be just and equitable.

There are several different types of maintenance

"Temporary" maintenance is maintenance for a specific period of time, sometimes with a review.

"Permanent" maintenance is lifetime maintenance, but usually subject to statutory termination events.

Maintenance "in gross" is a set amount of maintenance, paid in one or more installments.

Maintenance for a "fixed" period of time comprehends temporary maintenance and maintenance in gross.

What are the statutory termination events?

750 ILCS 5/510(c) states in part that the obligation to pay future maintenance is terminated upon the death of either party, or the remarriage of the party receiving maintenance, or if the party receiving maintenance cohabits with another person on a resident, continuing, conjugal basis.

Child Support Calculation Guidelines

750 ILCS 5/505(a) sets forth the guidelines for determining the proper amount of child support.

(Number of Children)	% of Supporting Party's Net Income
(1)	**20%**
(2)	**28%**
(3)	**32%**
(4)	40%
(5)	45%
(6 or more)	50%

The above guidelines are applied unless the court determines that the application of the guidelines would be inappropriate after considering the best interests of the child. Factors the court may consider include:

1. The financial resources and needs of the child;
2. The financial resources and needs of the custodial parent;
3. The standard of living the child would have enjoyed had the marriage not been dissolved;
4. The physical and emotional condition of the child and his educational needs;
5. The financial resources and needs of the non-custodial parent.

Deviation from Child Support Guidelines

COURTS can deviate from percentage guidelines if they feel they are not in the best interests of the child. The examples below are situations where deviation is appropriate:

(A) Split, shared and joint custody may allow the court to deviate from guidelines:

(1) Split custody: where each parent is a primary custodian for at least one child;
(2) Shared Custody: where each parent has extensive parenting time with the minor.

(B) Deviations from the guidelines in high income cases: The courts can deviate from the standard guidelines where the child's needs are being met even though the amount for child support falls below the guidelines. The courts will also look at the kind of lifestyle the child would have enjoyed had there not been a dissolution of marriage between parents.

Failure to Pay Child Support

FAILURE to comply with a support order is punishable as in other cases of contempt. In addition to other penalties provided by law, the court may, after finding the parent guilty of contempt, order that the parent be:

1. Placed on probation with conditions as the court deems fit;
2. Sentenced to periodic imprisonment for a period not to exceed six months.

750 ILCS 5/505(b) allows the court to order the driver's license of a parent who is 90 days or more behind in his or her child support payments to be suspended.

Child Support Non-Compliance Penalties

ACT 16 Non-Support Punishment Act

(A) Failure to Support Defined: Failure of supporting parent to pay shall be found guilty of contempt.

(1) Where the obligor without lawful excuse willfully refuses to provide support of his child under the age of 18 and obligor has the ability to provide such support.

(a) This could result in a Class A misdemeanor.

(2) Where there is a court or administrative order and the obligor fails to pay support if the obligation has remained unpaid for a period longer than six months or is in arrears for an amount greater than $5,000.00.

(a) This could result in a Class A misdemeanor.

(3) If the obligor leaves the State with the intent to evade a support order which has remained unpaid for a period longer than 6 months or is in arrears in an amount greater than $10,000.00. This is regardless of when the child support actually accrued.

(a) This could result in a Class D Felony.

(B) Prosecution can be commenced with a complaint filed by the person receiving child support, by the State Attorney's office

or by the Attorney General's office if the case is referred by the Illinois Department of Public Aid.

(C) Interest and fines

(1) Where a support obligation is due and unpaid for 30 days or more interest shall accrue at a rate of 9% per annum.

(2) Courts may also impose fines and sentences:

(a) Fine of $1-5,000.00 if the support obligation is unpaid for a period longer than 2 years or is in arrears for an amount from $1-10,000.00.

(b) Fine of 5-10,000.00 if the support obligation is unpaid for longer than 5 years or is in arrears from $10-20,000.00.

(c) Fine of $10-25,000.00 if the support obligation is unpaid for longer than 8 years or is in arrears in an amount greater than $20,000.00.

(D) Suspension of Driver's License: Failure to pay can also lead to a suspension of that parent's driver's license privileges. Courts can however allow for the privileges for the parent's employment and medical percentages.

(E) Liens of Non-payor's property: Public Act 90-18: Welfare Reform Implementation Act - Lien Provisions as to Over Due Support. A new provision was added to 505(d), the final sentence of which now reads, "A lien arises by operation of law against the real and personal property of the non-custodial parent for each installment of overdue support owed by the non-custodial parent." 750 ILCS 505(d). (1) Wage garnishment: This language also allows for the garnishment of the non-custodial parent's wages.

(F) Notice to Obligor in contempt proceedings: In an action to enforce an order for support based on the obligor's failure to

make support payments as required by the order, notice of proceedings to hold the obligor in contempt for that failure may be served on the respondent by personal service or by regular mail addressed to the respondent's last known address. The respondent's last known address may be determined from records of the clerk of the court, from the Federal Case Registry of Child Support Orders, or by any other reasonable means.

Determining Net Income

Net Income is defined as the total of all income from all sources, minus the following deductions:

1. Federal income taxes;
2. State income taxes;
3. Social Security (FICA payments);
4. Mandatory retirement contributions required by law or as a condition of employment;
5. Union dues;
6. Dependent and individual health/hospitalization insurance premiums;
7. Prior obligations of support or maintenance actually paid pursuant to a court order;
8. Expenditures for repayment of debts that represent reasonable and necessary expenses for the production of income, medical expenditures necessary to preserve life or health and reasonable expenditures for the benefit of the child and the other parent, exclusive of gifts.

Child Support Q & A

- **When does Illinois child support terminate?** Child support terminates when the child reaches the age of emancipation (regularly considered age 18). Child support can continue if the child is over 18 but still in school. The termination is not automatic and the duty to support continues unless and until an order is entered by the court.
- **Does child support exist without divorce?** Illinois will allow a parent to file for custody and visitation rights without a legal divorce, so support can be issued. Temporary custody must be decided prior to filing a petition for support. In this situation, both parents have an equal right to have the children live with them, unless records show past abuse.
- **Can child support be modified in Illinois?** Illinois will allow for the modification of child support as long as a substantial change has occurred and the change is not something that has been previously addressed.
- **How can child support be increased?** In order to increase child support, a petition must be filed. A substantial increase of the supporting parent's income will support the petition.
- **How can child support be decreased**? Again, a petition must be filed for a decrease in child support. The most common basis for a decrease in child support is a decrease in income of the supporting parent. Another reason is when the supporting parent's needs increase for one reason or another, such as an illness requiring his or her income for health expenses.
- **Can a court order an employer to deduct child support from the supporting parent's salary and pay it directly to the receiving parent?** Yes, as long as the supporting parent is employed at a job. If the supporting parent is self-employed, much of his or her work income is in cash tips or payments,

or is on a straight commission without a draw, this device will not be helpful.

- **If a supporting parent is unemployed, can the court require him or her to work and pay child support?** Yes. The court may order him or her to seek employment and report periodically showing his or her efforts to find work and to participate in governmental job search, training or work programs.
- **What happens if the supporting parent is ill and can't work or loses his or her job?** Child support will accumulate and the court will not be able to erase the accumulation. The parent who is unable to work needs to immediately seek Illinois court intervention and file a petition to modify or abate the child support. Once the petition is filed, the court is able to abate or reduce the child support because of the change of circumstances.
- **If the supporting parent is very wealthy or earns a very large income, can the court award a larger amount?** The trial court may award support in excess of the guidelines. The court takes into consideration the lifestyle of the supporting parent and also the custodial parent. The source of the custodial parent's income, such as public aid, will not ordinarily impact on the amount the contributing parent is expected to pay.
- **Can a reduction in child support be made if the supporting parent voluntarily takes a cut in income?** A reduction in income is a possibility. If the change in employment is made in good faith, then modification of child support is possible. If the supporting parent loses his or her job, and it was not brought about by deliberate conduct intending to evade paying child support, it can be considered a material change in circumstances.
- **Does the death of a parent terminate support?** No. The support obligation may be enforced against the parent's estate .

- **Will child support terminate upon a child's death?** Child support may terminate upon a child's death but a court order is necessary to end or modify support.
- **What about medical insurance for the children?** In Illinois, this issue is typically addressed and taken care of in the Marital Settlement Agreement. It is important for the child or children to have coverage during the divorce process. A decision is made between the two parties, but it is the responsibility of the parent who can provide coverage due to his or her employment.
- **Should support payments stop if visitation is being prevented?** No. Unfortunately, each is a legal duty of its own. If a parent is deprived of visitation, he or she must still provide support. Visitation and non-payment of support must be petitioned in court separately.
- **Is child support tax deductible?** The amount of support declared at the date of settlement is not considered income for the parent who receives it; therefore, the support amount cannot be deducted as an expense for federal income tax purposes.
- **If the paying spouse files for bankruptcy, is he or she obligated to make support payments?** Yes. The federal law does not allow any child support or alimony payments to be discharged in bankruptcy.

Purposes of Discovery

Discovery serves several purposes in divorce litigation. On a basic, straightforward level, it serves to inform counsel and the client about factual information necessary to evaluate the case, such as the nature of the income and assets of the other spouse. Secondly, discovery is a trial preparation tool, used for example, to identify lay witnesses, independent expert witnesses, and controlled expert witnesses together with the nature of their testimony.

Discovery in divorce litigation can also be useful on a third level. Divorce is often an emotional and personal process; Discovery can be properly used to bring pressure on a party to settle either the entire litigation or a portion thereof, and it can also be improperly used to harass a party to settle the litigation. By way of example, deposition subpoenas (or the prospect that they will be issued and served) directed to other members of the family (parents, brothers and sisters, etc.) or the employers, supervisors, business colleagues, customers, etc., may serve to provide useful information and may also be considered as harassment by the party on the receiving end of the subpoenas. Based on the facts in the case, at times, such subpoenas will clearly be proper, and at times such subpoenas will clearly be abusive. Many times, such subpoenas will neither be clearly proper nor clearly abusive and will fall into that gray area very familiar to practicing divorce lawyers.

Requests for Production of Documents

OBTAINING financial records is an extremely important form of discovery. Bank records, credit card statements, retirement account records, and other such records are necessary for a divorce lawyer to determine the nature and extent of the marital estate, the marital and non-marital character of property, the lifestyle maintained by the parties during the marriage, and other financial information that may be relevant pursuant to statute.

Records can be obtained either from a party pursuant to a request for the production of documents under Supreme Court Rule 214 or from a nonparty pursuant to a subpoena for records only served pursuant to a notice of deposition under Supreme Court Rule 204(a)(4).

In some cases, mandatory disclosure requirements may require a party to turn over income information without the need for a request by the adverse party. The practitioner may want to confirm the veracity of information and the earlier withdrawal or transfer of funds prior to the disclosure by following up any mandatory disclosure requirements with other discovery tools such as subpoenas for records pursuant to Rule 204.

Interrogatories

Interrogatories are a simple and inexpensive method of discovery. By the same token, they have limited use because the answers are often carefully crafted by lawyers to avoid providing any useful information. Interrogatories serve certain limited purposes.

Interrogatories are best for obtaining specific factual information such as the identification of specific assets and liabilities, including, for example, account numbers at specific financial institutions. If local circuit court rules do not mandate the disclosure of such information, interrogatories are a must for obtaining it at the outset of a case.

Interrogatories are also essential for the identification of trial and expert witnesses. Recent changes in the Supreme Court Rules provide for complete disclosure of trial witnesses upon written interrogatories and substitute interrogatory answers relating to expert witnesses for the now-abolished Supreme Court Rule 220 disclosure of expert witnesses. See Supreme Court Rules 213, 218. All of the above-described factual information is included in the recently adopted standard matrimonial interrogatories.

Sample Matrimonial Interrogatories

#000000
IN THE CIRCUIT COURT OF COOK
COUNTY, ILLINOIS
COUNTY DEPARTMENT—
DOMESTIC RELATIONS DIVISION

IN RE THE MARRIAGE OF:
JOE PETITIONER,
Petitioner,
and
JONIE RESPONDENT,
Respondent.

MATRIMONIAL INTERROGATORIES

TO: Attorney of Record, 134 Elm St., Chicago, IL

Petitioner, JOE PETITIONER, by Mr. Attorney, his attorney, requests that the Respondent, JONIE RESPONDENT, answer under oath, in accordance with Supreme Court Rule 213, the following Interrogatories:

1. State your full name, current address, date of birth and social security number.
2. List all employment held by you during the preceding three years and with regard to each employment state:

   (a) The name and address of each employer;

(b) Your position, job title or description;
(c) If you had an employment contract;
(d) The date on which you commenced your employment and, if applicable, the date and reason for the termination of your employment;
(e) Your current gross and net income per pay period;
(f) Your gross income as shown on the last W–2 tax and wage statement received by you, your social security wages as shown on the last W–2 tax and wage statement received by you, and the amounts of all deductions shown thereon; and
(g) All additional benefits or perquisites received from your employment stating the type and value thereof.

3. During the preceding three years, have you had any source of income other than from your employment listed above? If so, with regard to each source of income, state the following:

(a) The source of income, including the type of income and name and address of the source;
(b) The frequency in which you receive income from the source;
(c) The amount of income received by you from the source during the immediately preceding three years; and
(d) The amount of income received by you from the source for each month during the immediately preceding three years.

4. Do you own any interest in real estate? If so, with regard to each such interest state the following:

(a) The size and description of the parcel of real estate, including improvements thereon;
(b) The name, address and interest of each person who has or

claims to have an ownership interest in the parcel of real estate;

(c) The date your interest in the parcel of real estate was acquired;

(d) The consideration you transferred or paid for your interest in the parcel of real estate;

(e) Your estimate of the current fair market value of the parcel of real estate and your interest therein; and

(f) The amount of any indebtedness owed on the parcel of real estate and to whom.

5. For the preceding three years, list the names and addresses of all associations, partnerships, corporations, enterprises or entities in which you have an interest or claim any interest, the nature of your interest or claim of interest therein, the amount of percentage of your interest or claim of interest therein, and an estimate of the value of your interest therein.

6. During the preceding three years, have you had any account or investment in any type of financial institution, individually or with another or in the name of another, including checking accounts, savings accounts, certificates of deposit and money market accounts? If so, with regard to each such account or investment, state the following:

(a) The type of account or investment;

(b) The name and address of the financial institution;

(c) The name and address of each person in whose name the account is held; and

(d) Both the high and the low balance of the account or investment, stating the date of the high balance and the date of the low balance.

7. During the preceding three years, have you been the holder

of or had access to any safety deposit boxes? If so, state the following:

(a) The name of the bank or institution where such box is located;
(b) The number of each box;
(c) A description of the contents of each box during the immediately preceding three years and as of the date of the answer; and
(d) The name and address of any joint or co-owners of such safety deposit box or any trustees holding the box for your benefit.

8. During the immediately preceding three years, has any person or entity held cash or property on your behalf? If so, state:

(a) The name and address of the person or entity holding the cash or property; and
(b) The type of cash or property held and the value thereof.

9. During the preceding three years, have you owned any stocks, bonds, securities or other investments, including savings bonds? If so, with regard to each such stock, bond, security or investment state:

(a) A description of the stock, bond, security or investment;
(b) The name and address of the entity issuing the stock, bond, security or investment;
(c) The present value of such stock, bond, security or investment;
(d) The date of acquisition of the stock, bond, security or investment;
(e) The cost of the stock, bond, security or investment;

(f) The name and address of any other owner or owners in such stock, bond, security or investment; and
(g) If applicable, the date sold and the amount realized there from.

10. Do you own or have any incidents of ownership in any life, annuity or endowment insurance policies? If so, with regard to each such policy state:

(a) The name of the company;
(b) The number of the policy;
(c) The face value of the policy;
(d) The present value of the policy;
(e) The amount of any loan or encumbrance on the policy;
(f) The date of acquisition of the policy; and
(g) With regard to each policy, the beneficiary or beneficiaries.

11. Do you have any right, title, claim or interest in or to a pension plan, retirement plan or profit sharing plan, including, but not limited to, individual retirement accounts, 401(k) plans and deferred compensation plans? If so, with regard to each such plan state:

(a) The name and address of the entity providing the plan;
(b) The date of your initial participation in the plan; and
(c) The amount of funds currently held on your behalf under the plan.

12. Do you have any outstanding indebtedness or financial obligations, including mortgages, promissory notes, or other oral or written contracts? If so, with regard to each obligation state the following:

(a) The name and address of the creditor;
(b) The form of the obligation;
(c) The date the obligation was initially incurred;
(d) The amount of the original obligation;
(e) The purpose or consideration for which the obligation was incurred;
(f) A description of any security connected with the obligation;
(g) The rate of interest on the obligation;
(h) The present unpaid balance of the obligation;
(i) The dates and amounts of installment payments; and
(j) The date of maturity of the obligation.

13. Are you owed any money or property? If so, state:

(a) The name and address of the debtor;
(b) The form of the obligation;
(c) The date the obligation was initially incurred;
(d) The amount of the original obligation;
(e) The purpose or consideration for which the obligation was incurred;
(f) The description of any security connected with the obligation;
(g) The rate of interest on the obligation;
(h) The present unpaid balance of the obligation;
(i) The dates and amounts of installment payments; and
(j) The date of maturity of the obligation.

14. State the year, make and model of each motor or motorized vehicle, motor or mobile home and farm machinery or equipment in which you have an ownership, estate, interest or claim of interest, whether individually or with another, and with regard to each item state:

(a) The date the item was acquired;
(b) The consideration paid for the item;
(c) The name and address of each other person, who has a right, title, claim or interest in or to the item;
(d) The approximate fair market value of the item; and
(e) The amount of any indebtedness on the item and the name and address of the creditor.

15. Have you purchased or contributed towards the payment for or provided other consideration or improvement with regard to any real estate, motorized vehicle, financial account or securities, or other property, real or personal, on behalf of another person or entity other than your spouse during the preceding three years? If so, with regard to each such transaction state:

(a) The name and address of the person or entity to whom you contributed;
(b) The type of contribution made by you;
(c) The type of property to which the contribution was made;
(d) The location of the property to which the contribution was made;
(e) Whether or not there is written evidence of the existence of a loan; and
(f) A description of the written evidence.

16. During the preceding three years, have you made any gift of cash or property, real or personal, to any person or entity not your spouse? If so, with regard to each such transaction state:

(a) A description of the gift;
(b) The value of the gift;
(c) The date of the gift;

(d) The name and address of the person or entity receiving the gift;
(e) Whether or not there is written evidence of the existence of a gift; and
(f) A description of the written evidence.

17. During the preceding three years, have you made any loans to any person or entity not your spouse and, if so, with regard to each such loan state:

(a) A description of the loan;
(b) The value of the loan;
(c) The date of the loan;
(d) The name and address of the person or entity receiving the loan;
(e) Whether or not there is written evidence of the existence of a loan; and
(f) A description of the written evidence.

18. During the preceding three years, have you sold, transferred, conveyed, encumbered, concealed, damaged or otherwise disposed of any property owned by you and/or your spouse individually or collectively? If so, with regard to each item of property state:

(a) A description of the property;
(b) The current location of the property;
(c) The purpose or reason for the action taken by you with regard to the property;
(d) The approximate fair market value of the property;
(e) Whether or not there is written evidence of any such transaction; and
(f) A description of the written evidence.

19. During the preceding three years, have any appraisals been made with regard to any of the property listed by you under your answers to these interrogatories? If so, state:

    (a) The name and address of the person conducting each such appraisal;
    (b) A description of the property appraised;
    (c) The date of the appraisal; and
    (d) The location of any copies of each such appraisal.

20. During the preceding three years, have you prepared or has anyone prepared for you any financial statements, net worth statements or lists of assets and liabilities pertaining to your property or financial affairs? If so, with regard to each such document state:

    (a) The name and address of the person preparing each such document;
    (b) The type of document prepared;
    (c) The date the document was prepared; and
    (d) The location of all copies of each such document.

21. State the name and address of any accountant, tax preparer, bookkeeper and other person, firm or entity who has kept or prepared books, documents and records with regard to your income, property, business or financial affairs during the course of this marriage.
22. List all non-marital property claimed by you, identifying each item of property as to the type of property, the date received, the basis on which you claim it is non-marital property, its location, and the present value of the property.
23. List all marital property of this marriage, identifying each item of property as to the type of property, the basis on which you

claim it to be marital property, its location, and the present value of the property.

24. What contribution or dissipation has your spouse made to the marital estate, including but not limited to each of the items of property identified in response to interrogatories No. 22 and No. 23 above, citing specifics, if any, for each item of property?
25. Pursuant to Illinois Supreme Court Rule 213(f), provide the name and address of each witness who will testify at trial and state the subject of each witness' testimony.
26. Pursuant to Illinois Supreme Court Rule 213(g), provide the name and address of each opinion witness who will offer any testimony, and state:

    (a) The subject matter on which the opinion witness is expected to testify;
    (b) The conclusions and/or opinions of the opinion witness and the basis therefore, including reports of the witness, if any;
    (c) The qualifications of each opinion witness, including a *curriculum vitae* and/or resume, if any; and
    (d) The identity of any written reports of the opinion witness regarding this occurrence.

27. Are you in any manner incapacitated or limited in your ability to earn income at the present time? If so, define and describe such incapacity or limitation, and state when such incapacity or limitation commenced and when it is expected to end.
28. Identify any statements, information and/or documents known to you and requested by any of the foregoing interrogatories which you claim to be work product or subject to any common law or statutory privilege, and with respect to each interrogatory, specify the legal basis for the claim as required by Illinois Supreme Court Rule 201(n).

Please take notice that a copy of the answers to these Interrogatories should be served upon the undersigned within 28 days after the service of these Interrogatories.

Mr. Attorney
Attorney for Joe Petitioner

ATTESTATION

STATE OF ILLINOIS
COUNTY OF

_____, being first duly sworn on oath, deposes and states that he/she is the in the above-captioned matter, and that he/she has read the foregoing document, and the answers made herein are true, correct and complete to the best of his/her knowledge and belief.

SIGNATURE

SUBSCRIBED and SWORN to before me this day of , 20__.

NOTARY PUBLIC

CERTIFICATE OF DELIVERY

The undersigned hereby certifies under penalties of perjury as provided by law pursuant to Section 1–109 of the Code of Civil Procedure, that the above Matrimonial Interrogatories were [ ] placed in the U.S. Mail properly addressed and mailed with first class postage prepaid, [ ] sent via messenger, [ ] sent via facsimile (pages, from the office of , sender's facsimile number, to recipient's facsimile number

), to the party at the address set forth above on the day of , 200__ before the hour of 5:00 p.m.

Mr. Attorney
Attorney for Petitioner
456 LaSalle St.
Chicago, IL
(773) xxx-xxxx

Elements of Trial

Preparation

BEGIN with the end in mind. Trial preparation should begin even before filing the first pleading in the case. To the extent possible, the issues should be identified in the first several meetings with the client and refined throughout the discovery process. Early on in the representation, the client should be instructed as to the relevancy of certain facts in order to alleviate too much information and minutia. Whether a party has been aggrieved a decade earlier or a parent has had an occasional lapse of judgment is not particularly relevant and should not be the focus of attention. The attorney should assist the client in focusing exclusively on those areas that support or dovetail with that which the court is going to be asked to conclude.

Direct Examination

Testifying effectively is not second nature to most people. Witness credibility depends as much on demeanor as on the content of the testimony. The practitioner should work with the client to develop a comfortable style and pace that is effective. In developing the testimony, important matters should be stressed in detail, while unimportant matters should get minimal focus. The practitioner and the client should determine in advance, what the critical portion of the client's testimony is going to be. The client should be taught to elicit sensory images so that the judge can relive the important events through his or her imagination.

While it may be helpful to a client to have an outline on subject matters that will be addressed during direct examination, a list of questions and answers should not be provided. The scripted direct examination not only sounds rehearsed, it can become chaotic when

objections are lodged and/or the order of the questions changes. The direct examination should be practiced with the client so that the practitioner has prior knowledge of the client's answers on the stand. Nothing is worse than an unfocused client going off on a tangent.

The client should be instructed as to the dynamics of the process. As the examination evolves, the client could be faced with an unexpected question and should not try to anticipate what it is the practitioner is attempting to elicit. The client needs to be instructed that if he or she does not understand the question, he or she should so indicate. If a document is being referred to that the client is uncertain of, he or she should request of his or her counsel to review the document in order to refresh his or her recollection. A "scripted" client may find himself lost if the script is not followed verbatim. A prepared client will be able to move through the process with a certain degree of fluidity and cohesiveness so that his or her position is understood.

Cross-Examination

What many practitioners frequently overlook is the demeanor of the client during the adverse and/or cross-examination of the client's spouse. Good judges not only listen to the client's testimony, but also evaluate the client's demeanor during the opposition's testimony. A client who is out of control, frequently scribbling messages, making faces, hand gestures, and the like, may lead to an adverse reaction by the judiciary. A client who is controlled and who is able to respond neutrally is preferred.

With respect to the client's cross-examination, in most instances, more information is generally disfavored. To the extent a client can answer a question yes or no, the client should be advised to do so. A client who rambles on to inject his or her thoughts and/or self-serving statements beyond the questions generally affects his or her credibility. To the extent that the client is required to make an admission that may not be favorable, it is much easier to make the admission and move forward, leaving the practitioner to deal with possible redirect.

Fighting with the opposition normally results in negative consequences. Getting on and off the stand with limited damage as a result of limited testimony is normally favorable. Cross-examination is not the time for the client to feel he or she should destroy the opposition.

CONCLUSION

A well-prepared client is, generally speaking, a client who can be better guided through the dissolution of marriage process. One of the best ways to have a well-prepared client is for the client to actively participate in the process and to understand the uncertainties he or she faces. A well-prepared client is easier to manage throughout the case and will typically be satisfied with the attorney despite the turmoil in the client's life.

Parentage

In today's society, many children are born to couples outside of wedlock under varied circumstances; however, these children's needs are not addressed in the Illinois Marriage and Dissolution of Marriage Act due to the parents' unwed status. As a result, the Illinois legislature responded with the Illinois Parentage Act of 1984 (750 ILCS 45). Illinois wanted to recognize and protect the rights of *every* child to the physical, mental, emotional and monetary support of his or her parents under this act. This act explicitly states that the rights, privileges, duties, and obligations of being a parent are independent of the marital status of the parents.

In most instances that we will come across in our practice, it is really an issue of paternity. Paternity is the relationship between a father and his child and establishing paternity is the process of making this a legal relationship. However, the client on a paternity case could be the mother, the expectant mother, the man presumed or alleging himself to be the father, the child, or any person or public agency that has custody of, or is providing financial support for the child. Besides determining who the biological parent of the child is, many of these cases involve other issues like custody, visitation, and child support.

1. **Why is establishing Paternity important?**
   Paternity can provide benefits to the parents as well as the child, and it is a good way to get the relationship with the child off to a good start. Establishing paternity is the critical first step in collecting child support. When legal paternity is established, a child has the right to the father's Social Security or veteran's benefits, medical coverage, pensions and inheritance. Also, the medical genetic information of both parents is available for the child if needed for diagnosis and treatment of medical problems.

2. **How is the Parent and Child relationship established for mothers?**

   The parent child relationship is established by the natural mother by proof of her having given birth to the child. The mother can also establish this relationship through any other means under the Illinois Parentage Act of 1984. In very rare cases, the identity of the mother may be in question. This usually happens when the mother is deceased and a dispute arises over the inheritance of the estate. The Illinois Parentage Act of 1984 offers a way for affected parties to conclusively determine whether a particular child is, in fact, the biological offspring of a mother.

3. **How is legal paternity established?**

   Parentage (paternity) of a child may be established in **one of three ways** under Illinois law: **by presumption, by consent, and by judicial determination.**

I. ESTABLISHING PARENTAGE BY PRESUMPTION:

- **a.** In Illinois, when a married woman either conceives or gives birth to a child, the husband at the time of conception or birth is presumed to be the father of the child. This is true even if the marriage is invalid.
- **b.** When an unmarried woman gives birth and later marries, the new husband will be presumed to be the child's father if he is named -with written consent- as the child's father on the child's birth certificate.
- **c.** When an unmarried man along with the child's mother voluntarily signs a **Voluntary Acknowledgment of Paternity (VAP)**, the unmarried man will be presumed to be the father of the child.
- **d.** If the mother is married - thereby creating a second presumptive father (her husband) - the husband and wife must sign a **Voluntary Denial of Paternity**

(VDP). In addition, the biological father must also sign a VAP. Unless both the VAP and the VDP are signed, the husband will still be presumed the father.

II. ESTABLISHING PARENTAGE BY CONSENT:

a. The Voluntary Acknowledgment of Paternity (VAP) - These forms are presented to allow couples to establish paternity and provide several warnings to would be fathers. The warning is as follows:

NOTICE OF RIGHTS AND RESPONSIBILITIES

When the mother and alleged biological father properly sign the Voluntary Acknowledgment of Paternity form and, if required, the husband / ex-husband and mother sign the Voluntary Denial of Paternity form, the alleged biological father becomes the legal father of the child for all purposes. The biological father and / or mother may be ordered to pay **child support** until the child is at least 18 years old, including retro-active child support from the date of the child's birth, reimbursement of public assistance paid to the custodial parent for the child, medical costs and medical insurance for the child until the child is at least 18 years old. You have the right to an attorney, a hearing and a right to have genetic testing. When the alleged biological father and the mother sign the Voluntary Acknowledgment of Paternity they are waiving those rights. Custody of the child is presumed to be with the mother. The alleged biological father may petition the courts for custody and visitation rights. You should have a genetic test if you are not sure who is the biological father of the child. If the results of the genetic testing show that the man is the biological father of the child you can sign the Voluntary Acknowledgment of Paternity form and the mother and husband / ex-husband may sign the voluntary Denial of Paternity form. If you want legal advice you should talk to an attorney. If you would like to establish paternity without going to court or need other child

support services, you may call the Illinois Department of Public Aid at 1-800-447-4278. Persons using a teletypewriter (TTY) may call 1-800-526-5812.

b. * **PLEASE NOTE** paternity IS established by these forms. SOLE CUSTODY automatically goes to the mother - Issues of joint custody, visitation, and child support are not decided by the VAP and are not typically addressed by the Illinois Department of Public Aid when they pursue child support.

c. There are only two ways to UNDO a VAP (2yrs)

i. **Recission** - 60 days after the date of acknowledgment is signed.

ii. **Challenge** - After 60 days have past, an individual may try to challenge the voluntariness of the acknowledgment if he can show that it was obtained by fraud, duress or material mistake of fact. This also must be brought within a certain time frame and under the correct legal statute.

III. COURT-ESTABLISHED PATERNITY AND PROVING PATERNITY:

a. The first issue to consider in any court action is whether the cause of action is being **brought in a timely manner**; i.e. Statute of Limitations: (2yrs)

i. An action brought by the child or on the child's behalf, by the alleged natural parent, or by the IL Dept. of Public Aid after providing financial support shall be barred if brought later than 2 years after the child reaches the age of majority.

ii. An action brought by a public agency other than

the IL Dept. of Public Aid if it is or has provided financial support to the child or is assisting with child support collection services shall be barred 2 years after the agency has ceased to provide assistance to the child.

iii. An action to declare the non-existence of the parent child relationship shall be barred if brought later than 2 years after the filing party obtains knowledge of relevant facts but shall not extend beyond the date on which the child reaches 18 years of age.

iv. An action to declare the non-existence of the parent child relationship may be brought after an adjudication of paternity based on the presumption of paternity when a DNA indicates that the party adjudicated to be the father is NOT the natural father MUST be brought within 2 years after the filing party obtains knowledge of relevant facts but shall not extend beyond the date on which the child reaches 18 years of age. The 2 year period shall not apply to periods of time where the natural mother of the child refuses to submit to DNA tests.

v. Failure to bring an action to the existence of the parent child relationship shall not bar any defense in an action that seeks to declare the non-existence of the parent child relationship. Conversely, Failure to bring an action to the non-existence of the parent child relationship shall not bar any defense in an action that seeks to declare the existence of the parent child relationship.

b. The second step is to **file the cause of action** with the

court – everything happens very much like in a divorce case. Of special importance is the notice provided to the other parties in the case. Failure to follow the detailed, technical requirements can invalidate a case.

i. The summons that is served on the defendant must contain, in addition to the other civil procedure requirements, the following: "If you do not appear as instructed in this summons, you may be required to support the child named in this petition until the child is at least 18 years old. You may also have to pay the pregnancy and delivery costs of the mother."

ii. Paternity can be established by default when an alleged father fails to attend a scheduled interview or to go for a scheduled genetic test and has been properly served with a notice to appear.

iii. Paternity can be established by publication of the alleged father's name in the newspaper.

iv. An additional notice is required when seeking to establish the parent child relationship by consent or when the alleged father is different from the man presumed to be the father which should be served in the same manner as the summons.

NOTICE TO PRESUMED FATHER (STATUTE)

IN THE MATTER OF NOTICE TO _____ PRESUMED FATHER. You have been identified as the presumed father of _____ born on _____.

The mother of the child is _____.

An action is being brought to establish the parent and child relationship between the names child and a man named by the mother, _____.

Under the law, you are presumed to be the father if (1) you and the child's mother are or have been married to each other, and the child was born or conceived during the marriage; or if (2) upon the child's birth, you and the child's mother married each other and you were named, with your consent, as the child's father on the child's birth certificate.

As the presumed father, you have certain legal rights with respect to the named child, including the right to notice of the filing of the proceedings instituted for the establishment of parentage, the right to submit, along with the mother and child, to deoxyribonucleic acid (DNA) tests to determine inherited characteristics. If you wish to retain your rights with respect to said child, you must file with the Clerk of this Circuit Court of _____County, Illinois whose address is _____, Illinois, within 30 days after the date of receipt of this notice, a declaration of parentage stating that you are, in fact, the father of said child and that you intend to retain your legal rights with respect to said child, or request to be notified of any further proceedings with respect to the parentage of said child.

If you do not file such declaration of parentage, or request for notice, then whatever legal rights you have with respect to the named child, including the right to notice of any future proceedings for the establishment of parentage of the child, may be terminated without any further notice to you. When your legal rights with respect to the named child are so terminated, you will not be entitled to notice of any future proceedings.

c. The third step is to **have the parties participate in a DNA** test to establish by expert evidence that the parent child relationship does or does not exist.

i. The court, upon request of a party shall order or direct the mother, child, and alleged father to submit to DNA test as soon as practicable. However, the party demanding the DNA test

is required to pay for the testing or the parties may even have to share the cost of the testing. In some cases where the party requesting the DNA test is deemed to be an indigent by the court, the expense shall be paid by the public agency representing the indigent or by the county itself.

ii. If a party refuses to submit to the test then the court may resolve the question of paternity against that party or seek to enforce its order if necessary to protect the rights of others.

iii. The test must be conducted by an expert qualified as an examiner of blood or tissue types and appointed by the court. A hearing can be requested to object to the qualifications of the expert or the test procedures. An independent examiner may also be used to present expert testimony.

iv. The expert shall prepare a written report of the test results. If the father is not excluded then a report must contain a paternity index as to the probability of paternity.

v. These genetic test results are often conclusive, although courts often allow contradicting evidence, such as proof that the alleged father had no physical access to the mother at the time of conception.

d. The fourth step is to **establish child support**. A temporary order for support can be granted during the pending judicial determination of parentage by showing clear and convincing evidence of paternity. The same guidelines used in the Illinois Marriage and Dissolution of Marriage Act are used in setting this amount.

i. If an action is brought within two years of the child's birth, the judgment may require either parent to pay the reasonable expenses incurred during the mother's pregnancy and the delivery of the child, but not lost wages.

ii. The court may award back support. The question of whether and to what extent back support will be payable is determined on a case by case basis. There are several relevant factors in making this determination. The court will consider the factors as outlined in the IMDMA and the following:

1) the father's prior knowledge of the facts and circumstances of the child's birth;
2) the father's prior willingness or refusal to help raise or support the child;
3) the extent to which the mother or the public agency bringing the action previously informed the father of the child's needs or attempted to seek or require his help in raising or supporting the child;
4) the reasons the mother or public agency did not file the action earlier; and
5) the extent to which the father would be prejudiced by the delay in bringing the action.

iii. It is generally presumed that the father's current net income is the same as the father's net income from the date of the child's birth. Accordingly, the mother generally does not have to prove the amount of the father's previous net income in order to obtain an award of back child support.

e. The fifth step is to have a **judgment of parentage entered**

i. The judgment shall contain or explicitly reserve provisions concerning any duty and amount of child support.
ii. The judgment may contain provisions concerning the custody and guardianship of the child, visitation privileges with the child, or any other relevant issue concerning the best interests of the child.
iii. The court shall use the standards outlined in the IMDMA when rendering these decisions.

f. After obtaining a judgment, you may need to use certain procedures to **enforce that judgment** or have the judgment modified.

i. Any party, person or agency that has provided or may provided financial assistance to the child may seek to enforce the paternity judgment.
ii. Failure to obey the judgment can result in contempt of court.
iii. The court may choose to pierce the veil of ownership in order to attach to other assets in order to satisfy the judgment.
iv. The court may also suspend driving privileges when the obligor is delinquent for more than 90 days.

g. Any establishment of paternity made under the laws of another state shall be given full faith and credit in

this State regardless of the means used to establish the paternity.

4. **What if the mother wants to terminate the father's relationship with the child?**
   The courts do not want that to happen unless and until another adult is ready, willing, and able to provide the love and support the child is entitled to receive. In some cases where both parents agree, the child's legal relationship with one or both parents is terminated to make the child legally available for adoption. Sometimes the parent-child relationship is terminated against the will of the parents. That could happen in cases of child abuse and neglect. Even if there are not any adoptive parents, the state sometimes terminates the abusive parents' rights or because they've abandoned the child.

THE "PUTATIVE FATHER REGISTRY": In the infamous "Baby Richard Case," an unwed mother lied to the father and told him that the child had died prior to birth. The father, who had been out of the country at the time, returned to America to discover that, in fact, the mother had given birth and given the child up for adoption. The father sued the adoptive parents to obtain custody of his biological son. The case played out in the media and, eventually, the child was removed from his adoptive parents – the only family he had known – and turned over to the father, a relative stranger, as the news cameras rolled. Reacting to the tragic scene, Illinois' legislature created the "Putative Father Registry." Under the law, a man who claims to be the father, and who wants to protect his rights to a child, must register with a State agency at anytime prior to the birth, or within 30 days of a child's birth (there is a way to extend the time limit). Once he's registered, a "putative father" must be given notice of any adoption and have an opportunity to be heard if he wishes to object to the proposed adoption. If, however, a father fails to properly sign up with the Putative

Father Registry, then an adoption can go forward without notifying the father.

Father's wanting to prevent an adoption - need to register with the IL Putative father Registry and then establish legal paternity proceedings within 30 days to protect his rights OTHERWISE:

His consent to an adoption will not be required.
He will not receive notice of the filing of an adoption action.
He will not receive notice of any hearing in an adoption action.
He will be deemed to have abandoned the child and his failure to register shall be prima facie evidence of sufficient ground to support termination of his parental rights.
He may be barred from declaring himself to be the father of his child in a paternity action.

Annulment

An annulment is now known as a "Declaration of Invalidity" of marriage. A court will enter a judgment declaring a marriage invalid under the following circumstances:

1. A party lacked capacity to consent to the marriage at the time the marriage was solemnized, either because of mental incapacity or infirmity or because of the influence of alcohol, drugs or other incapacitating substances, or a party was induced to enter into a marriage by force or duress or by fraud involving the essentials of marriage;
2. A party lacks the physical capacity to consummate the marriage by sexual intercourse and at the time the marriage was solemnized the other party did not know of the incapacity;
3. A party was aged 16 of 17 years and did not have the consent of his parents or guardian or judicial approval; or
4. The marriage is prohibited.

Prohibited Marriages

THE Illinois Marriage and Dissolution of Marriage Act lists the following as prohibited marriages:

(1) A marriage entered into prior to the dissolution of an earlier marriage of one of the parties;
(2) A marriage between an ancestor and a descendant or between a brother and a sister, whether the relationship is by the half or the whole blood or by adoption;
(3) A marriage between an uncle and a niece or between an aunt and a nephew, whether the relationship is by the half or the whole blood;
(4) A marriage between cousins of the first degree; however, a marriage between first cousins is not prohibited if:

    a) Both parties are 50 years of age or older; or
    b) either party, at the time of application for a marriage license, presents for filing with the county clerk of the county in which the marriage is to be solemnized, a certificate signed by a licensed physician stating that the party to the proposed marriage is permanently and irreversibly sterile;

(5) A marriage between 2 individuals of the same sex.

Some prohibited marriages, as in the case of a bigamous marriage, may become valid marriages once the previous marriage has been legally dissolved; providing the parties continue to live together as a couple.

Any children born or adopted of a prohibited marriage remain the lawful children of both parties.

Mediation

THE practitioner should always advise the client of the option of alternative dispute resolution. An agreement mediated by clients with the assistance of their attorneys is likely to be a more comprehensive document than judgment received after a trial. Therefore, mediation is a powerful mechanism for the quick and efficient resolution of a divorce case. In many jurisdictions, mediation is mandatory with respect to custody and visitation. When mediation occurs, the lawyer continues to be involved but has a different role.

In child custody and related issues, the client needs to be cautioned as to the possible consequence of mediation. Mediation is usually viewed as a privileged session. However, a client airing his or her differences may alert the spouse to weaknesses in the client's case, thereby providing the opponent an opportunity to strengthen his or her case.

The client also needs to understand the dynamics of mediation. The mediator is simply attempting to facilitate the decision-making process. Unfortunately, when one party is intractable as to his or her positions, the mediator may focus on the more flexible party to see if that party will move from his or her position. In these situations, one of the participants may sacrifice his or her positions for no apparent gain.

A client will be unable to effectively mediate financial issues if he or she is unaware of the nature and extent of the family assets, liabilities, income, and expenses. The client should be conversant with the disclosure form and be comfortable in relying on it during the mediation session. If questions concerning full disclosure, accuracy, or the like exist, mediation is premature. To the extent valuations are necessary, the practitioner should work with the client to select either a joint or independent appraiser to appraise businesses, real estate, defined contributions plans, etc. Without valuations, the client in mediation

could be taking on significant risk and the practitioner could ultimately be blamed.

Prior to mediation, the attorney should also discuss the disputed issues with the client and advise him or her as to how the law would be applied if the case were to be litigated. The mediator should not be expected to give the client legal advice as to, for example, the appropriateness of business deductions in child support calculations or the burden of proof in a removal case.

Lastly, the practitioner should continue to counsel the client throughout the mediation process. It is a good idea to request copies of draft agreements during the process in order to point out errors and omissions to be brought back to the mediator. Failure to do so may result in an incomplete or unsatisfactory agreement.

Parental Alienation

PARENTAL Alienation is an effort by one parent to cause a child to fear or dislike the other parent. Parental alienation occurs in varying degrees of intensity. Some occasional disparagement of the other parent in the presence of children probably occurs in the vast majority of divorce cases. On the other extreme, judges see parents who attempt to fill a child's head with hatred for the other parent on a daily basis. This may occur during custody litigation as an effort to obtain a primary custody award or an ally in the litigation. It may occur shortly after a permanent custody award in an effort to change the prior custody award.

Sample Joint Parenting Agreement

WHAT follows below is just an example. Each particular case is different and the document will be prepared by the law firm to reflect the particulars of the case. This document is made a part of the Judgment For Dissolution and is presented before the presiding Judge for approval and entry. If not done to the satisfaction of the Judge, the Joint Parenting Agreement will not be approved.

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS COUNTY DEPARTMENT - DOMESTIC RELATIONS DIVISION

IN RE THE MARRIAGE OF:

JOE JONES Petitioner,

No.

and

JONI JONES Respondent.

JOINT PARENTING ORDER AND AGREEMENT

This cause coming before the Court on the parties' stipulation to have this matter heard as an uncontested cause, the Court having jurisdiction of this cause and of the parties and the Court being fully advised that the following is submitted to the Court by agreement of the parties as a proposed plan for the sharing of custodial and child care responsibilities pursuant to the purposes of the Illinois Marriage and

Dissolution of Marriage Ace (herein the "Act") as set forth in Sections 102 and 602 thereof and in accordance with the procedures set forth in Section 602.1 of the Act.

IT IS HEREBY ORDERED:

ARTICLE I - CUSTODY

1.1 The parties believe and agree that it is presently in the best interests of the minor child that they share joint custody of the minor child pursuant to the provisions contained in this Agreement. The parties further agree that JONI JONES (herein referred to as "Mother") is designated as the primary residential parent subject to JOE JONES' (herein referred to as "Father") visitation as set forth herein.

1.2 That this Order shall be effective upon entry of same and that no motion to modify custody shall be made earlier than two (2) years after its date, unless the court permits it to be made on the basis of Affidavits that there is reason to believe the child's present environment may endanger seriously the child's physical, mental, moral or emotional health, pursuant to 750 ILCS 5/610.

1.3 For purposes of this Joint Parenting Agreement, the term "Joint Custody" or "Joint Parenting" shall mean each party shall confer with each other and consider the other's opinion on all important matters pertaining to the minor child's health, welfare, education, religious training, extracurricular activities and upbringing, including but not limited to choice of day care providers, pre-schools, public, private or religious schools, course curriculum, tutoring, lessons, athletics, choice of camps, travel away from home, full or part-time employment, purchase or operation of a motor vehicle, and the like, with the view to arriving at a harmonious policy to promote the minor child's best interests. Each party shall have authority to inspect

the child's school, financial, legal and medical records and to confer with physicians, teachers, school personnel, counselors and psychologists regarding the minor child. Additionally, each party shall provide to the other ample prior notice of all conferences with the child's teachers, school personnel, counselors, psychologists and physicians regarding the minor child. Each party shall have the right to participate in all school and extracurricular events and activities of the minor child which are open to parents, including, but not limited to, sports, scouts, camp, music and arts, and the like, and each party shall provide the other reasonable notice of same. The parties shall cooperated with each other in notifying the school authorities in which the minor child is enrolled, to list both parties as the father and mother of the minor child and further authorizing them to release any and all information, documents, records, reports, grades, evaluations and bulletins to both parties regarding the minor child.

1.4 Both parties will use their best efforts to foster the respect, love and affection of the minor child towards each parent and shall cooperate fully in implementing a relationship with the minor child that will give them the maximum feeling of security that may be possible. It is agreed by and between the parties that they will always conduct themselves in such a manner as to be conducive to the welfare and best interests of the minor child.

1.5 Neither party shall make derogatory statements, ridicule, defame, belittle the other, or other's family and friends in the presence of the minor child or in any other way seek to undermine the minor child's love and respect for the other parent. The parties shall also advise their respective family members to refrain from making any similar remarks intended to embarrass the child, other parent or other parent's family and friends.

1.6 Each party shall keep the other informed as to the exact place where each of them resides, the telephone numbers of said

residence, his or her mobile phone or pager numbers, his or her place of employment, the telephone numbers of same and any other information with respect to such party's residence or whereabouts (including vacation). Neither party shall utilize the telephone or pager numbers of the other for any purpose unrelated to the minor child.

1.7 The parties shall be allowed to telephone the minor child and the minor child shall be encouraged to telephone the parties at all reasonable times, on a daily basis. Neither parent shall use a telephone answering machine or similar device to screen a parent's call to the minor child unless the minor child is not physically present.

1.8 The minor child's surname is that of the Father. That no other surname or hyphenated name shall be used either formally or informally in private, public, school or any other records, appointments or reservations unless otherwise agreed by the parties in writing.

ARTICLE II - JOINT PARENTING TIME

2.1 The parties agree that Father shall have parenting time with the minor child as set forth below:

A. WEEKLY PARENTING TIME

Reserved.

B. WEEKEND PARENTING TIME

Father shall have weekend parenting time every weekend from Friday evening through Sunday evening.

C. HOLIDAYS	**Even Years**	**Odd Years**
Easter Day	**Father**	**Mother**
Memorial Day	**Mother**	**Father**
Fourth of July	**Father**	**Mother**
Labor Day	**Mother**	**Father**
Thanksgiving Day	**Mother**	**Father**

Christmas Eve	**Father**	**Mother**
Christmas Day	**Mother**	**Father**
New Year's Eve	**Father**	**Mother**
New Year's Day	**Mother**	**Father**

D. VACATION PARENTING TIME

1. SPRING VACATION: Reserved
2. CHRISTMAS VACATION: Father shall have one week of parenting time with the minor child.
3. SUMMER VACATION: Father shall have eight weeks of parenting time with the minor child.

E. MISCELLANEOUS

Father shall have parenting time with the minor child on Father's Day and Father's birthday every year.
Mother shall have parenting time with the minor child on Mother's Day and Mother's birthday every year.
Father and Mother shall have reasonable parenting time with the minor child on the children's birthdays.
The aforementioned holiday schedule shall take precedence over the parties' weekend and weekly parenting time with the minor child.
Each party has the right of first refusal to care for the minor child when the other is unavailable resulting from employment, personal, social and travel commitments.

2.2 The minor child shall be properly dressed during the exchange of parenting time between the parties and for special occasions. Each parent shall be provided with the appropriate clothing and other necessities specifically including, but not limited to, toiletries, medication, sporting goods, toys, schoolwork and the like, which shall be returned with the child upon conclu-

sion. Both parties will provided the child with clean clothes at the exchange of parenting time between the parties.

2.3 Each party shall advise the other of any serious illness or injury or emotional trauma suffered by the child as soon as possible, after hearing of same. In the event that one parent is precluded from parenting time by virtue of illness or injury to the minor child, the parties shall cooperate to implement a reasonable alternate or substitute opportunity for that parent to have parenting time.

2.4 The parties shall always use their best efforts to resolve any scheduling conflicts that may arise as to avoid any inconvenience or interference to the other party. Each party shall exercise common courtesy and consideration in promptly advising the other party when said party is unable to provide care to the minor child or will be unavoidably detained or delayed in picking up or returning the minor child at the scheduled time. Each party shall provide the other the specific pick up and return times as close as can be approximated and shall make every effort to adhere to said specific times. However, for the convenience of the parties and the minor child, the parties shall remain flexible concerning these specific times.

2.5 If either party desires to travel with the minor child outside the jurisdiction of this Court, the traveling party shall provided the other party an itinerary which includes the destinations, mode or transportation, dates of travel, and telephone numbers where they can be reached, and related information, at least (14) fourteen days in advance of the scheduled departure date for trips of less than four (4) days' duration (e.g. weekend trips) and at least thirty (30) days in advance of the scheduled departure date for trips of four (4) days or more. The traveling party shall arrange reasonable telephonic communication with the minor child when traveling with the minor child and the other parent during such periods. Neither party shall place

unreasonable restraints on either parties' desire to travel with the minor child outside the jurisdiction.

ARTICLE III - REVIEW

3.1 The parties agree to review the terms of this Joint Parenting Order and Agreement annually beginning December of this year. However, said review shall not preclude a party from modifying the visitation provisions of this Order/Agreement upon proper petition and notice.

ARTICLE IV - DISPUTE RESOLUTION

4.1 In order to avoid the escalation of dispute into formal litigation, the parties agree to first discuss any disputes relating to the terms contained in this Joint Parenting Agreement as follows:

4.2 If any disputes arise between the parents as to any of the provisions of this Order, other than modification of visitation or implementation thereof, or any other issue relating to the general subject matter of this Order or to the child's welfare and best interests, the complaining party shall first notify the other party of the nature of the complaint and both parties shall make reasonable attempts to negotiate a settlement of the dispute. When practicable under the circumstances, the complaints shall be made in written form and given to the other party. The party receiving said complaints shall, when practicable, reply to the complaint in a similar manner in written form.

4.3 In the event that the parties cannot resolve any such disputes between themselves within seven (7) days, the parties agree that they shall enter mediation with the American Arbitration Association in an attempt to resolve their differences. The parties shall each pay one-half (1/2) of all costs of mediation.

4.4 While the parties acknowledge and understand their rights to

submit any such disputes to a court of competent jurisdiction, the parties understand that such litigation is frequently not in the best interests of the minor child, and agree to seek judicial intervention only as an avenue of last resort.

ARTICLE V - REMOVAL

5.1 Neither party shall have the unrestricted right to remove the minor child to another jurisdiction to reside therein on a permanent basis, without first obtaining the informed written consent of the other party or the approval of a Court of competent jurisdiction. Further, neither party shall be permitted to remove the minor child from this jurisdiction on a temporary basis and retain said minor child outside this jurisdiction where the purpose, intent or result thereof, will be to deprive the other party of that party's parental and custodial rights, care-giving and contact events, oral and written communications with the minor child, or would otherwise interfere with, impede, or undermine the purposes and intents of this Agreement.

5.2 Leave to remove the minor child from this jurisdiction on a permanent basis shall be subject to and governed by Section 609 and Section 610 of the Illinois Marriage and Dissolution of Marriage Act and the provisions of Sections 602 and 602.1 of said Act, or any successive provisions of said Act.

APPROVED: ENTER:

_____

_____

JOE JONES

_____

JONI JONES

JOE ATTORNEY
Attorney For Petitioner
123 ELM ST.
CHICAGO, IL

ILLINOIS DIVORCE AND CHILD CUSTODY LAW

ILLINOIS divorce cases are governed under the Illinois Marriage and Dissolution of Marriage Act, (IMDMA). The Act is found at Chapter 750, Act 5.

Part VI, Custody, is found generally beginning with Section 601. The topics covered include jurisdiction, best interest of the child, parental powers-joint custody-criteria, temporary orders, interviews, investigations and reports, hearings, visitation, enforcement of visitation orders, visitation abuse, judicial supervision, leave to remove children, modification and enforcement of a custody order or order prohibiting removal of child from the jurisdiction of the court.

Jurisdiction

Depicts who is capable of bringing a custody petition and who is capable of making a finding with regard to the custody petition.

Best Interest of Child

Sets the standard for how custody determinations are awarded. It itemizes the factors that the court will consider.

Parental Powers-Joint Custody-Criteria

What joint custody means from a legal standpoint. What the rights are of the parents or custodians. What factors the court will consider in accepting or ordering joint custody.

Temporary Orders

The proper method for obtaining temporary custody orders. The

court may award temporary custody under the standards of Section 602.

Interviews

The court may interview the child in chambers to ascertain the child's wishes as to his custodian.

Investigations

The court may order an investigation and report concerning the custodial arrangements for the child.

Hearings

Custody hearings receive priority in being set for hearing. The public may be excluded and the record may be sealed if the court feels it is in the best interest of the child.

Modification

Petitions to modify a prior custody order within two years of its entry must be made on the basis of affidavits alleging that the child's current environment may seriously endanger the child's physical, mental, moral or emotional health.

Jurisdiction to Decide Child Custody Matters

Commencement of the Proceeding

750 ILCS 5/601

Under Section 4 of the Uniform Child Custody Jurisdiction Act, a court of the State of Illinois, competent to decide child custody matters, has jurisdiction to make a child custody determination in original or modification proceedings.

A child custody proceeding can be commenced in the court by a parent in connection with the filing of a petition for dissolution of marriage or legal separation or declaration of invalidity of marriage. It can be commenced by the filing of a petition for custody in the county in which the child permanently resides or is found. It can be commenced by a person other than the parent, but only if the child is not in the physical custody of one of his parents. It can also be filed by a stepparent under certain circumstances.

Notice of a child custody proceeding shall be given to the child's parents, guardian and custodian. Each of those persons may appear, be heard, and file a responsive pleading. The court may also permit intervention of other interested parties upon a showing of good cause.

Proceeding to modify a previous custody order, which began more that 30 days after entry of the prior order, must be initiated by serving a written notice and a copy of the petition for modification upon the child's parent, guardian and custodian at least 30 days prior to a hearing on the petition.

In a custody proceeding involving an out-of-state party, the court, prior to granting or modifying a custody judgment, shall consult the registry of out-of-state judgments to determine whether there exists any documents suggesting that the child had been removed from the

physical custody of the person entitled to custody. If so, the court shall notify the person or agency who submitted the communications as to the location of the child.

CRITERIA CONSIDERED IN CUSTODY EVALUATIONS

THE evaluation is designed to provide the court with information it needs to determine the child's best interest when the parties cannot agree on custody themselves. The court will consider several of these factors:

- The quality and emotional ties between the parents and child;
- The capacity of each parent to educate, raise, guide and love the child;
- The ability of each parent to provide food, clothing and medical care;
- Each parent's abilities and possible disabilities;
- The psychological functioning and developmental needs of the child;
- The child's need for stability with regard to the living arrangements;
- The parties' value structure regarding parenting;
- The potential for improper conduct on the part of the parents;
- A parent's capacity to encourage the other parent's relationship with the child;
- The wishes of the child if the child has reached an age where his wishes can be articulated to the court with understanding and maturity.

One of the most important factors that the court will consider is the relationship between each parent and the child. The court will want to know how bonded the child is to each parent. All children need at least one primary person, although, they can be easily attached

to two or more people. The primary person is typically the one who has spent more time with the child, but this is not always the case. It is often the person to whom the child turns when he is ill or tired.

The courts often have a difficult time making decisions as to custody. That is why it is very important that the evaluator does a thorough and detailed job.

Best Interest of the Child Standard

750 ILCS 5/602

Section 602 depicts the present day policy that custody be awarded in accordance with the best interests of the child. This is a much different policy then the needs or interests of a parent. The primary focus is that of the child, not that of the parent.

Section 602(a) sets forth the important, but not exhaustive, factors comprising the best interests of a child. The court will consider relevant factors which include:

- The wishes of the child's parent or parents as to his custody;
- The wishes of the child as to his custodian;
- The interaction and interrelationship of the child with his parent or parents, his siblings and any other person who may significantly affect the child's best interest;
- The child's adjustment to his home, school and community;
- The mental and physical health of all individuals involved;
- The physical violence or threat thereof by the child's potential custodian, whether directed against the child or a third party;
- The occurrence of ongoing abuse, whether directed against the child or a third party;
- The willingness and ability of each parent to facilitate and encourage a close and continuing relationship between the other parent and the child.

Other factors which are not part of Section 602, but may be considered include:

- The sufficiency and stability of the parties' homes and surroundings;

- The interaction and relationship of the child to his parent and the child's adjustment to his home;
- The relative economic positions of the parties;
- Whether a party is current with child support obligations.

Evaluation of Child's Best Interest

750 ILCS 5/604.5

In a custody, visitation or removal proceeding, the court may order an evaluation concerning the best interest of the child as it relates to those issues. The motion may be made by a party, parent, child's custodian, attorney for the child, guardian ad litem or child's representative. The evaluation may be in place of or in addition to an evaluation conducted under subsection (b) of Section 604.

The motion shall state the identity of the proposed evaluator and set forth that person's specialty or discipline.

An order for an evaluation shall set out the time, place, conditions and scope of the evaluation and shall designate the evaluator. A party shall not be forced to travel an unreasonable distance for the evaluation.

The person requesting the evaluator shall bear the costs unless otherwise ordered by the court.

Within 21 days of completing the evaluation, if the moving party intends to call the evaluator as a witness, the evaluator must prepare and mail the written evaluation to the attorneys of record. The evaluation shall set forth the findings, test results, conclusions and recommendations. If the evaluation is not timely provided, it may not be received into evidence.

The party calling an evaluator to testify at trial shall disclose the evaluator as an opinion witness in accordance with Supreme Court Rules.

CUSTODY FACTORS INCLUDE THE MENTAL HEALTH OF THE PARTIES

THE fact that your spouse has some mental health problems doesn't automatically prove that the person is unable to be a competent and capable custodian for the children. However, when a person's psychological health disturbances interfere with the individual's ability to be a consistent parent or to use good judgment, that will be a factor in a custody case.

Examples of mental health issues having an effect would be a person's inability to get out of bed in the morning due to depression or being on medication that makes proper decision making impossible. Be sure to bring these facts to the attention of your attorney and evaluator if they affect the person's ability to parent effectively.

Mediating A Custody Dispute

WHEN there is a divorce case filed, there is an automatic status date which is set by the clerk of court. The attorneys of record will appear on that status date and advise the court of the status of the case. This status date is set before the court approximately 120 days after the case is filed. Often times, the parties will have filed preliminary motions such as temporary custody, temporary child support and temporary maintenance among others. Once the court becomes aware that custody is in issue, it will order the parties to undergo mediation.

In Chicago, Cook County, Illinois, the initial mediation is provided for free. The mediation involves having the parties sit down with a court ordered mediator to discuss what concerns the parties have with the other's ability to care for and control the children. If the parties are reasonable, the mediator can often make suggestions which will effectively, end the dispute. For example, if the mother is not unfit and the father will agree that she is a good mother, then the mediator can turn the father's attention to the best interest of the child. Although this sounds simple, the problem lies in the fact that most parties do not realize what the custody terms really mean. It is not until the mediator sheds some light on the subject that the battle calms down. For example, if a father is fighting to have a say in the health, education and religious training of his child, he may learn for the first time that he can have joint custody for decision making. He may be agreeable to having the child live with his mother. He only wanted to protect his right to have a say in the child's life, effectively, co-parent.

After the mediation session, if successful, the parties will present to the court the results. The results can then be made a part of a court order which resolves the issues of temporary custody and child visitation. Once those items are resolved, the parties are well on their way to resolving their case.

Custody Hearings

750 ILCS 5/606

Custody proceedings shall receive priority in being set for hearing. The court may tax as costs the payment of necessary travel and other expenses incurred by any person whose presence at the hearing the court deems necessary to determine the best interest of the child. The court, without a jury, shall determine questions of law and fact. If a public hearing would be detrimental to the child's best interest, the court may exclude the public from a custody hearing. The court may seal the record of any interview, report, investigation or testimony if it feels that the child's welfare needs protection.

Previous statements of a child relating to allegations of abuse or neglect within the meaning of the Abused and Neglected Child Reporting Act or within the meaning of the Juvenile Court Act of 1987, shall be admissible in evidence in a hearing concerning custody. No such statement, if uncorroborated and not subject to cross examination shall be sufficient in itself to support a finding of abuse or neglect.

Custody Investigations And Reports

750 ILCS 5/605

In contested custody proceeding, a parent or the child's custodian can request and the court can order an investigation and report concerning custodial arrangements for the child.

In preparing the report, the investigator may consult any person who may have information about the child and his potential custody arrangements. Under order of court, the investigator may refer the child to professional personnel for diagnosis. The investigator may consult with and obtain information from medical, psychiatric or other expert persons who have served the child in the past, without obtaining consent of the parent or the child's custodian. The child must consent if he has reached the age of 16, unless the court finds that he lacks the mental capacity to consent.

The court may examine and consider the investigator's report in determining custody. The investigator must provide the data, reports, and test results in addition to providing the name and address of each person who he consulted. Any party to the proceeding may call the investigator or any person whom he consulted as a court's witness for cross-examination.

Preference of the Child in Awarding Custody

THE court must consider the preferences of a child in awarding custody. However, the court is not bound by that preference. The weight given to the child's preference will be affected by the child's age, reasoning and maturity. The court can hear the preference of a child of any age. The age of 14 is sometimes given as a time when a child can make an intelligent preference. Some courts have considered the preferences of children considerably younger than 14.

Several cases that dealt with a child's preference include:

In re Marriage of Kush, 106 Ill.App.3d 233, 435 N.E.2n 921, 923, 62 Ill.Dec.123 (3d Dist. 1982), stated that "preferences of young children, though entitled to consideration, are not binding upon the court."

In re Marriage of Zucco, 150 Ill.App.3d 146, 501 N.E.2d 875, 103 Ill.Dec. 558 (5th Dist. 1986), appellate court reviewed the records and found that the six year old had not truly expressed a preference for either parent. The appellate court reversed the trial court for relying on the child's alleged preference.

In re Marriage of Lovejoy, 84 Ill.App.3d 53, 404 N.E.2d 1092, 1094, 39 Ill.Dec.501 (3d Dist. 1980), the court heard differing desires of the children, ages 11 and 14. The act required the court to consider the children's wishes. When they conflicted, the court did not abuse its discretion in giving greater weight to the desire's of the older and more mature child.

Some children, particularly teenagers, may manipulate their parents by preferring the one who is less of a disciplinarian. In re Marriage of Allen, 81 Ill.App.3d 517, 520, 401 N.E.2d 608, 611, 36 Ill.Dec. 767, 770 (3d Dist. 1980), a child's stated preference "may not

always accord with the child's best interest. Frequently, a child will favor a non-custodial parent, whom he sees only on weekends, to his custodial parent, who is responsible for his day-to-day schooling and discipline, irrespective of the quality of care he receives at home."

SEPARATION OF SIBLINGS

A court will generally prefer to keep siblings together in one household as opposed to splitting custody of children between parties.

In re Marriage of Ford, 91 Ill.App.3d 1066, 415 N.E.2d 546, 551, 47 Ill.Dec. 541 (1st Dist. 1980), "there is much to commend the keeping together of the siblings of a family in order to preserve what remains of the family."

Separation of the children may occasionally be in the children's best interest. In re Marriage of Slavenas, 139 Ill.App.3d 581, 487 N.E.2d 739, 93 Ill.Dec. 914 (2nd Dist. 1985), the court awarded the 14 year old boy to the father and the 11 year old boy to the mother. The Slavenas' children failed to get along and the older boy had a strong preference for living with his father.

In appropriate circumstances, the courts may order divided custody, giving one parent custody of one or more of the children and the other parent custody of one or more of the children. In re Marriage of Werner, 14 Ill.App.3d 263, 493 N.E.2d 1199, 98 Ill.Dec. 178 (5th Dist. 1986), split custody was allowed. The court considered the mother's allowing the children to wear dirty clothes, emotional abuse of one daughter, and bizarre behavior, including sifting through garbage before allowing its disposal, locking food in the freezer, and locking clean clothes in the basement, as well as other factors as relevant to her poor relationship with most of the children and their poor relationship with her. The court awarded five of the six minor children to the father and one minor child to the mother.

In Brandt v. Brandt, 99 Ill.App.3d 1089, 425 N.E.2d 1251, 55 Ill. Dec. 78 (1 Dist. 1981), custody was split between the parents. The 16 year old was awarded to the mother while the 14 year old was awarded to the father. The fact that the mother cohabitated with a married man affected the preference of the 14 year old.

Tender Years Doctrine

In custody litigation, mothers and fathers have an equal opportunity to obtain the custody of their children. The tender years doctrine, whereby mothers were the preferred custodians of very young children, no longer exists. In re Marriage of Kennedy, 94 Ill.App.3d 537, 545, 418 N.E.2d 947, 953, 49 Ill.Dec. 927, 933 (1st Dist. 1981), it was stated:

Changing social and legal trends have cast the tender years doctrine aside. The doctrine rested on a sociological presumption that maternal affection is more active and better adapted to the care of the child than that of the father. With the advent of new lifestyles for both men and women, however, the factual basis for the doctrine, if there ever was one, has vanished. The sex of the candidate for custody is but one of the many factors that may be considered in determining which parent receives the child.

Although mothers are no longer favored under the tender years presumption, courts may give added weight to the parent who served as the child's primary caregiver. In practice, this often means a slight preference toward the mother. In re Marriage of Dall, 191 Ill.App.3d 652, 548 N.E.2d 109, 138 Ill.Dec. 879 (5th Dist. 1989).

Other cases of interest include:

Jines v. Jines, 63 Ill.App.3d 564, 380 N.E.2d 440, 443, 20 Ill.Dec. 462 (5th Dist. 1978).

There is no rule or presumption in contested child custody cases favoring the mother over the father; rather, the increased recognition of the equality of the sexes has resulted in placing the parents on equal footing insofar as their rights to custody of a minor child are concerned.

In re Marriage of Ramer, 84 Ill.App.3d 213, 405 N.E.2d 401, 404, 39 Ill.Dec. 648 (5th Dist. 1980).

The presumption is no longer valid as a result of ongoing social and legal trends.

Marcus v. Marcus, 24 Ill.App.3d 401, 320 N.E.2d 581 (1974). The fact that a mother is fit is only one facet of the situation, and standing by itself, does not authorize a denial of custody to the father when it appears necessary because of other considerations.

What Happens In a Custody Evaluation?

ATTEMPT to speak with the evaluator in advance to ascertain what type of information he or she will be looking for and about how the procedure works. In general, evaluations will consist of the following:

Meeting with the parents and children alone several times to learn about all of the parties and to learn their reactions to the current situation.

- Analyzing the relationship between the parents and children.
- Observing the home to see that the children are comfortable.
- Speaking with others who know the parties and the children.
- Psychological assessment using standardized and open-ended questions that cause one to expound on the topic.
- Speaking with extended family members and community sources.

Importantly, deal with the evaluator in the most truthful way as possible. The evaluator will be able to sense if one of the parties or one of the children is not being truthful. Help the evaluator to make an accurate assessment. It is ultimately in the best interest of the family that the evaluation is done accurately.

Joint Custody – Parental Powers

750 ILCS 5/602.1

The dissolution of marriage, declaration of invalidity of marriage, legal separation of the parents or parents living separate and apart shall not diminish parental powers, rights, and responsibilities except if the court determines that there is good cause to do so.

The parties can apply to the court for an award of joint custody or the court can consider awarding joint custody on its own motion. Joint custody means custody determined pursuant to a Joint Parenting Agreement or Joint Parenting Order. The agreement shall specify each parent's powers, rights, and responsibilities for the personal care of the child and for major decisions such as education, health care and religious training. The agreement shall specify a procedure by which proposed changes, disputed and alleged breaches may be mediated or otherwise resolved. The agreement shall provide for a periodic review of the terms by the parents.

To assist the court in determining whether an award of joint custody is appropriate, the court may order mediation and may direct that an investigation be conducted pursuant to the provisions of Section 605.

In the event that the parents fail to produce a Joint Parenting Agreement, the court may enter an appropriate Joint Parenting Order under the standards of Section 602 or it may award sole custody under the standards of Sections 602, 607 and 608.

The court may enter an order of joint custody if it determines that joint custody would be in the best interests of the child, taking into account the following:

The ability of the parents to cooperate effectively and consistently in matters that directly affect the joint parenting of the child;

- The residential circumstances of each parent; and

- All other factors that are relevant concerning the best interests of the child.

Joint custody is not presumed to mean equal parenting time. The physical residence of the child in joint custodial situations shall be determined by express agreement of the parties or by order of the court.

Access to records and information pertaining to a child, including but not limited to medical, dental, child care and school records, shall not be denied to a parent for the reason that such parent is not the child's custodial parent. However, no parent shall have access if that parent is prohibited by an order of protection from inspecting or obtaining such records pursuant to the Illinois Domestic Violence Act of 1986, as now or as amended.

Affairs And Custody

In most courts, the fact that one spouse is having or has had an affair will not be a major factor in determining custody. If the parent's sexual activity affects the child however, it will be a major consideration. For example, if the parent is leaving the child unattended while he or she is partaking in a romantic adventure with a new partner, this will affect the case. Further, is the sexual activity being done in the presence of the child? This would certainly not be in the best interest of the child. It is always best to keep any relationship out of the presence of the child until after the divorce. The child has enough emotional tension just knowing that his parent's life together is ending. He really doesn't need the additional stress of a third party standing in the place of his mother or father.

If an affair is ongoing during the divorce and the new party is spending considerable time, possibly overnights, at the child's home, one can petition the court to prohibit such conduct. That third party may be restricted to no overnights or even no interaction with the child in extreme circumstances. For example, the third party may be engaging in illegal activities such as drug use. This fact can be harmful to the child and to the parent allowing this conduct in the presence of the child.

Impact of Parental Conduct And Misconduct

SECTION 602(b) states that "The court shall not consider the conduct of a present or proposed custodian that does not affect his relationship to the child." For example, a parent who has a sexual relationship with another person is not necessarily disqualified as a custodian, so long as the conduct does not take place in the presence of the children and does not otherwise affect the parent's ability to be an appropriate custodian (In re Marriage of Radae, 208 Ill.App.3d 1027, 1030, 567 N.E.2d 760, 762, 153 Ill.Dec. 802, 804 (5th Dist. 1991).

A parent's use of drugs is relevant to custody disputes only if the conduct "can be shown to affect his mental or physical health and his relationship with the child", In re Custody of Gonzalez, 204 Ill. App.3d 28, 34, 561 N.E.2d 1276 1279, 149 Ill.Dec. 580, 583 (3d Dist. 1990).

The misconduct rule was expounded in Nye v. Nye, 411 Ill. 408, 105 N.E.2d 300, 303-304 (1952):

Where the mother is able to care for her minor daughter and is not shown to lack the proper attributes of good motherhood, past misconduct, where the evidence indicated no probable future misconduct, should not be a basis for denying custody to the mother. To do so would be not only to punish the mother for her past misconduct, but, more important, would punish the child by denying her a mother's care and guidance. It is not the purpose of this court, nor of any court, to so punish an innocent child.

Thus, many types of misconduct will not by themselves prevent an award of custody.

Protecting Children in Custody Cases

ALL children are adversely affected to some extent by the separation of their parents. They will have a deep sense of loss for the parent who has departed and a strong desire to have their parents back together again. Some children blame themselves for the divorce. They may have the inability to trust and may harbor fears such as the loss of their home, friends and current way of life.

All good parents want to protect their children as much as possible from the affects of divorce. How can this fact be balanced against the desire for custody? The answer is simple. Looking out for the best interest of your child and attempting to protect your child will not hurt you in a custody case.

Let's begin by discussing what you should not do:

- Do not make disparaging remarks about the other parent in the presence of the child;
- Do not prevent the other parent from spending ample time with the child;
- Do not stifle the child from having a loving relationship with the other parent;
- Do not discuss any part of the legal proceedings with the child;
- Do not engage in any conduct which would cause the child to alienate himself from the other parent;

If you do anything that will cause harm to the child, it will likely be uncovered in an evaluation. Don't make that mistake. A child is typically aware and sensitive to disparaging comments about the other spouse. A child will be able to see through this and will likely describe the conduct during an evaluation.

Relocation of Children

THE court will frequently attempt to keep children in their homes so that they can remain in their current environment and their current schools. This can be accomplished by allowing the custodial parent to remain in the former marital home while the children are minors, or until the happening of some other event. When that event is triggered, the home can be sold with the proceeds divided in accordance with the terms of any prior Judgment of Dissolution and Marital Settlement Agreement.

Constant relocation and movement of the children can be a basis for awarding a change in custody. In re Marriage of Kartholl, 143 Ill. App.3d 228, 492 N.E.2d 1006, 97 Ill.Dec. 347 (2nd Dist. 1986), the custodial mother moved four times in four and one-half years. The father who was requesting a change of custody failed to establish how the several moves adversely affected the child's adjustment to his home, school or community.

On the other hand, in In re Custody of Russell, 80 Ill.App.3d 41, 399 N.E.2d 212, 35 Ill.Dec. 378 (5th Dist. 1979), the mother moved with the child five times in four months. Thus, instability was virtually assured.

Modification of a Custody Judgment

750 ILCS 5/610

Unless it is agreed upon by the parties, no motion to modify a custody judgment may be made within two years after its date, unless the court permits it to be made on the basis of affidavits that there is reason to believe that the child's present environment may seriously endanger his physical, mental, moral or emotional health.

The court will not modify a prior custody judgment unless it finds by clear and convincing evidence that a change has occurred in the circumstances of the child or his custodian and that the modification is necessary to serve the best interest of the child. *(Whether a change has occurred is a matter to be determined by the court, but may include such things as a relocation, re-marriage and increasing age of minor child.)*

In the case of joint custody, if the parties agree to terminate the joint custody arrangement, the court may do so as well and make any modification which is in the child's best interest. The court will state in its decision specific findings of fact in support of its modification or termination of joint custody if either parent opposes the modification or termination.

Attorney fees and costs will be assessed against a party seeking modification if the court finds that the action was vexatious and constituted harassment.

Custody Judgment Modifications Within Two Years

THERE are clear requirements for petitions for modification of custody judgments within two years of entry of the prior order. First, the petitioner must establish by affidavits filed with the court that there is reason to believe that the child is seriously endangered by the present custodial environment. Second, the court must hold an evidentiary hearing on the petition.

The court cannot modify a prior custody judgment unless the requirements for modification are established by clear and convincing evidence. The requirements for modification are:

A change has occurred in the circumstances of the child or his custodian; Modification is necessary to serve the best interests of the child.

The facts comprising the proof must have arisen since the prior judgment or were unknown at the time of the entry of the prior judgment.

Section 610[c] allows the court to assess attorney's fees against a party who has brought a modification action found to be vexatious and harassing. This fact deters harassing litigation and promotes stability for the child.

Child Support Guidelines

IMDMA §505 has set forth guidelines that have been held valid against a multi-pronged challenge. That challenge included that they violated the states constitutional requirement of separation of powers, that the state constitution prohibited special or local legislation, and the state and federal provisions requiring both substantive and procedural due process and equal protection. In re Marriage of Cook, 147 Ill.App.3d 134, 497 N.E.2d 1029, 100 IllDec. 760 (3d Dist. 1986).

According to the Parentage Act, 750 ILCS 45/14(a)(1) Specifically, in determining the amount of any child support award, the court shall use the guidelines and standards set forth in subsection (a) of section 505 and in section 505.2 of the Illinois Marriage and Dissolution of Marriage Act.

The current statutory percentages for setting "minimum" or "standard" support are set forth in IMDMA §505(a)(1)

Number of Children	Percentage of Supporting Party's Net Income
1	20%
2	28%
3	32%
4	40%
5	45%
6 or more	50%

These percentages are applied to the net income of the parent required to pay support to determine a support figure, which is then

entered into a support order. This is accompanied by a withholding notice to the supporting parent's employer for automatic wage deductions (unless other arrangements are made).

Legal Obligation To Provide Support

THE parents' legal obligation is codified in IMDMA §505, which governs the spectrum of child support, including how to get, how to set, how to change, and how to enforce child support.

Among its many provisions, IMDMA §505 details percentage guidelines used to determine the minimum amount of support that either or both parents can be ordered to pay. It also defines the relative factors that the court must consider if it, or the parties by agreement, wish to deviate from the standard guidelines.

IMDMA §505 must be used as the starting point in making a claim for or determining child support. However there are many other provisions that should be considered: IMDMA §501 (temporary relief), §502 (agreement), §503 (disposition of property), §510 (modification and termination of provisions for maintenance, support, property disposition, and educational expenses), §513 (support for non-minor children and educational expenses), and §601 (jurisdiction in child custody proceedings), as well as §14 of the Parentage Act.

What if the Guidelines for child support are not adequate or appropriate?

"**Deviation** from the guidelines"; The parameters set by the IMDMA §505(a)(1), are simply guidelines and the court must consider all relevant factors when making a determination for child support. See §505(a)(2), which includes the following:

1. The financial resources and needs of the child;
2. The financial need and resources of the custodial parent;
3. The standard of living the child would have enjoyed had the marriage not been dissolved;
4. The child's educational needs;
5. The physical and emotional condition of the child; and
6. The needs and the financial resources of the non-custodial parent.

In addition to these factors, §505(a)(2) states that the court may deviate from the guidelines when it finds that applicable guidelines would be inappropriate when taking into consideration the best interest of the child. The last paragraph of §505(a)(2) provides that when the court does deviate from the guidelines, it must indicate the specific amount that would have been ordered under the guidelines, if determinable.

There are many cases in which the custodial parent's income was much greater than that of the non-custodial parent, and consequently the support order was lower than the stated guidelines. *See Marriage of Rogliano, 198 Ill.App3d 404, 555 N.E.2d 1114, 144 Ill.Dec. 595 (5th Dist. 1990), and Marriage of DeGironemo, 206 Ill.App.3d 1019, 565 N.E.2d 189, 151 Ill.Dec. 918 (1st Dist. 1990).*

Even in cases where both parents determine a mutual support agreement that does not meet the standard guidelines, it can be necessary to show the court sufficient cause why the guidelines were not met.

Calculating "Net Income" In Relation to Child Support

THE term "net income" relative to a child support order is not always a simple calculation, especially when it involves self-employed parents, parents paid on commission or with bonuses, and other non-regular or non-reporting wage earners.

When trying to determine child support, the court begins with a basic formula outlined under IMDMA §505. Net income is the total of all income minus the statutorily defined deductions (750 ILCS 5/505(a)(3)). The concept of "net income" is intentionally broader than just wages or earnings, though for many parents there is little difference between the two. See §15 of the Income Withholding for Support Act, 750 ILCS 28/1, et seq., which defines an even broader definition of "income".

Illinois courts have held that "income" includes passive income from bonds and securities but excludes passive income that is reportable on income tax returns, but is not actually received by the party. In re Marriage of Harmon, 210 Ill.App.3d 92, 568 N.E.2d 948, 154 IllDec. 727 (2d Dist. 1991) (unearned income is included in net income, but gifts and interest payments received from investments of non-custodial mother's share of marital estate received from custodial father at time of dissolution is not); In re Marriage of Dodds, 222 ill. App.3d 99, 583 N.E.2d 608, 164 Ill.Dec. 692 (2d Dist. 1991) (net income includes workers' compensation award).

The parent responsible for paying support will have their net income determined by their latest available income tax return or other more recent and reliable data. See Marriage of Schroeder, 215 Ill. App.3d 156, 574 N.E.2d 834, 158 Ill.Dec. 721 (4th Dist. 1991). In Schroeder, 574 N.E.2d at 837, the appellate court held that the court

of record had erred in assessing the father's income by averaging his wages over the past six years to determine the amount of support and instead should have based it's support ruling on the income figures shown on the latest income tax return.

Deductions the Court Allows for the Purpose of Determining Child Support

IMDMA §505(a)(2) and §505(a)(3) contain language that allows the court to consider specific deductions when calculating child support figures. This is in an effort to keep child support fair for all parties. Below is a list of these allowable deductions.

1. Federal income tax;
2. State income tax;
3. Social Security (FICA Payments);
4. Mandatory Retirement Contributions required by law or as a condition of employment;
5 Union dues;
6. Health and hospitalization for both the individual and dependants;
7. Previously stated court ordered support; and
8. Expenditures for repayment of debts that represent reasonable and necessary expenses for production of income, medical expenditures necessary to preserve life or health, reasonable expenditures for the benefit of the child and the other parent, exclusive of gifts. 750 ILCS 5/50(a)(3)

How is Support Calculated if There Are Multiple Support Orders?

WHEN faced with multiple support orders or where support is being paid to multiple custodians, the "number of children" factor is not cumulative but separate for each family. The first order is deducted and the net income is then adjusted by that amount before the calculation is made to determine the second support figure, and so on, and so on from there. *See 750 ILCS 5/505(a)(3). See also Carnes v. Dressen 215 Ill.App.3d 166, 574 N.E.2d 845, 158 Ill.Dec. 732 (4th Dist. 1991),* in which a father of two children by different mothers, who was already paying 20 percent of his net income as child support for the first child pursuant to court order, argued in the case setting support for the second child that his total support for both children should be 25 percent (the guideline percentage for two children). By his argument he would pay the amount designated by the initial support order for the first child and only the difference (5 percent) for the second child. The court disagreed, stating that the amount to be paid for the second child was to be determined by subtracting from the father's gross pay the statutorily designated deduction plus the first support order amount, and then taking 20 percent from this net amount. *Cf. In re Marriage of Flemming, 143 Ill.App.3d 592, 493 N.E.2d 666, 97 IllDec. 859 (3rd Dist. 1986)* (Upholding order requiring father in dual custody arrangement to pay mother who had custody of other child, only 12.5 percent of his net income). *Carnes, supra, 574 N.E.2d at 848,* suggested that the statue be amended to allow the children of multiple families of a single obligor to be "pooled" for the purposes of applying the guidelines in an even-handed way for all the children.

How Does Standard of Living Influence Support?

In an effort to calculate an order for child support, the court tries to determine what the child's standard of living would have been if the parents stayed together or if the marriage had not dissolved. The term "lifestyle" is often used in place of "standard of living". This can become a complex argument for either side and the courts have seen compelling arguments for and against raising and lowering support. There are many cases to draw information from and making yourself familiar with some of their nuances may help your case.

In re Marriage of Bussey, *108 Ill.2d 286, 483 N.E.2d 1229, 91 Ill. Dec. 594 (1985)*, The Illinois Supreme Court rejected the argument that a child is entitled to receive support only for basic needs. As the court noted, to accept that argument would be to read the "standard of living the child would have enjoyed had the marriage not dissolved" out of the statute and to deny the child that benefit. As the court stated "A child is not expected to have to live at a minimum level of comfort while the non-custodial parent lives a life of luxury." 483 N.E.2d at 1234. The court found no abuse of discretion in increasing the support to $900.00 for two children based on a $14,000.00 per month income. In addition, the parent was also ordered to make direct payments for other expenses such as medical care, counseling and private schooling. This award represented approximately 6.5 percent of the non-custodial parent's income.

Defining Parent's Financial Resources & How They Factor into Support

WHEN the court becomes involved in determining a child support order, the financial resources of the custodial parent can become a key factor, especially when deviating from the preset guidelines. In re Marriage of Bush, *191 Ill.App.3d 249, 547 N.E.2d 590, 596, 138 Ill.Dec, 423 (4th Dist. 1989),* for example, a case that involved two high-income physician parents, the appellate court affirmed a six percent child support order stating:

We now hold that where the individual incomes of both parents are more than sufficient to provide the reasonable needs of the parties' children, taking into consideration the life-style the children would have absent the dissolution, the court was justified in setting the figure below the guideline amount.

Similarly, in re Marriage of Kraft, *217 Ill.App.3d 502, 577 N.E.2d 522, 160 Ill.Dec. 392 (2nd Dist. 1991),* the appellate court took into account both the custodial parent and the non-custodial parents' incomes in determining that the custodial parent could properly support the child without contribution from the other parent. Kraft, 577 N.E.2d at 524, said: Under 505(a) of the Act, the duty of support is contingent upon the earning capacity of the parties. If one parent earns significantly more than the other, it is only equitable that [that] parent pay a greater share of support… When the custodial parent has sufficient income to support the child, but the non-custodial parent is not able to contribute financially, it is not an abuse of discretion for the trial court to order that the non-custodial parent is not obligated to pay child support.

Children's Right To Be Supported

THE right to be supported and to receive support belongs to the children, and the court will protect that right even (or perhaps especially) against the erosion by parents. The law favors settlements in dissolution cases, and the court will often review agreements or request independent inquiries to ensure that child support is handled appropriately and set at a level consistent with the law. *See Cox v. Miller, 146 Ill.2d 399, 586 N.E.2d 1251, 166 Ill.Dec. 922 (1992)* (settlement agreement between mother and putative father of illegitimate child does not bar later action for child support brought on behalf of child).

Illinois courts have also shown a reluctance to allow custodial parents in a dissolution setting to waive child support, and have at times denied approval of agreements that do so without sufficient evidence showing that the agreement is in the child's best interest.

Another common exchange between parents has been either: ("If you won't insist on time with the children, I won't seek support," or "If you don't insist on support, I won't ask for time with the children.") This exchange will not be approved by the court. The Illinois Supreme Court has addressed this issue in Blisset v. Blisset, *144 ILlApp.3d 1088, 495 N.E.2d 608 99 IllDec. 161 (4th Dist. 1986)*, affirmed in part, reversed in part on other grounds, 123 Ill2d 161 (1988). The Supreme Court held that an agreement waiving child support in return for relinquishment of visitation rights is void, unenforceable, and against public policy.

Payment of Child Support

ALL child support orders and withholding notices now include the obligor's social security number. The orders also require that wages of the payor be withheld for a particular dollar amount required for current support and any arrearages. In addition, the orders often specify any fees allowed for withholding without exceeding the Federal Consumer Credit Protection Act guidelines. Illinois law requires that the withholding notice include the date that withholding for current support terminates. Withholding notices may now be served on the payor by general or certified mail.

As of July 1, 1998, parents also have an enforceable continuing duty to update employment information:

An order entered under this section shall include a provision requiring the obligor to report to the obligee and to the clerk of the court within 10 days each time the obligor obtains new employment, and each time the obligor's employment is terminated for any reason. The report shall be in writing and shall, in the case of new employment, include the name and address of the new employer. (Failure to report new employment or the termination of current employment, if coupled with nonpayment of support for a period in excess of 60 days, is direct criminal contempt).

Modifications to a Child Support Order

ANY modification to a court ordered child support agreement must be petitioned through the court, and failure to do so is a direct violation. A typical situation that occurs is when the non-custodial parent is not afforded his right for visitation and he then holds back on his payment of child support. But, as we have already seen, IMDMA §509 states that failure of one party to comply with the judgment does not suspend the obligation of the other party to make payments for child support or to permit visitation, as the case may be.

Is Child Support Tax Deductible?

UNLIKE "spousal support", which is tax deductible, child support is not; nor is the parent receiving the support required to claim child support as income. The right to claim the child/children as a dependent is often included in support orders. A common, and acceptable scenario, is when both parents contribute income toward raising the child. They take turns claiming the child on their taxes. For example, the father may claim the child on even years and the mother may claim the child on odd numbered years. In cases where one parent's contributions far outweighs the others, it is reasonable to allow that parent to claim the child/children every year. Changes made by the IRS and by some states, now require parents, who do not have full custody of the child, but are claiming them as a dependent on their taxes, be required to attach a copy of a court document which grants them permission to claim the child.

How Long is a Parent Obligated to Pay Child Support?

ACCORDING to Illinois law, a parent under a child support order, has a legal obligation to continue support payments until the child is eighteen and finished with high school or if still in high school, when the child reaches the age of nineteen, whichever comes first, unless otherwise specified under the agreement. Even in the event of the obligated parent's death, the support will not be terminated.

Below is an excerpt from the Act:

Unless otherwise provided in this Act, or as agreed in writing or expressly provided in the judgment, provisions for the support of a child are terminated by emancipation of the child, or if the child has attained the age of 18 and is still attending high school, provisions for the support of the child are terminated upon the date that the child graduates from high school or the date the child attains the age of 19, whichever is earlier, but not by death of a parent. When a parent obligated to pay support or educational expenses, or both, dies, the amount of support or educational expenses, or both, may be enforced, modified, revoked, or commuted to a lump sum payment, as equity may require, and that determination may be provided for at the time of the dissolution of the marriage or thereafter. IMDMA §510(d).

The right to petition for child support or educational expenses, or both, under section 505 and 513 is not extinguished by the death of a parent. Upon a petition filed before or after a parent's death, the court may award sums of money out of the decedent's estate for the child support or educational expenses, or both, as equity may require. The time within which a claim may be filed against the estate of a decedent under section 505 and 513 and subsection (d) and this subsection shall

be governed by the provisions of the Probate Act of 1975, as a barrable, noncontingent claim. IMDMA §510(e).

Expenses Covering Education, Physical Needs and Emotional Needs

EDUCATION and in particular private schooling has often been an issue brought before the court when making the argument for support. In an effort to surmise this frequently debated topic, it is important to understand the guideline set forth by IMDMA §505 which states that if the private schooling was something the child would have been able to enjoy had the parents stayed together, then it is something the child is entitled to and both parents should share in the expense. *See Marriage of Alexander, 231 Ill.App.3d 950, 596 N.E.2d 1335, 173 Ill.Dec. 496 (4th Dist. 1992).*

The court, when determining a child support order, will consider the child's physical and emotional needs. Physical needs can be medical conditions, health related illnesses or dental needs such as orthodontia. Emotional needs can also stem from medical conditions, but in some cases, stress from the parental separation may warrant psychological evaluations.

Medical Coverage Factored into Support

THE inclusion of medical coverage, including health, optical, psychological and dental insurance has been prevalent in child support orders for some time now. However, recently the issue of medical coverage, has received more attention from both the courts and the parents. IMDMA §505(a)(2)(a) allows for deviation from standard guidelines if special needs for a child arise. *See Marriage of Ingrassia, 140 Ill.App.3d 826, 489 N.E.2d 386, 95 Ill.Dec. 165 (2d Dist. 1986) and Spencer v. Spencer, 73 Ill.App.3d 735, 392 N.E.2d 386, 95 Ill.Dec. 845 (3d Dist. 1979).*

750 ILCS 5/505(a)(3)(f), 5/505(a)(4) allow for the payor parent to deduct health insurance premiums before arriving at "net income" from which support will be determined.

Children have a right to health and medical coverage, and this has been both stated and strengthened in an amendment to IMDMA. §505.2, effective July 1, 1997, specifies the obligation to provide health insurance for dependent children. Although all of §505.2 is relevant and should be reviewed, the most salient portion clarifies the law as follows: Whenever the court establishes, modifies or enforces an order for child support or for child support and maintenance, the court shall include in the order a provision for the health care coverage of the child which shall, upon request of the obligee or Public Office, require that any child covered by the order be named as a beneficiary of any health insurance plan that is available to the obligor through an employer, labor union or trade union. If the court finds that such a plan is not available to the obligor, or that the plan is not accessible to the obligee, the court may, upon request of the obligee or Public Office, order the obligor to name the child covered by the order as a beneficiary of any health insurance plan that is available to the obligor on a group

basis, or as a beneficiary of an independent health insurance plan to be obtained by the obligor, after considering the following factors:

1. The medical needs of the child;
2. The availability of a plan to meet those needs; and
3. The cost of such a plan to the obligor. 750 ILCS 5/505.2(b)(1).

Enforcement of Child Support

CHILD support enforcement in this country has, in the past, been a national disgrace, due to both the lack of effective enforcement programs and the failure to implement those programs by the officials charged with the enforcement. It was the legislature's province to assess this crisis and determine whether, and how, to respond. We are not persuaded that the legislature exceeded the bounds of its discretion in enacting the legislature here challenged. The Illinois Supreme Court (1997).

IMDMA §505(b) spells out the available remedies to collect child support that is owed to the custodial parent. Those remedies have been greatly expanded by P.A. 90-18, an omnibus bill that amended many statutes related to the collection of child support.

Failure to pay court ordered child support is a form of contempt, and can lead to probation, periodical imprisonment, and suspension of Illinois driving privileges.

In every proceeding to enforce an order or judgment when the court finds that the failure to comply with the order or judgment was without compelling cause or justification, the court shall order the party against whom the proceeding is brought to pay promptly, the cost and reasonable attorney's fees of the prevailing party. 750 ILCS 5/508(b)

Child Support Enforcement Agencies

THE government agency charged with assisting the collection of child support in Illinois is the Illinois Department of Public Aid ("IDPA"). There are additional agencies, both state and federal that can play a role in recovering delinquent child support, including the following:

1. Office of the Controller, which has the power to intercept tax refunds of deadbeat parents and apply them to the payment of delinquent child support.
2. Department of Employment Security, which tracks new hires in the state and provides employment information on deadbeat parents to the IDPA.
3. Secretary of State, which can help the IDPA to locate deadbeat parents and which can suspend the driver's license of those who fail to pay child support.
4. Federal Office of Child Support Enforcement, which oversees enforcement of federal laws regarding child support.
5. United States Department of Revenue, which may intercept federal income tax refunds against child support.

Another good source for information is the Illinois Department of Public Aid website, www.state.il.us/dpa.

Split Custody and its Impact on Child Support

SPLIT or "Joint" custody (when both parents share custody of the child/children equally), can make things even more complicated when trying to determine fair child support. The guidelines set forth in IMDMA §505 are not clear concerning split custody, and the court's rulings in cases that address this situation, reflect the difficulties.

There have been cases where the court has elected to reduce child support, and there have been cases where the court decided to eliminate child support, determining that since the parents both had the children 50 percent of the time, they would in fact, be splitting the expenses. *See Marriage of Keown, 225 Ill.App.3d 808, 587 N.E.2d 644, 167 Ill.Dec. 375 (4th Dist. 1992), and Marriage of Flemming, 143 Ill. App.3d 592, 493 N.E.2d 666, 97 Ill.Dec. 859 (3rd Dist. 1986).*

An added note of interest, the Appellate court in In re Marriage of Stedadman, 283 Ill.App.3d 703, 670 N.E.2d 1146, 219 Ill.Dec. 258 (3d Dist. 1996), specifically stated that when parties divide the custody of their children in a settlement agreement, there are no specific guidelines for the court to follow.

If and When does Child Support Include Post High School Education?

SOME states provide for support to continue until the child reaches the age of 21. However Illinois' age cut-off has been set at 18 or 19 depending on completion of high school. However, this is subject to the court's discretion and in some cases, the court will require the support to include a provision for the continued education of the child.

The court does not believe that every parent should be obligated to participate in the post high school educational expenses, but in cases that involve disabled children, the court tends to lean toward some, if not full participation.

Does Joint Custody or Frequent Visitation Lessen the Support Obligations of the Non-Custodial Parent?

THIS is a frequently asked question, and the answer may surprise you. The answer is "no"; and there have been numerous cases that have tried to argue this fact. See Marriage of DeMattia, 302 Ill. App.3d 390, 706 N.E. 2d 67, 235 Ill.Dec. 807 (4th Dist. 1999), the ruling found that a joint custodial father with extended visitation is not necessarily entitled to a deviation from child support guidelines. The opinion was that there should be no automatic downward deviation from the guidelines just because the non-residential parent cared for the children for 8 hours on 10 out of 14 days. Caring for one's own children is not daycare and the parent has no reason to be compensated.

See Marriage of Andersen, No. 2-99-0676, Rule 23 (2d Dist. 2000), applied the principles of DeMattia. The Petitioner argued that the non-custodial father incurred additional expenses exercising his visitation rights and wanted these expenses to be factored into his child support order. The court determined that gifts are not a substitute for the duty to provide for the child's basic needs.

The Law on Visitation

750 *ILCS 5/607*
607. Visitation

a. The parent who is not awarded custody of the child is entitled to sensible, practical, reasonable visitation, unless the court finds reasons that the child is likely to suffer physical, mental, moral or emotional effects due to this parent.
b. Under certain circumstances, a grandparent or a great-grandparent can be awarded visitation. A petition for privileges may be filed when one or more of the items listed below are met.

    1. The parents are no longer living together.
    2. One of the parents has been gone for more than 30 days without notifying the other parent of his or her location.
    3. A parent is deceased.
    4. One party joins in a petition with the grandparents, and/or great-grandparents.

c. A child over the age of 12 can request legal visitation for a stepparent who has been living with the child for at least 5 years.
d. Under Illinois law, the court reserves the right to modify an order granting, limiting or denying visitation when the child's welfare is in question.

Best Interests of the Child in Visitation Cases (Case Summaries)

THE best interest of the child is normally fostered by having a healthy and close relationship with both parents. *(In re Blanchard)*

The trial court's determination that both parties had demonstrated a genuine and honest concern for the best interests of their minor children, despite the friction generated between the parents as a result of the Tuesday night visitation, was amply supported by the record and the trial court did not err by retaining the existing Tuesday night custody schedule. *(In re Kessler)*

The terms of visitation are not to be limited as punishment for the past conduct of a parent, but determined in the light of present circumstances relevant to the present welfare and best interest of the child. *(In re Lawyer)*

It has been said that to deny all right of visitation to the non-custodial parent would be inequitable and unjust, but it should be kept in mind that the child's welfare, not the interests of the parents, is paramount. *(Valencia v. Valencia)*

It is believed to be in the best interests of the child, the touchstone against which all the court's determinations as to visitation must be evaluated, that he or she have a healthy and close relationship with both parents. *(Valencia)*

A circuit court, in granting visitation rights to a parent who does not have custody of a child, must seek primarily to promote the child's welfare; the welfare of the child usually requires that the parent who does not have custody of the child be given liberal visitation rights so that the child will not be estranged from that parent. *(McManus v. McManus)*

In view of the evidence showing the father to be unfit, and his lack of good health, it was adequately shown that allowing visitation or further contact between him and his son would be detrimental to the child. *(Ice v. Department of Children & Family Services)*

Obtaining Visitation Rights

Drafting an agreement. When both parties determine that they agree on visitation rights and scheduling, they can elect to draft an agreement together. When putting these terms in writing, one of the first items to consider is the amount of flexibility to include. For example, when one or both parties have fluctuating work schedules, you may want to include this fact in the agreement. However, it is important to spell out as many details as possible. Below are a few items you may wish to include:

1. School vacations and holidays (how they are divided between parents)
2. Where and when pick-up and drop-off is to occur. It's a good idea to spell out dates and times whenever possible.
3. If and when scheduling conflicts arise, what is considered reasonable notice for a scheduling change.

Petitioning the court for visitation rights. If the parties are unable to agree on visitation rights and/or a visitation schedule, you may need to petition the court for these rights to be granted. The first thing you will need to do is secure counsel. An attorney with experience will enable you to navigate through these complicated matters and should help you avoid making errors. It is very important to gather as much relevant material and data as possible. This information will be used by your attorney to help evaluate the situation. After reviewing this data, the attorney can decide the best course of action.

Visitation Schedules

Explanation regarding visitation schedules. Visitation schedules should be in accordance with the guidelines set forth by the court. However, many visitation schedules are drawn up and agreed upon by both parties without any court intervention. There are many benefits to this method, and as long as the schedule provides for reasonable and liberal visitation, the court will likely work with these preliminary guidelines.

Standard schedules. Many visitation orders include what the court views as standard visitation. This is typically when the non-custodial parent has the child/children every other weekend (Friday evening until Sunday evening) and alternating holidays. For example, the mother would have the child/children on Mother's Day and on her birthday, while the father would then have the child/children on Father's Day and on his birthday. Other holidays are traditionally split annually. For example, the mother could have the child/children on Christmas on even numbered years and the father on odd numbered years.

If the parents are unable to collectively agree on a schedule, one may need to be determined by the court. The court will take into consideration any pertinent information including both parties work schedules.

In Illinois, the court can be flexible to accommodate the non-custodial parents work schedule. Sometimes, even when the work schedule is "unusual", as long as it can be shown to be in the child's best interest, the visitation will be allowed. *As shown in re Marriage of Dobey, 258 ILL.App.3d 874, 629 N.E.2d 812, 196 ILL.Dec. 267 (4th Dist. 1994).*

Once visitation outlined by the court has been established, the parents have a legal obligation to maintain the schedule. Failure

to follow court ordered visitation can result in modification and/or limitation.

"Reasonable Visitation" too Vague For Most Judges

HAVING the term "reasonable visitation" included in a Judgment for Dissolution was widely accepted until the mid 1990's. Several Judges in Cook County found that their courtrooms were filling up with post-decree visitation issues. The issues revolved around what was meant by "reasonable" when it came to visitation. Did that mean every weekend, alternating holidays, one day per week, one evening per week, etc.? With the post-decree problem increasing, Judges figured that the best way to remedy the problem was to require more comprehensive language in the original Judgments.

Thus, stricken were the words "reasonable visitation" from the majority of Judgments. Instead, the Judges began to require a detailed and itemized visitation schedule before they would grant a Judgment. What this did was force the parties to address the visitation issue with some sense of certainty prior to receiving a divorce. The added framework within the divorce Judgment has provided significant structure and guidance. The parties now know what type and what frequency of visitation is awarded in their particular case. For the most part, the guesswork has been eliminated.

Although some attorneys who practice heavily in post-decree issues may wish that "reasonable visitation" was still the norm, most would agree that a detailed visitation schedule is superior for the parties, attorneys and the court.

Reluctance or Refusal to Visit a Parent

WHEN a child is reluctant or refuses to visit a parent who has been granted visitation, parents can feel an urge to grant the child's wishes. This can be an emotional and difficult matter for the parents to deal with. Remember, it is the parent's legal obligation to facilitate visitation, and courts have found parents in contempt of visitation interference even when testimony showed that they were trying to appease the child. However, this is more likely if the court senses that the custodial parent has influenced the child.

In a few rare cases, the court has determined that the child/children were in violation of visitation interference and punishment was handed down. The most notable of these cases was heard by the Illinois court in 1996; the case of Heidi and Rachel Nussbaum who at the ages 8 and 12 were ordered into foster care for one week. The Illinois appellate court ruled shortly after that although the judge had the authority, he should have considered an alternative such as citing the custodial parent.

Denial of Visitation in Extreme Circumstances

THE endangerment standard has been described as onerous, stringent and rigorous. Parents have a natural or inherent right of access to their children, and because sound public policy encouraged the maintenance of strong family relationships, even in post-divorce situations, only extreme circumstances allow courts to deprive a parent of visitation. (In re L.R.)

Courts are reluctant to deny all visitation rights because of the underlying rationale that parents have a natural or inherent right of access to their children and the sound public policy that this state encourages the maintenance of strong inter-family relationships. (Frail v. Frail)

Interference with Contact/Visitation Abuse

720 ILCS 5/10-5.5
Unlawful Visitation Interference

Even after the parties have entered into a visitation agreement or after the court has issued a visitation order, parents have been known to make visitation difficult on one another. Visitation abuse occurs when a parent is denying the other parent contact with a child during scheduled time or failing to return a child on a scheduled day.

There have been cases where one parent will make unexpected changes to the ordered schedule at the last minute, or sometimes child pick-up and drop-off times are not followed. Many times, this is meant just to annoy the other parent. However, both parents need to understand that this behavior can have a negative affect on the child. If any of these situations occur, it is in the best interest of the child to have the problem resolved, even if it means getting the court involved. It may be necessary to contact the local authorities and file a criminal complaint. After the authorities have reviewed the facts of the complaint, a judge may need to restrict, limit or modify the original order.

Helping Children Deal with Visitation

CHILDREN have an amazing ability to learn quickly. They crave knowledge. Their innocence is free of prejudice and their minds are open to absorb the experiences they encounter. As parents, we have a responsibility to our children to guide them, encourage their strengths and develop their weaknesses. When a family splits up, tensions surrounding the separation can have a lasting effect on everyone, and children are often much more susceptible to long lasting emotional scars.

Most experts agree that a child who is able to spend time with both parents on a regular and consistent schedule will have an easier time coping with the stresses of divorce than a child who has limited or no contact with one of the parents.

If a child is old enough to ask why the family is not together anymore, then the child is old enough to receive some type of explanation. It is important that you try to help them understand what they should expect to see happen during these difficult times. Inform them about any planned visitation schedules, so that they realize that they will still have contact with both parents. Communication is the key. Children, even very young children, learn from what they hear. With this in mind, parents should try to avoid fights, insults and heated discussions in the child's presence. If a child does hear the parents fighting, then it is important to reassure the child that any arguments between the mother and father does not affect the love they both share for the child.

Child Representation

Provisions related to child representation can be found at 750 ILCS 5/506.

In some cases, the court may find it necessary to appoint an attorney to represent a child. The main reasons for such an appointment would be to review the facts of the case and recommend to the court the findings as relative to the particular case. Below are a few of the facts the attorney would need to explore:

1. The child's feelings as related to time spent with the non-custodial parent.
2. The positions taken by the parents as related to custody and visitation.
3. History of drug or alcohol abuse by either parent.
4. Living conditions provided by either parent.
5. Abuse of the child by either parent.

Supervised Visitation

UNDER Illinois law, child visitation falls under the category of custody. The court believes that it is in the child's best interest to have a close, healthy relationship with both parents, and Illinois law views visitation as more than a privilege, but as a legal right of the noncustodial parent. However, the court can decide to limit or restrict visitation, but only when serious endangerment to the child has been shown.

When the court finds that the visiting parent poses a serious risk to the child's well-being, visitation can be restricted and/or denied. In some cases, the visiting parent can be granted limited visitation under controlled supervision clarified by the court's ruling.

In the event the custodial parent petitions the court for a visitation modification, the court will need to see proof that a change to visitation is in the child's best interest. In some cases, the court and/or a parent may request an evaluation to determine whether visitation should be limited, restricted, supervised or denied.

In cases in which abuse or other dangerous behavior has been shown, the court can order that visitation only occur under direct supervision. *See e.g., In re Marriage of Oertel, 216 ILL.App.3d 806, 159 ILL.Dec. 576 N.E.2d 435 (2d Dist.1991) (affirming supervised visitation for alcoholic father).*

Enforcement of Visitation

750 ILCS 5/607.1

607.1 Visitation enforcement;

Understanding the gravity and importance of regular family contact and to help maintain and regulate awarded visitation, the law has provided both parties with simple methods for ensuring that the scheduled child visitation is upheld. In the event that one parent denies another parent "scheduled visitation", set forth by the court, the circuit court shall expedite enforcement of the court order, once the party petitions the court with the following items.

a. Names and addresses of the parties involved.
b. Dates and times showing when the infraction(s) occurred.
c. The nature of the stated abuse, and all relevant details.
d. Explanation of how the party involved made a reasonable attempt to resolve the stated dispute.

After reviewing the evidence presented, the court may layout one of the following guidelines.

a. Modify or change the visitation order.
b. Intervene with a third party (supervised visitation).
c. Allow the abused party to make up visitation time.
d. Order mediation and/or counseling.

If it's determined that one parent has denied the other awarded visitation, the court can assess any attorney fees and court costs to the party in violation.

Modification of Visitation (Case Summaries)

SINCE any modification of a visitation order was required to be in accordance with the relevant factors specified in the Illinois Marriage and Dissolution of Marriage Act, 750 ILCS 5/101, the trial court erred in not considering whether the mother's proposed move to Florida was in the best interest of the child, which was a modification factor. *(DeBilio v. DeBilio)*

This Act creates, in the case of child visitation rights, an exception to the general requirement that modification of a dissolution of marriage decree be preceded by a petition requesting modification by providing that the visitation rights may be modified whenever modification would serve the best interest of the child. *(In re Stanley)*

The best interest of the child standard governs the modification of visiting rights whereas the endangerment standard governs the restriction of such rights where the court finds that the visitation as it exists seriously endangers the child's physical, mental, moral or emotional health. *(In re Anderson)*

A court may amend visitation privileges previously established, or in extreme cases, temporarily deny them altogether if the privilege is abused. *(Keefer v. Keefer)*

An order of visitation is not final. It can be modified as circumstances require, if it should appear reasonable and proper to do so upon motion of either parent and if the best interests of the child make is advisable. *(Smith v. Smith)*

Burden of Proof

The party seeking to increase or otherwise modify visitation rights originally granted by the dissolution decree bears the burden of showing such alteration is in the best interests of the child. *(In re Tisckos)*

The custodial parent bears the burden of proving by a preponderance of the evidence that visitation would endanger the children. *(In re Neat)*

The burden that proving that a modification would be in the best interest of the child is on the party seeking the modification. *(Valencia v. Valencia)*

Where a circuit court is called upon to alter previously established visitation rights, it need not find that there has been a material change of circumstances since the original order; its decision is to be guided solely by what it perceives to be in the best interest of the child. *(Valencia v. Valencia)*

When Should You Request a Modification to Your Visitation Order?

LIFE has uncanny ways of changing. Sometimes these changes may require you to modify an existing visitation agreement or order. Some of the common reasons for this are listed below.

1. Moving out of the area or out of the state.
2. A change in work schedule.
3. When a parent gets remarried.
4. Illness or health related situations.

Cost of Visitation (Case Summaries)

Apportionment of transportation responsibilities connected with visitation to the non-custodial parent was held not to have been an abuse of discretion. *(In re Nuechterlien)*

An order of visitation at the mother's expense for one week in the months of September, December and July in Illinois each year with the father was within the court's discretion where the mother had removed the child to Panama. *(Crawley v. Bauchens)*

Absent exigent circumstances, all biological parents enjoy a presumption that they are entitled to visitation with their children, whether visitation is requested under the Illinois Marriage and Dissolution of Marriage Act. *(Wenzelman v. Bennett)*

In matters of visitation, the primary concern of the court is the welfare of the child. *(In re Blanchard)*

How to Avoid Parental Abduction

1. Your Custody order should clearly state times for both visitation and custody, so that it will be easier to enforce.
2. If the child is old enough, make sure they know their full name, address, and phone number.
3. Make sure schools and childcare providers have a list of authorized people who are permitted to pick up your child.

IF your child is at high risk for abduction because of prior custodial interference or threats, ask your attorney to include specific preventive measures in your custody order or modify your current order to include these measures. These can include limiting contact to only supervised visitation and/or prohibit the other parent from leaving the state with the child. Below are a few additional items you should consider to ensure your child does not become a victim of parental abduction.

1. Maintain current photo records of your child and the other parent.
2. Look into programs that offer child fingerprinting that your local authorities may offer.
3. Try to have accurate and current information concerning the other parent. For example: home telephone, work telephone and address.
4. Keep records of any special medical conditions as well as updated dental records.
5. Record this toll free number somewhere safe in the event that you would need to report your child missing (800) THE-LOST (800-843-5678)

Glossary

Adultery. This is one of the original grounds for divorce. In many states previously if you could not prove adultery, then you were unable to obtain a divorce. The determination that a spouse was guilty of adultery, which is sexual intercourse of any form with a person other than your spouse when married, this often results in a division of property other than a 50/50 split for the spouse that was cheating. Today adultery is used less in determining fault.

Alimony. Also called maintenance and spousal support in many states this is typically a periodic payment made to one spouse from the other. The purpose of alimony is to allow a spouse to gain employment, or an education that will allow them to gain employment. Often alimony is also used to help keep the economic situation of the spouse with lower resources closer to the pre-divorce level. Some alimony has a specific time period to end, while other alimony is in effect indefinitely. Typically, the spouse paying alimony is able to enjoy a tax deduction for the amount paid, while the receiver must claim the amount received as taxable income.

Allowable Deductions. The following are deductions typically allowed against gross income: State and federal income taxes that accurately relate to the tax status of the parties; Contributions to Social Security (FICA); Mandatory union dues; Health insurance premiums; Child or spousal support that was paid; Necessary job related expenses

Alternative Dispute Resolution. This includes mediation as well as collaborative law and negotiations that are settled out of court. Some states require an alternative dispute resolution method be tried before a court will hear that case, however not all courts require this. Agreements that are reached are then given to the judge after both parties sign the

agreement and the judge will decide upon the terms agreed upon to ensure that both parties are treated fairly.

Annulment. An order from a court stating that a previous marriage never legally existed. Typically, there must be some sort of legal reasoning for an annulment, such as one party was already married, or one party was underage and proper consent was not obtain for example.

Answer to Complaint and Counterclaim. This is the response that the defendant files answering all of the claims and allegations against them that the plaintiff has stated when the complaint for divorce was filed. If the defendant has their own ideas about the reasons for divorce they are able to file a counterclaim, this would require the plaintiff to file a response to the counterclaim.

Appearance. This is a paper that must be filed with the courts that registers the name of your lawyer and their contact information. Additionally, if you represent yourself you file yourself as the attorney of record. Once this is done, any paperwork that must be delivered to your side is served to your attorney of record. Once an attorney is on file, they may not withdraw without your permission or the permission of the courts.

Arrearages. This is the difference between the amount ordered to be paid, and the actual amount paid. If the full amount is not paid, it results in an arrearage that must be paid at some point. However, if the arrearage is perceived because of payments that have been reduced that are not ordered by the courts, then it is not an arrearage.

Automatic Restraining Order. A restraining order that goes into effect when a divorce case is filed. However, other circumstances also exist. When an automatic restraining order goes into effect, neither party may transfer or dispose of any marital property without a court order, or the written permission of their other spouse. If a spouse transfers

assets without the proper permission, they could be punished with financial penalties, or even potential jail time.

Best interest of the child. This is a legal standard as well as a doctrine that is used to help determine what the best interest of the child is when there is a disagreement between the parents.

Biological Mother. This is the female who provides genetic material for the child in question. Because of surrogate mothers, this is not always the mother who carries the child during pregnancy.

Child Support. Payments ordered by the courts to ensure that the non-custodial parent pays money to the custodial parent for the maintenance of the children of the marriage. Can also be used when a marriage did not occur, however must have a court order to obtain.

Cohabitation. The practice of two people living together that are not married. Typically, this can become a major problem in a divorce case if the parties have children and one party does not agree, or if a spouse, receiving alimony decides to cohabitate in order to avoid marriage and terminating the alimony they are receiving.

Collaborative Law. The process of settling a divorce without ever seeking the help of the courts, both spouses agree to work with a lawyer to fully agree upon all of the issues involved in their divorce. If however, the collaborative law process fails, both lawyers are dismissed and new lawyers are retained for the divorce trial.

Community Property. Method of deciding how property will be divided. There are nine community property states in the United States- Arizona, California, Idaho, Louisiana, Nevada, New Mexico, Texas, Washington, and lastly Wisconsin. The property that is acquired in these states in the course of a marriage is considered the joint property of both parties. However some exceptions do occur, most notably

when an inheritance or gift is given from a family member. Exact state rules vary by location.

Complaint for Divorce. This is an official document filed with the courts that requests a divorce. It lists both parties involved, as well as the grounds and the exact claims that the plaintiff is making against the defendant. In addition, requests for custody and property are also included. In order to start the divorce process it is required that a complaint for divorce be filed.

Custodial Parent. This is the parent with whom the children of the marriage typically reside for the majority of the time. Even if the parents have joint custody, one parent is designated as the custodial parent for legal purposes.

Disclosure. The law requires both spouses to provide the other with all information related to their property, income, assets and debts. This is called Full Disclosure. Failing to fully disclose all relevant information or concealing information can have serious consequences. It's important to be precise in listing assets and debts. There are two disclosure forms that will be generated.

Divorce Decree. Also called a Judgment of Divorce or even a Decree of Dissolution this is the document that is the courts final ruling or judgment that gives the exact terms of the divorce including property division, custody, support, child support, name changes and any other issues raised during the divorce.

Emancipation. The process of a child becoming a legal adult. This is typically used for child support purposes. Many states have changed emancipation to 23 years old instead of 18 to allow for children to attend college.

Ex Parte. This can be either a motion or an order that allows one

party to seek the courts help and protection against their other spouse without the presence of their spouse. It allows for one party to have a hearing without being forced to take the time to properly serve the other spouse. This is typically only an option on emergency bases or if you are seeking an attachment. The reason for ex parte is because the side requesting an ex parte hearing feels that it would be dangerous to their safety, or the marital property if the other spouse had warning.

Grounds for Divorce. There are several grounds, which vary from state to state with each having their own requirements to prove the grounds that are being alleged. Adultery, cruel and abusive treatment, desertion, long-term incarceration, impotency, and no fault. To determine the proper grounds for your area you must check with a lawyer to see your exact options.

Gross Income. Income such as commissions, salaries, royalties, wages, bonuses, rents, dividends, pensions, interest, trust income, annuities, worker's compensation benefits, unemployment insurance benefits, disability benefits and spousal support received are all typically considered part of gross income. Gross income also includes gross receipts from a business, less business expenditures and employer benefits. Gross income does not include any received child support payments or public assistance based on need.

Habitual Residence. Phrase used in connection with the Hauge Convention that refers to the home where a child lived last prior to an abduction. However, this does not speculate how long, or even with whom the child was residing.

Head of Household. A filing status that the IRS allows certain people to claim. However, in order to claim head of household status you must meet certain guidelines. These guidelines are the same regardless of the state of residency and include being unmarried on the last day of the tax year which is December 31st. In addition, you must have paid

more than half of the expenses involved in keeping up a home during that tax year. You must also have a person who qualifies you to claim head of household such as a child, or other dependent.

Imputed Income. This is income that is figured in for a spouse that has no income, or if they are determined to be underemployed. This is typically used when determining alimony or more commonly child support. The courts will impute an amount for income based off what the spouse is capable of earning due to their training, education, and previous job experience. This can be applied for one spouse, or even both depending on the circumstances.

Irreconcilable Differences. When marital difficulties cannot be resolved and have led to the permanent breakdown of the marriage. This reasoning is all that is required for a divorce in most states.

Irretrievable Breakdown. A legal ground used to obtain a divorce using no fault grounds. Using this method the court must be sure that the marriage is broken and there is no hope of the parties reconciling.

Joint Petition. A petition that is filed when both parties request the court to grant a divorce. Often when a joint petition is filed, it is filed along with a separation agreement.

Judgment. The most important document in the case. It is the final resolution of all your legal issues. Every part of your judgment is finalized when it is signed by the court, including a marital settlement agreement and joint parenting agreement if necessary.

Legal Separation. This is only available in some states and provides a means for the spouses to be legally separated while remaining married. Typically, there will be some orders for custody, visitation, and even child support placed into effect while the separation is in effect.

Some states require a separation for a certain period of time before considering a divorce.

Lump Sum. This is also referred to as a lump sum settlement in some areas. This typically is a payment made that would pay off all payments for alimony or other payments. However, payments are not made in full when handled in this manner and typically; a discount is associated since the payment is made all at once, rather than smaller payments over time.

Maintenance. See alimony for description.

Marital Assets. Property including bank accounts and real physical property that the parties own and have purchased during the marriage, acquired during the marriage, or been given during the marriage that does not qualify as separate or individual property.

Marital Settlement Agreement. An agreement by which both spouses document the terms of the divorce, such as the division of property, child custody and spousal support.

Marriage Certificate. This is an official certificate, which is issued by your local government. This must be signed and properly filled out in accordance with your local marriage laws.

Mediation. The process of both parties voluntarily discussing various aspects of the divorce that they disagree upon. Typically, the mediation process involves the use of a certified mediator who is trained in the proper techniques of successful mediation. Because the process is, voluntarily either party can back out and the mediation will be stopped. Many times couples are able to reach agreements by mediation without someone else deciding upon their affairs for them. This is very commonly used in custody disputes, however is not used for child support.

Net Income. Net income is gross income minus allowable deductions.

Ordinary Expenses. This are the typical costs associated with living. They include things such as food, shelter, clothing, utilities, and such. However, for those families with larger budgets, it may include some luxury items that are normally included in the family budget before divorce.

Palimony. Payments that are made to someone whom you had agreed to marry and had supported. This is very hard to prove and be successful in receiving unless you have the right circumstances.

Parens patrieae. This is the right of the states to take over control of custody and the care of minor children or anyone else who is legally unable to make their own decisions if there is a good reason based on physical or mental danger.

Parenting Classes. These classes are often required for parents to attend when they have children of the marriage. They are intended for parents to learn how to work together without causing further hardship to the children, however are not as effective as many states would like since it involves parents putting aside their differences for the children.

Parental Kidnapping. One parent taking a child without the authorization of the other parent or the courts by a court order.

Parenting Schedule. This is the schedule that sets forth which parent has custody, as well as when the other parent is allowed time with the child. Also included tends to be issues pertaining to extra-curricular activities, and special occasions and holidays.

Paternity. This is the biological relationship between a male and a

child. However, on occasions paternity can be associated with a male who is not biologically related but has legal paternity of a child.

Paternity, **Establishment**. Determination of paternity that can be done by either a court order or by a voluntary acknowledgment that a father has signed.

Personal Property. This includes things such as bonds, cash, checking accounts, savings accounts, stocks, intellectual property, and even collectibles and pets. Not included in this is land, houses, or other real estate property.

Petition. The first document filed in court and the one that starts the clock running on any required waiting periods. The petition includes important information about the marriage, such as the husband, wife, and any children's names, whether there is any separate or community property, child custody, child support and spousal support.

Petitioner. The person who first "petitions" the court for a divorce.

Physical Custody. This is the determination of who has custody of the children physically. This is different from legal custody. This refers to where the children primarily reside.

Premarital Assets. These are all of the assets that are acquired before marriage. Whether they are physical or personal property these assets are separate property. Depending upon your state where you live depends upon how the assets will be divided in the event of a divorce. Some states consider it separate property for a divorce while other states will still divide the property.

Primary Physical Custody. See the description for physical custody.

Pro Se. This is when a client, either a plaintiff or a defendant chooses

to represent themselves in court in a legal action without the use of a lawyer. If your case is very complicated it is much more advisable to retain a lawyer for your case if you can financially afford it.

Real Property. Property such as buildings, land, and other real estate.

Recrimination. Term used to describe when the plaintiff in a divorce action is also accused of adultery in the counterclaim filed in court.

Rehabilitative Alimony. Alimony or spousal support paid to help the spouse receiving the payments gain an education or a source of employment. This is typically for a very short period of time, often only a few years before alimony is terminated.

Removal. Typically refers to a parent removing the primary residence of the child. This almost always requires the approval of the courts regardless of which parent is requesting to move so that visitation issues can be resolved as well as the custodial parent prove why it is in the child's best interest for the move to take place.

Residency Requirement. This is the amount of time, which varies from state to state that you must live in a state before you are able to file for a divorce there. Most states say somewhere between 6 months and 12 months is the minimum.

Respondent. The spouse who is not the petitioner is the respondent. The respondent is the one who "responds" to the action brought by the petitioner.

Separate Property. This is the property that is not part of the marital property in states that are community property states. It often includes assets owned before the marriage as well as certain property acquired during the marriage.

Separation. The date of "separation" is the date when both the husband and wife stopped functioning properly as husband and wife.

Shared Custody. This is typically an arrangement where the parents share custody of the children. Both physical and legal custody is included in this classification. Typically, physical custody is primarily given to one parent regardless of how much time the non-custodial parent has with the child. Legal custody is the easiest form of custody to share.

Single Parent Families. This usually refers to families where only one parent is involved, due to a divorce, death, or other reason. Most single parent families are headed by a female since most minor children are with their mothers following a divorce. However, recent trends show more fathers heading single parent families now.

Spousal Support. See Alimony, also called maintenance.

Summons. The official notice to a party in a lawsuit that they must respond formally to a complaint or petition that was filed in court. A proper service process must be done in order for the summons to be binding. A summons must be attached to the complaint for divorce when it is served.

Temporary Support. This is support, whether spousal or child support that is ordered to be paid while the case is pending. Often the orders are entered early in the divorce process to ensure that children are taken care of while the divorce proceeds for years in some cases.

Tender Years Presumption. This is an old concept that many courts used that stated that mothers were the better parent for custody when a child was young. Most commonly from the age of 10 or younger. However, many states are dropping this method of belief when deciding custody now.

Uncontested Divorce. A divorce in which both parties agree to the divorce and the settlement terms without going to trial. This does not mean there are no arguments or disputes between the spouses. It simply means the spouses could reach an agreement without going to court and having a judge rule.

Vacate the Marital Home, Motion. This is typically used to force one spouse to leave the family home. While it is possible to request this, it is not usually granted unless there is a true fear of violence of some form. Because of the hostility that this can cause, it is not recommended to file this motion unless you are sure you will win, and you feel that you have no other options because many spouses react very badly to this motion.

Vacating Order. This is an order from the courts that is designed to vacate or remove an order previously in effect. Often associated with restraining orders and other similar types of orders.

Visitation, Supervised. This type of visitation occurs typically when someone is attempting to rekindle a relationship with a child, or if there is a fear of physical danger. The visits are typically supervised by someone that the court appoints to ensure there is proper supervision.

Visitation Center. A place where children and parents can visit where they are supervised by trained personnel. Typically, a fee is due for each visit that is almost always required to be paid by the non-custodial parent. However, depending upon your exact custody arrangement the custodial parent may be required to pay the fee for the center.

Voluntary Acknowledgment. This is a document that is a written declaration that a man is the biological father of a child. This is done voluntarily and without a court order, or a DNA test.

About the Authors

David M. Siegel is an Illinois attorney who practices extensively in the areas of divorce, family law and consumer bankruptcy. He graduated from the University of Illinois in 1988 and received a Bachelor of Science degree in Political Science. He earned his Juris Doctor degree from the John Marshall Law School in 1991. He was admitted to the General Bar of the United States District Court for the Northern District of Illinois in 1991 as well as the Central District of Illinois in 2008. Additionally, he was admitted to practice before the United States Tax Court in 2006. He is a member of the American Bankruptcy Institute and former member of the National Association of Consumer Bankruptcy Attorneys. He is the author of Chapter 7 Success: The Complete Guide to Surviving Personal Bankruptcy and has written extensively on divorce, family law and bankruptcy matters. He has appeared on Fox News Chicago and has been featured in the Chicago Tribune, the Daily Herald, Time Magazine and U.S. News & World Report.

Corey M. Bandes is the lead attorney of the Law Offices of Corey M. Bandes in Chicago, Illinois. He graduated from State University of New York at Albany (SUNY) in 1982 and received a Bachelor of Arts degree in Psychology. He earned his Juris Doctor degree from the John Marhsall Law School in 1985. For his entire twenty-three years of private practice, Mr. Bandes has concentrated in the areas of divorce and family law. He has helped thousands through the most difficult period of life by providing sound advice, including, but not limited to divorce, custody, support, visitation, paternity and maintenance. He has also provided excellent service to his clients dealing with adoptions, guardianships and estates. As a veteran practitioner in Cook County, Mr. Bandes is well respected by opposing counsel and highly regarded by the numerous Judges within the circuit court.

Jesse V. Barrientes is the proprietor of the Law Offices of Jesse V. Barrientes in Wheaton, Illinois. He graduated *Cum Laude* from Loyola University of Chicago in 1987 and received a Bachelor of Arts degree in Communications and Philosophy. He earned his *Juris Doctor* degree from the John Marshall Law School in 1991. He was admitted to the General Bar of the United States District Court for the Northern District of Illinois in 1991, and admitted to the Trial Bar of the United States District Court for the Northern District of Illinois in 2001. He is a member of the DuPage County Bar Association and the Will County Bar Association. Jesse V. Barrientes' practice areas include Civil Litigation, Criminal Law, Personal Injury, Employment Discrimination, Bankruptcy, and a **MAJOR** concentration in Family Law. His firm provides aggressive, experienced and quality legal services. He focuses on the equitable and financially feasible resolution of his clients' legal situations. He does not believe in sugar-coating his advice, or telling clients what they want to hear. He believes that each client must be aware of the realities of their unique legal situation, and the ramifications of their various legal options in order to render an intelligent, informed, and reasoned decision. He also believes in keeping his clients informed of the status and progress of their case at each and every stage of litigation.