F A M I L Y S U P P O R T
F O R U M

The Official Newsletter of the Illinois Family Support Enforcement Association

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Child Support Protection Act STILL ALIVE

Dear Child Support Colleague,

As the Congress begins its work for this year, it is another opportunity for you to make a contact with your Senator and Representative to discuss the importance of passage of S 803 and HR 1386 --- to restore the federal match on performance incentives.

To date, the Senate bill has 30 bipartisan co-sponsors, while the House bill has 74 bipartisan co-sponsors. As many of our states are reporting decreased revenue and serious budget reductions in 2009, it becomes more important that the federal government continue its financial commitment to the Child Support Enforcement program. I urge you to make a contact with your delegations to educate them about the importance of their support.

I want you to know that the funding restoration is very much alive. The sponsors continue to try to find the right vehicle for passage of the provisions. There has been much work going on with Washington-based advocates and associations to see if the economic stimulus package is a good vehicle.

As I am sure you are reading in your local papers, there are many ideas on what should be included, whether "pay-go" applies, and what would get the support of both the Congress and the signature of the President. Things are moving fast but still in progress. This week the National Conference of State Legislatures sent a letter urging the leadership to include child support in the economic stimulus package. This is but one example of the support the child support program continues to receive from many other groups.

Sincerely,

Sharon A.Santilli, Esq.
President - National Child Support Enforcement Association

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From the President . . .

. . .IFSEA UPDATE

By Jeff McKinley

Fellow Members:

I am honored to serve as your IFSEA president for the upcoming year. Our conference last fall was very successful in several ways. Our attendance approached 200, which is the largest we have had in many years. The response to the sessions, facilities, and food was almost universally positive. I was proud of the efforts we put together and hope that you enjoyed our own experience if you attended. Like all previous conference chairs I owe a tremendous debt to the many volunteers, agenda committee members, and our wonderful vendors. I especially appreciate the efforts of Deb Packard, who served as my agenda committee chair. She really did so much more than that title conveys. From table centerpieces, to scheduling volunteers, to organizing the panels and the material for our conference packets, Deb took the lead in so many areas and got the job done. For myself, and I am sure for the entire association, I offer heartfelt thanks.

I also offer thanks to our past president, Mary Morrow. She was and remains an effective leader for our organization. She is considering running for the NCSEA board this summer and will help raise Illinois' profile in the child support community.

Like Christmas, it seems our annual training conference is always just around the next corner. This year's conference will be held at Rend Lake Resort and Conference Center, 11712 East Windy Lane, Whittington, Illinois. More information will come later in the year, but mark your calendars now for October 19-21. Sherrie Runge is the conference chair this year and would appreciate any assistance and suggestions you may have. You can email her at Sherrie.Runge@illinois.gov.

Please take a moment to consider NCSEA President, Sharon A. Santilli's information about pending federal legislation that greatly impacts the child support functions in all states. Your voice can help make difference.

You can visit the NCSEA website at www.ncsea.org for an easy, electronic way to contact your representative or senators.

Jeff McKinley,
President

From HFS . . .

. . .ILLINOIS IV-D UPDATE

By Pamela Lowry

Fellow IFSEA members,

Hello! I imagine most of you are as anxious as I am to see the end of this long and dreary winter. I am happy to report that despite record-setting snowfalls, ice storms, and various weather-related problems, DCSE offices have been open for business and busy. DCSE staff once again demonstrated their commitment to customers by braving even the worst weather to remain accessible to customers.

In late January I had the privilege of co-chairing the National Child Support Enforcement Association's Mid-Year Policy Conference. During the conference, I was a panelist in a session that discussed the federal Office of Child Support Enforcement's PAID initiative. PAID (Project to Avoid Increasing Delinquencies) is a national initiative to increase collections of current support and prevent and reduce arrears so that child support will be a reliable source of income for more families.

The OCSE has published several "PAID Updates" as part of the PAID initiative. These updates inform child support professionals about initiatives that local or state IV-D agencies have shared with the OCSE as examples of ideas that promote collection or debt reduction. You can obtain copies of the PAID updates by contacting John.Powell@illinois.gov.

As part of the PAID initiative, OCSE Commissioner Margot Bean invited states to participate in strategic discussions regarding the initiative and its goals, called PAID Attention meetings. Illinois was an early state to participate in these discussions, and I was asked to speak at the Policy Forum about the Illinois PAID Attention meeting.

In my introduction, I shared with those attending the workshop that we are pretty serious in Illinois about measuring our performance. What sometimes is left unstated is that our performance measurement is outcome based. That means that when we talk about improving our performance, we are actually talking about improving the economic lives of families.

So when we talk about PAID projects, what we are really saying is that we will thoughtfully and strategically focus our efforts on those outcome measures that most directly affect the economic health of children.

As you all know, Illinois intentionally moved to a Focus On Collections in federal fiscal year 2007. This statewide approach includes specific, pro-active management of cases towards collections. I shared with the workshop attendees that Illinois once had a very low ratio of cases with orders, so by improving that ratio and engaging in a very successful New Hire Outreach campaign we were able to achieve collections improvements through our early re-engineering efforts. By focusing on improving our order establishment processes and at the same time working with employers on New Hire and on IW compliance, we were able to bring our IV-D collections up very significantly. However, we all know that collections do not automatically follow the entry of all new orders. Added to that, we had quite a lot of very old orders with no collections.

In October of 2006 we started a new effort to re-build Illinois' child support performance by adding a collections focus. Since we benefited a great deal from studying others in our establishment improvements and from the best practices and guidance offered by the OCSE, we were very open to being an early state to engage with Commissioner Bean and OCSE staff in PAID Attention meetings. Our meeting occurred in April of 2007. Prior

to the meeting, we received a document that listed several possible topics. Because we received the document in advance, we were able to assemble our data and potential responses in advance, which helped our meeting go very smoothly. Additionally, we were able to identify the topic experts we needed and invite them to the meeting. I invited about 12 Illinois staff to attend the meeting with me, and there were many federal attendees as well.

The first topic was Illinois' New Hire Outreach with employers. As a Governor's initiative, this effort has doubled Illinois' monthly collections attributable to New Hire. One result of this discussion was an invitation to attend the OCSE's annual training conference and provide a presentation on this topic in September of last year. As a result of the PAID discussion, we also undertook a match of a federal file against the Illinois New Hire file to test the validity of the state data collection and processing. We found that our process worked extraordinarily well.

We also discussed Illinois' remarkable increase in FY2007 federal offset collections. Through the PAID Attention meeting, we were able to answer the OCSE's questions about our system enhancements that allow us to identify all eligible cases.

In the technical assistance area, we discussed Illinois' participation in Interstate Case Reconciliation 4. That led also to a discussion of the need to send a new Reconciliation file to the FCR, to reduce synchronization errors. That activity will become an annual task.

We also discussed the Employer Database Cleanup efforts going on around the nation, particularly the efforts undertaken by the Texas IV-D program. Illinois had some understanding of the benefits of this kind of initiative prior to the call, but gained a greater understanding through the discussion. Though we elected to continue to defer this activity until after we have completed a workplan we've already undertaken, the discussion was helpful. I think the OCSE would also judge the discussion helpful, as it gave them an opportunity to gain a better understanding of the improvements we are presently working on.

During our discussion of SVES (State Verification Exchange system, which is the match with the Social Security Administration), we determined that with a few changes we could obtain more and better information from the SSA. A beneficiary match on Title XVI SSA benefits (which can't be offset but would give us information for modification and debt reduction) and Title II disability benefits (which can be used for income withholding) data will begin soon. Following the reconciliation matching, we will begin proactive matching. We expect to match with the SSA on less than 1% of our cases, but every case counts. For those cases that match, income withholding and lump sum payments on Title II cases and debt reduction and modification on Title XVI are expected to follow.

One of the things discussed was a way to validate that we were getting the greatest benefit possible from our income withholding automation. Illinois is a very automated state, and about 80% of our collections are attributable to income withholding. We are actually in the process of a comprehensive review and re-write of our income withholding programs. Among the benefits of the rewrite is that we will use the new programming to communicate proactively with non-custodial parents when they first become delinquent. To assist in this effort, the OCSE PAID group offered to develop a tool for us to use in our assessment. OCSE staff developed a matrix which we utilized to continue to assess our approach.

We also agreed to submit an additional PAID practice for publication. We had already submitted the use of the USPS Address Change Service as PAID update #7 at the OCSE's request but have since submitted our project to increase current collections on cases with no employer and no payment for 120 days. We expect that to be published soon, but I shared the concept with attendees at the workshop.

We began this new practice because we realized that from FFY2005 to FFY2006, an additional $38 million in IV-D collections did not increase our ratio of current support collected - due to a 12% increase in current support charges during the period. Between 2002 and 2006, Illinois' ratio of cases with court orders improved from 40.8% to 66.9%, with annual current support charges increasing from $767.7 million to $866.4 million. During the same period, the percentage of current support collected improved from 39.1% to 51.8%. This represents annual

increases in collection of current support of $148 million. Our outcome evaluation spurred an analysis of current support charges and collections, with the goal to both discover the drivers and to generate additional collections.

Three distinct groups of non-paying cases were identified: Cases with No Employer/No Payment in 120 Days, Self-Employed NCP's/No Payment in 120 days, and NCP's with Employers and No Payment in 120 days. While work was performed on all three categories, the focus was placed on Cases with No Employer and No Payment in 120 Days. This was due primarily to the low volume of cases in the other two categories and the high volume of cases in the selected category. Only 828 cases had a self-employment indicator marked, although that is more likely an indication that the field is not utilized than an indication of the self-employed NCPs included in the Illinois caseload. 7,088 cases were identified as having employer information. A review of these cases indicated that many were former employers not terminated on the Illinois system or very new employers where income withholding had recently been served. However, 30,583 cases were identified as having no current employer information and no indication of self-employment. These cases represented $69,210,810 in current support due or approximately 10% of total current support charges. An additional reason to focus on these cases was the composition of collection of current support. A snapshot review of collections indicated that 68.5% of current support was collected for those cases where at least one employer segment existed, but that only 20% of current support was collected for cases with no employer segments.

Having identified the target population, caseworkers were asked to pursue intense and proactive collections activity including contacting the NCP by phone, collection letters, or referring the case for court action to obtain payments. Workers made various inquiries with NCPs and undertook local locate actions to determine the employment status of the NCP, served income withholding on any identified employer, contacted custodial parent for additional information or leads, and prepared pleadings for contempt as appropriate.

The results reflected a 10-month period from December 2006 to September 2007.

At the end of the first month (December 2006) the collection rate was 1.5%. At the end of the 6th month, current collections arose to 8% or $5.3 million. A total collection for this population of cases was 18% or $12.4 million during the 10-month period.

A random sample of 100 cases from the original target population where payments had now been made was reviewed to determine if payments were recurring over time. Categories for the review were: No payments received, one-time payment (this was defined as three or less payments in 10 months), or recurring payments (more than three payments in 10 months). Our sample indicated that 74% of these cases had recurring payments. The review also included analysis of whether the driver for the payments was income withholding, staff intervention, or court related actions. 61 % of the sample had income withholding completed, indicating NCP's had changed jobs or employment locate activities had succeeded, while 39% had no new employment information but either personal contact or court action taken on their case had secured payments.

I hope that you have found this informative, that you will take an opportunity to review the PAID Updates from our IV-D colleagues around the nation, and that you will offer your support to the OCSE and families in Illinois and around the nation by participating in the Project to Avoid Increasing Delinquencies.

Sincerely,

Pam

From the 2007 IFSEA Scholarship Winners. . .

. . .Reflections on the Conference

Tunisa Jackson, DCSE Cook County Appeals Unit, and Kristy Pelka, DCSE Downstate Accounting, were recipients of the 3rd Annual IFSEA Training Conference Scholarship. Here are their impressions of the event…

Tunisa Jackson

First, let me start off by saying how honored I was to be chosen as one of the scholarship recipients.

I wanted to attend the conference because I believed that there would be invaluable information to be obtained by attending the many sessions scheduled. While everyone that attended the conference knows something about the Child Support Program, there is always more to learn because policies and laws are constantly changing. I learned about the issues we have with trying to create a uniform support order that every county can use, mainly because many counties have different needs based upon their population's demographics that have to be addressed within their orders that all counties do not encounter. I have a better understanding of how Project Clean Slate works and the advantages it brings not only to the Department, but to the NCP and the children that they provide support for. I learned more about customer service and how we should handle our customers that are a little more challenging than we are normally used to. I can definitely say that I left the conference with more useful information than what I came with.

Another benefit of attending the conference was getting to know my fellow co-workers in Cook County in a more social setting. But better than that, was getting to meet the many co-workers and partners within the Child Support Program that I don't encounter on an everyday basis. It is one thing to continually email or talk by phone to person about work that has to be done, but it is another to know the person that you are corresponding with on a more personal-professional level. I feel that I made great friends and contacts by attending the conference. For me that was the most invaluable part of attending the conference. Don't get me wrong, getting the information provided was good, but meeting and learning my child support partners was even better.

I would recommend to anyone that if they ever got the opportunity to attend a Child Support Conference, Take It! The information provided is great. The friends and contacts made, the best. And the time spent at the conference overall, unforgettable.

Kristy Pelka

I would like to thank the committee for giving me the opportunity to use one of the scholarships to attend the IFSEA Conference held at the Stoney Creek Inn at Moline, in October 2007. I had heard from other attendees that it was not to be missed if given the opportunity to attend and I have to agree.

As an accountant in the Peoria Regional Office, I have been working on the account balances of the Iowa-Illinois border project cases for a little more than a year. Attending the Border Project session, I was able to learn some of the background of how the projects got started in Illinois with Iowa and Wisconsin. And it was beneficial to hear from individuals on the panel and to put some names and faces together. Attending the conference also gave me the opportunity to meet new HFS staff from other regional offices, and from the central operations in Springfield.

During the two-day conference, I found the other sessions both informative and interesting. The speaker from Social Security gave an excellent presentation. I can use the information gained from that session to assist in my regular accounting duties in PRO.

Thank you again for allowing me to attend the IFSEA Conference.

If you or anyone you know of is interested applying for a scholarship to attend the 2008 IFSEA Training Conference, please complete and submit the scholarship application found on page 15 of the FORUM. Two scholarships will be awarded for the 2008 IFSEA Training Conference.

From the Courthouse . . . . . Cases and Commentary

The following is a summary of arguably support-related cases published since cases were last summarized in the FORUM – essentially almost a "Year-Plus in Review."

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

Petition Required to Terminate Maintenance Based on Continuing Conjugal Cohabitation

In Re Marriage of Thornton, ___ Ill. App. 3d ___, ___ N.E. 2d ____ (3rd Dist., No. 3-05-0722, 4/17/07), reversed orders terminating maintenance and remanded for further proceedings on that and other issues.

In their March, 2001, divorce settlement Wade was to pay to Rosemary maintenance of $275 per month for 30 months (*to be reviewed at the end of that period*) and pay $373.50 per month as his half of a second mortgage. In September, 2004, Rosemary filed a contempt petition alleging that Wade had paid no maintenance or mortgage payments and had avoided other debts assigned to him by filing bankruptcy. She also sought an extension of maintenance. The trial court initially found Wade liable for all the payments alleged, totaling $8,250, plus interest, but later "reserved" that decision pending a hearing on Wade's oral claim that maintenance had automatically terminated as the result of Rosemary's "living congically" with "another man."

In that hearing Wade admitted he hadn't made any payments, but claimed he didn't have to because his brother had moved in with Rosemary before the judgment was entered. His evidence established little more than that his brother's car was seen on several occasions at her house, that he had been seen there several times, and had made phone calls from there. Rosemary testified the brother lived in the basement, that they had entirely separate lives and no romantic or conjugal relationship. The trial court abated all maintenance payments without making any findings of fact or explanation for its ruling, and made no ruling as to the mortgage payments or other debt issues raised in Rosemary's contempt petition. Rosemary appeals.

Rosemary's appeal seemed to focus on whether maintenance was terminated automatically by a continuous conjugal relationship or required a petition to terminate it. Discussing earlier cases that really dealt with the effective date of such termination, the Appellate Court found that "[l]ogic compels us to conclude that section 510(c) creates an exception to section 510(a)'s limitation of relief to installments after the filing of the motion or petition, but does not establish an exception from the obligation to file a petition in order to conform the court's order to present circumstances." The IMDMA requires that a petition must be filed and the requisite findings concerning conjugal cohabitation must be made before a court-imposed maintenance obligation can be terminated. Wade never filed such a petition.

Had Rosemary not raised the issue of maintenance (by seeking to extend it), the court's order terminating it would have been void for lack of jurisdiction. Instead it was voidable. The evidence presented by Wade was insufficient to establish a continuing conjugal relationship, and Rosemary's evidence that there was no such relationship was undisputed. Finding no evidence of a continuing conjugal relationship, the termination of maintenance was reversed and remanded with directions to direct Wade to pay the sums first found due.

The Appellate Court then found Rosemary's petition to extend maintenance was within the Court's jurisdiction, even though it was filed after the initial award of maintenance had ended. Rosemary's allegations that Wade's bankruptcy shifter debts to her that had been assigned to him, if found to be true, could be a basis for a finding of changed circumstances. And the other issues raised by Rosemary's petitions had to be addressed. Cause remanded on all these issues.

Presumed Father Has Standing to Seek Custody Despite Later DNA Exclusion

In Re Marriage of Casey, ___ Ill. App. 3d ___, ___ N.E. 2d ____ (5th Dist., No. 5-07-0020, 5/18/07), reversed denial of a husband's claim for custody of a child born to wife during marriage, following DNA exclusion of his paternity, based solely on a finding he lacked standing because of the paternity exclusion.

James and Stephanie were married in May, 2004. One child, Z.C., was born prior to the marriage. A second child, S.C. was born during the marriage, on July 6, 2005. In his divorce petition, filed in April 2006, James sought custody of both children. In her response Stephanie admitted James was the father of both children. Only after James was granted temporary custody of both children Stephanie moved for DNA testing as to the paternity of S.C.. When the tests excluded James' parentage Stephanie moved to reconsider temporary custody. After a "best interests" hearing, the Court concluded it could not rule on those issues because James lacked standing to have custody as the result of the paternity exclusion, granted Stephanie's motion to reconsider, and granted her temporary custody of S.C. James appeals.

Reversed and remanded. Section 601 of the IMDMA provides that custody may be ordered in proceedings initiated by "a parent" in a dissolution action. "[T]he standing to seek relief under the Dissolution Act is based on the status of the party seeking relief *at the time the relief is sought*." Since the child was born during the marriage James was the presumed father at the time he filed his petition seeking custody. Thus, he had standing under the statutes to seek custody when he filed his petition, notwithstanding the subsequent DNA exclusion. Because the trial court decided the custody issue solely on its erroneous conclusion as to James' lack of standing, the matter must be remanded for determination of the best interests of the child. But because he is no longer the presumed father, on remand James will have to show not only that it is in the child's best interests that he have custody but must also demonstrate good cause or reason to overcome the presumption that a parent has a superior right over a non-parent to custody.

Arrearage Payments Following Termination of Current Support Not Limited to Level of Pre-Termination Order, Wage Assignment Limits

Crank v. Crank, ___ Ill. App. 3d ___, ___ N.E. 2d ____ (3rd Dist., No. 3-06-0907, 7/12/07), affirmed orders for repayment of arrearages following termination of current support and maintenance.

In the parties' 1991 divorce Gary was ordered to pay child support for two children, plus maintenance for a determined period. Originally set at $272.77 per week, the support was later modified, first to $75 per week in 1993, and then to $96 per week plus 20% of bonuses in 2000. His support and maintenance obligations ended as of July, 2005, and a determination of arrearages was sought.

The Court determined his arrearage was $220,209.55, consisting of $170,760.44 in child support and $49,449.11 in interest, and ordered payments toward that arrearage of $300 per week. Gary moved to reconsider, asserting that the Court was incorrect in characterization of the arrearages as all child support, and that the $300 per week order was excessive. He argued $300 per week was 60% of his weekly income, far higher than the 15% allowed by the Illinois Wage Assignment Act , and that under Section 505(g-5) of the IMDMA the Court could only order the old support amount of $96 or $94.94 per week (15% of his weekly net income). The Court agreed with his first contention, and re-defined the $170,760.44 as a combination of specified amounts for child support owed his ex, child support owed to the state, maintenance owed the ex, and "medical arrearages;" the interest amount due remained the same. However, the Court rejected Gary's arguments against the payments ordered, and reiterated the order of $300 per week. Gary appeals.

Nice try, but No. Section 505 (g-5) provides that if an arrearage or delinquency of more than thirty day's support exists when current support terminates "the periodic amount required to be paid for current support of that child immediately prior to that date shall automatically continue to be an obligation, not as current support, but as periodic payment toward satisfaction of the arrearage or delinquency." Gary argued that section limited what could be ordered toward his arrearage to the prior order of $96 per week. The Appellate Court rejected this interpretation, finding "the plain language of the statutes makes clear that the statutes are meant to streamline the collection of arrearages posttermination. . . . There is no mention in the statutes that the circuit court is restricted by the previous periodic payment amount when setting the new periodic payment amount to satisfy the arrearages posttermination." "The provision sets a default for posttermination support arrearages if the parties do not ask the court to set it. It does not,

however, prevent the court from modifying the pretermination periodic payment amount."

Gary's argument for limitation under the Wage Assignment Act also fails. That act does not apply to child support/maintenance situations. Rather limits on how much can be withheld for child support purposes is governed by the Income Withholding for Support Act, which sets high limits consistent with the Federal Consumer Credit Protection Act. (Apparently not argued, and certainly not discussed, is whether the Court could order payments which exceed the limits of what can be withheld under the Income Withholding and Consumer Credit Protection acts) Affirmed.

Federal Bankruptcy Court Finds Child Support Interest Mandatory, Not Waived by Failure to Assert in Tax Offset Notices

In Re Eichwedel, ___ F. Supp. ___ (US Bkrptcy Ct., C.D. Ill, No. 06-81327, 7/30/07), allowed a claim by the Dept. of Healthcare and Family Services for child support plus interest as a priority domestic support obligation in a Chapter 13 bankruptcy plan, rejecting an objection by the debtor to the inclusion of interest.

Debtor was ordered to pay child support for one child in his divorce, beginning in 1986. The child attained majority in 2000. Debtor filed for Ch. 13 bankruptcy in August, 2006,. His Plan included as a priority claim child support arrearages of $5,000, to be paid without interest through the plan. The Dept. of Healthcare and Family Support filed a claim in November, 2006, claiming arrearages plus interest totaled $13,217.16 as of August 245, 2006. The Department's claim included worksheets showing support due of $32,508, interest of $7,930.16 charged as of July 30, 2006, and payments made of $27,222, leaving the balance of $13,217.16. Evidence also included four tax offset notices sent by the Department from 2003 to 2006, which asserted arrearages but not interest due.

The Debtor argued that Illinois law did not provide for interest on child support until January 1, 2000, when Section 505(b) was amended to expressly provide for it. He asserted that before then interest on child support was discretionary with the court, and since the court had not ordered it, the court had implicitly denied it. In the alternative, the Department had waived its claim to interest by failing to assert it in the tax intercept notices it had sent the debtor over the years.

The Department argued that interest on child support has been mandatory since May 1, 1987 (and only claimed interest accruing from that date in this claim). On that date amendments to Section 505 became effective providing that each payment that came due became a judgment by operation of law, and Section 12-109 of the Code of Civil Procedure was amended to provide that judgments for child support arising by operation of law "shall bear interest" as provided by Section 2-1303.

After reviewing the progression of Illinois case law decisions on the subject, the bankruptcy judge agreed with the Department, that interest became mandatory as of May 1, 1987. Failure of the court to order "anticipatory" interest when it entered the original support order does not mean it exercised its discretion to deny it. And failure of the Department to assert a claim for interest in its several tax offset notices does not amount to a waiver of that claim. "The party claiming an implied waiver has the burden of proving a clear, unequivocal and decisive act by the other party manifesting an intention to waive its rights." The notices did not make any reference to anything beyond the support payments ordered, and did not suggest payment would satisfy all obligations.

The Court also rejected Gary's argument that interest should stop accruing when the current support obligation ended. "Although the support obligation itself may terminate upon [the child's emancipation], interest is compensation for the time value of money, and continues to accrue on the unpaid principal balance until paid in full." The Department's claim for support plus interest was granted.

Post-Dissolution Parentage Petition Proper in Dissolution Case, Governed by Parentage Act

In Re Marriage of Mannix and Sheetz, ___ Ill. App. 3d ___, ___ N.E. 2d ____ (1st Dist., No. 1-06-2130, 6/18/07), affirmed post-dissolution parentage determination.

This decision, modified on denial of rehearing, replaced the decision previously released 3/30/07 and reported in the June, 2007 issue of the FORUM, but without changing its conclusions.

Agreed Percent-of-Income Support Order Improper; Amendment of Supreme Court Rule Permits Appeal from Premature Notice of Appeal

In Re Marriage of Duggan, ___ Ill. App. 3d ___, ___ N.E. 2d ___ (2nd Dist., No. 2-06-0061, 10/16/07), reversed refusal to vacate an agreed order to modify child support to a percent of income, first permitting the appeal to proceed though other claims were pending when the notice of appeal was filed.

In August, 2005, Tamara petitioned to modify child support previously ordered for two children. The parties reached an agreed order for Darrell to pay "28% of his net income," without any specific or minimal dollar figure. Darrell subsequently moved to vacate that order because it did not state the amount in specific dollar terms. The trial court refused, apparently believing it was bound to accept the parties' agreement. When Darrell moved to reconsider he also petitioned to specify visitation. When the trial court denied his motion to reconsider, Darrell filed his notice of appeal, although his petition to specify visitation remained pending. The visitation issue was resolved five months later.

Reversed and remanded on the support order issue. Section 505 (a)(5) pf the IMDMA expressly requires that support orders be stated in specified dollar terms, or percentages in addition to a specified dollar amount. Parties' agreements do not bind the court in issues of child support, custody and visitation. But before it could reach that issue, the Appellate Court dedicated most of its decision to the basis for exercising jurisdiction of this appeal initiated before the issue of visitation was determined.

Generally a final disposition of one "claim" may not be appealed as a final order without a finding of appealability under Supreme Court Rule 304 (a) when another claim remains unresolved. However, while the appeal was pending the Supreme Court amended S. Ct. Rule 303 (a)(2) to provide that when a timely post-judgment motion has been filed, a notice of appeal filed before the final disposition of any separate claim does not become effective until the order disposing of the separate claim is entered. This change being essentially procedural in nature, it can and should be applied retroactively to appeals pending at the time it became effective. Without application of this new saving provision, Darrel's appeal would have been premature, as the post-dissolution petitions are "new claims" rather than "new actions," which would have required a Section 304 (a) finding to permit appellate jurisdiction.

Supreme Court: Income Withholding Fine of $1M-plus is Not Excessive, Unconstitutional

In Re Marriage of Miller, ___ Ill. 2d, ___, ___ N.E. 2d ____ (No. 104022, 104035 cons., 11/29/07), reversed the Appellate Court finding that a $1M+ fine against an employer for failing to pay child support withheld from his employee was excessive and the statute unconstitutional as it applied to this case, and affirmed the trial court's assessment of that fine.

In Harold and Lenora's 2001 divorce Harold was ordered to pay $82 per week in child support. A Notice to Withhold was served on his employer, H.R. Miller, Sr. After a warning letter was ignored, Lenora filed a complaint against H.R. Miller Sr. in March, 2002, seeking the $100 per day penalty for 35 weeks of payments allegedly withheld but not sent in a timely manner. H.R. claimed the penalty provision was unconstitutional as applied in his case. The court rejected H.R.'s claim of unconstitutionality.

In October, 2004, the parties stipulated that H.R. had withheld but not forwarded 128 weeks of support since Lenora had filed her complaint, and that imposition of the penalty would amount to $1,172,100. Judgment was entered against H.R., and he appealed.

The Appellate Court reversed (369 Ill. App. 3d 46, 860 N.E. 2d 519 (1st Dist., 12/12/06), accepting H.R.'s argument the penalty provision was unconstitutional as applied to him because it resulted in such an excessive penalty. The Appellate Court reasoned that the legislature's power to fix penalties is subject to the requirements of due process. But if a penalty is grossly excessive, it does not further a legitimate government purpose and constitutes an arbitrary deprivation of property. The Appellate Court concluded, when compared to the other penalties provided by the legislature for similar misconduct -- such as the maximum fine of $25,000 possible under the Non-Support Punishment Act – the $1,172,100 penalty imposed in this case was unconstitutional as a denial of due process.

The Supreme Court disagrees. Since the penalty statute does not implicate a fundamental constitutional right, the statute need only bear a reasonable relationship to a legitimate state interest to satisfy substantive due process. On its face the $100-per-day penalty provision rationally promotes the State's legitimate interest in encouraging the prompt payment of child support. And while a penalty excessively disproportionate to the offense would run afoul of due process, the Supreme Court disagreed this penalty should be so characterized.

The proper focus should be on the reasonableness of the penalties for each offense, not the cumulative effect on the offender.

> "We recognize that the individual daily penalties amassed by Miller produce a weighty sum when aggregated. Miller, however, could have avoided the imposition of any penalties simply by complying with his statutory obligation upon service of the withholding notice or at least after suit was filed. Miller chose to do otherwise. Because Miller controlled the extent of the penalty, he cannot now complain that the penalty is harsh when compared to the amount of child support at stake. * * * Our lawmakers are under no obligation to make unlawful conduct affordable, particularly where multiple statutory violations are at issue."

> "Based on the important societal interests as stake and the concomitant need for adherence to the Withholding Act, coupled with the egregiousness of Miller's conduct, we cannot say that the statute is unconstitutional as applied to Miller. Were we to hold otherwise, then "[a]ll an employer would have to do to evade any penalty is nothing, as Miller did here. It could pile up the nonpayments and, when called to account under the penalty provisions, contend it cannot be required to pay because the mandatory penalty is unconstitutionally excessive."

The Appellate Court's comparison of the fine to the penalty under the Non-Support Punishment Act was also was "not an apt one and provides an insufficient basis for holding Section 35© of the Withholding Act unconstitutional as applied to Miller. The decision of the Appellate Court was reversed and the judgment of the trial court affirmed.

(Note that the judgment involved dealt with support payments due as of October, 2004. It has been reported that while these appeals have been pending Mr. Miller has continued to violate the withholding requirement. Imagine what another 3+ years of $100-per-day penalties will amount to!)

SAVE THE DATE!

This year's IFSEA conference is going to be held at Rend Lake Resort and Conference Center, Whittington, IL October 19-21, 2008. Look for more information in an upcoming IFSEA Forum.

IFSEA's 2007 Conference Approved for MCLE Credit

By Thomas P. Sweeney

On December 10, 2007, IFSEA received notice from the MCLE Board that the Conference held October 21-23, 2007, has been approved for 9.25 hours of general Minimum Continuing Legal Education credit. Separate application to the Committee on Professionalism of the Supreme Court is required for designation of portions of the conference that qualify for professional responsibility credit. Professional responsibility credit is being sought for the session on Ethics, Civility and Professionalism for Attorneys (1.0 credit hour). As soon as a decision is obtained on the applications for professionalism credits IFSEA will provide attorneys who attended the conference will certification of their credits based on the number and length of sessions attended. Attorneys will be entitled to credit only for the sessions they attended as documented by attendance sheets signed at the sessions.

The MCLE Board has advised that course providers who charge fees for attendance are required to pay a fee of $1 per hour of MCLE credit approved for the conference as a whole for each attorney seeking credit, regardless of how many sessions each attorney attends and credits available to that attorney. Accordingly, IFSEA is required to pay $8.25 for each attorney receiving any credit for the 2006 conference, and $9.25 for each attorney receiving any credit for the 2007 conference. As announced at the 2007 conference, IFSEA will be seeking an increased registration fee from attorneys seeking MCLE credit at its future conferences to cover this additional cost, and will welcome voluntary contributions toward costs incurred for the 2007 conference.

Jim Ryan Presented With Lifetime Achievement Award

By Thomas P. Sweeney

Jim Ryan, IFSEA Board Member and Treasurer for the past 18 years, was presented the Madalyn Maxwell Lifetime Achievement Award by IFSEA founder Tom Sweeney at the association's 2007 Conference on Support Enforcement, held October 21-23, 2007 in Moline. One of only a few members actively involved in the association since its formation in 1987, Jim had recently announced his intention not to seek re-election to the Board or continue as Treasurer, citing health concerns as his reason for stepping down.

Jim began his involvement in child support enforcement as a Resource Consultant for the Cook County Department of Public Aid, then followed that up with a long term as Assistant State's Attorney in the Cook County State's Attorney's Child Support Division. Following retirement from county employment he has remained active in the Cook County Bar Association, including many years as member of its Legislation Committee. He has also co-authored the chapter on enforcement of judgments in the *Family Law Handbook* of the Illinois Institute for Continuing Legal Education, and been a frequent panelist at past IFSEA conferences.

Though not actively practicing in child support enforcement, Jim has nevertheless maintained his active involvement in IFSEA. As its long-time Treasurer Jim has been responsible for keeping the association fiscally responsible, and is well known for his efforts to seek bargains on purchases and pursue the best returns for association funds. Attending IFSEA conferences and meetings at his own expense, he has remained one of the constants amidst the many changes experienced by the association over the years. While he promises continued involvement in IFSEA his services as Board member and Treasurer will be missed.

Thanks and Congratulations, Jim.

Illinois Family Support Enforcement Association Board of Directors announces the 4th annual opportunity for an IFSEA Training Conference Scholarship. IFSEA's 2008 Conference will be held October 19th–21st, Whittington, Illinois.

- IFSEA awards two scholarships each year to the annual conference.
- Each scholarship will include the conference registration fee and lodging for the 2008 Annual Training Conference.
- Conference registration includes all meals with the exception of dinner on Monday night.
- The Scholarship recipient will be responsible for their transportation to and from the conference.
- Applicants need not be current IFSEA members but are required to be dedicated to the improvement of family support enforcement in Illinois.

Applicant Information:

Name:	
Title:	
Agency:	
Address:	
Telephone #:	Fax #:
E-mail Address:	

For what type of child support agency do you work? Check one:

☐ HFS ☐ Illinois Attorney General's Office ☐ State's Attorney's Office
☐ Private Attorney ☐ Other_____

Job Description – Please attach a brief description of the type of work you do.

Essay – Please tell us in one to two pages why you are interested in applying for the scholarship and how attending the IFSEA Training Conference will benefit you and your customers.

Applications must be postmarked by September 19, 2008. Please return this application and related documentation to:

Illinois Family Support Enforcement Association
Attention: Christine Towles
335 E. Geneva Road
Carol Stream, IL 60188

Thank you for your application!

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ILLINOIS FAMILY SUPPORT ENFORCEMENT ASSOCIATION
Application for Membership / Address Correction

Please: [ ] accept my application for membership in IFSEA. [ ] correct my address as noted below.

[ ] Regular membership - please enclose $20.00 annual dues.
[ ] Subscription membership - please enclose $20.00 annual fee.
[ ] Affiliate membership - (dues to be determined by Directors upon acceptance).

Applicant's Name: _____
Position/Title: _____
Employer/Agency: _____
Office _____
City/State/Zip: _____ Office Phone: _____
Preferred Mailing Address: _____
Preferred Phone: _____ Preferred Fax: _____
E-Mail Address: _____
[ ] Send Forum to E-Mail Address

Is this a [ ] New Application [ ] Renewal [ ] Address Correction ONLY?
Please return with dues to: IFSEA, 335 E. Geneva Road, Carol Stream, IL 60188

(FEIN: 37-1274237)

(1/05)

Illinois Family Support
Enforcement Association

Is Your Address Correct?
See Reverse to Correct.

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