



94TH GENERAL ASSEMBLY
State of Illinois
2005 and 2006
SB2475

Introduced 1/18/2006, by Sen. John J. Cullerton

SYNOPSIS AS INTRODUCED:

750 ILCS 5/508

from Ch. 40, par. 508

Amends the Illinois Marriage and Dissolution of Marriage Act. Removes the one-year limitation period to file a complaint in an independent proceeding for actions brought to collect legal fees, when the action is brought after the close of the period during which a petition may be filed under the listed subdivision and no petition for legal fees remains pending. Provides that the limitation period for breach of contract shall apply to an action brought in an independent proceeding to pursue an award and judgment for legal fees and costs. Effective immediately.

LRB094 15281 LCT 50472 b

1 AN ACT concerning families.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Illinois Marriage and Dissolution of
5 Marriage Act is amended by changing Section 508 as follows:

6 (750 ILCS 5/508) (from Ch. 40, par. 508)

7 Sec. 508. Attorney's Fees; Client's Rights and
8 Responsibilities Respecting Fees and Costs.

9 (a) The court from time to time, after due notice and
10 hearing, and after considering the financial resources of the
11 parties, may order any party to pay a reasonable amount for his
12 own or the other party's costs and attorney's fees. Interim
13 attorney's fees and costs may be awarded from the opposing
14 party, in accordance with subsection (c-1) of Section 501. At
15 the conclusion of the case, contribution to attorney's fees and
16 costs may be awarded from the opposing party in accordance with
17 subsection (j) of Section 503. Fees and costs may be awarded to
18 counsel from a former client in accordance with subsection (c)
19 of this Section. Awards may be made in connection with the
20 following:

21 (1) The maintenance or defense of any proceeding under
22 this Act.

23 (2) The enforcement or modification of any order or
24 judgment under this Act.

25 (3) The defense of an appeal of any order or judgment
26 under this Act, including the defense of appeals of
27 post-judgment orders.

28 (3.1) The prosecution of any claim on appeal (if the
29 prosecuting party has substantially prevailed).

30 (4) The maintenance or defense of a petition brought
31 under Section 2-1401 of the Code of Civil Procedure seeking
32 relief from a final order or judgment under this Act.

1 (5) The costs and legal services of an attorney
2 rendered in preparation of the commencement of the
3 proceeding brought under this Act.

4 (6) Ancillary litigation incident to, or reasonably
5 connected with, a proceeding under this Act.

6 The court may order that the award of attorney's fees and
7 costs (including an interim or contribution award) shall be
8 paid directly to the attorney, who may enforce the order in his
9 or her name, or that it shall be paid to the appropriate party.
10 Judgment may be entered and enforcement had accordingly. Except
11 as otherwise provided in subdivision (e)(1) of this Section,
12 subsection (c) of this Section is exclusive as to the right of
13 any counsel (or former counsel) of record to petition a court
14 for an award and judgment for final fees and costs during the
15 pendency of a proceeding under this Act.

16 (b) In every proceeding for the enforcement of an order or
17 judgment when the court finds that the failure to comply with
18 the order or judgment was without compelling cause or
19 justification, the court shall order the party against whom the
20 proceeding is brought to pay promptly the costs and reasonable
21 attorney's fees of the prevailing party. If non-compliance is
22 with respect to a discovery order, the non-compliance is
23 presumptively without compelling cause or justification, and
24 the presumption may only be rebutted by clear and convincing
25 evidence. If at any time a court finds that a hearing under
26 this Section was precipitated or conducted for any improper
27 purpose, the court shall allocate fees and costs of all parties
28 for the hearing to the party or counsel found to have acted
29 improperly. Improper purposes include, but are not limited to,
30 harassment, unnecessary delay, or other acts needlessly
31 increasing the cost of litigation.

32 (c) Final hearings for attorney's fees and costs against an
33 attorney's own client, pursuant to a Petition for Setting Final
34 Fees and Costs of either a counsel or a client, shall be
35 governed by the following:

36 (1) No petition of a counsel of record may be filed

1 against a client unless the filing counsel previously has
2 been granted leave to withdraw as counsel of record or has
3 filed a motion for leave to withdraw as counsel. On receipt
4 of a petition of a client under this subsection (c), the
5 counsel of record shall promptly file a motion for leave to
6 withdraw as counsel. If the client and the counsel of
7 record agree, however, a hearing on the motion for leave to
8 withdraw as counsel filed pursuant to this subdivision
9 (c)(1) may be deferred until completion of any alternative
10 dispute resolution procedure under subdivision (c)(4). As
11 to any Petition for Setting Final Fees and Costs against a
12 client or counsel over whom the court has not obtained
13 jurisdiction, a separate summons shall issue. Whenever a
14 separate summons is not required, original notice as to a
15 Petition for Setting Final Fees and Costs may be given, and
16 documents served, in accordance with Illinois Supreme
17 Court Rules 11 and 12.

18 (2) No final hearing under this subsection (c) is
19 permitted unless: (i) the counsel and the client had
20 entered into a written engagement agreement at the time the
21 client retained the counsel (or reasonably soon
22 thereafter) and the agreement meets the requirements of
23 subsection (f); (ii) the written engagement agreement is
24 attached to an affidavit of counsel that is filed with the
25 petition or with the counsel's response to a client's
26 petition; (iii) judgment in any contribution hearing on
27 behalf of the client has been entered or the right to a
28 contribution hearing under subsection (j) of Section 503
29 has been waived; (iv) the counsel has withdrawn as counsel
30 of record; and (v) the petition seeks adjudication of all
31 unresolved claims for fees and costs between the counsel
32 and the client. Irrespective of a Petition for Setting
33 Final Fees and Costs being heard in conjunction with an
34 original proceeding under this Act, the relief requested
35 under a Petition for Setting Final Fees and Costs
36 constitutes a distinct cause of action. A pending but

1 undetermined Petition for Setting Final Fees and Costs
2 shall not affect appealability of any judgment or other
3 adjudication in the original proceeding.

4 (3) The determination of reasonable attorney's fees
5 and costs either under this subsection (c), whether
6 initiated by a counsel or a client, or in an independent
7 proceeding for services within the scope of subdivisions
8 (1) through (5) of subsection (a), is within the sound
9 discretion of the trial court. The court shall first
10 consider the written engagement agreement and, if the court
11 finds that the former client and the filing counsel,
12 pursuant to their written engagement agreement, entered
13 into a contract which meets applicable requirements of
14 court rules and addresses all material terms, then the
15 contract shall be enforceable in accordance with its terms,
16 subject to the further requirements of this subdivision
17 (c)(3). Before ordering enforcement, however, the court
18 shall consider the performance pursuant to the contract.
19 Any amount awarded by the court must be found to be fair
20 compensation for the services, pursuant to the contract,
21 that the court finds were reasonable and necessary. Quantum
22 meruit principles shall govern any award for legal services
23 performed that is not based on the terms of the written
24 engagement agreement (except that, if a court expressly
25 finds in a particular case that aggregate billings to a
26 client were unconscionably excessive, the court in its
27 discretion may reduce the award otherwise determined
28 appropriate or deny fees altogether).

29 (4) No final hearing under this subsection (c) is
30 permitted unless any controversy over fees and costs (that
31 is not otherwise subject to some form of alternative
32 dispute resolution) has first been submitted to mediation,
33 arbitration, or any other court approved alternative
34 dispute resolution procedure, except as follows:

35 (A) In any circuit court for a single county with a
36 population in excess of 1,000,000, the requirement of

1 the controversy being submitted to an alternative
2 dispute resolution procedure is mandatory unless the
3 client and the counsel both affirmatively opt out of
4 such procedures; or

5 (B) In any other circuit court, the requirement of
6 the controversy being submitted to an alternative
7 dispute resolution procedure is mandatory only if
8 neither the client nor the counsel affirmatively opts
9 out of such procedures.

10 After completion of any such procedure (or after one or
11 both sides has opted out of such procedures), if the
12 dispute is unresolved, any pending motion for leave to
13 withdraw as counsel shall be promptly granted and a final
14 hearing under this subsection (c) shall be expeditiously
15 set and completed.

16 (5) A petition (or a praecipe for fee hearing without
17 the petition) shall be filed no later than the end of the
18 period in which it is permissible to file a motion pursuant
19 to Section 2-1203 of the Code of Civil Procedure. A
20 praecipe for fee hearing shall be dismissed if a Petition
21 for Setting Final Fees and Costs is not filed within 60
22 days after the filing of the praecipe. A counsel who
23 becomes a party by filing a Petition for Setting Final Fees
24 and Costs, or as a result of the client filing a Petition
25 for Setting Final Fees and Costs, shall not be entitled to
26 exercise the right to a substitution of a judge without
27 cause under subdivision (a)(2) of Section 2-1001 of the
28 Code of Civil Procedure.

29 (d) A consent judgment, in favor of a current counsel of
30 record against his or her own client for a specific amount in a
31 marital settlement agreement, dissolution judgment, or any
32 other instrument involving the other litigant, is prohibited. A
33 consent judgment between client and counsel, however, is
34 permissible if it is entered pursuant to a verified petition
35 for entry of consent judgment, supported by an affidavit of the
36 counsel of record that incorporates an itemization of the

1 billing or billings to the client, detailing hourly costs, time
2 spent, and tasks performed, and by an affidavit of the client
3 acknowledging receipt of that documentation, awareness of the
4 right to a hearing, the right to be represented by counsel
5 (other than counsel to whom the consent judgment is in favor),
6 and the right to be present at the time of presentation of the
7 petition, and agreement to the terms of the judgment. The
8 petition may be filed at any time during which it is
9 permissible for counsel of record to file a petition (or a
10 praecipe) for a final fee hearing, except that no such petition
11 for entry of consent judgment may be filed before adjudication
12 (or waiver) of the client's right to contribution under
13 subsection (j) of Section 503 or filed after the filing of a
14 petition (or a praecipe) by counsel of record for a fee hearing
15 under subsection (c) if the petition (or praecipe) remains
16 pending. No consent security arrangement between a client and a
17 counsel of record, pursuant to which assets of a client are
18 collateralized to secure payment of legal fees or costs, is
19 permissible unless approved in advance by the court as being
20 reasonable under the circumstances.

21 (e) Counsel may pursue an award and judgment against a
22 former client for legal fees and costs in an independent
23 proceeding in the following circumstances:

24 (1) While a case under this Act is still pending ~~pends~~,
25 a former counsel may pursue such an award and judgment at
26 any time subsequent to 90 days after the entry of an order
27 granting counsel leave to withdraw; and

28 (2) After the close of the period during which a
29 petition (or praecipe) may be filed under subdivision
30 (c) (5), if no such petition (or praecipe) for the counsel
31 remains pending, any counsel or former counsel may pursue
32 such an award and judgment in an independent proceeding,
33 ~~provided the complaint in the independent proceeding is~~
34 ~~filed within one year after the close of the foregoing~~
35 ~~period.~~

36 In an independent proceeding, the prior applicability of this

1 Section shall in no way be deemed to have diminished any other
2 right of any counsel (or former counsel) to pursue an award and
3 judgment for legal fees and costs on the basis of remedies that
4 may otherwise exist under applicable law; and the limitations
5 period for breach of contract shall apply. In an independent
6 proceeding under subdivision (e) (1) in which the former counsel
7 had represented a former client in a dissolution case that is
8 still pending ~~pends~~, the former client may bring in his or her
9 spouse as a third-party defendant, provided on or before the
10 final date for filing a petition (or praecipe) under subsection
11 (c), the party files an appropriate third-party complaint under
12 Section 2-406 of the Code of Civil Procedure. In any such case,
13 any judgment later obtained by the former counsel shall be
14 against both spouses or ex-spouses, jointly and severally
15 (except that, if a hearing under subsection (j) of Section 503
16 has already been concluded and the court hearing the
17 contribution issue has imposed a percentage allocation between
18 the parties as to fees and costs otherwise being adjudicated in
19 the independent proceeding, the allocation shall be applied
20 without deviation by the court in the independent proceeding
21 and a separate judgment shall be entered against each spouse
22 for the appropriate amount). After the period for the
23 commencement of a proceeding under subsection (c), the
24 provisions of this Section (other than the standard set forth
25 in subdivision (c) (3) and the terms respecting consent security
26 arrangements in subsection (d) of this Section 508) shall be
27 inapplicable.

28 The changes made by this amendatory Act of the 94th General
29 Assembly are declarative of existing law.

30 (f) Unless the Supreme Court by rule addresses the matters
31 set out in this subsection (f), a written engagement agreement
32 within the scope of subdivision (c) (2) shall have appended to
33 it verbatim the following Statement:

34 "STATEMENT OF CLIENT'S RIGHTS AND RESPONSIBILITIES

35 (1) WRITTEN ENGAGEMENT AGREEMENT. The written engagement

1 agreement, prepared by the counsel, shall clearly address the
2 objectives of representation and detail the fee arrangement,
3 including all material terms. If fees are to be based on
4 criteria apart from, or in addition to, hourly rates, such
5 criteria (e.g., unique time demands and/or utilization of
6 unique expertise) shall be delineated. The client shall receive
7 a copy of the written engagement agreement and any additional
8 clarification requested and is advised not to sign any such
9 agreement which the client finds to be unsatisfactory or does
10 not understand.

11 (2) REPRESENTATION. Representation will commence upon the
12 signing of the written engagement agreement. The counsel will
13 provide competent representation, which requires legal
14 knowledge, skill, thoroughness and preparation to handle those
15 matters set forth in the written engagement agreement. Once
16 employed, the counsel will act with reasonable diligence and
17 promptness, as well as use his best efforts on behalf of the
18 client, but he cannot guarantee results. The counsel will abide
19 by the client's decision concerning the objectives of
20 representation, including whether or not to accept an offer of
21 settlement, and will endeavor to explain any matter to the
22 extent reasonably necessary to permit the client to make
23 informed decisions regarding representation. During the course
24 of representation and afterwards, the counsel may not use or
25 reveal a client's confidence or secrets, except as required or
26 permitted by law.

27 (3) COMMUNICATION. The counsel will keep the client
28 reasonably informed about the status of representation and will
29 promptly respond to reasonable requests for information,
30 including any reasonable request for an estimate respecting
31 future costs of the representation or an appropriate portion of
32 it. The client shall be truthful in all discussions with the
33 counsel and provide all information or documentation required
34 to enable the counsel to provide competent representation.
35 During representation, the client is entitled to receive all
36 pleadings and substantive documents prepared on behalf of the

1 client and every document received from any other counsel of
2 record. At the end of the representation and on written request
3 from the client, the counsel will return to the client all
4 original documents and exhibits. In the event that the counsel
5 withdraws from representation, or is discharged by the client,
6 the counsel will turn over to the substituting counsel (or, if
7 no substitutions, to the client) all original documents and
8 exhibits together with complete copies of all pleadings and
9 discovery within thirty (30) days of the counsel's withdrawal
10 or discharge.

11 (4) ETHICAL CONDUCT. The counsel cannot be required to
12 engage in conduct which is illegal, unethical, or fraudulent.
13 In matters involving minor children, the counsel may refuse to
14 engage in conduct which, in the counsel's professional
15 judgment, would be contrary to the best interest of the
16 client's minor child or children. A counsel who cannot
17 ethically abide by his client's directions shall be allowed to
18 withdraw from representation.

19 (5) FEES. The counsel's fee for services may not be
20 contingent upon the securing of a dissolution of marriage, upon
21 obtaining custody, or be based upon the amount of maintenance,
22 child support, or property settlement received, except as
23 specifically permitted under Supreme Court rules. The counsel
24 may not require a non-refundable retainer fee, but must remit
25 back any overpayment at the end of the representation. The
26 counsel may enter into a consensual security arrangement with
27 the client whereby assets of the client are pledged to secure
28 payment of legal fees or costs, but only if the counsel first
29 obtains approval of the Court. The counsel will prepare and
30 provide the client with an itemized billing statement detailing
31 hourly rates (and/or other criteria), time spent, tasks
32 performed, and costs incurred on a regular basis, at least
33 quarterly. The client should review each billing statement
34 promptly and address any objection or error in a timely manner.
35 The client will not be billed for time spent to explain or
36 correct a billing statement. If an appropriately detailed

1 written estimate is submitted to a client as to future costs
2 for a counsel's representation or a portion of the contemplated
3 services (i.e., relative to specific steps recommended by the
4 counsel in the estimate) and, without objection from the
5 client, the counsel then performs the contemplated services,
6 all such services are presumptively reasonable and necessary,
7 as well as to be deemed pursuant to the client's direction. In
8 an appropriate case, the client may pursue contribution to his
9 or her fees and costs from the other party.

10 (6) DISPUTES. The counsel-client relationship is regulated
11 by the Illinois Rules of Professional Conduct (Article VIII of
12 the Illinois Supreme Court Rules), and any dispute shall be
13 reviewed under the terms of such Rules."

14 (g) The changes to this Section 508 made by this amendatory
15 Act of 1996 apply to cases pending on or after June 1, 1997,
16 except as follows:

17 (1) Subdivisions (c) (1) and (c) (2) of this Section 508,
18 as well as provisions of subdivision (c) (3) of this Section
19 508 pertaining to written engagement agreements, apply
20 only to cases filed on or after June 1, 1997.

21 (2) The following do not apply in the case of a hearing
22 under this Section that began before June 1, 1997:

23 (A) Subsection (c-1) of Section 501.

24 (B) Subsection (j) of Section 503.

25 (C) The changes to this Section 508 made by this
26 amendatory Act of 1996 pertaining to the final setting
27 of fees.

28 (Source: P.A. 89-712, eff. 6-1-97.)

29 Section 99. Effective date. This Act takes effect upon
30 becoming law.