FAMILY SUPPORT FORUM

The Official Newsletter of the Illinois Family Support Enforcement Association

Vol. 17 **SEPTEMBER, 2005** **No. 1**

Gov. Blagojevich announces a record-breaking $1 billion in child support collections

Governor signs new laws to further strengthen child support enforcement Illinois increase in collections nearly triples the national average

Press Release from June 30, 2005

CHICAGO – Gov. Blagojevich today announced that the State of Illinois will collect a record-breaking $1 billion in child support payments this year. The funds will provide 386,000 Illinois parents with the money they need to care for their children. This dramatic turnaround follows years of poor child support collection. But, over the past two years, Governor Blagojevich launched a number of innovative and aggressive programs to improve collection to help working parents, including the Deadbeat Parents Website and the New Hire Directory hotline.

"To raise a healthy and happy child, it takes love, patience, understanding – and money. Children need clothes to wear and food to eat. Every year, it gets more expensive to provide for a child and every year even more parents are raising their children alone," said Gov. Blagojevich. "When I was running for governor, the child support system in our state was the worst in the nation. But over the past two and a half years we have taken major steps to turn the system around, and our efforts are paying off. This year, we set a new record in child support collections, and we're sending a clear message to deadbeat parents –If you don't pay up, the state of Illinois is coming after you."

In the mid-1990s, the Illinois Department of Public Aid's Child Support Enforcement Division's performance fell steeply, causing hardship for thousands of Illinois parents. In fact, in 2000, Illinois faced the serious threat of federal penalties for poor child support enforcement. Since Governor Blagojevich was elected in 2002, his Administration has worked to turn Illinois' record around to help struggling single parents meet their families' needs.

"We are doing what needs to be done quickly and efficiently to ensure that our most vulnerable children get the support they need and deserve," said Barry Maram, director of the Department of Healthcare and Family Services (HFS).

Child support is the second largest income source for low-income families who qualify for the program. In 2003, more than 846,735 children in Illinois were owed child support payments totaling about $3 billion, with a collection rate of 28 percent. Today, the collection rate is 32 percent, with 741,787 children's support being enforced by the Department of Healthcare and Family Services.

Collections on cases receiving enforcement services from the Department of Healthcare and Family Services (formerly IL Dept. of Public Aid) grew 8.5 percent, surpassing the national average of 3 percent growth.
(Continued on page 11)

- In This Issue -

FAMILY SUPPORT FORUM

is the official newsletter of the

ILLINOIS FAMILY SUPPORT ENFORCEMENT ASSOCIATION

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Officers & Directors
2004 - 2005

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2005 Conference Registration Form

(Please submit separate registration for each person attending)

Please register me for IFSEA's Seventeenth Annual Conference on Support Enforcement, October 16 – 18, 2005.

PLEASE TYPE OR PRINT LEGIBLY.

Name (to appear on Membership Certificate): _____

Title & Employer: _____

Office Address: _____

City/State/Zip: _____

Preferred Mailing Address: _____

Phone Number:_____

E-Mail Address:_____
[ ] Send *FORUM* to my E-Mail address.

My Registration fee of $_____ [ ] is enclosed [ ] will be paid by (agency): _____
Please confirm, in advance, with the appropriate authority if you think your agency is paying your registration!
(Registration fees must be paid in full, or film billing arrangements made prior to the start of the conference.)
($110.00 fee required for registrations received on or before October 2, 2005, $135.00 required thereafter)

NOTE: If a payment is not enclosed, the signature of an official authorized to guarantee payment is required.
The undersigned hereby certifies that (s)he is authorized to guarantee payment by the agency indicated below.
Signature: _____
Agency: _____

Please answer: I [ ] will [ ] will not be attending the Sunday dinner.
[ ] Vegetarian Meals preferred.

If any of your meal plans change, please notify the conference Chair Christine Kovach at least 5 days before the conference.

Please include ____ additional tickets for the Sunday dinner (include $25.00 extra for each additional ticket).
Please include ____ additional tickets for all meals (include $50.00 extra for each additional set of tickets).
(Guest's Meal Preferences: ____ Regular meals ____ Vegetarian meals.)

Conference Location:
Four Points by Sheraton
319 Fountains Parkway
Fairview Heights, IL 62208
For Reservations: (618) 622-9500

Please return with Registration Fee to:
IFSEA Conference Registration
1917 South Whittier Avenue
Springfield, IL 62704
(FEIN No. 37-1274237)

Illinois Family Support Enforcement Association

2005 Annual Training Conference
October 16-18, 2005
Four Points by Sheraton
Fairview Heights, Illinois

AGENDA

SUNDAY, OCTOBER 16, 2005

4:00 – 7:00 p.m.	Registration
6:00 – 7:00 p.m.	Appetizers/Cash Bar
7:00 – 9:00 p.m.	Dinner
	Speaker: The Honorable William R. Haine, Senator
	Dinner Buffet with Chicken Entrée, Roast Beef and Pasta Primavera
9:00 – 11:00 p.m.	Hospitality Suite

MONDAY, OCTOBER 17, 2005

8:00 – 5:00	Exhibitors
8:30 – 10:00 a.m.	**PLENARY SESSION**
	Opening Remarks: Christa Ballew, President, IFSEA
	Federal IV-D Update: Mike Vicars, OCSE
	Illinois IV-D Update : Pam Compton, HFS/DCSE
	Attorney General Update : Patrice Ball-Reed, Deputy AG
	Case Law Update: Diane Potts, Assistant Attorney General

Legislative Update: Rick Saavedra, Office of General Counsel, HFS

Annual IFSEA Election of Board of Directors

10:10 – 11:30 a.m. BREAK OUT SESSIONS

A. ARDC/Third Party Issues
This panel will discuss the professional obligations of child support enforcement attorneys to the third party custodial and non-custodial parents.
Moderator: Patrice Ball-Reed
Speaker:

B. Effective Communication
This session will discuss applications of the 7 Habits of Highly Effective People for managers.
Moderator and Speaker: Norris Stevenson

C. Collection and Enforcement Options
Moderator: Mary Morrow
Speakers: Patti Litteral
Mary Miller
Michele Nevins

11:30 – 12:50 p.m. ELECTIONS ANNOUNCEMENT/LUNCH

Lunch Buffet with chicken, beef and vegetarian choices

1:00 – 2:20 p.m. BREAK OUT SESSIONS

A. Interest Calculations
This session will be devoted to familiarize the participants with the new law on interest calculations for child support and its implementation.
Moderator: Larry Nelson
Speakers: Larry Nelson
Michele Metcalf

B. Administrative Hearings and Judicial Challenges to Administrative Collection Tools
This panel will discuss hearings at the administrative level and the judicial challenges to administrative collection tools, including tax intercepts, bank levies,

pension/profit sharing levies, real property liens, passport revocations and professional license denials. The panel will also discuss judicial orders terminating income-withholding notices.

Moderator: Ralph Abt
Speakers: Ralph Abt
Mark Lichtenfeld
Susan Moorehead, ALJ

2:20 – 2:30 p.m. REFRESHMENT BREAK

2:30 – 3:50 p.m. BREAK OUT SESSIONS

A. Hot Tips for Lawyers
This panel will discuss HIPAA issues, emancipation issues, and liens for child support.
Moderator: Theresa Hagans

B. Legal Basics for Non-Lawyers
This session will give participants a basic understanding of legal terms and the child support legal process from establishment of paternity and child support to enforcement of child support orders.
Moderator: Irene Curran

C. Genetic Testing
A discussion of the newest changes in genetic testing and acceptable reports for paternity genetic testing. What is required by AABB standards for paternity testing reports.
Moderator: Scott Black
Speaker: Dr. George Maha

4:00 – 5:00 p.m. BREAK OUT SESSIONS

A. Strange but True Stories
A light-hearted discussion of some of the strange but true stories of paternity and child support.
Moderator: Larry Nelson

B. Employer Compliance
This panel will discuss the laws affecting employers and their implementation, including new hire reporting and employer non-compliance with withholding notices.
Moderator: Pam Compton

C. Military Issues
The speakers will address the child support and health insurance issues involving military non-custodial parents.
Moderator: Christine Kovach

5:00 – 6:00 p.m. DIRECTORS MEETING

9:00 – 11:00 p.m. HOSPITALITY SUITE

TUESDAY, OCTOBER 18, 2005

8:00 – 12:00 a.m. EXHIBITORS

8:30 – 10:00 a.m. JUDGES' PANEL

10:00 – 11:30 a.m. HFS/BPR/PARTNERS UPDATES AND INITIATIVES

11:30 – 12:30 p.m. ANNUAL MEMBERS MEETING/DOOR PRIZES

Proposed Amendments to
Illinois Family Support Enforcement Association By-Laws

WHEREAS, the current By-Laws provide in various articles and sections for notification to the membership by regular mail, and

WHEREAS, it is the desire of the Board of Directors to recognize the increasing use of e-mail and to allow for e-mail notification to the Board of Directors and membership of the meetings and newsletter publications, and

WHEREAS, pursuant to Article X of the By-Laws of IFSEA adopted September 18, 1997 and amended thereafter, the Board of Directors recommends the following for consideration and adoption by the general membership [changes in bold and italics]:

ARTICLE V: Annual Meeting. There shall be one Annual Meeting of the Association, to be held in conjunction with a Training Conference at times and locations to be determined by the Board of Directors.

Notice of the date and location of the Annual Meeting shall be provided by regular mail ***or by electronic mail (e-mail)*** to each member of the Association at least sixty days in advance thereof.

ARTICLE VI: Board of Directors.

C. Meetings: The Board of Directors shall meet at least once annually, in conjunction with the Association's Annual Meeting, and at such other times and places as may be determined by the President, by majority vote of the Officers, or by vote of at least one-third of all the Directors. Notice of the meetings of the Board of Directors shall be mailed ***or e-mailed*** to each Director at least 14 days in advance thereof unless such notice is waived and a majority of all Directors are present at such meetings.

D. Voting: Business of the Board of Directors shall be determined by a majority vote of Directors participating in the vote, except that a vote of 60% of all Directors shall be required for adoption of any statements of an official position of the Association. Directors absent during the vote on any issue may authorize any other Director to cast his/her vote by providing his/her written proxy to the Secretary prior to, during or within 72 hours after any such vote. Any such proxy may be revoked by participation by the Director in the vote or by written revocation received by the Secretary within 72 hours after the vote. If a written proxy is not received or is revoked within the designated time frame the Director who does not participate in a vote shall be deemed not to have voted. In the event that a regular meeting cannot be held, voting may be conducted by telephone, ***e-mail*** or mailed written ballot.

ARTICLE X: Amendments to By-Laws. These By-Laws may be amended at any annual or special meeting of the general membership by a majority vote of the regular members in attendance. Only proposed amendments provided to the membership in writing ***or by e-mail*** with or prior to the official notice of the membership meeting at which such proposal is to be considered may be considered at that meeting, although minor amendments to any such proposed amendment may be approved without such prior written ***or e-mail*** notice.

Nominations Sought for IFSEA Director Election

Half of the twenty member-elected IFSEA Director positions will be subject to election at the Annual Members' Meeting to be held during the 17th Annual Conference on Support Enforcement. Two directors are to be elected from Cook County plus four from each of the two downstate regions. Terms of office for Directors elected this year extend until 2007.

The Annual Meeting will again be split into two parts during IFSEA's Conference program. The election of Directors (including any nominations from the floor) will take place Monday, October 17th at 11:45 a.m. at the Conference. Results will be announced at the Annual Members' Meeting on Tuesday, October 18th.

Pursuant to Art. VII of the By-Laws, nominations for election are to be submitted in writing to the Nominations & Resolutions Committee at least seven days prior to the election - i.e., by October 10, 2005. Nominations may also be made from the floor if supported by five members from the region to be represented by the elected Director. However, time is *extremely* limited at the meetings, so advance nominations are urged.

If you would like to be elected to the IFSEA Board of Directors, or you know someone you would like to see elected, please complete the Director Nomination form provided below and return it to: **IFSEA, Nominations & Resolutions Committee, 1917 South Whittier, Springfield, IL, 62704**. Incumbents seeking re-election also require nomination. Only regular members in good standing (membership dues paid for 2005-2006) may be elected or appointed to the Board of Directors.

Those holding elected positions on the current IFSEA Board of Directors and their terms of office are as follows (see page 2 for the complete Board and officers):

2003 – 2005*	2004 - 2006
Christine Kovach (Asst. State's Atty.)	Christa Ballew (Maximus)
Jim Ryan (Atty. at Law)	Mary Morrow (IDPA, DCSE)
Norris Stevenson (IDPA, DCSE)	Pamela Compton (IDPA, DCSE)
Jeffry McKinley (Asst. Atty. Gen'l.)	Deanie Bergbreiter (Asst. Atty. Gen'l.)
Lawrence Nelson (Asst. Atty. Gen'l.)	Scott Black (Asst. Atty. Gen'l.)
Yvette Perez-Trevino (IDPA, DCSE)	Jeanne Fitzpatrick (Asst. Atty. Gen'l.)
Nancy Schuster Waites (Asst. State's Atty.)	Charles Kirian (Retired, HFS, DCSE)
Cheryl Drda (Asst. State's Atty.)	Patti Litteral (HFS, DCSE)
Mary K. Manning (Asst. State's Atty.)	Scott Michalec (Asst. Atty. Gen'l.)
Thomas M. Vaught (Asst. Atty. Gen'l.)	Matthew Ryan (Asst. Atty. Gen'l.)

* Directors whose terms end this year. The one-year terms of "At-Large" Directors Barb McDermott, HFS-DCSE, and Karen Williams, HFS-DCSE, also expire at this year's election.

NOMINATION FOR ELECTION TO THE BOARD OF DIRECTORS ILLINOIS FAMILY SUPPORT ENFORCEMENT ASSOCIATION

October 17 – 18, 2005
For a two-year term of office
2005 – 2007

I hereby nominate the following person for election to the IFSEA Board of Directors:

Nominee: _____

Position/Employer: _____

Office Address (County):_____

Credentials/Comments: _____

Person Making Nomination if other than Nominee: _____

Office Address (County): _____

To be eligible for election the nominee must be a regular member of the association, in good standing (with dues paid for the upcoming year) prior to the election.

Return before October 10, 2005, to:

IFSEA, Nominating & Resolutions Committee

1917 South Whittier, Springfield, IL 62704

From HFS . . .

. . . ILLINOIS IV-D UPDATE

By Pamela Compton

This has been an exciting year for IV-D program in Illinois! At the close of the state fiscal year, Governor Blagojevich announced a record-breaking $1 billion in collections in our offices at 32 West Randolph in Chicago. This was a momentous event for DCSE staff and turnout was enthusiastic. Governor Blagojevich congratulated IV-D staff throughout the state for the impressive strides made in improving performance, while acknowledging that much work remains to be done.

Among the statistics highlighting the program's improvement is our movement to 44th overall in state rankings. While our goal is to move much higher in the national rankings, moving to 44th from at or near the bottom of the rankings in such a short time is a milestone achievement. Illinois' growth in collections on IV-D cases is actually surpassing the national growth, with Illinois at 8.5% compared to national growth at 3%. At nearly 50%, we continue to have arguably the highest rate of incoming electronic payments to our State Disbursement Unit, and this year added two new electronic options. Noncustodial parents who are not subject to income withholding can now request that their payments being directly debited from a bank account. Custodial parents can now request that payments be disbursed to them via a "stored value" card called an "Eppicard". The parent does not need to have a bank account to use this disbursement option, and there are protections against fraud and theft associated with the card.

In another milestone for the child support program, Governor Blagojevich announced a new initiative for employers in this year's State of the State address. The New Hire Outreach program assists employers in meeting their obligations to report newly hired employees to the Department of Employment Security, so that income withholding orders can immediately be sent when noncustodial parents change jobs or obtain employment. Since 80% of child support collections are through income withholding, immediate reporting of new hires directly contributes to more collections and less disruption in support for families and helps non-custodial parents avoid building up unpaid child support debt.

During the conference in October we will cover new legislation in depth, but I want to take a moment to acknowledge the collaboration that led to the development and passage of SB452 addressing interest on child support. The participation of the Attorney General's staff and staff of each States' Attorney office involved in the IV-D program was critical to the development and passage of this important bill, and I am deeply appreciative of the hard work and thoughtful approach of everyone who contributed to the bill's language and to the planning for implementation. This collaboration set the stage for the coming year's most important Business Process Re-Engineering effort - the Legal Project BPR. You will also hear more about this new initiative during the conference.

I look forward to seeing you at the Fall Conference.

(Continued from page 1)
More than $100 million of the $1 billion collected went to parents whose child support was severely overdue.

To help more working parents provide for their children and leading to this year's record-breaking $1 billion in collections, Governor Blagojevich launched a number of critical programs including:

The Deadbeat Parents Website. In November 2003, Governor Blagojevich launched the Deadbeat Parents Website that identified parents who owe more than $5,000 in child support payments, resulting in the collection of over $172,000 in back payments in 18 months of operation (http://www.ilchildsupport.com/deadbeats). In addition, Healthcare and Family Services (HFS) received federal certification of the Key Information Delivery System (KIDS), the main computer for the child support process.

New Hire Initiative. In Illinois, 80 percent of child support is collected through wage withholdings, a method facilitated by the Illinois Department of Employment Security's New Hire Directory. This year, the Blagojevich administration made it easier for employers to comply with the Illinois Department of Employment Security's New Hire Directory by establishing a toll-free hotline to get information and clarification about the law, and developed easy-to-understand marketing materials that assisted in the employer education process. HFS also provided onsite training at employer sites and association meetings.

The Sheridan Rehabilitation Project. The Sheridan Rehabilitation Project within the Illinois Department of Corrections helps ex-offenders access jobs and training programs so that they can meet their child support obligations. According to the Center for Law and Social Policy, roughly one-quarter of U.S. inmates have open child support cases. Incarcerated non-custodial parents owe in the range of $225 to $313 per month in child support. On average, parents owe more than $10,000 in arrears when they got to prison and leave prison owing $23,000 or more.

These initiatives and resulting success earned the Division of Child Support Enforcement (DCSE) a $7 million federal bonus award for meeting federal child support indicators, the largest incentive ever received by Illinois under a performance based system.

Mary Marquette, an Illinois parent who has collected child support and was present at the bill signing, said she has benefited from Illinois' innovative collection programs.

"The passport program is a really great tool, and more states should adopt the program because it is fail-safe - if the person who owes child support wants to travel, they need to pay their child support," she said.

To continue Illinois' recent success and further strengthen child support enforcement, the Governor signed four pieces of legislation today:

Making the child support process more efficient: Sponsored by Rep. Cynthia Soto (D-Chicago) and Sen. Iris Martinez (D-Chicago), House Bill 785, makes child support collection more efficient by updating the process to reflect current practices. The law is effective January 1, 2006.

Adding interest to unpaid alimony: Sponsored by Rep. Patricia Reid Lindner (R-Sugar Grove) and Sen. Susan Garrett (D-Highwood), Senate Bill 95, an initiative of the Illinois State Bar Association, provides that any new or existing order including any unallocated maintenance obligation (alimony) shall accrue simple interest at the rate of 9% per annum, just as child support obligations. This law is effective January 1, 2006.

Improving ability to legally serve notices on non-custodial parents: Sponsored by Rep. Lovana Jones (D-Chicago) and Sen. Kwame Raoul (D-Chicago), Senate Bill 955 improves the Department's ability to legally serve notices on non-custodial parents. This law is effective immediately.

Making sure the family receives interest payments first: Sponsored by Rep. Patricia Reid Lindner (R-Sugar Grove) and Sen. Maggie Crotty (D-Oak Forest), Senate Bill 452 simplifies the calculation and distribution of interest on unpaid child support and ensures that collections of interest are paid to the family first. This law is effective January 1, 2006.

Making payments easier through currency exchanges: Sponsored by Rep. Cynthia Soto (D-Chicago) and Sen. Iris Martinez (D-Chicago), HB 783 allows a non-custodial parent to give certain information to a currency exchange so that their child support payments can be made there, giving the non-custodial parent more access to places where they can make payments.

"This new legislation provides a fair and equitable way to help ensure women receive their divorce maintenance payments on time," said Sen. Susan Garrett (D-Highwood).

"For many low-income families, child support payments can mean the difference between living comfortably and falling into poverty," said Rep. Cynthia Soto (D-Chicago). "These new laws will help families collect the money they need to stay afloat.

Governor Declares August is Child Support Month

Official Proclamation Recognizes Strengthened Enforcement and Increased Collections for Illinois' Children

Press Release from August 2, 2005

CHICAGO – Governor Rod R. Blagojevich today announced that August is Child Support Month and honored the Division of Child Support Enforcement with an official proclamation recognizing its success in strengthening enforcement and increasing collections for Illinois' children. Governor Blagojevich recently signed five bills into law that further improve the state's child support services under the Illinois Department of Healthcare and Family Services (HFS).

"Every year, it gets more expensive to raise children and every year even more children are being raised by single parents. Moms and dads who are bringing up families alone shouldn't have to bear the financial burden alone. My Administration has taken major steps to turn the child support system around in Illinois, and our efforts are paying off. Deadbeat parents are hearing us loud and clear – If you don't pay up, the state of Illinois is coming after you," said Governor Blagojevich.

In July, Governor Blagojevich announced a record breaking $1 billion in child support payments have been made this year. The funds will provide 386,000 Illinois parents with the money they need to care for their children. More than $100 million of the $1 billion collected went to parents whose child support was severely overdue. Collections on cases receiving enforcement services from HFS grew 8.5 percent, surpassing the national average of 3 percent growth.

During the month of August, HFS outreach staff will travel throughout the state to increase awareness on the new innovative and aggressive programs the Governor has implemented to improve collection for Illinois' working families.

"The children of Illinois have found a passionate, determined advocate in Governor Blagojevich," said Barry Maram, director of HFS. "We are acting quickly and efficiently to ensure that our children get the support they need and deserve."

Laura Cassidy-Jaquez, a mother of two from Stone Park, IL, said she has witnessed a transformation in Illinois child support enforcement since Governor Blagojevich took office. "Five years ago, I would call to have my case re-filed, and it would never get done – my file would just disappear," said Cassidy-Jaquez. "Since Governor Blagojevich started making changes, I haven't had to worry about my family falling through the cracks, and I rest easy now knowing that my case is in responsive and efficient hands."

Child support is the second largest income source for low-income families who qualify for the program. In 2003, more than 846,735 children in Illinois were owed child support payments totaling about $3 billion, with a collection rate of 28 percent. Today, the collection rate is 32 percent, with 741,787 children's support being enforced by the Department of Healthcare and Family Services.

This dramatic turnaround follows years of poor child support collection. But, over the past two years, Governor Blagojevich launched a number of innovative and aggressive programs to improve collection to help working parents, including: a Deadbeat Parents Website that identifies parents who owe more than $5,000 in child support payments, resulting in the collection of over

$172,000 in back payments (http://www.ilchildsupport.com/deadbeats); HFS received federal certification of the Key Information Delivery System (KIDS), the main computer for the child support process; the New Hire Initiative made it easier for employers to comply with the Illinois Department of Employment Security's New Hire Directory by establishing a toll-free hotline to get information and clarification about the law, and developed easy-to-understand marketing materials that assisted in the employer education process; and the Sheridan Rehabilitation Project that helps ex-offenders access jobs and training so they can meet their child support obligations.

These initiatives and resulting success earned the Division of Child Support Enforcement (DCSE) a $7 million federal bonus award for meeting federal child support indicators, the largest incentive ever received by Illinois under a performance based system.

Governor Blagojevich signing Child Support bills at the Chicago office on June 30th. The Governor signed five pieces of Child Support legislation this summer.

Making the child support process more efficient: House Bill 785, makes child support collection more efficient by updating the process to reflect current practices. The law is effective January 1, 2006.

Adding interest to unpaid alimony: Senate Bill 95, an initiative of the Illinois State Bar Association, provides that any new or existing order including any unallocated maintenance obligation (alimony) shall accrue simple interest at the rate of 9 percent per annum, just as child support obligations. This law is effective January 1, 2006.

Improving ability to legally serve notices on non-custodial parents: Senate Bill 955 improves the Department's ability to legally serve notices on non-custodial parents. This law is effective immediately.

Making sure the family receives interest payments first: Senate Bill 452 simplifies the calculation and distribution of interest on unpaid child support and ensures that collections of interest are paid to the family first. This law is effective January 1, 2006.

Making payments easier through currency exchanges: HB 783 allows a non-custodial parent to give certain information to a currency exchange so that their child support payments can be made there, giving the non-custodial parent more access to places where they can make payments.

Child Support Highlights

IDPA now HFS
Effective July 1, the Department of Public Aid became the Department of Healthcare and Family Services.

New OCSE Commissioner
Margot Bean, formerly the IV-D Director for the State of New York, has been named the Commissioner of the Federal Office of Child Support Enforcement. Ms. Bean served as the IV-D Director for five years and previously had served as an attorney in that office. According to the OCSE, Ms. Bean began her career in 1980 in the Guam Attorney General's Office as an Assistant Attorney General. Ms. Bean was the 2005 President of the National Child Support Enforcement Association.

S.B. 0095: INTEREST; MAINTENANCE [P.A. 94-0089, eff. 1/1/06]

Amends § 504 of the Illinois Marriage and Dissolution of Marriage Act. As Introduced, provides that any maintenance obligation, including any unallocated maintenance and child support obligation, that becomes due and remains unpaid for 30 days or more shall accrue simple interest at the rate of 9% per annum.

As amended, provides that any maintenance obligation, including any unallocated maintenance and child support obligation, or any portion of any support obligation that becomes due and remains unpaid shall accrue simple interest as set forth in § 505 of IMDMA (instead of "that becomes due and remains unpaid for 30 days for more shall accrue simple interest at a rate of 9% per annum"). Provides that any new or existing order, including any unallocated maintenance and child support order, entered by the court under § 504 shall be deemed to be a series of judgments against the person obligated to pay support. Provides that each judgment shall be in the amount of each payment or installment of support and shall be deemed entered as of the date the corresponding payment or installment becomes due under the terms of the support order, except that no judgment may arise as to any installment coming due after the termination of maintenance. Provides that each judgment shall have the full force, effect, and attributes of any other judgment of this State, including the ability to be enforced. Provides that a lien arises by operation of law against the real and personal property of the obligor for each installment of overdue support owed by the obligor.

Passed by the Senate, as amended, 4/14/05, 59-0-0.

Passed by the House, 5/4/05, 115-0-0.

PASSED BOTH HOUSES. Sent to the Governor 6/2/05.

SIGNED BY THE GOVERNOR 6/30/05 as P.A. 94-0089, eff. 1/1/06.

S.B. 0452: INTEREST: CHILD SUPPORT [P.A. 94-0090, eff. 1/1/06]

Amends § 12-109 of the Code of Civil Procedure and sections of the Illinois Public Aid Code, the Illinois Marriage and Dissolution of Marriage Act, the Non-Support Punishment Act, the Income Withholding for Support Act, and the Illinois Parentage Act of 1984. Replaces the provisions concerning interest on child support judgments. Provides for the accrual of interest on a child support obligation that becomes due and remains unpaid as of the end of each month (instead of for 30 days or more). Provides that the interest on child support judgments shall be calculated by applying one-twelfth of the current statutory interest rate as provided in the Code of Civil Procedure to the unpaid child support balance as of the end of each calendar month. Provides that monthly child support payments shall be applied first to the current monthly child support obligation, then to any unpaid child support balance owed from previous months, and finally to the accrued interest on the unpaid child support balance. Provides that interest on child support obligations may be collected by any means available under federal or State law or rules.

As amended, provides that interest shall accrue on the amount of a child support obligation that remains unpaid at the end of each month, excluding the child support that was due for that month to the extent that it was not paid in that month (instead of simply the amount remaining unpaid at the end of each month). To be effective January 1, 2006.

Passed by the Senate, as amended, 4/14/05, 56-0-0.

Passed by the House, 5/5/05, 115-0-0.

PASSED BOTH HOUSES. Sent to the Governor 6/3/05.

SIGNED BY THE GOVERNOR 6/30/05 as P.A. 94-0090, eff. 1/1/06.

S.B. 0529: "LAWFUL CHILD" [P.A. 94-0229, eff. 1/1/06]

Amends the Illinois Pension Code, the Crime Victims Compensation Act, the Illinois Marriage and Dissolution of Marriage Act, the Emancipation of Minors Act, the Adoption Act, and the Probate Act of 1975. Changes references from "illegitimate child" to "child born out of wedlock" and from "legitimate child" to "lawful child".

Passed by the Senate, without amendment, 4/7/05, 56-0-0.

Passed by the House, without amendment, 5/18/05, 115-0-0.

PASSED BOTH HOUSES Sent to the Governor 6/16/05.

SIGNED BY THE GOVERNOR 7/14/05 as P.A. 94-0229, eff. 1/1/06.

S.B. 0955: SERVICE OF NOTICE OF SUPPORT OBLIGATION [P.A. 94-0092, eff. 6/30/05]

Introduced as a "shell Bill," as amended amends the Illinois Public Aid Code. In provisions concerning notification of a responsible relative's support obligation, provides for service of a notice of child support obligation by a person who is licensed or registered as a private detective under the Private Detective, Private Alarm, Private Security, and Locksmith Act of 2004 or by a registered employee of a private detective agency certified under that Act. Also provides for service of such a notice in counties with a population of less than 2,000,000 by any method provided by law for service of summons. Effective immediately.

Passed by the Senate, as amended, 5/29/05, 54-0-0.

Passed by the House, without amendment, 5/31/05, 116-0-0.

PASSED BOTH HOUSES. Sent to the Governor 6/24/05.

SIGNED BY THE GOVERNOR 6/30/05 as P. A. 94-0092, eff. 6/30/05

S.B. 2094: MILITARY SUPPORT MODIFICATION

As introduced, amends the Illinois Public Aid Code. Requires the Child and Spouse Support Unit to establish the Child Support Military Modification (CSMM) program that shall provide for temporary modification of child support paid by any member of the National Guard or Reserves of the United States Armed Forces called up to military active duty for more than 30 continuous days. Requires the Illinois Department of Public Aid to publish and distribute a publication reasonably calculated to inform members of the National Guard and the Reserves of the United States Armed Forces of the Child Support Military Modification program.

As amended, further amends the Illinois Public Aid Code. Provides that the Child and Spouse Support Unit shall modify support if the applicant's military income will vary in an amount that would support modification under § 510 of the Illinois Marriage and Dissolution of Marriage Act and the Illinois Department of Public Aid's rules on review and adjustment of child support orders. Provides that the support shall be modified in accordance with the guidelines in § 505 of the Illinois Marriage and Dissolution of Marriage Act or the listed Section of the Public Aid Code (instead of modified by the same proportion the applicant's military pay varies from his or her civilian pay). Removes language limiting the modification to the time during which the applicant is on military active duty. Requires the Child and Spouse Support Unit to notify the Adjutant General whenever any member of the Illinois National Guard obtains relief under the Child Support Military Modification program. Requires a person receiving relief under the program to notify the Child and Spouse Support Unit of his or her release from active duty within 21 days of the release. Requires the Child and Spouse Support Unit to notify the person receiving child support of the release and offer the person an opportunity to request a review and adjustment of the child support order.

Amends the Military Code of Illinois. Requires the Adjutant General to notify the Child and Spouse Support Unit within 21 days of a member of the Illinois National Guard being released from active military duty if the Adjutant General has been notified by the Child and Spouse Support Unit that the member obtained relief under the Child Support Military Modification program. To become effective immediately

Passed by the Senate, as amended, 4/14/05, 59-0-0.

BUT See House action on HB 2598, below.

H.B. 0173: INCOME WITHHOLDING; SOCIAL SECURITY NUMBERS [P.A. 94-0043, eff. 1/1/06]

As amended, amends the Income Withholding for Support Act. Provides that the income withholding notice shall include the Social Security Number of the obligor (instead of the obligor, obligee, and the child or children included in the order for support).

Passed by the House, as amended, 3/3/05, 115-0-0.

Passed by the Senate, 5/11/05, 58-0-0

PASSED BOTH HOUSES. Sent to the Governor 6/9/05.

SIGNED BY THE GOVERNOR 6/17/05 as P.A. 94-0043, eff. 1/1/06.

H.B. 0726: PARENTAGE; EDUCATION COSTS

As amended, amends the Illinois Public Aid Code. Provides that if paternity or an order for support has been established under any provision of Article X of the Public Aid Code, a petition for support and educational expenses for a non-minor child or children may be brought in the circuit court by a parent of the child or children, and not by the Department, in the instances set forth in § 513 of the Illinois Marriage and Dissolution of Marriage Act. Amends the Illinois Parentage Act of 1984 and the Non-Support Punishment Act. Provides that issues of support and educational expenses for a non-minor child or children shall be determined by the court under the provisions of § 513 of the Illinois Marriage and Dissolution of Marriage Act.

Passed by the House, as amended, 2/24/05, 114-0-0.

H.B. 0783: CHILD SUPPORT PAYMENT ACT [P.A. 94-0087, eff. 6/30/05]

Creates the Child Support Payment Act. Provides that an obligor under an order for support of a child may make any payment of child support required under that order at a currency exchange. Provides that when an obligor makes a payment of child support at a currency exchange, the obligor must provide the currency exchange with information sufficient to enable the currency exchange to transmit the amount of the payment to the obligee under the order for support.

Passed by the House, without amendment, 3/17/05, 102-11-0.

Senate amendment requires an obligor to provide a currency exchange with information sufficient to enable the currency exchange to transmit the amount of the child support payment to the State Disbursement Unit (instead of the obligee), as defined in the Income Withholding for Support Act, under the order for support. To become effective immediately.

Passed by the Senate, as amended, 5/19/05, 57-0-0.

House concurs in Senate amendment, 5/27/05, 116-0-0.

PASSED BOTH HOUSES. Sent to the Governor 6/24/05.

SIGNED BY THE GOVERNOR 6/30/05 as P.A. 94-0087, eff. 6/30/05.

H.B. 0785: PUBLIC AID; NOTICE OF CHILD SUPPORT SERVICES [P.A. 94-0088, eff. 1/1/06]

Amends the Illinois Public Aid Code, the Illinois Marriage and Dissolution of Marriage Act, the Non-Support Punishment Act, and the Illinois Parentage Act of 1984. Replaces a provision concerning notice to a circuit clerk that a person is receiving child support enforcement services from the Department of Public Aid and requiring the clerk to send support payments in accordance with the Department's instructions. Provides that the Department of Public Aid may provide notice at any time to the parties to a support action that the Department is providing child support enforcement services. Provides that the Department is thereafter entitled to notice of further court proceedings. Requires the Department to provide the circuit clerk with copies of the notices sent to the parties.

Passed by the House, without amendment, 3/2/05, 116-0-0.

Passed by the Senate, 5/11/05, 59-0-0.

PASSED BOTH HOUSES. Sent to the Governor 6/9/05.

SIGNED BY THE GOVERNOR 6/30/05 as P.A. 94-0088, eff. 1/1/06.

H.B. 2418: STATE DISBURSEMENT UNIT; SOCIAL SECURITY NUMBERS

Amends the Illinois Public Aid Code. In provisions concerning (i) the operation of the State Disbursement Unit and (ii) contracts concerning that operation, provides that a child support disbursement check, correspondence related to child support, or any other document related to child support may not contain the social security number of the child support obligor, the obligee, or the child entitled to support unless required under federal law or by order of a court of competent jurisdiction. Provides that nothing in these provisions prohibits the social security numbers of child support obligors, obligees, or children entitled to support from being retained as a confidential record not subject to public disclosure. To become effective October 1, 2005.

Passed by the House, without amendment, 4/13/05, 116-0-0.

H.B. 2598: PUBLIC AID; MILITARY SUPPORT

As introduced, amends the Illinois Public Aid Code. Requires the Child and Spouse Support Unit to establish the Child Support Military Modification program that shall provide for modification of child support paid by any member of the National Guard or Reserves of the United States Armed Forces called up to military active duty for more than 30 continuous days. Requires the Illinois Department of Public Aid to publish and distribute a publication reasonably calculated to inform members of the National Guard and the Reserves of the United States Armed Forces of the Child Support Military Modification program.

As amended, further provides that the Child and Spouse Support Unit shall modify support if the applicant's military income will vary in an amount that would support modification under § 510 of the Illinois Marriage and Dissolution of Marriage Act and the Illinois Department of Public Aid's rules on review and adjustment of child support orders. Provides that the support shall be modified in accordance with the guidelines in § 505 of the Illinois Marriage and Dissolution of Marriage Act or the listed Section of the Public Aid Code (instead of modified by the same proportion the applicant's military pay varies from his or her civilian pay). Removes language limiting the modification to the time during which the applicant is on military active duty. To become effective immediately.

Defeated by the House, as amended, 4/7/05, 20-91-2.

NOTE: In the interest of space, legislative proposals that were not voted on were not included. Those proposals may be viewed at illinoisfamilysupport.org.

From the Courthouse . . .

. . .CASES & COMMENTARY

The following is a summary of arguably support-related cases published since cases were last summarized in the FORUM – essentially a "Year-Plus in Review." Cases noted (*) were discussed at IFSEA's 2004 Conference.

Direct links to slip opinions of these and other recent decisions are maintained on IFSEA's web site, www.illinoisfamilysupport.org, soon after they are released.

by Thomas P. Sweeney

Support Obligor has Burden to Show Payments; Equitable Estoppel, Laches Not Valid Defenses to Child Support Enforcement

In Re Marriage of Smith, 347 Ill. App. 3d 395, 806 N.E. 2d 727 (2nd Dist., 3/25/04), affirmed a judgment of $60,000 in support arrearages.

William was ordered to pay support (and maintenance) in the parties' 1983 divorce. The support order was modified several times. In conjunction with other matters Sharon first pursued an arrearage claim in 2001. Using her best recollection of payments made, she "guestimated" the arrearage to be $60,520. William produced documentation of some payments made prior to 1991, but claimed later bank records were lost and many payments were made in cash. William also claimed equitable estoppel and laches barred her claim, and presented witnesses to a conversation in which Sharon had told him in 1997 he need not pay any more child support because he was providing other things. The trial court rejected that testimony and found there had not been an agreement to excuse payment, but even if there had been one it would be unenforceable. William appeals.

Affirmed. Once evidence of non-payment has been shown it is the burden of the obligor to prove payment. And the trial court's determination of the arrearage was not contrary to the manifest weight of evidence. The trial court did not abuse its discretion in finding no agreement to excuse payments in 1997, and William could not have relied on any such extra-judicial agreement because any such agreement must be approved by the court to be enforceable.

Error Not to Deduct Insurance Costs from Income in Support Calculation; Support Abatement Not Required During Extended Summer Visitation; Child's Tax Exemption is Element of Child Support

In Re Marriage of Sawicki, 346 Ill. App. 3d 1107, 806 N.E. 2d 701 (3td Dist., 3/18/04), among other property dispositions, affirmed refusal to abate child support during extended summer visitation, but reversed child support calculation and denial of child tax exemption.

On issues related to child support the Appellate Court relied on § 505 of IMDMA in ruling the trial court should have deducted the cost of health insurance when it determined Husband's net income. The trial court did not abuse its discretion in denying an abatement of support during extended summer visitation as Wife would continue to have expenses for the child during that time. Finding that the allocation of the child's tax exemption is an element of child support over which the trial court has discretion , and in light of the extensive visitation and amount of support being paid, Husband should have been allowed to claim the child's tax exemption in alternate years.

Modified Support Properly Based on Employment Voluntarily Left; Differences in Geographic Costs of Living Not Factor Under Guidelines

In Re Marriage of Adams, 348 Ill. App. 3d 340, 809 N.E. 2d 246 (3rd Dist., 4/30/04), affirmed an increase in child support finding: increased costs could be presumed from 1999 to 2002, non-custodial parent's income had increased, and his present inability to pay support is attributable to his voluntary termination of employment. The court noted that additional income may be imputed to a non-custodial parent who is voluntarily

underemployed and declined to cite as error the trial court's refusal to consider his cost of living in Washington D.C. in determining whether he had experienced an increased ability to pay.

Administrative Lien Statute Not Unconstitutional *

Martinez v. Dept. of Public Aid, 348 Ill. App. 3d 788, 810 N.E. 2d 608 (1st Dist., 5/25/04), affirmed dismissal of complaints against IDPA and Bank One by a co-owner of a savings account seized through an administrative lien for past due child support owed by the s other co-owner. Plaintiff's nephew, Mauro Rodriguez, owed his ex-wife $28,316.96 in past-due child support for the couple's two children. The Department discovered a savings account with Bank One held by Rodriguez and plaintiff. The Department placed a lien on the account under section 10-25.5 of the Illinois Public Aid Code) (305 ILCS 5/10-25.5 and section 160.70(g)(2) of the Illinois Administrative Code (89 Ill. Adm. Code §160.70(g)(2) (2002)). Notice of the lien was sent to plaintiff, advising of her right to prevent the levy on her share of the account by requesting a hearing within 15 days of the notice. Plaintiff received the notice but did not request a hearing, later alleging she lacked the capacity to understand the notice.

On direction of the Department, Bank One surrendered $28,316.96 of the account to the Department on January 11, 2002. After receiving the money, the Department forwarded the funds to Rodriguez's ex-wife. On March 26, 2002, plaintiff sent the Department a letter demanding return of the funds to her account. The Department advised plaintiff it was no longer in possession of the funds

On August 27, 2002, Plaintiff filed a two-count complaint seeking declaratory relief and a return of the fund. In Count I, against the Department, she alleged § 160.70 was unconstitutional to the extent it permitted the Department to adjudicate its own lien claim. In Count II, against Bank One, she sought a declaration that the account had at all times been hers and that the bank had improperly turned it over to Public Aid. The Department sought dismissal of Count I on the grounds of sovereign immunity, and Bank One sought dismissal of Count II on the basis it was granter immunity from liability under § 10-24.50 of the Public Aid Code. The trial court granted both motions and denied Plaintiff's motion for leave to file an amended complaint.

In affirming the dismissal, under a *de novo* standard, the appellate court found that no set of facts that would entitle plaintiff to recovery under the open courts provision of the Illinois Constitution and that authority to enforce a lien was not a judicial power unconstitutionally granted the Department. The court found plaintiff's other constitutional arguments and assertions regarding the right to amend pleadings to lack authority.

Penalty Improper for Unintentional Delay to Forward Withheld Support; Date Mailed is Proper Measure of Compliance *

Thomas v. Diener, 351 Ill. App. 3d 645, 814 N.E. 2d 187 (4th Dist., 8/4/04), reversed imposition of a penalty of $87,300 against an employer for delayed transmittal of withheld child support.

Defendant Diener is the employer of an obligor required to pay $77 per week in child support. On September 3, 1999, Diener was served with a withholding order, directing that he withhold and forward those payments. In July, 2001, the plaintiff filed suit seeking a penalty of $153,500 relating to several payments that had been timely withheld but were alleged to be a total of 1,535 days late in being transmitted. Evidence disclosed that Diener routinely withheld the child support and put checks in the mail to the SDU every other Saturday. His regular practice was to place his mail in the mailbox by the door of his business for the mail carrier to pick up. The trial court did a detailed analysis of when payments were due and when made, found a combined delinquency of 873 days, and entered judgment for $87,300. Diener appeals.

Reversed. The Appellate Court found from the regularity of Diener's practice that he recognized his obligation to withhold and transmit in a timely fashion, and that the few instances when errors occurred were inadvertent and not intentional. Contrary to the trial court's ruling, it was not necessary for Diener to deposit the checks in a "mailbox" or other official postal service facility to satisfy his mailing obligation. Including Saturdays as a business day for purposes of calculating when payments were due was also incorrect.

Justice McCullough dissented, objecting that Diener did not meet his burden of showing when he "paid" the support, and that his method of placing the mail in his private mail box did not satisfy the requirements of "mailing" payments.

Support Accrued Before Consent to Adoption, After Notice Adoption Did Not Occur Not Barred by Equitable Estoppel

In Re Marriage of Case, 351 Ill. App. 3d 907, 815 N.E. 2d 67 (4th Dist., 8/24/04), affirmed a $35,849 arrearage judgment, over claims of equitable estoppel.

In 1994 Michael was ordered to pay support for two children. Over the next five years Courtney filed several contempt petitions for Michael's failure to pay, and the order was modified at least once. On April 12, 1999, Michael signed an agreement to consent to adoption of the children by Courtney's new husband, including a provision that Courtney's not to seek collection of past due or prospective support. After signing the agreement Michael executed the consent to adoption with a court officer . No adoption took place until adoption until May 2003.

Michael stopped paying support or visiting the children. In October, 2001, IDPA began serving withholding orders on Michael's employers, and in December, 2001 a first payment of $200 was withheld from his pay. In November, 2002, IDPA filed a contempt petition seeking arrearages of over $32,000. That petition was amended to seek only an arrearage judgment. Michael moved to dismiss based on the agreement from April, 1999. At the hearing on both matters the court found equitable estoppel barred only the support due between April 12, 1999 and December, 2001, and entered judgment for $35,840 plus interest through the date of the adoption . Michael appealed.

Affirmed. Courtney's conduct in obtaining the consent for adoption did induce Michael to stop visitation after April 12, 1999, but the parties could not agree to abate support that had accrued prior to that date. And once the $200 payment came out of his pay in December, 2001, Michael should have been put on notice the adoption had not occurred, so from that date forward he could not have reasonably relied on the belief he had no support obligation.

Resolved Enforcement Proceedings, Separate from Unresolved Contempt Proceedings, are Separate, Final Orders; Jurisdiction to Reconsider or Appeal Lost After 30 Days*

Earles v. Earles, 352 Ill. App. 3d 274, 815 N.E. 2d 1203 (3rd Dist., 9/2/04), affirmed dismissal of a motion to reconsider a support modification order as untimely.

Tracy was ordered to pay child support to Carla. On July 9, 2002, a hearing was held on cross-petitions to modify support, granting a reduction sought by Tracy in a petition pending since 1998 and denying an increase sought by Carla. In the same order Tracy was found in contempt pursuant to a separate petition filed by Carla. Sentencing on the contempt finding was held July 29, 2002, but a written order on that matter was not entered until August 28, 2002. On September 24, 2002, Carla filed a motion to reconsider the modification rulings of July 9. Tracy moved to dismiss on the basis the motion was filed more than 30 days after the July 9 ruling. The trial court agreed. Carla appeals.

Affirmed. The July 9, 2002 order completely and finally disposed of all issues related to the petitions to modify support, and was therefore final as to those issues.

But See: Contempt Ruling Not Final Until Other Post-Dissolution Matters Resolved; Stock Option Distributions are Income; Changes in Net Income, Prior Miscalculation May be Basis for Support Modification

In Re Marriage of Colangelo, 355 Ill. App. 3d 383, 822 N.E. 2d 571 (2nd Dist., 1/18/05), reversed denial of a contempt petition and the granting of summary judgment denying an increase in child support.

In their September, 2002 divorce Julius was awarded a certain portion of vested and unvested stock options in the company where he was employed and was ordered to pay child support of a specified sum, plus "20% of net of any bonus/commission/overtime received." In October, 2003 Vicki filed a petition for rule to show cause alleging that since the divorce Julius had received 2,268 shares of company stock as a distribution which constitutes income from which he owed 20%, and that he had also received a bonus from which he had not fully paid the 20% due. She also filed a petition to increase child support, alleging increased needs for support, that Julius' W-2 for 2002 showed there had been a miscalculation of the original support order and that changes in tax rates and deductions resulted in a substantial increase in his net income. On November 10, 2003, the court ruled on the petition for rule, denying any part of the stock options on the basis those had been awarded to Julius as marital property but ordering payment of part of the bonus. On

November 20, 2003, Julius moved to dismiss the petition for increase or in the alternative for summary judgment against Vicki, based on her acknowledgment that his base income had not increased. On December 16, 2003, the court granted Julius' motion for summary judgment. On January 15, 2004, Vicki filed her Notice of Appeal of both those rulings.

Both rulings are reversed. First the Court found that despite the delay in filing her Notice of Appeal the Court did have jurisdiction in the appeal of the November 10 rulings on the contempt petition. "We conclude . . . that the denial of a petition for a rule to show cause filed in a postdissolution [sic] proceeding is not a final and appealable order when other postdissolution [sic]proceedings are still pending. Therefore, such an order is not immediately appealable unless a Rule 304(a) finding is made." The appeal brought within 30 days of the ruling on the remaining modification issue was timely for both.

On the denial of Vicki's petition for rule to show cause the trial court erred in not considering the stock option distributions as a bonus subject to child support. The stock options awarded to Julius were a property award, but the stock now distributed is the fruit of that property. The trial court also erred in granting summary judgment denying the modification petition. Increased child-related expenses were not disputed. The fact that Julius' "base pay" had not increased was not the point. Vicki had alleged that there had been a miscalculation of Julius' income in the original order, and that changes in the tax laws had resulted in a substantial increase in his "*net* income." "These are potentially meritorious grounds for increasing child support, as child support is to be based on the payor spouse's net income." Julius' unsworn assertions in his motion for summary judgment of a lack of any substantial change in his income cannot be a basis for summary judgment. Because there was an issue of fact whether his income had changed it was error to grant summary judgment.

"Health Premiums Paid" Reimbursement Not Limited to Child's Portion Under Agreement; Overpaid Support Not Offset to Reimbursement Due

In Re Marriage of Wassom, 352 Ill. App. 3d 327, 815 N.E. 2d 1251 (4th Dist., 9/15/04), affirmed judgment for one-half of insurance premium costs and rejecting credit for overpaid child support.

The section of the settlement agreement in the parties' second divorce from each other, entitled "Support of Children and Related Matters," in one paragraph required Kelly to pay child support to Rita. In a second paragraph that section required Rita to cover the child on health insurance through her employer, the parties to share 50/50 uncovered medical expenses for the child, and Kelly to reimburse Rita "for 50 percent of the health insurance premiums currently being paid by [Rita]." When Kelly sought a modification of support Rita countered with a contempt petition alleging Kelly owed $11,426.11 as the half of insurance premiums he had not paid, plus $378.75 as half of an uncovered bill.

Uncontradicted evidence was presented that Rita's health insurance premiums, including coverage for herself and family regardless of size, were paid by her union as a part of a package of benefits to members ultimately reflected in her pay. Had she not signed up for the plan the premium costs would have been added to the pay she received. Accordingly the trial court found that, while she was not paying the premiums out of the paycheck she received, the premiums were being "paid by" her, and entered judgment for the $11,426.11 share Kelly had not reimbursed. Credit as an offset against this amount for $3,400 in overpaid child support was rejected. Kelly appeals.

Affirmed, over J. Cook's dissent. The trial court's finding that the premiums were paid by Rita was not against the manifest weight of the evidence. And the parties are bound by the unambiguous wording of their agreement that did not limit Kelly's reimbursement to the portion of premiums attributable only to the child. Contrary to J. Cook's dissent, the Court cannot ignore the clear language of the agreement to infer a different intent of the parties and more equitable result for Kelly. The Court held Kelly's argument for a credit for overpaid child support was waived as it was not supported by legal authority.

Supreme Court Rules: Parentage Act, Not Requiring "Best Interests" Determination Before Marital Presumption is Challenges, is Not Unconstitutional *

In Re Parentage of John M., 212 Ill. 2d 253, 817 N.E. 2d 500 (9/23/04), on direct appeal from the Circuit Court of Kane County, reversed

dismissal by that court of a petition to establish patent-child relationship and its finding the Parentage Act of 1984 to be unconstitutional.

Javier petitioned to establish his parentage of John M., born to Maria, who was married to Dennis at the time of the child's conception and birth. Dennis moved for involuntary dismissal. He argued: (1) the Parentage Act, as applied to this case was unconstitutional because it allows a "stranger" to attack the legitimacy of a child; (2) fundamental fairness and constitutional guarantees of due process and equal protection "demand" that a determination of the child's "best interests" be made whether or not a parentage issue should or can be raised by any person other than the mother's husband before allowing any other proceedings (i.e., genetic tests); and (3) that Javier lacked standing to bring the action because Maria was married to Dennis at the time and there was evidence that he could be the child's father. After considering only arguments and Dennis' affidavit, the trial court, emphasizing the sanctity of marriage and the presumption it creates, found the Parentage Act violates Dennis' and the child's rights to due process and equal protection, and that it is "facially unconstitutional" in that it "fails to allow a court to determine best interests of children in considering petitions brought under 750 ILCS 45/7."

Because of its ruling on constitutionality, notice was then given to the Attorney General. Both Javier and Maria filed motions to reconsider. After further argument the trial court – "based on law and public policy" – continued to find the law unconstitutional and denied reconsideration. The Attorney General and Maria appeal directly to the Supreme Court.

In reversing, the Supreme Court first found the trial court's rulings unclear and its findings of unconstitutionality conclusory and unsupported by any legal analysis. Declined to find the statute either facially invalid or invalid as applied to Dennis.

Supreme Court Rules: Voluntary Acknowledgement of Paternity May Not be Challenged Under § 7 (b-5) of Parentage Act *

People ex rel. Department of Public Aid v. Smith, 212 Ill. 2d 389, 818 N.E. 2d 1204 (9/23/04), reversed the Appellate Court and affirmed the trial court's dismissal of a complaint to "undo" a voluntary acknowledgment of paternity.

Kendra Smith was born in October, 1997. Within days Romel Smith signed a voluntary acknowledgment of paternity, and six months later was ordered to pay support. Four years later, after obtaining a motherless DNA test result excluding his paternity, Romel petitioned to terminate the child support, and subsequently filed an amended complaint under §7 (b-5) of the Parentage Act to establish the non-existence of his parentage of Kendra. IDPA moved to dismiss the § 7 (b-5) petition, asserting that once the 60-day period for rescission of the voluntary acknowledgment had passed the paternity determination could only be challenged on the basis of fraud, duress or mistake pursuant to a § 2-1401 petition. The trial court dismissed Romel's § 7 (b-5) complaint on that basis, and Romel appealed.

The Appellate Court reversed. (***343 Ill. App. 3d 208, 797 N.E. 2d 172 (2nd Dist., 9/5/03))*** Rejecting IDPA's argument that § 6 (d) mandates a showing of fraud, duress or mistake of fact to challenge an unrescinded acknowledgment of paternity pursuant to a § 2-1401 petition, the Appellate Court concluded § 7 (b-5) created a new cause of action, permitting a man adjudicated to be the father of a child based on a presumption under § 5 of the Act to challenge that determination if he has DNA results excluding his paternity. The voluntary acknowledgment, if not rescinded within 60 days, establishes a paternity adjudication pursuant to the presumption in § 5 (a)(3) of the Act. With the DNA results required, Romel satisfied the requirements to challenge the paternity adjudication under § 7 (b-5).

The Supreme Court reverses the Appellate Court, and affirms the trial court. § 7 (b-5) provides for a cause of action "subsequent to an *adjudication* of paternity in any *judgment* by the man *adjudicated* to be the father pursuant to the presumptions in section 5." A man whose paternity is established by way of a voluntary acknowledgment is not "adjudicated" to be the father, and there is no "judgment." Noting that when the Legislature added § 6 (d) it seemed to intend that challenges to voluntary acknowledgments should be pursued under § 2-1401 of the Code of Civil Procedure, which relates to "relief from judgments," the Court acknowledged that each side had presented reasonable arguments as to what the Legislature intended by the terms "adjudicate," "adjudication" and "judgment." Thus other aids of construction were needed to resolve the seeming conflict within the statute.

Finding it logical to treat the paternities arising from the rebuttable presumptions based on marriage differently from those arising from the conclusive presumptions created by voluntary acknowledgment the Court opined to do otherwise would render the word "only" in § 6 (d) meaningless.

Interim Attorney's Fees May be Awarded in Parentage Cases

In Re Minor Child Alexis Stella (Stella II), 353 Ill. App. 3d 415, 818 N.E. 2d 824 (1st Dist., 10/19/04), held interim attorney's fees can be awarded under § 17 of the Parentage Act, using the methods, factors and procedures of § 501 (c-1) of the IMDMA.

Patrick Stella filed a petition to establish his parentage of Alexis. During the proceedings Respondent Pearl Garcia petitioned for attorney's fees under § 17 of the Parentage Act and §§ 508 and 501(c-1) of the IMDMA. The court ordered Patrick's attorney to "disgorge" to Pearl's attorney $20,000 of attorney's fees he had been paid. On this order the Appellate Court had previously ruled (***In Re Stella (Stella I),*** 339 Ill. App. 3d 610, 791 N.E. 2d 187 (2002)) ruled that disgorgement was not available in a parentage action. Based on that decision the trial court held it could not order interim attorney's fees either. On that ruling two questions were certified for appeal: can interim attorney's fees be awarded under § 17 of the Parentage Act, and if so, can those fees be awarded using the methods, factors and procedures of § 501 (c-1) of the IMDMA without considering disgorgement.

The answer to both questions is "yes." § 17 allows an award of attorney's fees "to be paid by *the parties*" in accordance with the factors in § 508. § 508 provides that interim fees may be awarded "from the *opposing party*" in accordance with § 501 (c-1). The sections authorize an award of attorney's fees from "a party," not from the attorney. So while disgorgement is not authorized, requiring interim fees from the other party is.

Supreme Court Affirms: Annual Gifts & Loans Received Without Expectation of Repayment Are Income for Purposes of Support Determination

In Re Marriage of Rogers, 213 Ill. 2d 129, 820 N.E. 2d 386 (11/18/04), affirmed the Appellate Court and trial court ruling increasing child support based on income including "gifts and loans."

In modifying a support order from $250 per month to $1,000 per month, the trial court had found Mr. Rogers' annual income of $61,000 included $46,000 in gifts and loans from his parents for which he had no tax liability or expectation of repayment. He appeals the inclusion of that income. The Appellate Court (345 Ill. App. 3d 77, 802 N.E.2d 1247 (1st Dist., 20/03), affirmed. Without a record showing how the trial court determined the nature of the $46,000 the Appellate Court had to assume its characterization as "gifts and loans" was proper. There is a rebuttable presumption that all income is income for purposes of support calculation, and neither gifts nor loans are among exclusions allowed under § 505. The Supreme Court granted Mr. Rogers' petition for leave to appeal.

Affirmed. The § 505 definition of income is expansive, and by its normal definition would include "gifts." Whether the IRS considers it as income is irrelevant. The argument that the income is not guaranteed to continue does not make it less of an income. "Few, if any, sources of income are certain to continue unchanged year in and year out. . . . [T]he relevant focus under section 505 is the parent's economic situation at the time the child support calculations are made by the court." The non-recurring nature of an income stream is not irrelevant, however. It must be included as income in the first instance when calculating guideline support. But if it is shown to be unlikely to continue it may be considered in deciding if and to what extent deviation from guidelines is appropriate. And if its receipt stops sooner than expected the obligor can seek modification. The Court was careful not to decide whether "loans" in general constitute income for purposes of § 505, the "loans" in this case were "loans in name only," without expectation of repayment.

Penalty for Failure to Withhold Requires Service by Certified Mail, is Not Unconstitutional

In Re Marriage of Chen, 354 Ill. App. 3d 1004, 820 N.E. 2d 1136 (2nd Dist., 12/9/04), reversed a determination of penalty for delayed forwarding of withheld income, but upheld the constitutionality of the penalty provision.

In 1997 a withholding order was issued requiring Greg's employer to withhold $155.57

in child support from his check each week. That order stated the payor's obligations and penalties, but did not include notice of the $100 per day penalty for delayed forwarding of withheld support. When Greg started working for Auto Mall in July, 2000, he provided a copy of the order to his new employer, and they began withholding in early July.

In October, 2000, Erika had filed suit seeking payment of the support alleged withheld but not yet paid, plus the $100-per-day penalty applicable to each of the eight payments then overdue for a total of 100 days. When hearing was held in 2003 the trial court concluded the $100-per-day fine could not be assessed against the first four checks because the 1997 withholding order did not provide notice of that penalty. Because the order served on August 4, 2000 did provide the notice, the fine was applicable to the last three checks, dated August 17, August 24 and September 1, 2000. Apparently finding the $933.42 payment received January 5, 2001 satisfied those payments, the trial court found the payments to be a total of 381 days delinquent, and assessed a fine of $38,100. Erika appeals claiming the fine should have applied to all eight checks, for a total of 1,682 days delinquent and a fine of $168,200; Auto Mall cross-appeals claiming no fine should be imposed and that the penalty provision is unconstitutional.

They're both wrong, but so is the trial court. The trial court was correct that the fine could not be applied to the first four paychecks since the withholding order under which Auto Mall was then operating did not contain the notice of the $100-per-day fine. And a finding of a payor's nonperformance must be documented by a certified mail return receipt showing the date the income withholding notice was served on the payor. This was not done until August 4, 2000. The trial court was also correct in not applying the fine to the paycheck issued August 10, 2000, since the 2000 order first applied to the next payroll period. However, the trial court was incorrect in concluding the payment received in January, 2001 applied to support withheld from the August 24 and September 1 paychecks. That check was issued August 23rd, before those paydays. Accordingly the support withheld from those checks was not paid until October 2, 2001, payments from the last three paychecks were a total of 906 days delinquent, and the proper fine was $90,600.

Rejecting Auto Mall's claim that it did not "knowingly" fail to pay, the court cited its failure to pay from at least three paychecks as raising the presumption that the failure was "knowing." Erika had no obligation to inform Auto Mall of its errors, and the possibility of a windfall to Erika by imposing the fine is irrelevant.

Also rejected was Auto Mall's claim the $100-per-day fine provision was unconstitutionally vague because it "buried" that penalty in a section other than the "Penalties" section of the Act. The separate sections are clear and not in conflict. Finally, Auto Mall's comparison to excessive punitive damages as a due process violation is inappropriate, as this is a fine of which the employer is given full notice and over which has control.

Veteran's Benefits, Once Received, Not Exempt from Garnishment for Support, Maintenance, Attorney's Fees & Cost Satisfaction

In Re Marriage of Pope-Clifton, 355 Ill. App. 3d 478, 823 N.E. 2d 607 (4th Dist., 2/7/05), affirmed the finding that funds in a bank account derived entirely from Veteran's Disability Benefits were not exempt from collection to pay past due child support, maintenance, attorney's fees and costs.

Walter argued the funds were exempt from garnishment under state and federal law as they were traceable to Veteran's Disability benefits received by him. § 12-1001(g) of the Code of Civil Procedure exempts from judgment or attachment "the debtor's right to receive" certain listed benefits, including social security, veteran's and disability benefits, while § 1001(b) exempts a debtor's "right to receive, or property that is traceable to" benefits not including social security or veteran's benefits. Thus funds traceable to social security or veteran's benefits are not exempt under § 12-1001. Neither are the funds exempt under federal law. Notwithstanding the exemption language of 38 U.S.C. § 5301(a)(1), the U.S. Supreme Court had held that veteran's benefits are not for the sole benefit of disabled veterans, but are intended "to provide reasonable and adequate compensation for disabled veterans *and their families."*

Non-Recurring Income from IRA Distribution
Is Income for Support Purposes

In Re Marriage of Lindman, 356 Ill. App. 3d 462, 824 N.E. 2d 1218 (2nd Dist., 3/7/05), affirmed an order for child support based on

income including distributions from an IRA rejecting obligor's contention that IRA distributions should not be included as income because they are non-recurring. The Court wrote "(t)he Act does not provide for a deduction of nonrecurring income in calculating net income for purposes of child support." This theory "presumes that the net income inquiry is concerned with what a parent's income will be at some time after the child support determination is made. It is not. Rather, the net income inquiry focuses on a parent's income at the time the determination is made."

Support Arrearage Judgment Accrues Interest, Despite Timely Payments Toward Satisfaction

In Re Marriage of Thompson, 357 Ill. App. 3d 854, 829 N.E. 2d 419 (2nd Dist., No. 2-04-0236, 5/20/05), affirmed judgments for statutory interest on previously entered child support arrearage judgments.

In 1978 William was ordered to pay child support of $322.50 per month. In 1980 it was increased to $350 per month. He was subsequently found in contempt for failure to pay. In 1992 a judgment was entered through RURESA proceedings in Florida for arrearages of $36,940.20. In 1995 the Florida court adjusted the arrearage judgment to $30,990.20, and David's monthly payment and income deduction to $325.

In 2003, back in Illinois, William moved to terminate the installment payments, asserting he had satisfied the 1995 judgment in full. IDPA, as intervenor, moved for assessment of interest on the arrearages in the amount of $22,964.99, which included the balance still due on the principal plus statutory interest accruing since 1992 *Florida* judgment. William argued that prior to statutory amendments in 2000 assessment of interest was not mandatory. He also argued that no interest was due on the 1995 judgment because he had made every installment payment ordered on that judgment. The trial court disagreed, and after hearing evidence on how IDPA had calculated its interest the court entered judgment for $21,282.73 in interest, calculated at 9% back to 1992. William appeals.

Affirmed. After reviewing the case law on discretionary vs. mandatory assessment of interest on child support, the Court concluded it did not matter when it became mandatory. Under the facts the trial court did not abuse its discretion in assessing interest back to 1992.

William argued that when the judgment was entered with payment terms those payment terms became the support order, and under § 505(d) interest could not accrue until those payments became 30-days delinquent, which they had not. The Court disagreed "The fact that the respondent's arrearage judgment was ordered to be paid in monthly installments does not terminate the interest on the original support obligation and make it a new support order within the realm of section 505(d) of the Dissolution Act."

"Reviewable" Unallocated Maintenance & Support Not Automatically Terminated by Continuing, Conjugal Relationship or Remarriage

In Re Marriage of Elenewski, 357 Ill. App. 3d 504, 828 N.E. 2d 825 (4th Dist., No. 4-04-0538, 5/12/05), affirmed an order terminating the maintenance portion of an unallocated child support and maintenance order retroactively to the date of the petition to terminate.

John was ordered to pay $3,500 per month in unallocated child support and maintenance, for 72 consecutive months commencing June 1, 2000. The order provided "the amount of support shall be reviewable" upon Loretta's remarriage, Loretta living on a conjugal basis with another man, or the expiration of 72 consecutive months of payments. On August 11, 2003, John petitioned to terminate the maintenance portion, and unilaterally reduced his payments from $3,500 to $1,226.26 per month. He alleged he believed Loretta began cohabitating with another man prior to April 30, 2002. Loretta acknowledged she and the other man had bought a house together in mid-May, 2002. It was later learned they had gotten married on June 27, 2002, and John filed an amended petition to terminate maintenance as of that date. The trial court found Loretta had a vested right to unallocated support of $3,500 per month until August 11, 2003 when John filed his petition, and support of $2,181.97 per month from then forward. John appeals.

Affirmed. § 510(c) of the IMDMA provides that the obligation to pay maintenance terminates upon remarriage or cohabitation of the recipient " unless otherwise agreed by the parties in a written agreement set forth in the judgment or otherwise approved by the court." Here the agreement provided that maintenance would only be *reviewable* upon such circumstances, so the parties had "otherwise agreed." Thus even

Loretta's re-marriage did not automatically terminate maintenance. The situation is further complicated by this being an order for unallocated child support and maintenance. Child support cannot be modified retroactively to periods prior to notice of a petition to modify it. Loretta had a right to rely on the full award until that issue was presented to the Court.

A dissent by J. Appleton disagreed the parties agreement to "review" the amount of unallocated support upon Loretta's remarriage should "trump" the provisions of § 510(c); the parties clearly intended only to review the *amount* of support when that occurred, not whether maintenance would terminate.

Bonus, Car Allowance Are Income, Ongoing Medical Costs for Obligor's Other Children Not Deductible in Child Support Calculation

Einstein v. Nijim, 358 Ill.App.3d 263, 831 N.E.2d 50, 294 Ill.Dec. 527 (4th Dist., No. 4-04-0766, 6/15/05), affirmed guidelines child support orders including bonuses and car allowances as income, requiring payment of half the child's day care and medical expenses and not allowing medical expenses for obligor's other child as deductions from his income.

In May, 2000 Kathryn petitioned for support of the parties' one minor child. In October, 2003, a temporary order was entered requiring Jason to pay support of $1,029.53 per month, but denying Kathryn's request for half her day-care costs. At the final hearing in June, 2004, Jason sought a deviation from guidelines. He testified that he now lives with his wife, her son, and their 20-month-old daughter, Jennah, who has special medical needs resulting from her premature birth. They were expecting another child at the end of the month. Jason's financial affidavit showed a monthly gross income of approximately $6,600, a car allowance from his employer of $300 bi-monthly, monthly expenses of $5,225, and monthly medical expenses for Jennah of $833, though he admitted he usually paid no more than $100 per month on those expenses. He testified his gross income in 2003 totaled $76,455.50, which included a $10,000 bonus; such bonuses were not guarantee but were "usually a sure thing." He testified if required to pay $1,029 per month in child support he would be unable to provide for Jennah's monthly medical expenses or make any payment toward the $13,000 in medical debt then due.

Kathryn's financial affidavit showed her monthly gross income as approximately $2,768 and her expenses just over $2,966. Since Jason stopped assisting with day-care expenses in 1999 she had paid day-care costs totaling $15,176.63. She pays $236 in monthly day-care expenses, and since 2000 had paid $1,728.28 for the child's uninsured medical expenses. After considering written closing arguments the court ordered Jason to pay (1) $1,168.50 in monthly child support, reflecting 20% of his income; (2) $7,588.32 for past day-care expenses; (3) one-half future day-care expenses; (4) $864.13 for past medical expenses; and (5) one-half the child's future medical expenses. The court specifically rejected Jason's contention that Jennah's *ongoing* medical expenses should be deducted from his income because they constitute "medical expenditures necessary to preserve life or health" under § 505(a)(3)(h) of the IMDMA, concluding that that section excludes only such medical expenditures necessary to preserve the life or health of the non-custodial parent, not his other dependents. Jason appeals, among other things, the failure to allow that exclusion, and the inclusion in his income of the bonuses and car allowance.

Affirmed. The Appellate Court found no need to determine whose life or health the medical expenses preserved, finding instead that they did not constitute "expenditures for repayment of debt" as required for exclusion under § 505(a)(3)(h).

Citing to and for the reasons stated in ***In Re Marriage of Rogers*** (213 Ill. 2d 129, 820 N.E. 2d 386 (20/04) and ***In Re Marriage of Lindman*** (356 Ill. App. 3d 462, 824 N.E. 2d 1218 (2nd Dist., 2005), the Court concluded that inclusion in Jason's income of the "usual sure thing" bonus was proper and agreed that the car allowance, being a financial benefit available, regardless of its taxability, was properly included in his income. Refusal to deviate below guidelines was not an abuse of discretion.

Jason argued the award of retroactive day-care costs was improper because that had been denied in a previous temporary order. But by its nature a "temporary" order does not bar such relief in the final order. He also protested the award of past and future day-care costs on claims the parties had previously agreed these were not issues in the case. But that argument was found to be waived by failure to raise it at the trial level or provide any supporting authority on appeal.

In dissent, J. Cook found offensive the court's refusal to consider Jennah's medical expenses in setting support. "The trial court's

refusal to consider Jennah's needs is wrong as a matter of law. The argument that the first child is entitled to the full guidelines amount of 20% before the needs of the second child may be considered is wrong in policy and in law and may violate equal protection. . . . The trial court was not allowed to ignore Jennah in setting child support for Jordan. Nor was the trial court allowed to punish Jason for remarriage." The dissent noted that the trial court had not just ordered guideline support of 20% of Jason's income; it also ordered additional payments of day-care and medical expenses.

Evidence Justifying Deviation, Special Findings Required for Court to Accept Settlement Agreement Deviating from Guidelines

In Re Marriage of Hightower, 358 Ill.App.3d 165, 830 N.E.2d 862, 294 Ill.Dec. 450 (2nd Dist., No. 2-04-0235, 6/16/05), affirmed several aspects of a judgment of dissolution of marriage, but reversed the provisions for child support.

In May, 2001, Belinda petitioned for dissolution of marriage. In January, 2003, the parties reached a settlement agreement which, among other things, awarded custody of the one minor child to Belinda and included a provision that "child support is reserved by reason of [Larry's] waiver of maintenance which otherwise would have been approximately $1150 per month; in the event that [Larry's] net income substantially exceeds $2,000 per month, child support may be reviewed on petition." After a series of amended petitions and counter-petitions, grounds were decided in October, 2003. By this time Belinda's amended petition, filed in April, 2003, had denied that there was an agreement as to child custody, support, visitation, disposition of property and maintenance. Over Belinda's objection the trial court entered a judgment of dissolution on grounds of irreconcilable differences, and incorporated the January 16, 2003 settlement agreement, which it found to be "fair, equitable and not unconscionable." Belinda's motion to reconsider and vacate was denied, and she appeals.

The appellate court reversed the denial of child support. The law encourages settlement agreements, but the court is not bound to accept the parties' agreement regarding child custody and support. Indeed, § 505 places a duty on the court, not the parties, to determine the adequacy and amount of child support. If support deviates from the guidelines the court must make special findings for doing so based on evidence of relevant factors specified in the statute. In this case the support provisions of the settlement agreement deviate from the guidelines, without any indication in the record that the trial court heard evidence on the relevant factors specified in § 505, and that after considering the child's best interests the court found application of the guidelines to be inappropriate. Nor does the record contain a finding what the child support would be under the guidelines. The cause must be remanded for these reasons. Belinda's other allegations of error were rejected.

Interest Calculation Legislation

By Lawrence Nelson and Michelle Metcalf

The Law

SB 452 has passed both houses of the General Assembly and the Governor signed it on June 30, 2005. It is now Public Act 94-0090. The effective date is January 1, 2006.

SB 95 provides for interest on maintenance and unallocated maintenance and child support. The calculation method will be as provided in Section 505 of the Illinois Marriage and Dissolution of Marriage Act. (750 ILCS 5/505) It has been signed by the Governor and is now Public Act 94-0089. It also is effective January 1, 2006.

Public Act 94-0090 amends various statutory provisions* relating to child support, including Section 505, supra. These statutory provisions state that interest on child support is to be calculated as provided in Section 12-109 of the Code of Civil Procedure. (735 ILCS 5/12-109) Prior to this Act, except for the thirty-day grace period, there was no statutory or case law in Illinois that indicated how interest was to be calculated for child support. Interest on child support is unique because of the ongoing current child support obligation and the federal distribution rules that govern how child support payments are to be applied.

The guiding principle of the drafters of the law was to provide for a simple method of calculating interest on child support that would comply with the federal distribution rules.

735 ILCS 5/12-109 provides for the method of calculation of interest on child support as follows:

There is a monthly accounting cycle. The payments received in a month are applied as follows:

1. Current child support due for the month.
2. Child support arrearages.
3. Interest on child support.

The exception would be payments from federal income tax refund intercepts, which can only by applied to support due as of the end of the preceding year.

Once all payments have been applied as set forth above, then the unpaid child support balance as of the end of the month is determined. This is done by totaling all the child support ordered including judgments for retroactive child support and excluding payments due in the current month to the extent that they are not paid in the current month. This takes into account that the Income Withholding For Support Act (750 ILCS 28/35(a)) requires the payor to mail the payments within 7 days of the date that the obligor is paid. The unpaid child support balance at the end of the month does not include accrued interest, which is maintained as a separate Interest Balance. This prevents the compounding of interest.

Interest is computed at the end of the month by applying one twelfth of the current statutory interest rate as provided in Section 2-1303 of the Code of Civil Procedure (735 ILCS 5/2-1303) to the unpaid child support balance as of the end of the month. Currently, the statutory interest rate is 9%. 9% divided by 12 is .0075.

*The other statutory provisions include: Illinois Public Aid Code, 305 ILCS 5/10-1 and 5/10-16.5, Non-Support Punishment Act, 750 ILCS 16/20, 16/23 and 16/25, Income Withholding for Support Act, 750 ILCS 28/15, and Illinois Parentage Act of 1984, 750 ILCS 45/20.7

Hypothetical

As of the end of the prior month the Unpaid Child Support Balance is $1000.00, which includes at least $500.00 that was owed as of the end of the prior year, and Interest Balance is $50.00. Current child support is $300.00 for the month. Total payments for the current month are $750.00, with $250.00 from income withholding and $500.00 from a federal income tax intercept.

The $250.00 from IWN would be applied to current child support.
The $500.00 federal income tax intercept would be applied to the Unpaid Child Support Balance, which was owed as of the end of the prior year.

The Unpaid Child Support Balance as of the end of the current month would be computed as follows:

Current Child Support
$300.00 - $250.00 = $50.00

Prior Month Unpaid Child Support
$1000.00 - $500.00 = $500.00

End of Month Unpaid Child Support	$550.00
Less Unpaid Current Support	$50.00
Unpaid Child Support Balance	$500.00

Note: The total child support that has not been paid is $550.00. The $50.00 is not included in the Unpaid Child Support Balance because it was charged but not paid in the current month.

The interest charge for the current month would be computed as follows:

$500.00 X .0075 = $3.75

Balances as of the beginning of the new month would be as follows:

Unpaid Child Support Balance:	$550.00
Interest Balance:	$ 53.75

In the new month, payments of $400.00 are received from IWN.

First $300.00 would be applied to current child support for the new month.

The remaining $100.00 would be applied to the unpaid child support balance.

The unpaid child support balance as of the end of the month would be $450.00.
$550.00 - $100.00 = $450.00

New month's interest would be $450.00 X .0075 or $3.375.

Balances as of beginning of next month:

Unpaid Child Support Balance $450.00
Interest Balance: $57.125

Attorney General's Office to Host Series of Lectures

By Patrice Ball-Reed

In 2006, Attorney General Lisa Madigan's office will host a series of lectures on various topics of interest to the child support community. These lectures will replace the bi-annual Attorney General Conference held in past years in Springfield.

The lectures will be presented in Chicago and Springfield and are tentatively scheduled for three afternoons in April, June and September. The sessions will begin at 1 pm and a snack will be provided. Invitations will be mailed as soon as the dates are confirmed with the speakers. The lectures tentatively scheduled are:

Communications Tactics and Detecting Danger: A workshop conducted by an Illinois State Police trainer on how to effectively communicate with hostile parties, defuse potentially dangerous situations, and if necessary protect yourself and escape the situation. Loosely based on the model created by George J. Thompson, Ph.D. in his book "Verbal Judo."

Social Security: An Overview for Child Support Attorneys: Tina Milhouse and Kevin Rice, both Public Affairs Specialists from the Social Security Administration, will discuss issues such as determining eligibility for dependent allowance, permissible work while receiving benefits, issues regarding temporary disability status, permissibility of garnishments and more. This session will be conducted in Springfield and Chicago.

Kidcare: An Update on Illinois Insurance Programs: A representative from Kidcare will discuss recent changes and additions to the health insurance programs available to Illinois residents, including income eligibility guidelines, cooperation requirements and benefit options and their inpact on medical support enforcement.

For additonal information please contact Deanie Bergbreiter at 630.844.8951 or by e-mail at AIDD5667@idpa.state.il.us or Sharon Lowe at 217.782-9080 or by e-mail at AIDD52DK@idpa.state.il.us.

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