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)

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

(a) The court from time to time, after due notice and 9 hearing, and after considering the financial resources of the 10 11 parties, may order any party to pay a reasonable amount for his own or the other party's costs and attorney's fees. Interim 12 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 following: 20

21

22

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

(2) The enforcement or modification of any order orjudgment under this Act.

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

(3.1) The prosecution of any claim on appeal (if theprosecuting 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

5

(6) Ancillary litigation incident to, or reasonably 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 for an award and judgment for final fees and costs during the 14 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 the order or judgment was without compelling cause 18 or 19 justification, the court shall order the party against whom the 20 proceeding is brought to pay promptly the costs and reasonable attorney's fees of the prevailing party. If non-compliance is 21 with respect to a discovery order, the non-compliance is 22 23 presumptively without compelling cause or justification, and the presumption may only be rebutted by clear and convincing 24 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 for the hearing to the party or counsel found to have acted 28 29 improperly. Improper purposes include, but are not limited to, 30 harassment, unnecessary delay, or other acts needlessly increasing the cost of litigation. 31

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

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

1 2

3

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

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

(4) No final hearing under this subsection (c) is
permitted unless any controversy over fees and costs (that
is not otherwise subject to some form of alternative
dispute resolution) has first been submitted to mediation,
arbitration, or any other court approved alternative
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.

After completion of any such procedure (or after one or both sides has opted out of such procedures), if the dispute is unresolved, any pending motion for leave to withdraw as counsel shall be promptly granted and a final hearing under this subsection (c) shall be expeditiously 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 period in which it is permissible to file a motion pursuant 18 to Section 2-1203 of the Code of Civil Procedure. A 19 20 praccipe for fee hearing shall be dismissed if a Petition for Setting Final Fees and Costs is not filed within 60 21 days after the filing of the praccipe. A counsel who 22 23 becomes a party by filing a Petition for Setting Final Fees and Costs, or as a result of the client filing a Petition 24 25 for Setting Final Fees and Costs, shall not be entitled to exercise the right to a substitution of a judge without 26 27 cause under subdivision (a)(2) of Section 2-1001 of the Code of Civil Procedure. 28

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 judgment between client and counsel, however, 33 consent is permissible if it is entered pursuant to a verified petition 34 for entry of consent judgment, supported by an affidavit of the 35 counsel of record that incorporates an itemization of the 36

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 petition, and agreement to the terms of the judgment. The 7 petition may be filed at any time during which it is 8 9 permissible for counsel of record to file a petition (or a praccipe) for a final fee hearing, except that no such petition 10 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 petition (or a praecipe) by counsel of record for a fee hearing 14 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 collateralized to secure payment of legal fees or costs, is 18 19 permissible unless approved in advance by the court as being 20 reasonable under the circumstances.

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

(1) While a case under this Act <u>is</u> still <u>pending</u> <del>pends</del>,
a former counsel may pursue such an award and judgment at
any time subsequent to 90 days after the entry of an order
granting counsel leave to withdraw; and

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

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 may otherwise exist under applicable law; and the limitations 4 5 period for breach of contract shall apply. In an independent 6 proceeding under subdivision (e) (1) in which the former counsel had represented a former client in a dissolution case that <u>is</u> 7 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 against both spouses or ex-spouses, jointly and severally 14 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 the parties as to fees and costs otherwise being adjudicated in 18 19 the independent proceeding, the allocation shall be applied 20 without deviation by the court in the independent proceeding and a separate judgment shall be entered against each spouse 21 for the appropriate amount). After the period for 22 the 23 commencement of a proceeding under subsection (c), the provisions of this Section (other than the standard set forth 24 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

29

## The changes made by this amendatory Act of the 94th General 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 unique expertise) shall be delineated. The client shall receive 6 a copy of the written engagement agreement and any additional 7 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.

(2) REPRESENTATION. Representation will commence upon the 11 12 signing of the written engagement agreement. The counsel will which requires 13 provide competent representation, legal knowledge, skill, thoroughness and preparation to handle those 14 15 matters set forth in the written engagement agreement. Once employed, the counsel will act with reasonable diligence and 16 17 promptness, as well as use his best efforts on behalf of the client, but he cannot guarantee results. The counsel will abide 18 19 by the client's decision concerning the objectives of 20 representation, including whether or not to accept an offer of settlement, and will endeavor to explain any matter to the 21 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 reveal a client's confidence or secrets, except as required or 25 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 future costs of the representation or an appropriate portion of 31 32 it. The client shall be truthful in all discussions with the counsel and provide all information or documentation required 33 to enable the counsel to provide competent representation. 34 35 During representation, the client is entitled to receive all pleadings and substantive documents prepared on behalf of the 36

SB2475 Engrossed - 9 - LRB094 15281 LCT 50472 b

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 no substitutions, to the client) all original documents and 7 8 exhibits together with complete copies of all pleadings and discovery within thirty (30) days of the counsel's withdrawal 9 10 or discharge.

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

19 (5) FEES. The counsel's fee for services may not be 20 contingent upon the securing of a dissolution of marriage, upon obtaining custody, or be based upon the amount of maintenance, 21 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 quarterly. The client should review each billing statement 33 promptly and address any objection or error in a timely manner. 34 35 The client will not be billed for time spent to explain or correct a billing statement. If an appropriately detailed 36

SB2475 Engrossed - 10 - LRB094 15281 LCT 50472 b

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 counsel in the estimate) and, without objection from the 4 5 client, the counsel then performs the contemplated services, 6 all such services are presumptively reasonable and necessary, as well as to be deemed pursuant to the client's direction. In 7 an appropriate case, the client may pursue contribution to his 8 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:

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

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

(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.)

23

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