



## 96TH GENERAL ASSEMBLY

### State of Illinois

2009 and 2010

SB0065

Introduced 1/30/2009, by Sen. Ira I. Silverstein

#### SYNOPSIS AS INTRODUCED:

750 ILCS 5/501	from Ch. 40, par. 501
750 ILCS 5/503	from Ch. 40, par. 503
750 ILCS 5/508	from Ch. 40, par. 508

Amends the Illinois Marriage and Dissolution of Marriage Act. Provides that a proceeding related to interim attorney's fees and costs in a pre-judgment dissolution proceeding (instead of interim attorney's fees) shall be nonevidentiary and summary in nature (instead of nonevidentiary, summary in nature, and expeditious). Provides that all hearings concerning interim attorney's fees and costs shall be scheduled expeditiously by the court. Provides that in dividing marital property, the court shall consider all relevant factors including each party's contribution to the marital or non-marital property including (i) any decrease in value attributable to an advance from the marital estate or (ii) the contribution of the spouse as a homemaker or to the family (instead of the contribution of the spouse as a homemaker or to the family). Provides that interim attorney's fees and costs may be awarded from the opposing party in a pre-judgment dissolution proceeding under the interim fees and costs provisions and in any other proceeding for attorney's fees and costs (instead of under the Code's interim fees and costs provisions). Provides that all petitions for or relating to interim fees and costs shall include an affidavit stating the factual basis for the requested relief and shall be expeditiously scheduled for hearing by the court. Provides that Code provisions concerning contribution to fees and costs apply to petitions for interim fees. Provides that deadlines for the filing of a praecipe or a petition for setting final fees and costs shall be tolled under specified conditions relating to an appeal or a post judgment motion. Makes other changes.

LRB096 03117 AJ0 13133 b

1 AN ACT concerning civil law.

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 Sections 501, 503, and 508  
6 as follows:

7 (750 ILCS 5/501) (from Ch. 40, par. 501)

8 Sec. 501. Temporary Relief.) In all proceedings under this  
9 Act, temporary relief shall be as follows:

10 (a) Either party may move for:

11 (1) temporary maintenance or temporary support of a  
12 child of the marriage entitled to support, accompanied by  
13 an affidavit as to the factual basis for the relief  
14 requested;

15 (2) a temporary restraining order or preliminary  
16 injunction, accompanied by affidavit showing a factual  
17 basis for any of the following relief:

18 (i) restraining any person from transferring,  
19 encumbering, concealing or otherwise disposing of any  
20 property except in the usual course of business or for  
21 the necessities of life, and, if so restrained,  
22 requiring him to notify the moving party and his  
23 attorney of any proposed extraordinary expenditures

1 made after the order is issued;

2 (ii) enjoining a party from removing a child from  
3 the jurisdiction of the court;

4 (iii) enjoining a party from striking or  
5 interfering with the personal liberty of the other  
6 party or of any child; or

7 (iv) providing other injunctive relief proper in  
8 the circumstances; or

9 (3) other appropriate temporary relief.

10 (b) The court may issue a temporary restraining order  
11 without requiring notice to the other party only if it finds,  
12 on the basis of the moving affidavit or other evidence, that  
13 irreparable injury will result to the moving party if no order  
14 is issued until the time for responding has elapsed.

15 (c) A response hereunder may be filed within 21 days after  
16 service of notice of motion or at the time specified in the  
17 temporary restraining order.

18 (c-1) As used in this subsection (c-1), "interim attorney's  
19 fees and costs" means attorney's fees and costs assessed from  
20 time to time while a case is pending, in favor of the  
21 petitioning party's current counsel, for reasonable fees and  
22 costs either already incurred or to be incurred, and "interim  
23 award" means an award of interim attorney's fees and costs.  
24 Interim awards shall be governed by the following:

25 (1) Except for good cause shown, a proceeding for (or  
26 relating to) interim attorney's fees and costs in a

1        pre-judgment dissolution proceeding shall be  
2        nonevidentiary, and summary in nature, ~~and expeditious.~~  
3        All hearings for or relating to interim attorney's fees and  
4        costs under this subsection shall be scheduled  
5        expeditiously by the court. When a party files a petition  
6        for interim attorney's fees and costs supported by one or  
7        more affidavits that delineate relevant factors, the court  
8        (or a hearing officer) shall assess an interim award after  
9        affording the opposing party a reasonable opportunity to  
10       file a responsive pleading. A responsive pleading shall set  
11       out the amount of each retainer or other payment or  
12       payments, or both, previously paid to the responding  
13       party's counsel by or on behalf of the responding party. In  
14       assessing an interim award, the court shall consider all  
15       relevant factors, as presented, that appear reasonable and  
16       necessary, including to the extent applicable:

17                (A) the income and property of each party,  
18                including alleged marital property within the sole  
19                control of one party and alleged non-marital property  
20                within access to a party;

21                (B) the needs of each party;

22                (C) the realistic earning capacity of each party;

23                (D) any impairment to present earning capacity of  
24                either party, including age and physical and emotional  
25                health;

26                (E) the standard of living established during the

1 marriage;

2 (F) the degree of complexity of the issues,  
3 including custody, valuation or division (or both) of  
4 closely held businesses, and tax planning, as well as  
5 reasonable needs for expert investigations or expert  
6 witnesses, or both;

7 (G) each party's access to relevant information;

8 (H) the amount of the payment or payments made or  
9 reasonably expected to be made to the attorney for the  
10 other party; and

11 (I) any other factor that the court expressly finds  
12 to be just and equitable.

13 (2) Any assessment of an interim award (including one  
14 pursuant to an agreed order) shall be without prejudice to  
15 any final allocation and without prejudice as to any claim  
16 or right of either party or any counsel of record at the  
17 time of the award. Any such claim or right may be presented  
18 by the appropriate party or counsel at a hearing on  
19 contribution under subsection (j) of Section 503 or a  
20 hearing on counsel's fees under subsection (c) of Section  
21 508. Unless otherwise ordered by the court at the final  
22 hearing between the parties or in a hearing under  
23 subsection (j) of Section 503 or subsection (c) of Section  
24 508, interim awards, as well as the aggregate of all other  
25 payments by each party to counsel and related payments to  
26 third parties, shall be deemed to have been advances from

1 the parties' marital estate. Any portion of any interim  
2 award constituting an overpayment shall be remitted back to  
3 the appropriate party or parties, or, alternatively, to  
4 successor counsel, as the court determines and directs,  
5 after notice.

6 (3) In any proceeding under this subsection (c-1), the  
7 court (or hearing officer) shall assess an interim award  
8 against an opposing party in an amount necessary to enable  
9 the petitioning party to participate adequately in the  
10 litigation, upon findings that the party from whom  
11 attorney's fees and costs are sought has the financial  
12 ability to pay reasonable amounts and that the party  
13 seeking attorney's fees and costs lacks sufficient access  
14 to assets or income to pay reasonable amounts. In  
15 determining an award, the court shall consider whether  
16 adequate participation in the litigation requires  
17 expenditure of more fees and costs for a party that is not  
18 in control of assets or relevant information. Except for  
19 good cause shown, an interim award shall not be less than  
20 payments made or reasonably expected to be made to the  
21 counsel for the other party. If the court finds that both  
22 parties lack financial ability or access to assets or  
23 income for reasonable attorney's fees and costs, the court  
24 (or hearing officer) shall enter an order that allocates  
25 available funds for each party's counsel, including  
26 retainers or interim payments, or both, previously paid, in

1 a manner that achieves substantial parity between the  
2 parties.

3 (4) The changes to this Section 501 made by this  
4 amendatory Act of 1996 apply to cases pending on or after  
5 June 1, 1997, except as otherwise provided in Section 508.

6 (d) A temporary order entered under this Section:

7 (1) does not prejudice the rights of the parties or the  
8 child which are to be adjudicated at subsequent hearings in  
9 the proceeding;

10 (2) may be revoked or modified before final judgment,  
11 on a showing by affidavit and upon hearing; and

12 (3) terminates when the final judgment is entered or  
13 when the petition for dissolution of marriage or legal  
14 separation or declaration of invalidity of marriage is  
15 dismissed.

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

17 (750 ILCS 5/503) (from Ch. 40, par. 503)

18 Sec. 503. Disposition of property.

19 (a) For purposes of this Act, "marital property" means all  
20 property acquired by either spouse subsequent to the marriage,  
21 except the following, which is known as "non-marital property":

22 (1) property acquired by gift, legacy or descent;

23 (2) property acquired in exchange for property  
24 acquired before the marriage or in exchange for property  
25 acquired by gift, legacy or descent;

1           (3) property acquired by a spouse after a judgment of  
2           legal separation;

3           (4) property excluded by valid agreement of the  
4           parties;

5           (5) any judgment or property obtained by judgment  
6           awarded to a spouse from the other spouse;

7           (6) property acquired before the marriage;

8           (7) the increase in value of property acquired by a  
9           method listed in paragraphs (1) through (6) of this  
10          subsection, irrespective of whether the increase results  
11          from a contribution of marital property, non-marital  
12          property, the personal effort of a spouse, or otherwise,  
13          subject to the right of reimbursement provided in  
14          subsection (c) of this Section; and

15          (8) income from property acquired by a method listed in  
16          paragraphs (1) through (7) of this subsection if the income  
17          is not attributable to the personal effort of a spouse.

18          (b) (1) For purposes of distribution of property pursuant to  
19          this Section, all property acquired by either spouse after the  
20          marriage and before a judgment of dissolution of marriage or  
21          declaration of invalidity of marriage, including non-marital  
22          property transferred into some form of co-ownership between the  
23          spouses, is presumed to be marital property, regardless of  
24          whether title is held individually or by the spouses in some  
25          form of co-ownership such as joint tenancy, tenancy in common,  
26          tenancy by the entirety, or community property. The presumption



1 of marital property is overcome by a showing that the property  
2 was acquired by a method listed in subsection (a) of this  
3 Section.

4 (2) For purposes of distribution of property pursuant to  
5 this Section, all pension benefits (including pension benefits  
6 under the Illinois Pension Code) acquired by either spouse  
7 after the marriage and before a judgment of dissolution of  
8 marriage or declaration of invalidity of the marriage are  
9 presumed to be marital property, regardless of which spouse  
10 participates in the pension plan. The presumption that these  
11 pension benefits are marital property is overcome by a showing  
12 that the pension benefits were acquired by a method listed in  
13 subsection (a) of this Section. The right to a division of  
14 pension benefits in just proportions under this Section is  
15 enforceable under Section 1-119 of the Illinois Pension Code.

16 The value of pension benefits in a retirement system  
17 subject to the Illinois Pension Code shall be determined in  
18 accordance with the valuation procedures established by the  
19 retirement system.

20 The recognition of pension benefits as marital property and  
21 the division of those benefits pursuant to a Qualified Illinois  
22 Domestic Relations Order shall not be deemed to be a  
23 diminishment, alienation, or impairment of those benefits. The  
24 division of pension benefits is an allocation of property in  
25 which each spouse has a species of common ownership.

26 (3) For purposes of distribution of property under this

1 Section, all stock options granted to either spouse after the  
2 marriage and before a judgment of dissolution of marriage or  
3 declaration of invalidity of marriage, whether vested or  
4 non-vested or whether their value is ascertainable, are  
5 presumed to be marital property. This presumption of marital  
6 property is overcome by a showing that the stock options were  
7 acquired by a method listed in subsection (a) of this Section.  
8 The court shall allocate stock options between the parties at  
9 the time of the judgment of dissolution of marriage or  
10 declaration of invalidity of marriage recognizing that the  
11 value of the stock options may not be then determinable and  
12 that the actual division of the options may not occur until a  
13 future date. In making the allocation between the parties, the  
14 court shall consider, in addition to the factors set forth in  
15 subsection (d) of this Section, the following:

16 (i) All circumstances underlying the grant of the stock  
17 option including but not limited to whether the grant was  
18 for past, present, or future efforts, or any combination  
19 thereof.

20 (ii) The length of time from the grant of the option to  
21 the time the option is exercisable.

22 (c) Commingled marital and non-marital property shall be  
23 treated in the following manner, unless otherwise agreed by the  
24 spouses:

25 (1) When marital and non-marital property are  
26 commingled by contributing one estate of property into

1 another resulting in a loss of identity of the contributed  
2 property, the classification of the contributed property  
3 is transmuted to the estate receiving the contribution,  
4 subject to the provisions of paragraph (2) of this  
5 subsection; provided that if marital and non-marital  
6 property are commingled into newly acquired property  
7 resulting in a loss of identity of the contributing  
8 estates, the commingled property shall be deemed  
9 transmuted to marital property, subject to the provisions  
10 of paragraph (2) of this subsection.

11 (2) When one estate of property makes a contribution to  
12 another estate of property, or when a spouse contributes  
13 personal effort to non-marital property, the contributing  
14 estate shall be reimbursed from the estate receiving the  
15 contribution notwithstanding any transmutation; provided,  
16 that no such reimbursement shall be made with respect to a  
17 contribution which is not retraceable by clear and  
18 convincing evidence, or was a gift, or, in the case of a  
19 contribution of personal effort of a spouse to non-marital  
20 property, unless the effort is significant and results in  
21 substantial appreciation of the non-marital property.  
22 Personal effort of a spouse shall be deemed a contribution  
23 by the marital estate. The court may provide for  
24 reimbursement out of the marital property to be divided or  
25 by imposing a lien against the non-marital property which  
26 received the contribution.

1 (d) In a proceeding for dissolution of marriage or  
2 declaration of invalidity of marriage, or in a proceeding for  
3 disposition of property following dissolution of marriage by a  
4 court which lacked personal jurisdiction over the absent spouse  
5 or lacked jurisdiction to dispose of the property, the court  
6 shall assign each spouse's non-marital property to that spouse.  
7 It also shall divide the marital property without regard to  
8 marital misconduct in just proportions considering all  
9 relevant factors, including:

10 (1) the contribution of each party to the acquisition,  
11 preservation, or increase or decrease in value of the  
12 marital or non-marital property, including (i) any such  
13 decrease attributable to a payment deemed to have been an  
14 advance from the parties' marital estate under subsection  
15 (c-1)(2) of Section 501 and (ii) the contribution of a  
16 spouse as a homemaker or to the family unit;

17 (2) the dissipation by each party of the marital or  
18 non-marital property;

19 (3) the value of the property assigned to each spouse;

20 (4) the duration of the marriage;

21 (5) the relevant economic circumstances of each spouse  
22 when the division of property is to become effective,  
23 including the desirability of awarding the family home, or  
24 the right to live therein for reasonable periods, to the  
25 spouse having custody of the children;

26 (6) any obligations and rights arising from a prior

1 marriage of either party;

2 (7) any antenuptial agreement of the parties;

3 (8) the age, health, station, occupation, amount and  
4 sources of income, vocational skills, employability,  
5 estate, liabilities, and needs of each of the parties;

6 (9) the custodial provisions for any children;

7 (10) whether the apportionment is in lieu of or in  
8 addition to maintenance;

9 (11) the reasonable opportunity of each spouse for  
10 future acquisition of capital assets and income; and

11 (12) the tax consequences of the property division upon  
12 the respective economic circumstances of the parties.

13 (e) Each spouse has a species of common ownership in the  
14 marital property which vests at the time dissolution  
15 proceedings are commenced and continues only during the  
16 pendency of the action. Any such interest in marital property  
17 shall not encumber that property so as to restrict its  
18 transfer, assignment or conveyance by the title holder unless  
19 such title holder is specifically enjoined from making such  
20 transfer, assignment or conveyance.

21 (f) In a proceeding for dissolution of marriage or  
22 declaration of invalidity of marriage or in a proceeding for  
23 disposition of property following dissolution of marriage by a  
24 court that lacked personal jurisdiction over the absent spouse  
25 or lacked jurisdiction to dispose of the property, the court,  
26 in determining the value of the marital and non-marital

1 property for purposes of dividing the property, shall value the  
2 property as of the date of trial or some other date as close to  
3 the date of trial as is practicable.

4 (g) The court if necessary to protect and promote the best  
5 interests of the children may set aside a portion of the  
6 jointly or separately held estates of the parties in a separate  
7 fund or trust for the support, maintenance, education, physical  
8 and mental health, and general welfare of any minor, dependent,  
9 or incompetent child of the parties. In making a determination  
10 under this subsection, the court may consider, among other  
11 things, the conviction of a party of any of the offenses set  
12 forth in Section 12-3.3, 12-4, 12-4.1, 12-4.2, 12-4.3, 12-13,  
13 12-14, 12-14.1, 12-15, or 12-16 of the Criminal Code of 1961 if  
14 the victim is a child of one or both of the parties, and there  
15 is a need for, and cost of, care, healing and counseling for  
16 the child who is the victim of the crime.

17 (h) Unless specifically directed by a reviewing court, or  
18 upon good cause shown, the court shall not on remand consider  
19 any increase or decrease in the value of any "marital" or  
20 "non-marital" property occurring since the assessment of such  
21 property at the original trial or hearing, but shall use only  
22 that assessment made at the original trial or hearing.

23 (i) The court may make such judgments affecting the marital  
24 property as may be just and may enforce such judgments by  
25 ordering a sale of marital property, with proceeds therefrom to  
26 be applied as determined by the court.

1           (j) After proofs have closed in the final hearing on all  
2 other issues between the parties (or in conjunction with the  
3 final hearing, if all parties so stipulate) and before judgment  
4 is entered, a party's petition for contribution to fees and  
5 costs incurred in the proceeding shall be heard and decided, in  
6 accordance with the following provisions:

7           (1) A petition for contribution, if not filed before  
8 the final hearing on other issues between the parties,  
9 shall be filed no later than 30 days after the closing of  
10 proofs in the final hearing or within such other period as  
11 the court orders.

12           (2) Any award of contribution to one party from the  
13 other party shall be based on the criteria for division of  
14 marital property under this Section 503 and, if maintenance  
15 has been awarded, on the criteria for an award of  
16 maintenance under Section 504.

17           (3) The filing of a petition for contribution shall not  
18 be deemed to constitute a waiver of the attorney-client  
19 privilege between the petitioning party and current or  
20 former counsel; and such a waiver shall not constitute a  
21 prerequisite to a hearing for contribution. If either  
22 party's presentation on contribution, however, includes  
23 evidence within the scope of the attorney-client  
24 privilege, the disclosure or disclosures shall be narrowly  
25 construed and shall not be deemed by the court to  
26 constitute a general waiver of the privilege as to matters

1 beyond the scope of the presentation.

2 (4) No finding on which a contribution award is based  
3 or denied shall be asserted against counsel or former  
4 counsel for purposes of any hearing under subsection (c) or  
5 (e) of Section 508.

6 (5) A contribution award (payable to either the  
7 petitioning party or the party's counsel, or jointly, as  
8 the court determines) may be in the form of either a set  
9 dollar amount or a percentage of fees and costs (or a  
10 portion of fees and costs) to be subsequently agreed upon  
11 by the petitioning party and counsel or, alternatively,  
12 thereafter determined in a hearing pursuant to subsection  
13 (c) of Section 508 or previously or thereafter determined  
14 in an independent proceeding under subsection (e) of  
15 Section 508.

16 (6) The changes to this Section 503 made by this  
17 amendatory Act of 1996 apply to cases pending on or after  
18 June 1, 1997, except as otherwise provided in Section 508.

19 (Source: P.A. 95-374, eff. 1-1-08.)

20 (750 ILCS 5/508) (from Ch. 40, par. 508)

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

23 (a) The court from time to time, after due notice and  
24 hearing, and after considering the financial resources of the  
25 parties, may order any party to pay a reasonable amount for his



1 own or the other party's costs and attorney's fees. Interim  
2 attorney's fees and costs may be awarded from the opposing  
3 party, in a pre-judgment dissolution proceeding in accordance  
4 with subsection (c-1) of Section 501 and in any other  
5 proceeding under this subsection. At the conclusion of any  
6 pre-judgment dissolution proceeding under this subsection ~~the~~  
7 ~~case~~, contribution to attorney's fees and costs may be awarded  
8 from the opposing party in accordance with subsection (j) of  
9 Section 503 and in any other proceeding under this subsection.  
10 Fees and costs may be awarded in any proceeding to counsel from  
11 a former client in accordance with subsection (c) of this  
12 Section. Awards may be made in connection with the following:

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

15 (2) The enforcement or modification of any order or  
16 judgment under this Act.

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

20 (3.1) The prosecution of any claim on appeal (if the  
21 prosecuting party has substantially prevailed).

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

25 (5) The costs and legal services of an attorney  
26 rendered in preparation of the commencement of the

1 proceeding brought under this Act.

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

4 All petitions for or relating to interim fees and costs  
5 under this subsection shall be accompanied by an affidavit as  
6 to the factual basis for the relief requested and all hearings  
7 relative to any such petition shall be scheduled expeditiously  
8 by the court. All provisions for contribution under this  
9 subsection shall also be subject to paragraphs (3), (4), and  
10 (5) of subsection (j) of Section 503.

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

21 (b) In every proceeding for the enforcement of an order or  
22 judgment when the court finds that the failure to comply with  
23 the order or judgment was without compelling cause or  
24 justification, the court shall order the party against whom the  
25 proceeding is brought to pay promptly the costs and reasonable  
26 attorney's fees of the prevailing party. If non-compliance is

1 with respect to a discovery order, the non-compliance is  
2 presumptively without compelling cause or justification, and  
3 the presumption may only be rebutted by clear and convincing  
4 evidence. If at any time a court finds that a hearing under  
5 this Section was precipitated or conducted for any improper  
6 purpose, the court shall allocate fees and costs of all parties  
7 for the hearing to the party or counsel found to have acted  
8 improperly. Improper purposes include, but are not limited to,  
9 harassment, unnecessary delay, or other acts needlessly  
10 increasing the cost of litigation.

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

15 (1) No petition of a counsel of record may be filed  
16 against a client unless the filing counsel previously has  
17 been granted leave to withdraw as counsel of record or has  
18 filed a motion for leave to withdraw as counsel. On receipt  
19 of a petition of a client under this subsection (c), the  
20 counsel of record shall promptly file a motion for leave to  
21 withdraw as counsel. If the client and the counsel of  
22 record agree, however, a hearing on the motion for leave to  
23 withdraw as counsel filed pursuant to this subdivision  
24 (c)(1) may be deferred until completion of any alternative  
25 dispute resolution procedure under subdivision (c)(4). As  
26 to any Petition for Setting Final Fees and Costs against a

1 client or counsel over whom the court has not obtained  
2 jurisdiction, a separate summons shall issue. Whenever a  
3 separate summons is not required, original notice as to a  
4 Petition for Setting Final Fees and Costs may be given, and  
5 documents served, in accordance with Illinois Supreme  
6 Court Rules 11 and 12.

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

1 shall not affect appealability of any judgment or other  
2 adjudication in the original proceeding.

3 (3) The determination of reasonable attorney's fees  
4 and costs either under this subsection (c), whether  
5 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 discretion of the trial court. The court shall first  
9 consider the written engagement agreement and, if the court  
10 finds that the former client and the filing counsel,  
11 pursuant to their written engagement agreement, entered  
12 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 subject to the further requirements of this subdivision  
16 (c)(3). Before ordering enforcement, however, the court  
17 shall consider the performance pursuant to the contract.  
18 Any amount awarded by the court must be found to be fair  
19 compensation for the services, pursuant to the contract,  
20 that the court finds were reasonable and necessary. Quantum  
21 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 finds in a particular case that aggregate billings to a  
25 client were unconscionably excessive, the court in its  
26 discretion may reduce the award otherwise determined

1 appropriate or deny fees altogether).

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

8 (A) In any circuit court for a single county with a  
9 population in excess of 1,000,000, the requirement of  
10 the controversy being submitted to an alternative  
11 dispute resolution procedure is mandatory unless the  
12 client and the counsel both affirmatively opt out of  
13 such procedures; or

14 (B) In any other circuit court, the requirement of  
15 the controversy being submitted to an alternative  
16 dispute resolution procedure is mandatory only if  
17 neither the client nor the counsel affirmatively opts  
18 out of such procedures.

19 After completion of any such procedure (or after one or  
20 both sides has opted out of such procedures), if the  
21 dispute is unresolved, any pending motion for leave to  
22 withdraw as counsel shall be promptly granted and a final  
23 hearing under this subsection (c) shall be expeditiously  
24 set and completed.

25 (5) A petition (or a praecipe for fee hearing without  
26 the petition) shall be filed no later than the end of the

1 period in which it is permissible to file a motion pursuant  
2 to Section 2-1203 of the Code of Civil Procedure. A  
3 praecipe for fee hearing shall be dismissed if a Petition  
4 for Setting Final Fees and Costs is not filed within 60  
5 days after the filing of the praecipe. A counsel who  
6 becomes a party by filing a Petition for Setting Final Fees  
7 and Costs, or as a result of the client filing a Petition  
8 for Setting Final Fees and Costs, shall not be entitled to  
9 exercise the right to a substitution of a judge without  
10 cause under subdivision (a)(2) of Section 2-1001 of the  
11 Code of Civil Procedure. Each of the foregoing deadlines  
12 for the filing of a praecipe or a petition shall be:

13 (A) tolled if a motion is filed under Section 2-1203 of  
14 the Code of Civil Procedure, in which instance a petition  
15 (or a praecipe) shall be filed no later than 30 days  
16 following disposition of all Section 2-1203 motions; or

17 (B) tolled if a notice of appeal is filed, in which  
18 instance a petition (or praecipe) shall be filed no later  
19 than 30 days following the date jurisdiction on the issue  
20 appealed is returned to the trial court.

21 If a praecipe has been timely filed, then by timely filed  
22 written stipulation between counsel and client (or former  
23 client), the deadline for the filing of a petition may be  
24 extended for a period of up to one year.

25 (d) A consent judgment, in favor of a current counsel of  
26 record against his or her own client for a specific amount in a

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



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

4           (1) While a case under this Act is still pending, a  
5 former counsel may pursue such an award and judgment at any  
6 time subsequent to 90 days after the entry of an order  
7 granting counsel leave to withdraw; and

8           (2) After the close of the period during which a  
9 petition (or praecipe) may be filed under subdivision  
10 (c) (5), if no such petition (or praecipe) for the counsel  
11 remains pending, any counsel or former counsel may pursue  
12 such an award and judgment in an independent proceeding.

13 In an independent proceeding, the prior applicability of this  
14 Section shall in no way be deemed to have diminished any other  
15 right of any counsel (or former counsel) to pursue an award and  
16 judgment for legal fees and costs on the basis of remedies that  
17 may otherwise exist under applicable law; and the limitations  
18 period for breach of contract shall apply. In an independent  
19 proceeding under subdivision (e) (1) in which the former counsel  
20 had represented a former client in a dissolution case that is  
21 still pending, the former client may bring in his or her spouse  
22 as a third-party defendant, provided on or before the final  
23 date for filing a petition (or praecipe) under subsection (c),  
24 the party files an appropriate third-party complaint under  
25 Section 2-406 of the Code of Civil Procedure. In any such case,  
26 any judgment later obtained by the former counsel shall be

1 against both spouses or ex-spouses, jointly and severally  
2 (except that, if a hearing under subsection (j) of Section 503  
3 has already been concluded and the court hearing the  
4 contribution issue has imposed a percentage allocation between  
5 the parties as to fees and costs otherwise being adjudicated in  
6 the independent proceeding, the allocation shall be applied  
7 without deviation by the court in the independent proceeding  
8 and a separate judgment shall be entered against each spouse  
9 for the appropriate amount). After the period for the  
10 commencement of a proceeding under subsection (c), the  
11 provisions of this Section (other than the standard set forth  
12 in subdivision (c) (3) and the terms respecting consent security  
13 arrangements in subsection (d) of this Section 508) shall be  
14 inapplicable.

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

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

21 "STATEMENT OF CLIENT'S RIGHTS AND RESPONSIBILITIES

22 (1) WRITTEN ENGAGEMENT AGREEMENT. The written engagement  
23 agreement, prepared by the counsel, shall clearly address the  
24 objectives of representation and detail the fee arrangement,  
25 including all material terms. If fees are to be based on

1 criteria apart from, or in addition to, hourly rates, such  
2 criteria (e.g., unique time demands and/or utilization of  
3 unique expertise) shall be delineated. The client shall receive  
4 a copy of the written engagement agreement and any additional  
5 clarification requested and is advised not to sign any such  
6 agreement which the client finds to be unsatisfactory or does  
7 not understand.

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

24 (3) COMMUNICATION. The counsel will keep the client  
25 reasonably informed about the status of representation and will  
26 promptly respond to reasonable requests for information,

1 including any reasonable request for an estimate respecting  
2 future costs of the representation or an appropriate portion of  
3 it. The client shall be truthful in all discussions with the  
4 counsel and provide all information or documentation required  
5 to enable the counsel to provide competent representation.  
6 During representation, the client is entitled to receive all  
7 pleadings and substantive documents prepared on behalf of the  
8 client and every document received from any other counsel of  
9 record. At the end of the representation and on written request  
10 from the client, the counsel will return to the client all  
11 original documents and exhibits. In the event that the counsel  
12 withdraws from representation, or is discharged by the client,  
13 the counsel will turn over to the substituting counsel (or, if  
14 no substitutions, to the client) all original documents and  
15 exhibits together with complete copies of all pleadings and  
16 discovery within thirty (30) days of the counsel's withdrawal  
17 or discharge.

18 (4) ETHICAL CONDUCT. The counsel cannot be required to  
19 engage in conduct which is illegal, unethical, or fraudulent.  
20 In matters involving minor children, the counsel may refuse to  
21 engage in conduct which, in the counsel's professional  
22 judgment, would be contrary to the best interest of the  
23 client's minor child or children. A counsel who cannot  
24 ethically abide by his client's directions shall be allowed to  
25 withdraw from representation.

26 (5) FEES. The counsel's fee for services may not be

1 contingent upon the securing of a dissolution of marriage, upon  
2 obtaining custody, or be based upon the amount of maintenance,  
3 child support, or property settlement received, except as  
4 specifically permitted under Supreme Court rules. The counsel  
5 may not require a non-refundable retainer fee, but must remit  
6 back any overpayment at the end of the representation. The  
7 counsel may enter into a consensual security arrangement with  
8 the client whereby assets of the client are pledged to secure  
9 payment of legal fees or costs, but only if the counsel first  
10 obtains approval of the Court. The counsel will prepare and  
11 provide the client with an itemized billing statement detailing  
12 hourly rates (and/or other criteria), time spent, tasks  
13 performed, and costs incurred on a regular basis, at least  
14 quarterly. The client should review each billing statement  
15 promptly and address any objection or error in a timely manner.  
16 The client will not be billed for time spent to explain or  
17 correct a billing statement. If an appropriately detailed  
18 written estimate is submitted to a client as to future costs  
19 for a counsel's representation or a portion of the contemplated  
20 services (i.e., relative to specific steps recommended by the  
21 counsel in the estimate) and, without objection from the  
22 client, the counsel then performs the contemplated services,  
23 all such services are presumptively reasonable and necessary,  
24 as well as to be deemed pursuant to the client's direction. In  
25 an appropriate case, the client may pursue contribution to his  
26 or her fees and costs from the other party.

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

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

8           (1) Subdivisions (c)(1) and (c)(2) of this Section 508,  
9 as well as provisions of subdivision (c)(3) of this Section  
10 508 pertaining to written engagement agreements, apply  
11 only to cases filed on or after June 1, 1997.

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

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

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

16           (C) The changes to this Section 508 made by this  
17 amendatory Act of 1996 pertaining to the final setting  
18 of fees.

19           (Source: P.A. 94-1016, eff. 7-7-06.)