

**FAMILY SUPPORT
FORUM**

The Official Newsletter of the Illinois Family Support Enforcement Association

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Governor Blagojevich proclaims August “Child Support Awareness Month”

Announcement made on Futures for Kids Day at Illinois State Fair

Governor’s Office Press Release – 8/15/2008

CHICAGO – Governor Rod R. Blagojevich today issued a proclamation declaring August “Child Support Awareness Month” in Illinois. The Governor’s proclamation coincides with Futures for Kids Day at the Illinois State Fair in Springfield, a day of activities for the Fair’s youngest visitors. Last month, the Governor announced that during fiscal year 2008, the Illinois Department of Healthcare and Family Services collected a record amount of child support for Illinois families.

“Our children depend on us for provision and safety. So on a day set aside for kids, it is the right time to remind parents of the steps Illinois has taken to make sure children have the financial support they deserve,” said

Governor Blagojevich. “Meeting your obligations to your children should come first and we will continue to impose consequences for parents who do not support their children.”

During fiscal year 2008, the Governor announced HFS collected \$1.33 billion in child support for Illinois’ children. That amount is more than 8 percent more than the \$1.22 billion collected during the previous fiscal year. This marks the fourth consecutive year the Department has collected a record amount of unpaid child support. Success has been due primarily to innovative programs geared toward holding non-custodial parents accountable.

“Most parents provide the necessary support

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to their children, but there are consequences for those who do not,” said HFS Director Barry S. Maram. “Helping parents meet their obligations to their children strengthens families, and the Department is proud to offer free child support enforcement services to any parent who needs our assistance.”

During the past year, HFS has employed innovative programs to impose consequences on parents who are not paying child support. Working with the Illinois Department of Natural Resources, HFS is making sure parents who do not first support their children financially will not be given the privilege of hunting and fishing permits. Starting this year, Illinois drivers who do not pay child support will have their driver’s licenses suspended through the Department’s Driver’s License Suspension Program, a joint effort with Secretary of State Jesse White. In addition to new and expanded programs, HFS continues to see success through other effective methods, such as the Deadbeat Parent Web site and the Governor’s New Hire Outreach program.

Child support enforcement services are available to any parent who needs assistance in establishing legal parentage, establishing child support or medical support, or enforcing support. Some enforcement tools, such as interception of income tax refunds, are available only to customers of the child support enforcement program. To register for free child support enforcement services, parents must complete and sign an application. Applications are available online at <http://www.ilchildsupport.com/> or by calling 1-800-447-4278 for assistance.

The Governor’s proclamation is as follows:

WHEREAS, the Department of Healthcare and Family Services has been given the responsibility of providing child support services to all Illinois families, and

WHEREAS, Illinois recognizes that children need strong family support; and

WHEREAS, Illinois works to focus attention on the needs of children to have both parents’ involvement in their children’s lives; and

WHEREAS, under my administration, Illinois Child Support Enforcement was named the Most Improved Program in the nation for 2006 by the National Child Support Enforcement Association and was given the Commissioner’s Award for Excellence in Performance in 2007 by the federal Office of Child Support Enforcement; and

WHEREAS, Illinois’ focus on improving outcomes for families has resulted in record-breaking collections of more than \$1.33 billion dollars; and

WHEREAS, the Department of Healthcare and Family Services is working closely with the Department of Human Services, Public Health, Children and Family Services, Employment Security, Corrections, Revenue, Natural Resources, the Secretary of State other state and county agencies as well as community groups to increase the number of children for whom paternity is established and whose families receive child support services; and

WHEREAS, Illinois is playing a lead role in helping strengthen Illinois families through innovation and sound practices in child support services;

THEREFORE, I, Rod R. Blagojevich, Governor of the State of Illinois, do hereby proclaim August, 2008 as CHILD SUPPORT AWARENESS MONTH in Illinois to promote the importance of child support and to affirm the continued commitment of my administration to helping our children receive the love and care that is vital to their success and the future welfare of Illinois.



From the President . . .

...IFSEA UPDATE

By Jeff McKinley

Fellow Members:

On June 20, 2008 the Board of Directors participated in a strategic planning session to assess IFSEA's functions and goals and to develop a path for the future. The session focused on our existing stated purposes and discussing and ranking items to accomplish in the next year or five years. The Board concluded that IFSEA has functioned well in presenting our annual conference and providing information through our newsletter. A consensus emerged, however, that many of our stated purposes are either not being met or are beyond our reasonable ability to accomplish. The Board wishes to update our stated purposes to better reflect our missions in the child support community. The Board also wishes to build on our past successes by making membership in IFSEA even more valuable and user friendly. By overhauling our website, the Board hopes to make IFSEA an important resource provider for information regarding child support issues in Illinois.

With all that in mind and to lay the groundwork for implementing the Board's decisions, a working group has met over the past several weeks to review and propose amendments to our by-laws. The group systematically reviewed each article and section of the by-laws, the first such comprehensive review since their adoption in 1987, and recommended several important changes or additions. The Board recommends that these amendments be approved by the membership at our meeting at the conference this October. Please visit our website at www.illinoisfamilysupport.org to see the complete by-laws document with proposed changes highlighted. Anything to be removed or replaced is shown with a strikethrough. Anything new is underlined. A summary of the articles that contain changes follows:

Article III: Purposes. The seven existing purposes are largely rewritten and condensed to five. The Board believed many of the purposes were somewhat repetitive or contained some mandates that were beyond the ability of our association. The new language focuses our purposes to promoting administration of family support programs and enforcement of state laws, providing information to the child support world and the general public, producing a newsletter and maintaining a web site, participate in the development of family support public policy, and to develop and promote relationships with other support programs and organizations.

Article IV: Membership. The only proposed change is to correct the name of the Department of Healthcare and Family Services.

Article VI: Board of Directors. A significant change is proposed for this article. The overall number of Directors would be reduced from 26 to 21, beginning with the elections in 2009. This change is largely a result of the Board's recommendation to change the length of Directors' terms from two years to three years (to be discussed later). In order to keep the terms staggered and to keep the existing ratio of Directors between Region One and Regions Two and Three, the number of elected Directors would have to change. Currently about 15% of our total membership sits on the Board, which is a large percentage and can at times contribute to inefficiencies. About 12% of the membership will still sit on the Board even with a reduction to 21 Directors. A slightly smaller board will also hopefully operate more efficiently and respond to emerging issues faster and more effectively.

Article VII: Election of Directors. Two significant changes are proposed for this article. The terms of Directors would change from two years to three years and the Directors would only be able to serve two successive three-year terms. After that they would be ineligible for re-election for another three years. While recognizing the

value of the contribution and service of individual Directors, the Board wants to encourage a regular change in the overall makeup of the Board by bringing in new Directors on a consistent basis. To accomplish the change in number and structure of terms, all existing terms would terminate in 2009 and a new Board would be elected. To keep terms staggered, one-third would be elected for one year and one-third would be elected for two years initially and then for three years thereafter.

Article VIII: Officers. Several changes are proposed for this article. In order to prevent any conflict the president might have in advancing IFSEA's position on a particular issue, language is added to clarify that the president may communicate the position or delegate that responsibility to another officer. No officer or member is required to communicate a position that is in conflict with that person's primary organizational affiliation.

Two officers would be added to the existing group of officers, a Technology Officer and the Immediate Past President. The Technology Officer would chair the new Newsletter and Website Committee and have responsibility to produce the newsletter and to create and/or maintain the website. This position moves responsibility for the newsletter from the Secretary. The Board believes that the newsletter and overhaul of the website is so important to IFSEA's future and mission that creation of a new officer with responsibility over those areas is necessary to help ensure effective implementation. The idea behind having the immediate past president remain as an officer is to help smooth the transition process and to keep the knowledge and experience of that individual more readily accessible to the existing Board and other officers.

Another proposed change is to clarify the dates of the terms of office. Currently the by-laws state that officers' terms begin one month following the first meeting of Directors held at the conference. We have not been abiding by that in practice, instead we have had the new officers take over their positions immediately following their election. The proposal would set the actual terms to begin December 1 and end the following

November 30. This allows for a more orderly transition and to resolve any possible legal concerns about officers acting without authority. Finally, this article would be clarified to indicate that any member may be elected an officer.

Article IX: Committees. Two changes are proposed for this article. Although the officers have unofficially met as an executive committee for some time, one proposed change is to create a new standing Executive Committee to formalize that role and to add the Immediate Past President as a non-voting member. Finally, the Publications Committee would be renamed the Newsletter and Website Committee, with the added responsibility to maintain a website, and would now be chaired by the Technology Officer as indicated above.

Changes to the by-laws alone will not accomplish all of the goals that came from the strategic session. However, they should set the stage and provide direction for IFSEA for some time to come. The Board will be reaching out to the membership, not just Directors, to join us in the planning and implementation of our goals, especially regarding the newsletter and website. If you have any particular expertise or interest in either or both of those areas please let me know. A complete text of the proposed changes is included in this newsletter and can also be found on our website <http://www.illinoisfamilysupport.org/>.

Very recently, I represented IFSEA at the National Child Support Enforcement Association's Annual Conference in San Francisco. Illinois was well represented, with several employees from the Department of Healthcare and Family Services, the Attorney General's Office and the Cook County State's Attorney Office attending. Most were also members of IFSEA as well. I will give a report at our upcoming conference. Speaking of that, please mark your calendars for October 19-21, 2008, and plan to attend our annual training conference at Rend Lake Resort and Conference Center, 11712 East Windy Lane, Whittington, Illinois. More information about the conference follows in this issue of the newsletter. I hope to see you there.

Jeff McKinley
President

BY-LAWS
OF THE
ILLINOIS FAMILY SUPPORT
ENFORCEMENT ASSOCIATION

ARTICLE I: Name. The name of the Association shall be "The Illinois Family Support Enforcement Association."

ARTICLE II: Incorporation. The Association shall be incorporated as a Not-For-Profit Corporation under the Illinois General Not-For Profit Corporation Act of 1986, with all the powers, duties and responsibilities provided thereunder.

ARTICLE III: Purposes. The purposes of the Association are:

- A. To promote the improvement of the administration of family support programs ~~through~~ and the diligent enforcement of state laws;
- B. To provide governmental officials at all levels, legal and child support practitioners, and the general public with information regarding family support programs, including the latest techniques, procedures and practices in family support enforcement, by developing, promoting and conducting educational programs and conferences;
- C. To provide, through a publication of a quarterly newsletter and maintenance of a web site dedicated specifically to family support enforcement issues, timely information regarding changes in legislation, case law and procedures so as to promote effective family support enforcement;
- D. To participate in the development of public policy related to family support enforcement;
- E. To develop and promote relationships with other family support programs and organizations.

ARTICLE IV: Membership.

- A. Regular Membership: Regular Voting Membership in the Association shall be open to:
1. Any attorney licensed to practice in the State of Illinois;
 2. Any Circuit Clerk, Deputy Circuit Clerk or other employee of a Circuit Clerk engaged in activities related to family support collection, distribution or enforcement;
 3. Any Judge in any court in the State of Illinois;
 4. The Director and any current or former employees of the Illinois Department of Healthcare and Family Services engaged in activities related to family support enforcement;
 5. Any elected official within the state of Illinois;
 6. Any paraprofessional or administrative employees of individuals entitled to regular membership who are engaged in activities related to family support enforcement;
 7. Representatives of parent advocacy groups;
 8. Any other individuals approved for membership by the Board of Directors upon recommendation by the Membership Committee.
- B. Affiliate Membership: Any individual, agency, association, business or other entity engaged in activities related to family support enforcement, not otherwise entitled to Regular Membership in the Association, may obtain Affiliate, non-voting membership by approval of the Board of Directors upon recommendation of the Membership Committee.
- C. Term of Membership: The annual term of membership in the Association shall extend from commencement of the Association's Annual Training Conference until commencement of the Association's next Annual Training Conference, or for one year, whichever is longer, and shall be indefinitely renewable for additional yearly terms upon tendering of the appropriate renewal application and dues.
- D. Dues: Annual dues for membership in the Association shall be:
- | | |
|-----------------------|---------------------------------------------------------------------------------|
| Regular Membership: | \$20.00 per member |
| Affiliate Membership: | Such sum or other consideration as may be determined by the Board of Directors. |
- At the discretion of the President, payment of dues otherwise required may be waived and Regular Membership granted to individuals otherwise eligible for membership in recognition of their contribution to the Association.

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.

A. Composition of Board of Directors: The Association shall be governed by a Board of Directors, comprised as follows:

1. Initial Board of Directors: From the date of its incorporation until the first Annual Meeting the Board of Directors shall consist of the Directors named in the Articles of Incorporation;

2. Commencing with the election of Directors to be conducted at the first Annual Meeting, the Board of Directors shall consist of 21 Directors determined as follows:

(a) Appointed Directors: Each of the following shall be authorized to serve as a Director of the Association:

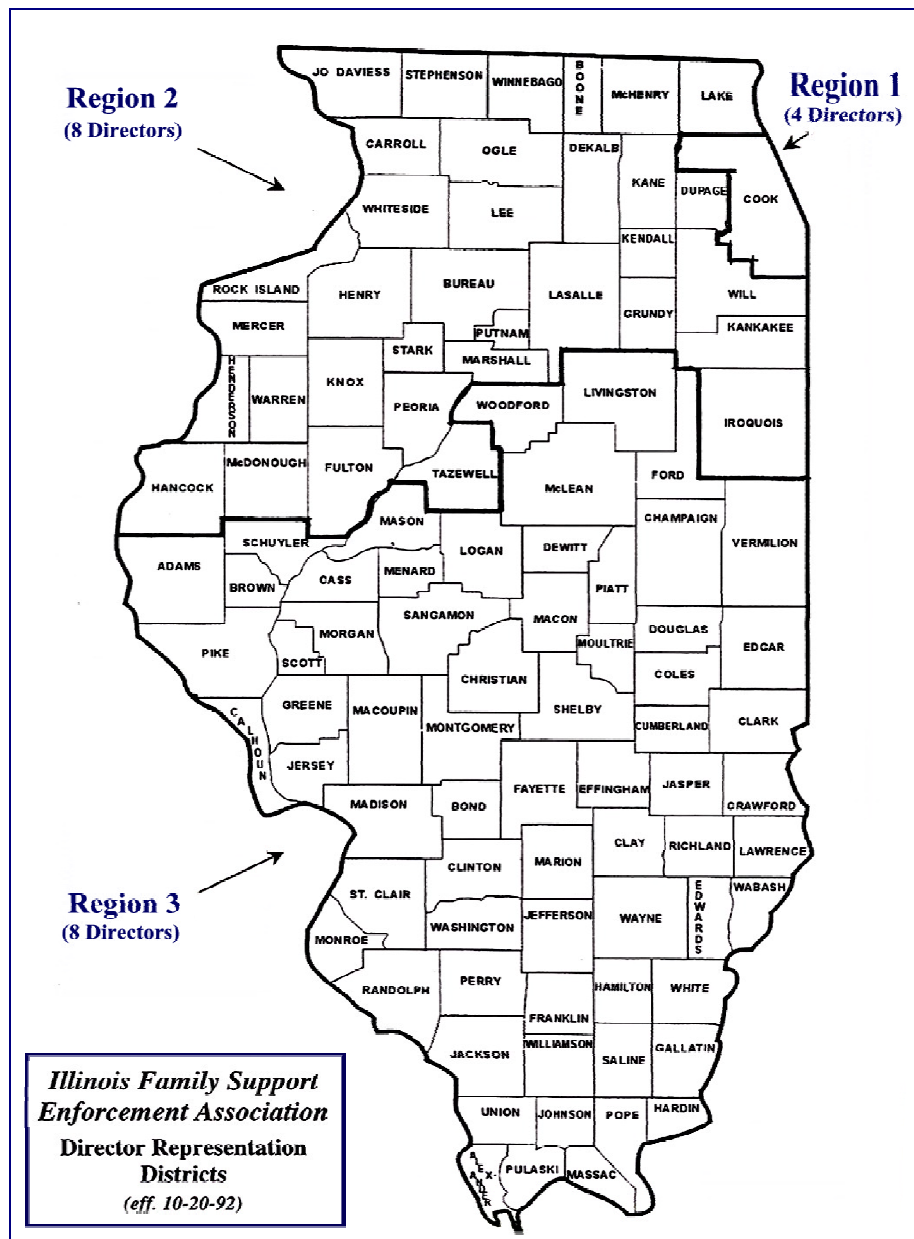
- The Director of the Illinois Department of ~~Public Aid Healthcare~~ and Family Services, or such other person within said agency designated either by name or position, as he/she may designate;
- The Attorney General of Illinois, or such other representative of that office as he/she may designate;
- The State's Attorney of Cook County or such other representative of that office as he/she may designate;
- The President of the Illinois Association of Court Clerks, or such other representative of that association as he/she may designate;
- Two individuals appointed by the President of the Illinois Family Support Enforcement Association at the conclusion of each annual election, to serve as "At Large" Directors.

(b) Elected Directors [commencing 2009]: The remainder of the Board of Directors shall consist of three Directors elected to represent Region One (the First Appellate District), and six Directors elected to represent both Region Two (the Second and Third Appellate Districts) and Region Three (the Fourth and Fifth Appellate Districts). The Regions shall be comprised of the following counties [See Revised Regional Map]:

- Region One: Cook County;

- Region Two: Boone, Bureau, Carroll, DeKalb, DuPage, Fulton, Grundy, Hancock, Henderson, Henry, Iroquois, Jo Daviess, Kane, Kankakee, Kendall, Knox, Lake, LaSalle, Lee, Marshall, McDonough, McHenry, Mercer, Ogle, Peoria, Putnam, Rock Island, Stark, Stephenson, Tazewell, Warren, Whiteside, Will and Winnebago;

Region Three: Adams, Alexander, Bond, Brown, Calhoun, Cass, Champaign, Christian, Clark, Clay, Clinton, Coles, Crawford, Cumberland, DeWitt, Douglas, Edgar, Edwards, Effingham, Ford, Fayette, Franklin, Gallatin, Greene, Jersey, Hamilton, Hardin, Jackson, Jasper, Jefferson, Johnson, Lawrence, Livingston, Logan, Macon, Macoupin, Madison, Marion, Mason, Massac, McLean, Menard, Montgomery, Monroe, Morgan, Moultrie, Piatt, Pike, Pope, Pulaski, Randolph, Richland, St. Clair, Sangamon, Saline, Schuyler, Scott, Shelby, Union, Vermilion, Wabash, Washington, Wayne, White, Williamson and Woodford counties.



The county in which a Director maintains his/her primary place of employment shall determine the region which he/she may be elected to represent.

- B. Compensation of Directors: Directors shall serve without compensation other than reimbursement of expenses incurred on behalf of the Association.
- 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 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 VII: Election of Directors.

- A. Nomination of Candidates: The names of persons designated to serve as appointed Directors shall be submitted in writing to the Nominating and Resolutions Committee at or prior to the election of Directors conducted at each Annual Meeting. Nominations for Directors to be elected shall be made in writing, to the Nominating and Resolutions Committee at least seven days prior to the election of Directors conducted at each Annual Meeting. Nominations may be made at the Annual Meeting if supported by five members from the respective region.
- B. Eligibility to Serve as Director: Only regular members in good standing may be appointed or elected to the Board of Directors.
- C. Election: Directors subject to election pursuant to Article VI, Section A 2 (b) of these By-Laws shall be elected by vote of all regular members in attendance entitled to vote. Nominees in each region shall be elected in a number equal to positions subject to election in each region, and shall be those nominees who receive the highest number of votes. Ties shall be decided by coin flip to be conducted by the President. The Nominations and Resolutions Committee may recommend to the membership a slate of candidates for election.
- D. Terms of Office:
1. Appointed Directors shall serve terms of one year, expiring at the next Annual Meeting, subject to indefinite renewed appointment;
 2. Elected Directors shall serve terms of ~~two~~ three years, commencing with the first Board of Directors Meeting held immediately following the election and expiring at the Annual Meeting held ~~two~~ three years after being elected., ~~except that of the Directors elected at the first Annual Meeting, two of the five Directors elected from Region 1 (Cook County) and one of the two Directors elected from each of the other Regions shall serve terms of one (1) year expiring at the next Annual Meeting. Determination of which Directors elected at the first Annual Meeting shall serve full two-year terms shall be made by coin toss if not otherwise agreed~~

3. Elected Directors may serve no more than two successive three-year terms as an Elected Director. After serving two, three-year successive terms as an Elected Director, Directors shall not be eligible for re-election until the expiration of three years from the termination date. Directors may serve as appointed Directors regardless of their eligibility for re-election.

4. At the 2009 Annual Meeting, the terms of all previously elected Directors shall terminate and an election shall be held to elect a new Board of Directors. In order to provide staggered terms of elected Directors, the initial terms shall be as follows:

Region One:

One term of one year

One term of two years

One term of three years

Regions Two and Three:

Two terms each of one year

Two terms each of two years

Two terms each of three years

E. Vacancies:

1. Should an individual entitled to be an appointed Director pursuant to Article VI, Section A 1 (a), not meet all requirements for Regular Membership in the Association, and not designate a representative entitled to Regular Membership in the Association, that position shall remain vacant until such time as membership is obtained or an eligible Member is designated.
2. If at any election of Directors there are insufficient nominations from any region to fill positions subject to election from that region, such positions shall be considered vacant.
3. Vacancies which may occur in Director's positions, other than appointed Director positions, shall be filled by appointment by the President upon recommendations made by the Nominating and Resolutions Committee, and such appointed Directors shall serve until the expiration of the term so filled.

F. Removal of Directors: Any elected Director, or person appointed to fill the vacancy of an elected Director, who fails to appear for two consecutive meetings of the Board of Directors, without excuse and after due notice, may be removed as Director upon majority vote of the remaining Directors present at any subsequent meeting of the Board of Directors.

ARTICLE VIII: Officers.

A. Designation and Duties of Officers. The Officers of the Association shall be:

1. President: The President shall preside at all meetings of the Board of Directors and at the Association's Annual Meeting. The President shall be Chairman of the Nominating and Resolutions Committee and ex officio member of all other standing committees. The President shall appoint members to the various standing committees and name special committees from time to time as may be recommended by the Board of Directors. The President may, with the consent of the Board of Directors, communicate the position of the Association on matters of public policy or federal or state legislation and/or delegate such communication to another Officer or Member of Board. No Officer or Member of the Board shall be required to communicate a position of the Association that is inconsistent with or in opposition to the position taken by the Officer or Member of the Board's primary organizational affiliation.
2. First Vice President: In the absence, disability or refusal to act by the President, the First Vice-President shall assume the responsibilities and authority of the President. The First Vice-President shall be Chairman of the Conference/Training Committee and shall perform such other duties as the President or Board may delegate.
3. Second Vice-President: In the absence, disability or refusal to act by both the President and First Vice-President, the Second Vice-President shall assume the responsibilities of the President. The Second Vice-President shall be Chairman of the Legislation Committee and shall perform such other duties as the President or Board may delegate.
4. Secretary: The Secretary shall attend all meetings of the Board of Directors and the Association's Annual Meeting, and maintain the official Minutes thereof. The Secretary shall give all Notices and file all documents required of the Association by applicable state regulation, statute or these By-Laws. The Secretary shall perform such other duties as the President may delegate.
5. Treasurer: The Treasurer shall maintain the financial books and accounts of the Association, shall deposit all dues and other funds of the Association in savings or equivalent accounts, and shall authorize all Association expenditures. The Treasurer shall deliver a financial report to the Association at each Annual Meeting, and to the Board of Directors at any meeting thereof upon request. The

Treasurer shall be Chairman of the Membership and Finance Committee and shall perform such other duties as the President may delegate.

6. Technology Officer: The Technology Officer shall be Chairman of the Newsletter and Website Committee and oversee the Association's website. The Technology Officer may directly create and maintain the website or contract with another provider with Board approval. The Technology Officer shall perform such other duties as the President may delegate.

7. Immediate Past President: The Immediate Past President shall perform such duties as the President or Board may delegate.

B. Election and Term of Office: With the exception of the immediate Past President, Officers shall be elected by majority vote of Directors in attendance at a meeting of the Board of Directors held immediately following or in conjunction with the Association's Annual Meeting. The immediate Past President shall be an Officer of the Board for the year immediately following his/her term as President. Officers shall serve terms of one year, commencing December 1 following their election and expiring the following November 30. Vacancies in the position of any officer shall be filled by vote of the Board of Directors. No person may be elected to the office of President for more than two consecutive terms.

C. Eligibility to Serve as Officer: Any regular member in good standing may be elected an officer.

ARTICLE IX: Committees.

A. Standing Committees. The Association shall have the following Standing Committees:

1. Executive Committee: Chaired by the President, the committee shall be composed of the Officers of the Association. The committee shall have authority to transact routine business on behalf of the Association or to carry out such other duties as the Board may designate. The Immediate Past President shall serve as a non-voting member of this committee.

2. Membership and Finance Committee: Chaired by the Treasurer, the committee will be responsible for recruiting members, issuing membership certificates and maintaining records of members and dues. The committee will also assist the Treasurer in maintaining the accounts and financial records of the Association.

3. Conference/Training Committee: Chaired by the First Vice-President, the committee will be responsible for planning training conferences to be held at least annually. In conjunction with the Publications Committee, the committee may also prepare educational materials for distribution to the membership or for general publication.
4. Newsletter and Website Committee: Chaired by the Technology Officer, the committee will be responsible for publication of a regular newsletter for distribution to the membership and maintenance of a website. In conjunction with the Conference/Training Committee, the committee may also prepare educational materials for distribution to the membership or for general publication.
5. Legislation Committee: Chaired by the Second Vice-President, the committee will monitor proposed and pending legislation to inform the membership of its content and progress, and will insure that the membership is informed promptly upon enactment of new legislation affecting family support enforcement. The committee may, at the direction of the Board of Directors, prepare legislative proposals.
6. Nominating and Resolutions Committee: Chaired by the President, the committee will receive and review nominations for election to the Board of Directors, review proposed resolutions for action by the Board and membership, and may make recommendations thereon.

B. Special Committees may be named by the President or Board of Directors.

C. Membership on Committees: Any regular member of the Association may be appointed by the President to any committee and may be a member of more than one committee at a time, but a majority of members on any committee shall be Directors.

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 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.

ARTICLE XI: Rules of Order. Proceedings of all meetings of the Association shall be governed by the latest revision of Robert's Rules of Order.

ARTICLE XII: Distribution of Assets. None of the income or assets of the Association shall be distributable to the Members or Directors, except to reimburse expenses incurred on behalf of the Association. Upon dissolution of the Association, the assets remaining after satisfaction of all debts and liabilities shall be distributable by the Board of Directors only for purposes consistent with the purposes for which the Association has been incorporated, and then only to such not-for-profit organization or organizations formed and operated exclusively for charitable, educational, religious or scientific purposes as shall at the time qualify as an exempt organization under Section 501(c)(3) of the Internal Revenue Code of 1954 as then in effect.

ADOPTED by the Board of Directors convened at Urbana, Illinois, on September 18, 1987, as amended by the Membership November 21, 1989, October 23, 1990, October 22, 1991, October 20, 1992, August 10, 1999, October 15, 2001, October 20, 2003, October 19, 2004, and October 18, 2005.

Attest: _____
Secretary



From HFS . . .

. . . ILLINOIS IV-D UPDATE

By Pamela Lowry

Fellow IFSEA members,

Hello from our state capital! Recently I had the privilege of representing our IV-D program at the annual National Child Support Enforcement Association conference, held this year in San Francisco. As beautiful as Northern California is, I confess I was happy to return to our own beautiful state and renew my focus on our statewide efforts with a renewed sense of our place in the nation. I want to report that four HFS staff and IFSEA members are not only now NCSEA members but attended the annual NCSEA conference at their own expense – Mary Morrow, Deb Packard, Deb Roan, and Christine Towles. It was a real pleasure for me to be able to introduce these staff to fellow NCSEA members and they did a great job representing HFS.

Some of you may have already seen the end of the state fiscal year wrap-up on the HFS Child Support Infonet, but here is a quick summary of our results from SFY2008:

For the fourth consecutive year total collections exceeded \$1 billion dollars.

The new program to administratively suspend Illinois driver's license had already netted nearly \$5 million in support payments by the end of June 2008. By the end of July, that total was up to \$7.6 million from 11,196 debtors.

The expansion of our partnership with the Department of Natural Resources to deny hunting and fishing licenses resulted in more that \$217,000 in collections. An additional \$470,000 was collected from other licensing actions.

In SFY08, we collected nearly \$170,000 from the most egregious child support evaders through the Deadbeat Parent website. Since November 2003, more than \$524,000 has been collected through the website.

Nearly \$2 million was collected through the Passport Denial Program and more than \$16.5 million through liens and seizures.

More than \$82.6 million was collected through federal income tax offsets.

In field offices, we had many outstanding efforts that led to significant individual payments, to increased compliance with orders, or to better balances.

In May, the Champaign Regional Office had two separate collections of more than \$10,000 each as a result of proactive communication with parents. Joliet Regional Office had a collection of more than \$10,000 after seeking a contempt action against an NCP and the NCP is now paying current support. In a Peoria Regional Office contempt action, an NCP paid \$19,000. The Cook

Collections and Enforcement Region accepted \$11,000 from a walk-in non-custodial parent in May. In February, the Rockford Regional Office and Clerk Advocate Clerk staff worked together to release an inheritance payment of more than \$30,000.

Several offices are sending introduction letters to non-custodial parent with first-time orders. These letters include SDU coupons. We are seeing a return of greater than 50% on collections on these cases.

You may have noticed that we are focusing on better handling of interstate cases over the last several months. Among the many related activities, field officers are reviewing interstate case statuses and taking the necessary actions to either move a case forward or to close cases that were open in errors. In two offices alone, more than \$500,000 in debt was reduced based on review of individual interstate case.

We also manually reviewed every case with a balance over \$100,000. In Cook, 636 cases were reviewed and \$18 million of debt was removed as a result of the reviews. Downstate, a review of 77 cases resulted in \$3.2 million in debt removal. As we expected, these cases were very old and were fraught with inaccuracies. We are now planning on conducting similar reviews of cases with balances under \$100,000 but over \$50,000.

The OCSE-157 numbers at the end of July look very good. 76% of cases have orders statewide. Our statewide current support ratio for October through July is 54.9%, and our October to July ratio of arrears cases statewide with a collection toward arrears was 56.48%, compared to 52% in July 2007.

All in all, state fiscal year 2008 was another good year for the IV-D program and the families we serve.

I hope to see you all at the annual training conference in October and am looking forward to hearing your thoughts and ideas against the backdrop of our lovely Southern Illinois scenery.

Sincerely,
Pam



**ILLNOIS FAMILY SUPPORT
ENFORCEMENT
ASSOCIATION ANNUAL
CONFERENCE
OCTOBER 19TH THRU 21ST ,
2008
REND LAKE RESORT AND
CONFERENCE CENTER**

CONFERENCE AT A GLANCE

SUNDAY, OCTOBER 19TH, 2008

4:00-7:00 Registration
6:00-7:00 Meet and Greet
7:00-9:00 Annual Banquet
9:00-11:00 Hospitality Suite

MONDAY, OCTOBER 20TH, 2008

8:00-5:00 Exhibitors
8:30-10:00 Plenary Session I
10:00-10:15 Refreshment Break
10:15-11:45 Break-out Session I
 A. DFAS
 B. Collections
11:45-12:00 Annual Meeting I
12:15-1:00 Lunch
1:00-2:20 Break-out Session II
 A. Prevent Child Abuse
 B. Bankruptcy
2:20-2:30 Refreshment Break
2:30-3:50 Break-out Session III
 A. Creative Leadership
 B. SSA
4:00-5:00 Break-out Session IV
 A. DNA
 B. Community Outreach
5:00-7:00 Hospitality Suite
7:00-11:00 Cook-out & Bon Fire

TUESDAY, OCTOBER 21ST, 2008

8:00-10:00 Exhibitors
8:30-10:00 Plenary Session II
 Judge's Panel
10:00-10:15 Refreshment Break
10:15-12:00 Annual Meeting II
 Elections

Door Prizes (Must be present to win)

Registration Form:

(Please submit separate registration for each person attending)

<i>SIGN UP</i>	<i>PRICE</i>	<i>TOTAL</i>
<input type="checkbox"/> Registration Fee (Before 9/30/08)	\$110.00	_____
<input type="checkbox"/> Registration Fee (After 9/30/08)	\$135.00	_____
<input type="checkbox"/> Illinois CLE Fee Illinois ARDC# _____	\$15.00	_____
<input type="checkbox"/> I will be attending Sunday Banquet		
<input type="checkbox"/> I will not be attending Sunday Banquet		
<input type="checkbox"/> I will be attending Monday Cook-out		
<input type="checkbox"/> I will not be attending Monday Cook-out		
Additional Sunday Dinner tickets _____ needed	\$25.00 ea	_____
Additional Monday Dinner tickets _____ needed	\$20.00 ea	_____
Additional Meal Package (includes all meals) _____ needed	\$75.00 ea	_____
TOTAL		_____

Make checks payable to: IFSEA
335 E. Geneva Road, Carol Stream, IL 60188

Name (to appear on Membership Certificate)

Nametag Preference _____

Title & Employer _____

Address _____

Phone _____

Email Address _____

REND LAKE RESORT AND CONFERENCE CENTER

Nestled in Wayne Fitzgerald State Park, in beautiful Southern Illinois, the Rend Lake Resort Complex offers a unique and memorable get-a-way that will keep you coming back time and time again. Set along the water, the resort offers the perfect setting for couples, families, sports and recreation enthusiasts or business groups, with many resorts and area activities to enjoy year-round. Our cozy cabins set along the water offer the perfect get-a-way no matter what the occasion. Our boatel rooms offer lofts, wet bars and decks overlooking the lake. Our hotel complex offers modern luxurious rooms.

11712 E. Windy Lane, Whittington, IL 62897

Reservations:

800-633-3341 or 618-629-2211

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!

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 20th 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 2010.

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 20th at 9:45 a.m. at the Conference. Results will be announced at the Annual Members' Meeting on Tuesday, October 21st.

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 13, 2008. 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, 1018 N. Scott St., Wheaton, IL 60187**. Incumbents seeking re-election also require nomination. Only regular members in good standing (membership dues paid for 2008-2009) 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):

2006-2008*	2007-2009
Mary Morrow (HFS, DCSE)	Christine Kovach (Madison Co Asst. State's Atty)
Christa Ballew (Maximus)	Jeffrey McKinley (Asst. Atty. Gen'l.)
Deanie Bergbreiter (Asst. Atty. Gen'l)	Barbara McDermott (HFS, DCSE)
Scott Black (Asst. Atty. Gen'l)	Lawrence Nelson (Asst. Atty. Gen'l.)
Bill Henry (Asst. Atty. Gen'l)	Sherrie Runge (HFS, DCSE)
Patti Litteral (HFS, DCSE)	Christine Towles (HFS, DCSE)
Scott Michalec (Asst. Atty. Gen'l)	Norris Stevenson (HFS, DCSE)
Deborah Packard (HFS, DCSE)	Kathryn Munzer (HFS, DCSE)
Matthew Ryan (Asst. Atty. Gen'l)	Lori Medernach (HFS, DCSE)
Irene Halkas-Curran (Lake Co. Asst. State's Atty)	Lyn Kuttin (HFS, DCSE)

* Directors whose terms end this year. The one-year terms of "At-Large" Directors Andrea Sarver (HFS, DCSE) and Georgia Heth (Peoria County Asst. States Attorney) also expire at this year's election.

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

October 19-21, 2008
For a two-year term of office
2008 – 2010

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

Nominee:

Position/Employer:

Office Address (County):

Credentials/Comments:



From the CourthouseCases and Commentary

The following is a summary of cases arguably related to child support, paternity and related issues decided since cases were last summarized in the FORUM, through June, 2008.

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

Supreme Court Reverses: Termination of Parental Rights Does NOT Terminate Support Responsibilities Unless Adoption is Actually Being Pursued

Dept. of Healthcare & Family Services v. Warner, 222 Ill. 2d 572, 861 N.E. 2d 655 (No. 103289, 1/25/08), reversed the Appellate Court and affirmed the trial court's denial of an obligor's petition to vacate his child support obligation based on termination of his parental rights in a separate proceeding.

In a 1996 parentage case Warner was ordered to pay child support. In 2002 his parental rights to the children were terminated in a juvenile court proceeding. The children were then under guardianship of DCFS, with adoption being "a goal", but no adoption was ever pending. Two years later he sought to vacate his support order, based on the termination of parental rights. The trial court denied his request, but the Appellate Court (366 Ill. App. 3d 1178, 853 N.E. 2d 435 (4th Dist., 2006) reversed, on the basis of Section 17 of the Adoption Act, which provided that "after either the entry of an order terminating parental rights or the entry of a judgment of adoption, the natural parents of a child sought to be adopted shall be relieved of all parental responsibility" for that child. The Appellate Court concluded: "Section 17 does not provide that natural parents are relieved of parental responsibility and deprived of legal rights only where their legal rights have been terminated and a specific person has expressed interest in adopting their natural child. Rather, a fair reading of the statute includes situations where a child is available for adoption, whether or not someone is actively seeking to adopt that child. . . ." Since Warner's parental rights had been terminated and adoption remained the goal, the Appellate Court concluded his support obligation, being a parental responsibility, therefore terminated.

In a 4-3 decision, the Supreme Court reversed the Appellate Court. The majority first rejected Warner's argument that the phrase in Sect. 17 "sought to be adopted" should be ignored, noting that the word "seek" is defined as "to make an attempt, to try;". Since only eligible applicants, and not the state, can "seek" to adopt, children merely "available for adoption" are not "sought to be adopted" under Sect. 17. The majority then rejected the analysis of the Appellate Court that Sect. 17 is "fairly read" to include children "available for adoption," as that phrase could have been used but was not.

Concluding that Sect. 17 "does not apply" to this case, the majority found it unnecessary to rule on the state's alternative argument that natural parents have a common law, residual duty to support their children. Case law which seemed to strongly support Warner were ignored by the majority, as they were only raised in his argument against the "residual duty to support" argument, which was not addressed by the majority. The majority also disregarded consideration of an argument based on Sect. 2-29(2) of the Juvenile Court Act, which provides that in terminating parental rights, the juvenile court *may* authorize the guardian of the person of the minor to consent to adoption, and that an order so empowering the guardian to consent to adoption relieves the parents of all parental responsibility. 705 ILCS 405/2-29(2). Since Warner had not included in the record on appeal the order from the juvenile case terminating his parental rights, the majority could not determine if that section might have any relevance. Additionally he had failed to argue the applicability of that section below or to properly raise it in his argument before the Supreme Court, so the majority concluded he had waived any argument based on that section. In short, to reach the better result the majority found ways to disregard case law and other statutory authority which could have turned the decision in his favor had Warner argued them differently. [*The next appellant (and the General*

Assembly) might want to take note.] Appellate Court reverse,; trial court affirmed, Warner's support obligation continued.

The dissent criticizes the majority's decision as creating disharmony between Sect. 17 of the Adoption Act and Sect. 2-29(2) of the Juvenile Court Act, contrary to statutory directive that the two acts be read together. The dissent asserts the Court should take judicial notice of the order terminating parental rights, regardless of its having been omitted from the record on appeal. The dissent agreed with the Appellate Court that Sect. 17 should be construed to apply to children "available for adoption," and argued that the Court's analysis should conclude, based on Sect. 17 and prior case law, that the "common law residual duty to support" is abrogated when Sect. 17 applies. "To conclude, I cannot concur with an interpretation of section 17 creating conflict with another statute on the same subject, when a reasonable construction exists that will both harmonize the overall statutory scheme addressing the termination of parental rights and adoptions, and acknowledge DCFS's adoptive placement efforts. Today's opinion is also inconsistent with prior judicial holdings on the effect of the termination of parental rights. Therefore, I respectfully dissent." [*Again, the General Assembly might want to take note.*]

Unprofitable Self-Employment Venture, Following Involuntary Employment Loss, Held Insufficient to Justify Reduction of Child Support, College Expense Obligation

In Re Marriage of Deike, 381 Ill. App. 3d 620, 887 N.E. 2d 628 (4th Dist., 4/3/08), affirmed, with minor modification, refusal to reduce obligations to pay child support and college expenses, and finding of contempt for failure to make timely payments.

In their 1994 divorce Robert agreed to pay to Marshella child support of \$312.50 every two weeks for the parties' three minor children, to pay 50% of college expenses, and for each of the parties to maintain health insurance coverage available through their employers for the children. At that time he was working for Diamondstar Motors (now Mitsubishi), with an annual net income assumed by the Court to be approximately \$22,500. Marshella worked at State Farm Insurance, with an annual gross income of \$30,000. In February, 2004, Robert's position was eliminated by Mitsubishi; he then received severance for 38 weeks and unemployment compensation until October, 2004. In June, 2004, Marshella filed a petition seeking definition of "college expenses," the eldest child having started college the previous fall. At the same time she also petitioned to require Robert to contribute to her cost for insurance, and for a finding of contempt because he was two weeks late in

paying child support. In August, 2004, Marshella petitioned to include living expenses during the summer in college expenses toward which Robert must contribute. In September, 2004, Robert petitioned to reduce support and eliminate the obligation to provide insurance through his employer.

Apparently nothing happened on all these petitions for more than two years. In October, 2006, Robert petitioned to modify the requirement that he pay 50% of college expenses. In November Marshella filed amended petitions to clarify and define the college expense obligations and for indirect, civil contempt for Robert's failure to pay toward college expenses (all three children then being in college). Finally in January, 2007, the several petitions came on for hearing.

Evidence indicated Marshella's gross income had increased to \$57,000 in 2004. She itemized expenses, including costs toward the college expenses of the three children, of \$5,350 per month, with a net income of \$2,362 per month. Robert's net income in 2004 was \$47,000. After numerous unsuccessful efforts to obtain employment after his layoff from Mitsubishi, Robert and his wife purchased and began operating a bar and grill in Minnesota. The bar and grill lost \$28,000 in 2005, and, despite gross receipts of \$128,000 in 2006, was still expected to incur a somewhat lesser loss for that year. Though they intended the bar and grill to be their only employment when they purchased it, when Robert started putting his child support payments on credit cards in 2005 he was persuaded to take a second job, from which he now earns \$27,000 per year. In addition to the second job, Robert continues to work in the bar and grill 30-40 hours per week, while his wife works there 100 hours per week. The bar and grill is a cash operation, and any tips they get go back into

Robert and his wife paid \$16,000 to purchase the bar and grill and still owed another \$15,000 mortgage balance at the time of hearing. They also spent another \$47,000 for equipment and remodeling during the first year of operation, \$30,000 of which came from a loan. Robert owns a cabin on a lake inherited from his parents, valued at \$120,000 in 2006, but it is security for a debt consolidation loan for \$60-80,000; he said he was not sure of the mortgage balance due at the time of hearing. He also owns a boat valued at \$6,000, and commercial property in LeRoy, Illinois, subject to a \$35,000 mortgage balance, which he has been unable to sell.

The trial court granted Marshella's petition regarding college expenses, requiring Robert to be liable for 50% of college expenses specified to include a portion of living expenses during summer months. While the loss of his Mitsubishi income was not his fault, he had not put money aside during the

ten years before that happened while Marshella had, so to require her now to contribute a greater share was unfair. The court also noted he had considerable assets to use as collateral for college loans. He was found to owe \$26,236.78 in past college expenses. Robert's petition to reduce child support was allowed only to excuse the requirement to maintain insurance, but he was ordered to reimburse Marshella half of her costs to provide insurance. Other reduction of his child support obligation was denied, the court noting he had invested a lot of money in a business that is losing money and did not seek other employment until 2005. He was found to owe \$2,187.50 in back child support. Robert was found in indirect, civil contempt for failure to pay college expenses and child support in a timely fashion, was assessed \$2,382.67 as partial attorney's fees, and ordered to purge the contempt by paying \$24,049.79 in past-due college expenses and child support by April 15, 2007. Robert appealed.

With J. Cook dissenting on all issues, affirmed, with some adjustments. Again noting Robert's assets as possible collateral for college loans or sale, the majority concluded there was no abuse of discretion in requiring him to be liable for half the college expenses. The majority concluded his income of \$47,000 prior to the layoff in 2004 was evidence he had that earning capacity, but was now working for only \$27,000, and he had chosen to invest savings in a losing business when he knew he had a current and future obligation to pay college expenses. The amount due was modified to correct a double-counting of some summer living expenses.

Similarly there was no abuse of discretion in denying reduction in child support. Support can be based on earning potential when the obligor is underemployed. Again the majority was critical of Robert's decision to invest in a losing business. "Before purchasing the business, Robert should have been concerned about how he would continue to support his children. The record establishes Robert was underemployed and, thus, not unable to pay previously agreed-upon child support." And Robert failed to provide specific evidence of how his income was spent so as to meet his burden to show that failure to pay college expenses and child support as they came due was not willful. When contempt is found assessment of attorney's fees is mandatory. No abuse of discretion here, either. No mention was made of the propriety of the purge requirement.

Justice Cook dissented. As to Robert's investment in a losing business, he argues:

"The question, however, is not whether the choice worked out successfully. [E]conomic reversals as a result of changes in employment or bad investments, if made in good faith, may constitute a material change in circumstances

sufficient to warrant a modification of a child[-] support order.' [Citation] The question is whether the choice was made in good faith. Employment changes that are voluntary must be made in good faith and not prompted by a desire to avoid obligations. [citation] The record affords no evidence that the choice to become self-employed was in bad faith. In fact, it is a mischaracterization to describe this choice as "voluntary." Robert did not quit his job at Mitsubishi. His job was eliminated and he was forced to seek new employment. He was forced to make a choice.

Justice Cook further criticizes the majority's conclusion as to Robert's potential for income:

"It is incorrect to say that Robert 'is capable of earning in excess of \$47,000 per year as shown by his net income in 2004,' the year he lost his job and received severance benefits. Slip op. at 14. We should not assume that a person who earns \$47,000 in one year will be able to earn that amount in future years. The loss of long-term employment is often a devastating blow from which a worker never recovers. 'Certainly this court cannot find that an employment layoff and an attempt to become self-employed are attempts to evade financial responsibility.' [citation]"

Citing Robert's efforts to find a better job, his efforts to make a go of the bar and grill, and the amount of support and college expenses he did pay even when his income had substantially declined, Justice Cook concludes his failure to pay everything did not amount to willful failure to pay. And requiring payment of \$24,000+ as a purge, when it is clear he cannot do so any time soon, amounts to an improper penalty for past actions rather than a civil contempt sanction designed to coerce future compliance.

Out-of-State Employer Held Liable for \$100-per-day Fine for Failure to Withhold; Jurisdiction and Constitutional Objections Rejected

In Re Marriage of Gulla & Kanaval, ___ Ill. App. 3d ___, 888 N.E.2d 585 (2nd Dist., No. 2-07-0387, 5/1/08), affirmed fine imposed on out-of-state employer for failure to withhold income for support.

In March, 2006, the court ordered payments of \$3,000 per month toward arrearages of \$123,000+, and issued a notice to withhold that amount to the obligor's employer in Mississippi, Knobias, Inc. That notice was served by certified mail, return receipt requested, and included directions to

withhold \$3,000 per month, but not to exceed the limit provided by federal law. Knobias did not withhold anything until served with a Rule to Show Cause in November, 2006, later claiming they thought the order had been vacated. Rejecting Knobias' claim of lack of jurisdiction, the trial court also rejected Knobias claim it had acted in good faith in believing the parties had settled the matter and vacated the payment order. It then ordered Knobias to pay \$7,854.56 in support payments it should have withheld, and assessed a \$100-per-day fine totaling \$369,000. Knobias appeals.

Affirmed. The income withholding notice was properly served, and provided clear notice of the employer's obligations, including the 150% imputation on income that could be withheld and a number to call if there were questions. The fact that the obligor's income was less than what was ordered to be withheld did not make the notice improper. "Based on the clarity of the notice and Knobias's failure to adhere to its terms, Knobias cannot rebut the presumption in the Withholding Act that it knowingly failed to pay over the amounts that it was obligated to. Thus, the trial court properly assessed a penalty against Knobias for its knowing violation of the Withholding Act."

The Appellate Court also rejected Knobias' argument that the penalty could only be imposed for failure to forward income actually withheld, the law having been amended to impose the penalty for failure to withhold in addition to failure to forward. The argument that the penalty provision was unconstitutional as excessive was rejected in light of recent case law. And the Court found Illinois did have jurisdiction over the out-of-state employer, citing as its authority federal statutes requiring that each state give full faith and credit to income withholding notices from other states and Mississippi statutes requiring its employers to treat out of state income withholding notices as if they were issued by a Mississippi tribunal.

**Voluntary Acknowledgement of Paternity, Not Timely or Properly Challenged, Binding
On Mother; Order Vacating Paternity Determination on Mother's Request is Void; Action to Name New Father Properly Dismissed for Lack of Justiciable Issue**

In Re Parentage of G.E.M., ___ Ill. App. 3d ___, ___ N.E. 2d ___ (3rd Dist., No. 3-06-0848, 5/27/08), reversed denial of a motion to dismiss a parentage action filed after another man had been determined to be the father pursuant to a voluntary acknowledgement of paternity.

At the time of G.E.M.'s birth in 1995 (prior to implementation of the "Voluntary Acknowledgment of Paternity" procedure) the mother's "close friend" Richard signed an "electronic Birth Certificate Worksheet" acknowledging that Richard was the child's father. That form was required to put Richard's name on the birth certificate as the child's father. Mom subsequently acknowledged that at that time there was a doubt in her mind as to which of three men was the father. Mom then brought a paternity action against Richard in court, resulting in a paternity determination including support and visitation orders. In 1998, pursuant to mom's contempt petitions, Richard was found in contempt for failing to pay medical expense and child support and failing to provide life insurance. Further action against Richard was apparently put on hold pending outcome of his bankruptcy.

In 2000 mom requested the orders against Richard be vacated, making reference to DNA results indicating he is not the child's biological father. After ordering another round of DNA tests and appointing a child's representative, the trial court granted the request—vacating both the support and "all prior orders of parentage."

A year later mom filed a petition to determine parentage of Louis. Louis moved to dismiss, based on the prior voluntary paternity determination and Richard's judicial declaration of paternity in the prior court proceedings. He further argued that the order vacating Richard's paternity determination was void, and that the prior paternity determination was binding. That motion was denied. Based on DNA results, Louis was found to be the child's father. He appeals denial of his motion to dismiss.

Louis wins. The Parentage Act provides that paternity can be established by voluntary acknowledgment, and that if it is not rescinded in a timely fashion that presumption of paternity becomes conclusive.

"The Act allows that fatherhood is not always created by pure genetics. Consent is as legally binding on a parent as a DNA determination when that unconditional acceptance of the role of parent is voluntarily accepted for purposes of an adoption or a voluntary acceptance of paternity. Here, both mother and Richard agreed to name Richard as G.E.M.'s legal father at birth. Neither Richard nor mother timely rescinded that agreement or alleged that their respective acknowledgments of paternity were based on duress, fraud, or mistake of fact as required by statute. This acknowledgment creates a legal presumption which can not be easily cast aside when the responsibilities of parenting become difficult."

Furthermore:

“In parentage cases, the trial court has no inherent powers to deviate from the statute. . . . [T]here is not any statutory authority for a court to *vacate* or simply set aside parental rights at the request of a parent. . . . No court can arbitrarily vacate a judgment of paternity, created by statute or judicial determination, and allow a parent to abandon the duties necessary for the well-being of their child, no matter how inconvenient those obligations may be for one or both parents.”

Louis did have standing to challenge the order vacating Richard’s paternity determination, as a void order can be challenged at any time in any court. Mom and Richard had standing to challenge their own acknowledgement of paternity, but only within specified time limitations which differ for each of them. Richard did not challenge his acknowledgement, and mom could not do it for him. Mom did not have standing to question Richard’s status as father. The court lost jurisdiction of Richard’s paternity determination 30 days after its entry, and mom’s pro se request to vacate it did not meet the requirements of Section 2-1401 to challenge it. Accordingly, the order vacating Richard’s paternity determination was without jurisdiction, and was void. Since Richard remained responsible as G.E. M.’s father, there was no justiciable issue as to the child’s paternity when mom brought her petition against Louis. Accordingly, that case should have been dismissed, regardless of the DNA results.

IRA Distribution, Rent Income Ignored as Income for Support Determination

In Re Marriage of O’Daniel, ___ Ill. App. 3d ___, 889 N.E. 2d 254 (4th Dist., No. 4-07-0250, 6/2/08), affirmed support modification which ignored IRA withdrawals and rent income from the obligor’s net income.

In June, 2005, Jerome petitioned to reduce child support due to loss of his employment. Before hearing on that petition he had obtained new employment, but in the meantime had several periods when he was unemployed and received unemployment compensation. During the periods of unemployment he withdrew \$71,864 from an IRA. He also earned rental income from a property he owned with Bob Shaver, but it had been paid to Shaver because Shaver had advanced Jerome’s share of the purchase price for the property. Contrary to Susan’s argument, the trial court did not include the IRA withdrawals or half of the rental proceed in Jerome’s income in calculating modified support. Susan appeals this and the court’s refusal to find

Jerome in contempt for failure to maintain health insurance for the children

Affirmed. As to the IRA withdrawals, the Court disagreed with the Second District decision in *In Re Marriage of Lindman* (356 Ill. App. 3d 462, 824 N.E. 2d 1219 (2005)), finding that IRA distributions are income for purposes of child support calculation. “The Second District’s decision does not adequately take into account that IRA’s are ordinarily self-funded by the individual possessing the retirement account. . . . The money the individual places in an IRA already belongs to that individual. When an individual withdraws money he placed into an IRA, he does not gain anything as the money was already his. Therefore it is not a gain and not income.” Interest earned on the IRA might be income, but what portion of the withdrawals here was interest was not determined here.

As to his share of rents Jerome had argued this was a “wash,” as he had paid it to his partner to repay advances for his share of the purchase price. Thus it was deductible as an expense for repayment of debt required for the production of income. Since Susan could not show why the trial court erred in agreeing with this argument, the Appellate Court would not overrule it. Similarly the Court could not find an abuse of discretion in not finding Jerome in contempt for failing to maintain insurance when he was unemployed.

Support Obligor's Marital Interest in Spouse's IRA May be Reached to Satisfy Support Arrearages

In Re Marriage of Takata, ___ Ill. App. 3d ___, ___ N.E. 2d ___ (3rd Dist., No. 3-07-0175, 6/13/08), reversed and remanded denial of a motion for turn-over of half of an IRA held in the name of a support obligor’s wife to apply to the obligor’s child support arrearage.

With a long history of repeated failures to pay child support, the Respondent had accrued an arrearage of \$23,963.70 by July, 2006. In response to an interrogatory asking for identification of any stocks, bonds, securities or other investments in which he had an interest, and the name of any other party who shared such interest he identified an IRA in his wife’s name, with a balance of \$31,067.83. Petitioner sought turn-over of the wife’s IRA under Sect. 2-1402(c)(3) of the Code of Civil Procedure, arguing that the Respondent would be entitled to a share of that property in a hypothetical cause of action – i.e., as his marital property in a dissolution of marriage action. The trial court found that Respondent’s interest in the IRA was “an inchoate interest at best that is dependent on a variety of

hypothetical and speculative factors (including the occurrence of a divorce and the weighing and balancing of numerous factors set forth in Section 503 of the Illinois Marriage and Dissolution of Marriage Act, along with other assets and liabilities). Under the circumstances submitted, there is simply no more than a vague, contingent, highly speculative interest in the asset in question. “ Petitioner’s motion for turn over was denied, She appeals.

Reversed and remanded. Sect. 2-1402(c)(3) provides a court may order turn over of a third-party’s asset in which a judgment debtor has an interest “when those assets are held under such circumstances that in an action by the judgment debtor he or she *could* recover them in specie or obtain a judgment for the proceeds or value thereof.” (emphasis added) The asset is not exempt from collection because neither respondent nor his wife asserted it as such, and because exemptions do not apply to child support judgments. The Appellate Court found Respondent had “an actual interest” in the IRA “as it is the respondent’s and third party defendant’s marital property>’ Property of husband and wife is presumed to be marital property unless the presumption is rebutted, but no rebuttal evidence was presented. “Accordingly, we find that the IRA is marital property of the respondent and third-party defendant. Moreover, because the IRA is marital property and the respondent has a legal interest in it, we find that the IRA is subject to turnover to the extent of the respondent’s interest.” And finally, having shown that the third-party defendant possessed an IRA in which the respondent had an interest, the petitioner did not need to determine the extent of that interest.

Support Order with Annual Adjustment is Proper, Enforceable; Proceeds from Sale of Residence, Mortgage Loan are Not Income for Support Calculation; Unreimbursed Business Expenses, Resulting in Loss, Are Deductible

In Re Marriage of Baumgartner, ___ Ill. App. 3d ___, ___ N.E. 2d ___ (1st Dist., No. 1-06-2866, 6/30/08), affirmed an obligor’s income and child support determination based on a percent of income, refusal to find contempt and imposition of sanctions for abuse of discovery.

An agreed order entered in the parties’ divorce, effective January 1, 2001, called for Craig to pay child support for their one child a certain sum, but provided further that he provide tax returns and other income documentation at the end of each year and that additional support then be calculated to make up the difference between the base obligation and 20% of his years income. In June, 2005, Susan filed a

petition for indirect, civil contempt, claiming Craig had not provided the annual documentation and had not paid the additional support due under the annual adjustments.

In the hearing finally held in January, 2006, Craig claimed certain unreimbursed business expenses (which resulted in a loss) were deductible from his income as repayment of debt reasonable and necessary to produce income. Susan claimed proceeds Craig received from the sale of a residence and a mortgage loan obtained by him should be included in his income for purposes of child support calculation. The trial court made findings of support due for each year through 2005, accepting Craig’s business expenses as deductible but rejecting the proceeds from sale of his residence and mortgage loan as income for that purpose. The court further declined to hold Craig in contempt, but later assessed \$7,579.50 in attorney’s fees against Susan as a sanction for abuse of discovery in issuing a subpoena for deposition of Craig’s attorneys. Susan appeals.

Affirmed on all points. The agreed order was proper under Sect. 505 (a)(5) of the IMDMA, which permits support based on a percentage of income in addition to a base figure. An agreed settlement of sums due for 2001 was not an improper modification by the parties of the court’s order, but was contemplated by the order, and was thus under the direction and with the approval of the court.

Proceeds from a mortgage loan were properly excluded from income. Referring to a variety of analogous cases from other states the Court found “a determining factor . . . is whether repayment of the money received was required. Where repayment was required, the loan was not considered income. . . . We do not hold that loan proceeds may never constitute income. However, a residential mortgage loan, made by a bond fide lender, does not constitute income.”

Similarly, proceeds from the sale of a residence, used for purchase of another residence, were not income for calculation of child support. “Under section 505(a)(3) and the definition of income cited in *Rogers II* [In *Re Marriage of Rogers*, 213 Ill. 2d 129(2004)], we are constrained to agree with Susan that the proceeds from the sale of property such as a residence would qualify as income. Nonetheless, we do not agree that the circuit court erred in refusing to include the proceeds in its determination of net income. As a practical matter, it stands to reason that to a certain extent the sale proceeds represent a return on payments made by Craig our of income already accounted for in the determination of his child support obligation.” Where the sale proceeds are not actually available, except to purchase a new residence, they should not be considered as income for child support purposes.

Craig's unreimbursed business expenses were properly excluded from his income and "expenditures for repayment of debts that represent reasonable and necessary expenses for the production of income." Craig's evidence of these expenses constituted a prima facie showing that they were legitimate. Susan failed to rebut their legitimacy. The fact that they may have resulted in a loss does not rebut their legitimacy. As to whether the expenses were for "repayment of debt," the Court disagreed with the restrictive definition of that phrase in *Gay v. Dunlap* (279 Ill. App. 3d 140 (4th Dist., 1996)). "Subsection (a)(3)(h) does not limit 'debt' to a one-time-only business expense. 'Debt' is defined as '[l]iability on a claim; a specific sum of money due by agreement or otherwise,' Black's Law Dictionary 410 (7th ed. 1999). *Gay* does not explain why repaying debts incurred for day-to-day business expenses is any different from paying a one-time business expense, except that such an interpretation conflicts with the requirement of a repayment plan." Since Craig's income, and expense deductions, are to be recalculated every year, the requirement that the deduction of such expenses be limited to the period of repayment is satisfied.

The trial court did not err in finding Susan's questions about unexplained bank deposits irrelevant. And the trial court did not abuse its discretion in declining to find Craig in contempt or in sanctioning Susan for abuse of discovery.

Problem Solving Child Support Court The Cycle Is Broken

By Irene Curran

The Cycle is familiar to all child support practitioners. The non-custodial parent (NCP) is ordered to pay child support; NCP fails to pay child support; state files a Petition for rule to show cause and said rule is issued; NCP comes to court; NCP is found to be in contempt; NCP is ordered to pay a purge amount or risk going to jail; NCP pays purge amount; NCP is released; the whole cycle begins again.

The goal is simple: Break the Cycle: NCP gets a job; NCP's support is set at a reasonable amount; NCP pays support every pay period through an order for withholding; court intervention is not necessary.

Lake County has identified a need to change the cycle. We recognize that child support orders must be reasonable and paid consistently. We realized the court alone can not accomplish this goal so we have created partnerships with different groups who can help us work with the courts to break the cycle. We began work towards our goal by meeting and collaborating with the judiciary, the Sheriff's office, the Illinois Department of Healthcare and Family Services and the State's Attorney's office. In these meetings we discussed our options and implemented solutions. As we continue to meet, our group has grown to include community partners, such as Waukegan Township.

Lake County's recipe to break the cycle:

First: Find a judge who is willing to be a part of the collaboration team. The judge must be willing to convene meetings that will include all partners. The judge must be willing to invest time in supervising these cases, as well as be willing to order treatment and rehabilitative services.

Second: The court must be willing to use alternatives to incarceration. Incarceration may produce a lump sum, but in most cases subsequent payments are erratic. Alternatives to incarceration include work release and electronic home monitoring. There are benefits to the Sheriff's office for considering these alternatives. The Lake County Sheriff's office pays \$65 per day to incarcerate NCP yet it costs just \$ 16.00 for work release sentences and only \$10.00 per day for electronic home monitoring. Work release has been a successful avenue for our program because the NCP can continue to work. Furthermore, if the NCP is not employed, the work release facility can assist the NCP in finding a job. In Lake County, NCPs are allowed to job search one day a week. On the other days, the NCPs are sent to temporary employment agencies for work. The Lake County facility has child support payment coupons on the premises. The Sheriff's Office and the Department of Healthcare and Family services share a direct line of communication. Upon an NCP obtaining employment, the Sheriff's Office contacts the Department and a withholding notice to the employer can be issued. The use of electronic home monitoring has become useful as a stepping down event, for example, if the NCP has been compliant with work release rules and protocol, the court can reward the NCP by placing him/her on electronic home monitoring. This program can provide motivation for the NCP to work, as well as save the county money.

Third: provide a representative from the Department of Healthcare and Family Services at all court hearings. This representative should be available to answer questions and provide payment information to all parties. In Lake County, the presence of the department worker has increased payments on initial support orders, even before the income withholding takes effect. Parties are able to see that the department is not a faceless bureaucracy.

Fourth: The court must be willing to refer the parties for other services. Mediation is one of the services used to assist families with issues which may not or may not be child support related. In Lake County parties are referred to mediation when a visitation or custody issue is discovered by the judge. Likewise, if the court detects some other issue, the court can order other services such as, alcohol, drug, or gambling addiction treatment.

Fifth: a probation and employment specialist position should be created to assist the court. Because the Illinois statute allows an NCP who has been found in contempt to be placed on probation, the use of a probation officer is desirable. The probation officer can monitor the NCP and report directly to the court of the NCP's progress. An employment specialist can assist NCPs in finding employment. The employment specialist position would require the NCP to have community connections and referrals for employment. More importantly, the employment specialist can report directly to the court on the NCP's progress.

Using this recipe for change can make the child support court call more effective. The most important ingredient of this recipe is sustaining solid partnerships. The more group collaboration, the better the program will be. Lake County State's Attorney's Office has been very lucky to work with the Judiciary, Sheriff's Office and the Illinois Department of Healthcare and Family Services. We call ourselves the IV-D work group. Look for us to do some great things in the future.

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Newsletter Editor

Christine Towles

335 E. Geneva Road
Carol Stream, IL 60188

Ph: 630-221-2329 Fax: 630-221-2332

e-mail: Christine.Towles@Illinois.gov

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