

FAMILY SUPPORT FORUM

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Appellate Courts Reject Requests for Genetic Tests, Challenges to Voluntary Acknowledgment, Adjudication of Parentage

By Thomas P. Sweeney

This appears to be the year for appellate courts in Illinois to deal with requests for genetic tests by men whose parentage has already been established by voluntary acknowledgment or consent adjudication.

In a surprise move the Illinois Supreme Court has agreed to review an unpublished Fourth District Appellate decision rejecting results of genetic tests ordered and denying a challenge to a parentage determination made six years after the issue had been decided by agreement in the parties' dissolution of marriage. Recently the Third District Appellate Court, in another unpublished decision, has reversed entry of an order for genetic tests requested by a man who had previously executed and not rescinded or otherwise challenged a Voluntary Acknowledgment of Paternity. And still pending before the Third District is an appeal of a summary judgment rejecting attempts to deny paternity by a man who had executed the Voluntary Acknowledgment several years earlier.

People ex rel Kates v. Kates

In *People ex rel. Kates v. Kates* (4th Dist., No. 4-00-130), the parties were divorced in 1993. In his petition Mark Kates alleged he was not the father of the child born during the marriage, but in the settlement agreement approved by the Court he agreed to a finding that the child was born of the marriage and was ordered to pay child support. In 1996 and again in 1997 Mark sought relief from his support obligations, claiming he was not the child's father, that he had had a vasectomy years before the child was born. Both he and the ex-wife, Ann, agreed they had both known from the beginning Mark was not the father. The Court rejected Mark's claim, and increased support to \$65 per week.

In 1999 Mark again petitioned to establish non-existence of the parent-child relationship, asking that

DNA tests be ordered. Over Ann's objection, DNA tests were ordered and concluded that Mark is not the child's father. The Court then granted Mark's petition, and vacated all orders as to paternity and support. Ann appealed.

In its unpublished order the Fourth District reversed the trial court. It held that, consistent with *In Re Marriage of Lubbs*, 313 Ill. App. 3d 968, 730 N.E. 2d 1139 (3rd Dist., 3/9/00), the provisions of 750 ILCS 45/7 (b-5) allowing petitions to establish non-paternity by a man previously adjudicated to be a child's father require the petitioner to have DNA results showing non-parentage *before* filing his petition, and that the section does not authorize the Court to order such tests. While not specifically denouncing the order for DNA tests, the Appellate Court simply reversed the granting

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(* indicates appointed Directors or their designee)

(‡ indicates Directors appointed at large)

Newsletter Editor

Thomas P. Sweeney

P. O. Box 370

1tele. & fax: (217) 485-5302

e-mail: tsweeney@pdnt.com

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***Depending on contributions, the FORUM attempts to publish
four times a year - in March, June, August/September, and December.***

Items for publication are needed by the 8th of the month.

**News items and other articles of interest to Illinois family
support practitioners are eagerly sought.**

Contact the Editor for details.

Please Contribute - its YOUR Newsletter!



From the Statehouse . . .

. . . LEGISLATIVE UPDATE

2001 Illinois Support-Related Legislation

Once again the Illinois General Assembly has addressed few bills related to child support enforcement, and has so far passed only seven of those on to the Governor. The following is a summary of bills relevant to family support enforcement addressed by the Illinois Legislature during the Spring term.

Summaries of bills and their status, including direct links to the text of each bill and to Public Acts following their approval by the Governor, are now available on IFSEA's web site, www.illinoisfamilysupport.org.

by Thomas P. Sweeney

Only a handful of bills related to child support enforcement have so far been approved by the 92nd Illinois General Assembly and await the Governor's signature. The following is a summary of those bills, as well as a Resolution adopted by the House

**S.B. 0163 SDU, Extended IDPA Operation;
Contract Requirements; Administrative Fund**

Originally a "shell bill," amended by Senate to extend authority of IDPA to operate State Disbursement Unit for 24 months after July 1, 2001, and place SDU Administrative Fund under control of the Director of IDPA rather than under the State Treasurer. House amendments added new section to the Public Aid Code specifying a list of requirements to be included in contracts entered into for operation of the SDU and other specifics for administration of the SDU Administrative Fund, including requirement that IDPA submit to the General Assembly by December 1, 2001, a corrective action plan to establish accurate accounts in the Child Support Enforcement Trust Fund. Eff. 7/1/01.

S.B. 0661 Support, Court Enforcement Powers

Amends IMDMA, specifies that a court does not lose powers of contempt, license suspension or other child support enforcement mechanisms upon the emancipation of the minor child or children.

S.B. 0950 Public Aid's "Deadbeats Most Wanted"

Authorizes IDPA to create and distribute at its offices or through the internet a list of "deadbeats most wanted," limited to no more than 200 individuals owing at least \$5,000 in delinquent support, requiring 90 days advance written notice to the individuals and excluding those who have made arrangements for payments or whose delinquencies are subject to administrative or judicial review. Eff. 7/1/02.

S.B. 0993 Child Support, Interest

Amends Public Aid Code, IMDMA and other acts to provide that interest on support obligations shall be calculated as simple interest. Requirements for accounting for interest included in initial bill have been deleted by Senate Amendment. Requires that orders entered after 1/1/02 include statement that simple interest accrues on amounts not paid, but failure to include such language would not affect validity of order or accrual of interest.

H.B. 2301: Support, Delay of Enforcement

Amends IMDMA, provides that a petition to modify or terminate child support, custody or visitation shall not delay any child support enforcement litigation or supplementary proceedings on behalf of the obligee.

**H.B. 3128 Disclosures for State Case Registry;
UIFSA, Registration of Foreign Orders**

Amends various acts regarding entry of support orders, replaces provisions for information to be provided to the State Case Registry with new specifications as to items to be disclosed and updated by obligors and obligees, provides that parties' information beyond what is required by other laws to be included in the body of a support order is confidential and not to be a public record; requires that parties provide address and other information to the circuit clerk at the time orders are entered (rather than within five days), and that failure to provide or update such information may be punished as for contempt; changes provisions in UIFSA for registration of foreign orders by filing with the appropriate tribunal (rather than "circuit court").

(Cont'd. on page 4)

H.B. 3576: Clerk of Court Funding; Charges for Credit Cards, Returned Check

Amends Clerk of Courts Act, authorizes Clerks in counties under 180,000 to charge \$25 for checks not honored on two occasions; changes state funding for Clerk's offices in counties where prisons are located, and authorizes local government entities to charge higher fees for accepting credit cards under specified situations.

H.R. 0284 House Task Force on Child Support Collection and Enforcement

Resolution to create a House Task Force to conduct hearings to explore the possibility of creating an independent agency for the establishment, collection, disbursement and enforcement of child support.

Resolution ADOPTED, 5/22/01, 115-0-0.

Other Bills Considered

The following bills have been approved by at least one house, but have either been defeated or await approval by the other house.

H.B. 3125 UIFSA, Registration Tribunal

Amends UIFSA, provides that a support or income withholding order of another state may be registered in this state if specified documents and information are sent to the appropriate "tribunal" in this state (rather than to the appropriate "circuit court" in this state).

Passed by House without amendment, 3/27/01, 117-0-0; Passed by Senate with minor amendment, 5/18/01, 58-0-0. House concurrence pending.

S.B. 0117 Modification of Maintenance

Amends IMDMA, sets forth specific, additional factors to be considered in a review, modification or termination of maintenance.

Passed by Senate without amendment, 3/29/01, 55-0-0. According to press reports, the bill as slightly amended fell three votes shy of passing in the House on 5/23/01, but may be addressed again.

S.B. 0883 Public Aid, Name Change

Amends Civil Administrative Code regarding organization of the State Government to replace the "Department of Public Aid" with the new name, the "Department of Health Finance;" provides that any reference to the Department of Public Aid in any law, rule, proceeding, contract or other matter is deemed to be a reference to the Department of Health Finance. As amended in the Senate, change would become effective 1/1/2002.

Passed by Senate as amended, 3/27/01, 41-12-0; *Defeated in the House, 5/30/01, 41-71-5.*

H.B. 0714 Child Support, Pass Through

Amends Public Aid Code, creates Child Support Pays Program under which IDPA is to pass through to TANF recipients 50% of child support collected or amount set by administrative rule, whichever is greater.

Passed by House without amendment, 3/22/01, 113-0-0; Not addressed by Senate.

H.B. 1095: IDPA, Child Support, Process Server

Amends Public Aid Code, provides that in court action to enforce support IDPA may appoint an individual to accompany process server to help locate and identify the respondent.

Passed by House without amendment, 3/21/01, 114-0-0; Not addressed by Senate

H.B. 2298 Child Support, High School Graduation

Amends IMDMA, extends child support obligation until date of graduation from high school for children who attain majority prior to graduation, so long as reasonable progress is being made toward graduation. Adopted amendments extend obligation until graduation or age 19, whichever is earlier, removing other proposed conditions.

Passed by House, as amended, 4/5/01, 116-0-0; Not addressed by Senate.

The following bills of potential interest to child support practitioners have been introduced but not achieved passage in their final form by either house.

S.B. 0065 Parentage Act, Custody, Removal

Amends Parentage Act to provide that in a custody action under that act the court may enjoin removal of child from Illinois pending custody adjudication; authorizes sanctions for bringing custody action in bad faith to thwart removal.

Without amendment, scheduled for 3rd reading, but subsequently tabled by sponsor.

S.B. 0442 Dissolution, Support, Accounting

Amends IMDMA support guideline provisions allowing court to find guidelines inappropriate to provide that court may require custodial parent to provide an accounting of how child support is or will be spent.

S.B. 0537 Council on Responsible Fatherhood

Creates the Council on Responsible Fatherhood, to establish a responsible fatherhood initiative.

S.B. 0721 Civil Procedure, Service of Process

As originally introduced, would amend Code of Civil Procedure to provide that in all counties -- not just counties under 1,000,000 population -- process may be served without special appointment by licenses private detective or a registered employee thereof.

Senate amendment deleted all original provisions, replacing it with provisions for inspection and cost limits on copying of medical records.

**S.B. 1033: Support Delinquency;
State Tax Intercept**

Originally a "shell bill," passed by the Senate, 3/30/01, 53-0-0, as amended to direct IDPA to seek repayment of emergency payments made by the State Disbursement Unit. House amendment deleted everything, amends State Comptroller Act and Code of Civil Procedure to provide that if it finds a delinquency in support pursuant to a specific form of petition the Court shall direct Circuit Clerk to certify the arrearage to the Comptroller to withhold it from any state income tax refund due the obligor and pay it over to the obligee.

H.B. 0083 Wage Payment, Child Support

Amends Wage Payment and Collection Act, requires employer to inquire before employing a person whether that person owes a duty to pay child support, provides that payment of wages to person owing child support in cash which enables employee to evade support obligation is punishable as a business offense for which employer may be fined an amount equal to 3 times the support evaded.

**H.B. 0084 Child Support, Default as Summary
Criminal Contempt, License Suspension**

Amends IMDMA and other acts, provides that a person who willfully defaults on a child support order may be subject to summary criminal contempt; further provides that each State agency shall suspend any license or certificate to a person found guilty of criminal contempt based on such a default.

House amendments, approved by committee, adds refusal to renew and restriction of license as penalty, but prohibits license suspensions, etc., while contempt finding is on appeal.

As amended, scheduled for 3rd reading; later re-referred to committee.

**H.B. 0085 Fraudulent Property Transfer;
Criminal Contempt, License Suspension;
Location Information**

Amends variety of acts, provides transfer of property by support obligor is fraudulent under specified circumstances, authorizing avoidance of the transfer and other relief; provides willful default on a support order may be subject to summary criminal contempt proceedings; provides each State agency shall withhold, suspend or restrict license to persons found guilty of such criminal contempt; authorizes IDPA and others to receive location information for support establishment or enforcement purposes from employers, unions, utilities; authorizes issuance of subpoenas to discover assets at request of other states.

**H.B. 0088 State Debt Collection;
Fraudulent Transfers to Avoid Support;
Summary Criminal Contempt; UIFSA Subpoena**

Among other things, requires State Auditor General to establish Debt Collection Unit to assume responsibility for collecting debts owed the State; requires all state agencies to end use of private collection agencies. In areas of child support amends various acts to provide that transfers of assets with intent to avoid support obligations or without receiving fair value are fraudulent transfers; provides party who willfully defaults on support order may be subject to summary criminal contempt; authorizes issuance of subpoena or subpoena duces tecum to discover assets, ability to pay support upon request of another state's tribunal.

H.B. 0653 Child Support, Drivers License

Amends Vehicle Code, changing or replacing provisions added by P.A. 91-613 concerning suspension of a driver's license for failure to pay child support; requires Secretary of State to suspend obligor's license upon receiving a court certification that the obligor is 90 days or more delinquent in child support or has been adjudicated in arrears in an amount equal to or greater than 90 days obligation - eliminating requirement of a court order directing suspension.

H.B. 1767 Support, Continuances

Amends several acts, provides each party shall be granted no more than two continuances in a court proceeding to enforce a support order.

H.B. 1912 Child Support, Attorney General

Would amend numerous acts to transfer child support collection functions from IDPA to the Attorney General's office, eff. July 1, 2001.

**H.B. 2225 Minimum Support Order,
Unemployed Obligor**

Amends IMDMA, provides that unemployed obligor shall be ordered to pay a minimum amount of support according to guidelines or in the amount of \$100 per month, whichever is greater; provides that "net income" for an unemployed person shall be calculated at 77% of the state minimum hourly wage multiplied by 40 hours per week multiplied by the number of weeks in a month.

H.B. 2256 Court of Claims, Abolish

Abolishes Court of Claims Act and Repeals State Lawsuit Immunity Act, transfers jurisdiction of pending cases to the Circuit Courts.

H.B. 2302 Support, Collection from Settlement

Amends IMDMA, provides that while child support may be modified only as to installments accruing after notice of the petition, an exception shall be made

OCSE Revises Approved Income Withholding Form

by Thomas P. Sweeney

On March 29, 2001, the federal Office of Child Support Enforcement announced a revised version of the Order/Notice to Withhold Income for Child Support. Pursuant to federal mandates Illinois' statutes have long required income withholding for payment of child support, and since July, 1997, have required that the income withholding notice "be in the standard format prescribed by the federal Department of Health and Human Services."

The revised form was reorganized to provide space for tribunal/court information (i.e., stamps) in addition to the tribunal/court case number. Remittance Information was reworded to provide clearer guidance for an employer to remit payments as prescribed in the underlying order for support. The Termination Notification section requests additional information from an employer regarding termination of employment. And the form provides space to indicate the name of the party submitting the Order/Notice for withholding.

The revised form is the product of a task group established by OCSE to review and revise the standardized form. The task group, comprised of representatives from State IV-D agencies, courts/tribunals, the American Payroll Association and employers, began its review in October, 2000, and recommended several changes which were circulated to the State IV-D Directors for comment. The task group reviewed comments received and the Order/Notice form was revised to incorporate the recommended changes.

A copy of the revised federal form and instructions provided by OCSE are reproduced on the following

pages. OCSE's Action Transmittal (OCSE-AT-01-07) and forms can be found on the OCSE web site at www.acf.dhhs.gov/programs/cse/pol/at-01-07.htm. Blank forms will be posted on the "Useful Links" page of IFSEA's web site, www.illinoisfamilysupport.org.

It should be noted that the resulting form, as presented by OCSE, does not satisfy the requirements of Illinois law. (Nor, for that matter, does the form presently in use by IDPA.) Since at least 1997 (P.A. 90-18) Illinois has required that the income withholding notice state the date on which withholding is to stop, and state the fee an employer may charge for withholding. The new federal form directs withholding "until further notice," and omits specification of the allowable fee. Since August, 1998 (P.A. 90-790), Illinois has required that notices "state the date of entry of the order for support upon which the income withholding notice is based." And since July, 1999 (P.A. 91-212), notices have been required to include the Social Security numbers of the obligee and children, in addition to that of the obligor. Neither the form currently in use nor the revised form include spaces for these required items.

A suggested form of the new Notice, incorporating suggested additions and changes needed to satisfy Illinois law, is provided immediately following the instructions for the federal form. This suggested form will also be posted on the "Useful Links" page of IFSEA's web site, www.illinoisfamilysupport.org. It is, however, not an "official" form approved or endorsed by IDPA, and is offered merely as a proposed form to be used or ignored as readers may deem appropriate.

("Legislative Up-date," cont'd. from page 5)

for any petition seeking to collect a portion of a workers' compensation, personal injury or other settlement.

H.B. 3127 Administrative Procedure, Licenses, Social Security Numbers

Amends Illinois Administrative Procedure Act, in section requiring inclusion of Social Security numbers in applications for professional licenses, provides that the Social Security number so provided may be used only for purposes of Title IV-D and regulations under that act.

H.B. 3310: QUILDRO, Percentage or Formula; Information upon Request

Amends Illinois Pension Code, provides benefits may be stated as a percentage or according to a formula (or a fixed dollar amount as under present law); re-

quires pension system to release information upon request (rather than requiring subpoena);

H.B. 3381 Dept. of Public Aid; Abolish

Amends Civil Administrative Code and other acts to abolish the Dept. of Public Aid and transfer its functions, personnel, property and rules to the Dept. of Human Services.

H.B. 3577 Transfer of Clerk's Support Duties to State Disbursement Unit

Amends many acts, beginning July 1, 2002, to transfer functions related to collection and disbursement of support and maintenance from Circuit Clerks to State Disbursement Unit, transfer some record keeping and reporting duties to IDPA; amends Clerk of Courts Act to eliminate \$36 annual fee for support and maintenance record keeping.

ORDER/NOTICE TO WITHHOLD INCOME FOR CHILD SUPPORT

Original Amended Termination 1a
State 1b
Co./City/Dist. of 1c
Tribunal/Case Number 1d

2a
Employer's/Withholder's Name
2b
Employer's/Withholder's Address
2c

2d
Employer/Withholder's Federal EIN Number (if known)

4 Child(ren)'s Name(s) DOB

RE: 3a
Employee's/Obligor's Name (Last, First, MI) 3b
Employee's/Obligor's Social Security Number 3c
Employee's/Obligor's Case Identifier 3d
Obligee Name (Last, First, MI)

5
If checked, you are required to enroll the child(ren) identified above in any health insurance coverage available to the employee's/obligor's through his/her employment.

ORDER INFORMATION: This Order/Notice is based on the support order from [State] 6.

You are required by law to deduct these amounts from the employee's/obligor's income until further notice.

\$ 7a Per 7b current child support 14
\$ 8a Per 8b past-due child support - Arrears 12 weeks or greater? yes no
\$ 9a Per 9b current medical support
\$ 10a Per 10b past-due medical support
\$ 11a Per 11b spousal support
\$ 12a Per 12b other (specify) 12c
for a total of \$ 13a per 13b to be forwarded to the payee below.

You do not have to vary your pay cycle to be in compliance with the support order. If your pay cycle does not match the ordered payment cycle, withhold one of the following amounts:

\$ 15a per weekly pay period. \$ 15c per semimonthly pay period (twice a month).
\$ 15b per biweekly pay period (every two weeks). \$ 15d per monthly pay period.

REMITTANCE INFORMATION: When remitting payment, provide the pay date/date of withholding and the case identifier. If the employee's/obligor's principal place of employment is 16, begin withholding no later than the first pay period occurring 17 days after the date of 18. Send payment within 19 working days of the pay date/date of withholding. The total withheld amount, including your fee, cannot exceed 20 % of the employee's/obligor's aggregate disposable weekly earnings.

If the employee's/obligor's principal place of employment is not 21, for limitations on withholding, applicable time requirements, and any allowable employer fees, follow the laws and procedures of the employee's/obligor's principal place of employment (see #4 and #10, ADDITIONAL INFORMATION TO EMPLOYERS AND OTHER WITHHOLDERS).

If remitting payment by EFT/EDI, call 22a before first submission. Use this FIPS code: 22b :
Bank routing code: 22c Bank account number: 22d

Make check payable to: 23 Send check to: 24 Payee
and Case identifier
Authorized by 25a Date: 25b
Date:
Print Name and Title 26
Of Authorized Official(s)

IMPORTANT: The person completing this form is advised that the information on this form may be shared with the obligor.

ADDITIONAL INFORMATION TO EMPLOYERS AND OTHER WITHHOLDERS

27 If checked, you are required to provide a copy of this form to your employee. If your employee works in a state that is different from the state that issued this order, a copy must be provided to your employee even if the box is not checked.

1. We appreciate the voluntary compliance of Federally recognized Indian tribes, tribally-owned businesses, and Indian-owned businesses located on a reservation that choose to withhold in accordance with this notice.

2. **Priority:** Withholding under this Order/Notice has priority over any other legal process under State law against the same income. Federal tax levies in effect before receipt of this order have priority. If there are Federal tax levies in effect, please contact the State Child Support Enforcement Agency or party listed in number 12 below.

3. **Combining Payments:** You can combine withheld amounts from more than one employee's/obligor's income in a single payment to each agency/party requesting withholding. You must, however, separately identify the portion of the single payment that is attributable to each employee/obligor.

4. **Reporting the Paydate/Date of Withholding:** You must report the paydate/date of withholding when sending the payment. The paydate/date of withholding is the date on which the amount was withheld from the employee's wages. You must comply with the law of the state of employee's/obligor's principal place of employment with respect to the time periods within which you must implement the withholding order and forward the support payments.

5. **Employee/Obligor with Multiple Support Withholdings:** If there is more than one Order/Notice to Withhold Income for Child Support against this employee/obligor and you are unable to honor all support Order/Notices due to Federal or State withholding limits, you must follow the law of the state of employee's/obligor's principal place of employment. You must honor all Order/Notices to the greatest extent possible. (See #10 below.)

6. **Termination Notification:** You must promptly notify the Child Support Enforcement Agency or payee when the employee/obligor no longer works for you. Please provide the information requested and return a complete copy of this order/notice to the Child Support Enforcement Agency or payee.

EMPLOYEE'S/OBLIGOR'S NAME: _____ **CASE IDENTIFIER:** _____
DATE OF SEPARATION FROM EMPLOYMENT: _____
LAST KNOWN HOME ADDRESS: _____
NEW EMPLOYER/ADDRESS: _____

7. **Lump Sum Payments:** You may be required to report and withhold from lump sum payments such as bonuses, commissions, or severance pay. If you have any questions about lump sum payments, contact the person or authority below.

8. **Liability:** If you have any doubts about the validity of the Order/Notice, contact the agency or person listed below. If you fail to withhold income as the Order/Notice directs, you are liable for both the accumulated amount you should have withheld from the employee's/obligor's income and any other penalties set by State law.
28 _____

9. **Anti-discrimination:** You are subject to a fine determined under State law for discharging an employee/obligor from employment, refusing to employ, or taking disciplinary action against any employee/obligor because of a child support withholding.
29 _____

10. **Withholding Limits:** You may not withhold more than the lesser of: 1) the amounts allowed by the Federal Consumer Credit Protection Act (15 U.S.C. § 1673(b)); or 2) the amounts allowed by the State of the employee's/obligor's principal place of employment. The Federal limit applies to the aggregate disposable weekly earnings (ADWE). ADWE is the net income left after making mandatory deductions such as: State, Federal, local taxes, Social Security taxes, statutory pension contributions, and Medicare taxes.
Additional Information: 30 _____

11. **Submitted by** _____ **31** _____

12. If you or your employee/obligor have any questions, contact: _____ **32a** _____
by telephone at _____ **32b** _____ or by FAX at _____ **32c** _____
or by Internet at _____ **32d** _____

INSTRUCTION FOR COMPLETION OF REVISED ORDER/NOTICE TO WITHHOLD INCOME FOR CHILD SUPPORT (OCSE AT-01-07)

The Order/Notice to Withhold Income for Child Support is a standardized form used for income withholding in intrastate and interstate cases. The following are instructions to complete the Order/Notice to Withhold Income for Child Support. When completing the form, please include the following information. The person or agency completing this form may cross out the word "Order" or "Notice" if that term is inappropriate under the law of the issuing state.

- 1a. Check the appropriate status of the Order/Notice to Withhold.
- 1b. Name of the issuing State or territory.
- 1c. Name of the order issuing tribunal or other jurisdictional designation if any used by the order issuing State.
- 1d. Identifying number used by the court/agency issuing this Order/Notice, if appropriate.
- 2a. Employer's/Withholder's name.
- 2b-c. Employer's/Withholder's mailing address, city, and state. (This may differ from the Employee/Obligor work site.)
- 2d. Employer's/Withholder's nine-digit Federal employer identification numbers (if available). Include three-digit location code.
- 3a. Employee's/Obligor's last name, first name, and middle initial.
- 3b. Employee's/Obligor's Social Security Number (if known).
- 3c. The identifier used by the order issuing state for recording payments. (May be the same as #1d.)
- 3d. Custodial Parent's last name, first name, and middle initial (if known).
4. Child(ren)'s name(s) and date(s) of birth listed in the support order. [& Social Security number(s).]
5. Check if the child support order requires enrollment of the child(ren) in any health insurance coverage available to the employee's/obligor's through his/her employer. (The space on the form is provided for instructions to the employer, i.e. "see attached medical support form.")

Order Information

6. Name of State that issued the order. [& order Date.]
- 7a. Dollar amount to be withheld for payment of current child support.
- 7b. Time period that corresponds to the amount in #7a (such as month, week, etc.).

8a. Dollar amount to be withheld for payment of past-due child support under State law.

8b. Time period that corresponds to the amount in #8a (such as month, week, etc.).

9a. Dollar amount to be withheld for payment of current medical support, as appropriate, based on the underlying order.

9b. Time period that corresponds to the amount in #9a (such as month, week, etc.).

10a. Dollar amount to be withheld for payment of past-due medical support, if appropriate, based on the underlying order. [Suggest specify amount due.]

10b. Time period that corresponds to the amount in #10a (such as month, week, etc.).

11a. Dollar amount to be withheld for payment of spousal support (alimony), if appropriate based on the underlying order.

11b. Time period that corresponds to the amount in 11a (such as month, week, etc.).

12a-c. Dollar amount to be withheld for payment of miscellaneous obligations, if appropriate, based on the underlying order, time period that corresponds to the amount in #13a (e.g., month), and describe the miscellaneous obligation.

13a. Total of #7a, #8a, #9a, #10a, 11a, and # 12a.

13b. Time period that corresponds to the amount in #13a (e.g., month).

14. Check this box if arrears are 12 weeks or greater.

15a. Amount an employer should withhold if the employee is paid weekly.

15b. Amount an employer should withhold if the employee is paid every two weeks.

15c. Amount an employer should withhold if the employee is paid twice a month.

15d. Amount an employer should withhold if the employee is paid once a month.

Remittance Information

16. The State in which this Order/Notice is issued.
17. Number of days in which the withholding must begin pursuant to the issuing State's law.
18. The effective date of the income withholding.
19. Number of working days within which an employer

(Cont'd. on page 10)

(“Instructions for Withholding Notice,” cont’d. from page 9)

or other payor of income must remit amounts withheld pursuant to the issuing State’s law.

20. Maximum percentage that can be withheld based on the applicable withholding limit of the issuing State. If the Federal Consumer Credit Protection Act laws of the issuing State allows the additional arrearage payment of 5 percentage points to the percentage normally specified in #20 (i.e., 65% instead of 60 or 55% instead of 50% if the obligor supports a second family), use this increased percentage in #20 and check #14 on the Order/Notice to indicate the support is 12 weeks or more in arrears. [Suggest add limits of processing fee.]

21. The State in which this Order/Notice is issued.

22a. The agency’s number for representative to provide EFT/EDI instructions. Contact the court/agency before the first EFT/EDI submission.

22b. Complete only for EFT/EDI transmission. Federal Information Process Standard (FIPS) code for transmitting payments through EFT/EDI. The FIPS code is five characters that identify the State and county. It is seven characters when it identifies the State, county, and a location within the county. It is necessary for centralized collections.

22c. Complete only for EFT/EDI transmission. Receiving agency’s bank routing number.

22d. Complete only for EFT/EDI transmission. Receiving agency’s bank account number.

23. Name of the collection unit (State Disbursement Unit), person, or tribunal/court specified in the underlying income withholding order to which payments are required to be sent. This form may not indicate a location other than that specified by an entity authorized under State law to issue an income withholding order. Please include the case identifier used to record payment (may be the same as 3c).

24. Street address, city, and State of the collection unit, person, or tribunal/court identified in #22. This information is shared with the obligor. If you have a confidential address, please contact your IV-D agency.

25a. Signature of official(s) authorizing this Order/Notice. This line may be optional only if the Order/Notice includes the name and title of an official of the State or local IV-D agency on line 24, and a signature of the official is not required by State law.

25b. Date of signature.

26. Print name and title of the official(s) State or local IV-D agency authorizing this Order/Notice.

27. Check the box if the employer is to provide a copy of the Order/Notice to the employee.

28. Penalty and/or citation for an employer who fails to comply with the Order/Notice. The State law governs unless the obligor is employed in another State, in which case the law of the State in which he or she is employed governs. Use this space to provide State specific information.

29. Penalty and/or citation for an employer who discharges, refuses to employ, or disciplines an employee/obligor as a result of the Order/Notice. The State law governs unless the obligor is employed in another State, in which case the law of the State in which he or she is employed governs. Use this space to provide State specific information.

30. Withholding limits enforced by the Federal Consumer Credit Protection Act (15 U.S.C. § 1673(b)). Use this space to provide State specific information on income withholding limits.

31. Name and address of the State or local IV-D agency, tribunal/court, individual, or private agency submitting the income withholding.

32a. Name of the child support enforcement agency’s contact person or party whom an employer and/or employee/obligor may call for information regarding the Order/Notice.

32b. Telephone number of the contact person who an employer may call for information regarding the Order/Notice.

32c. Facsimile number for the person whom appears in #32a.

32d. Internet address for the person whom name appears in 32a.

If the employer is a Federal Government agency, the following instructions apply:

- Serve the Order/Notice upon the governmental agent listed in 5 CFR part 581, appendix A.
- Sufficient identifying information must be provided in order for the obligor to be identified. It is, therefore, recommended that the following information, if known and if applicable, be provided: (1) full name of the obligor; (2) date of birth; (3) employment number, Department of Veterans Affairs claim number, or civil service retirement claim number; (4) component of the government entity for which the obligor works, and the official duty station or worksite; and (5) status of the obligor, e.g., employee, former employee, or annuitant.
- You may withhold from a variety of incomes and forms of payment, including voluntary separation incentive payments (buy-out payments), incentive pay, and cash awards. For a more complete list see 5 CFR 581.103.

ORDER/NOTICE TO WITHHOLD INCOME FOR CHILD SUPPORT

Original Amended Termination

State ILLINOIS

Co./City/Dist. of _____

Tribunal/Case Number _____

Employer's/Withholder's Name

Employer's/Withholder's Address

Employer/Withholder's Federal EIN Number (if known)

Child(ren)'s Name(s): DOB Soc Sec No

RE: _____
Employee's/Obligor's Name (Last, First, MI)

Employee's/Obligor's Social Security Number

Employee's/Obligor's Case Identifier

Obligee Name (Last, First, MI)

Obligee's Social Security Number

If checked, you are required to enroll the child(ren) identified above in any health insurance coverage available to the employee's/obligor's through his/her employment.

ORDER INFORMATION: This Order/Notice is based on the support order from ILLINOIS (dated _____). You are required by law to deduct these amounts from the employee's/obligor's income until _____.

\$ _____ Per _____ current child support
\$ _____ Per _____ past-due child support totaling \$ _____; Arrears 12 weeks or greater? yes no
\$ _____ Per _____ current medical support
\$ _____ Per _____ past-due medical support
\$ _____ Per _____ spousal support
\$ _____ Per _____ other (specify) _____

for a total of \$ _____ per _____ to be forwarded to the payee below.

You do not have to vary your pay cycle to be in compliance with the support order. If your pay cycle does not match the ordered payment cycle, withhold one of the following amounts:

\$ _____ per weekly pay period. \$ _____ per semimonthly pay period (twice a month).
\$ _____ per biweekly pay period (every two weeks). \$ _____ per monthly pay period.

REMITTANCE INFORMATION: When remitting payment, provide the pay date/date of withholding and the case identifier. If the employee's/obligor's principal place of employment is ILLINOIS, begin withholding no later than the first pay period occurring 14 days after the date of this notice. Send payment within 7 business days of the pay date/date of withholding. The total withheld amount, including your fee*, cannot exceed _____% of the employee's/obligor's aggregate disposable weekly earnings. (*Your fee may not exceed \$5 per month.)

If the employee's/obligor's principal place of employment is not ILLINOIS, for limitations on withholding, applicable time requirements, and any allowable employer fees, follow the laws and procedures of the employee's/obligor's principal place of employment (See #4 and #10, ADDITIONAL INFORMATION TO EMPLOYERS AND OTHER WITHHOLDERS).

If remitting payment by EFT/EDI, call _____ before first submission. Use this FIPS code: _____:
Bank routing code: _____ Bank account number: _____

Make check payable to: Illinois State Disbursement Unit Send check to: P. O. Box 8000, Wheaton, IL 60189-8000
Payee and Case identifier

Authorized by _____ Date: _____
_____ Date: _____

Print Name and Title _____
Of Authorized Official(s) _____

IMPORTANT: The person completing this form is advised that the information on this form may be shared with the obligor.

ADDITIONAL INFORMATION TO EMPLOYERS AND OTHER WITHHOLDERS

If checked, you are required to provide a copy of this form to your employee. If your employee works in a state that is different from the state that issued this order, a copy must be provided to your employee even if the box is not checked.

1. We appreciate the voluntary compliance of Federally recognized Indian tribes, tribally-owned businesses, and Indian-owned businesses located on a reservation that choose to withhold in accordance with this notice.
2. **Priority:** Withholding under this Order/Notice has priority over any other legal process under State law against the same income. Federal tax levies in effect before receipt of this order have priority. If there are Federal tax levies in effect, please contact the State Child Support Enforcement Agency or party listed in number 12 below.
3. **Combining Payments:** You can combine withheld amounts from more than one employee's/obligor's income in a single payment to each agency/party requesting withholding. You must, however, separately identify the portion of the single payment that is attributable to each employee/obligor.
4. **Reporting the Paydate/Date of Withholding:** You must report the paydate/date of withholding when sending the payment. The paydate/date of withholding is the date on which the amount was withheld from the employee's wages. You must comply with the law of the state of employee's/obligor's principal place of employment with respect to the time periods within which you must implement the withholding order and forward the support payments.
5. **Employee/Obligor with Multiple Support Withholdings:** If there is more than one Order/Notice to Withhold Income for Child Support against this employee/obligor and you are unable to honor all support Order/Notices due to Federal or State withholding limits, you must follow the law of the state of employee's/obligor's principal place of employment. You must honor all Order/Notices to the greatest extent possible. (See #10 below.)
6. **Termination Notification:** You must promptly notify the Child Support Enforcement Agency or payee when the employee/obligor no longer works for you. Please provide the information requested and return a complete copy of this order/notice to the Child Support Enforcement Agency or payee.
EMPLOYEE'S/OBLIGOR'S NAME: _____ **CASE IDENTIFIER:** _____
DATE OF SEPARATION FROM EMPLOYMENT: _____
LAST KNOWN HOME ADDRESS: _____
NEW EMPLOYER/ADDRESS: _____
7. **Lump Sum Payments:** You may be required to report and withhold from lump sum payments such as bonuses, commissions, or severance pay. If you have any questions about lump sum payments, contact the person or authority below.
8. **Liability:** If you have any doubts about the validity of the Order/Notice, contact the agency or person listed below. If you fail to withhold income as the Order/Notice directs, you are liable for both the accumulated amount you should have withheld from the employee's/obligor's income and any other penalties set by State law.
In addition to other penalties, a payor who fails to withhold as directed may be assessed a fine of up to \$200. See 750 ILCS 28/50. A payor may also be fined a penalty of \$100 per day for each day any payment withheld is not forwarded beyond the seventh day after support was withheld. See 750 ILCS 28/35.
9. **Anti-discrimination:** You are subject to a fine determined under State law for discharging an employee/obligor from employment, refusing to employ, or taking disciplinary action against any employee/obligor because of a child support withholding.
In addition to other penalties, a payor who discharges, disciplines or fails to hire or otherwise penalizes an employee as a consequence of income withholding may be assessed a fine of up to \$200. See 750 ILCS 28/50
10. **Withholding Limits:** You may not withhold more than the lesser of: 1) the amounts allowed by the Federal Consumer Credit Protection Act (15 U.S.C. § 1673(b)); or 2) the amounts allowed by the State of the employee's/obligor's principal place of employment. The Federal limit applies to the aggregate disposable weekly earnings (ADWE). ADWE is the net income left after making mandatory deductions such as: State, Federal, local taxes, Social Security taxes, statutory pension contributions, and Medicare taxes. [The Federal CCPA limit is 50% of the ADWE for child support and alimony, which is increased by: 1) 10% if the employee does not support a second family; and/or 2) 5% if arrears are for more than 12 weeks.]
Additional Information: For further clarification of obligor's and payor's rights, duties and obligations, where the employee's principle state of employment is Illinois, see Illinois Compiled Statutes at 750 ILCS 28/1, et seq..
11. **Submitted by** _____
12. If you or your employee/obligor have any questions, contact: _____
by telephone at _____ or by FAX at _____
or by Internet at _____

OMB: 0970-0154

FAMILY SUPPORT FORUM

The Official Newsletter of the Illinois Family Support Enforcement Association

SUPPLEMENT - JUNE, 2001

Cumulative Case Law Index - 2001 Supplement

The following is an index of case law reported in Vol. 12 (2000) of the *Family Support FORUM*. It supplements the January, 1994 Index of cases reported in Vols. 1 through 5 (1989-1993), the January, 1999 Index of cases reported in Vols. 6 through 10 (1994-1998), and the January, 2000 Supplement of cases reported in Vol. 11 (1999), of the *FORUM*.

Cases cited are not necessarily the leading or controlling authority for the categories noted, but are indicative of recent decisions in the area. Issues of the *FORUM* in which the cases were summarized are indicated in brackets; "C&C" refers to "Cases & Commentary" sections.

by Thomas P. Sweeney

- ARREARAGES -

Burden of Proof:

In Re Marriage of Jorczak, 315 Ill. App. 3d 954, 735 N.E. 2d 182 (4th Dist., 8/29/00), [Support obligor has burden to prove payments; Obligee not required to prove non-payment.]
[C&C, 12/00-3/01]

- BLOOD TESTS -

Non-Parentage:

In Re Marriage of Lubbs, 313 Ill. App. 3d 968, 730 N.E. 2d 1139 (3rd Dist., 3/9/00), [DNA results showing paternity exclusion are required before filing petition to establish non-paternity after adjudication.]
[C&C, 3-6/00]

- CHILD SUPPORT RECOVERY ACT -

Constitutionality:

United States v. Faasse, 227 F. 3d 660 (6th Circuit, 9/25/00), [As originally reported, Federal Child Support Recovery Act held unconstitutional – beyond commercial clause authority. But, decision was withdrawn and vacated for rehearing, 234 F.3d 234, 12/1/00.]
[C&C, 12/00-3/01]

Private Cause of Action:

Salahuddin v. Alaji, 232 F. 3d 305 (2nd Circuit, 11/13/00), [No private cause of action allowed under Federal Child Support Recovery Act.]
[C&C, 12/00-3/01]

- CONFIDENTIALITY -

Employee Liability:

McDade v. West, et al., 223 F. 3d 1135 (9th Circuit, 9/15/00), [County employee's unauthorized personal use of confidential state data is basis for federal civil rights claim.]
[C&C, 12/00-3/01]

- CONTEMPT -

Final, Appealable Orders:

Yowell v. Pedersen, 315 Ill. App. 3d 665, 734 N.E. 2d 169 (2nd Dist., 8/1/00), [Contempt finding not final, appealable without imposition of sanctions.]
[C&C, 12/00-3/01]

- DISCOVERY -

Sanctions:

In Re Marriage of Booher, 313 Ill. App. 3d 356, 728 N.E. 2d 1230 (4th Dist., 5/3/00), [Disallowance of evidence on custody issues held unreasonable sanction for failure to file financial affidavit.]
[C&C, 12/00-3/01]

- EMPLOYMENT SEARCH -

In Re Marriage of Sweet, 316 Ill. App. 3d 101, 785 N.E. 2d 1037 (2nd Dist., 9/5/00), [Court may compel parties to family law proceedings to seek more lucrative employment or pay support at a level as if they had done so.]

[C&C, 12/00-3/01]

- ENFORCEMENT -

Burden of Proof:

In Re Marriage of Jorzak, 315 Ill. App. 3d 954, 735 N.E. 2d 182 (4th Dist., 8/29/00), [Support obligor has burden to prove payments; Obligee not required to prove non-payment.]

[C&C, 12/00-3/01]

- EXTRADITION -

Jurisdiction:

Behr v. Ramsey, et al., 230 F. 3d 268 (7th Circuit, 10/2/00), [Defenses to state's jurisdiction to order support is no defense to extradition from another state for violating order.]

[C&C, 12/00-3/01]

- GUIDELINES -

Deviation:

In Re Marriage of Sweet, 316 Ill. App. 3d 101, 785 N.E. 2d 1037 (2nd Dist., 9/5/00), [Where court finds bad faith in employment efforts and lack of credibility, strict application of guidelines may be eschewed and support may be ordered commensurate with obligor's unrealized earning ability.]

[C&C, 12/00-3/01]

Express Findings for Deviation:

In Re Marriage of Sweet, 316 Ill. App. 3d 101, 785 N.E. 2d 1037 (2nd Dist., 9/5/00), [Court's oral comments in ordering support commensurate with obligor's unrealized earning ability may satisfy requirement for express findings justifying deviation.]

[C&C, 12/00-3/01]

- INCOME -

Insurance Proceeds:

Slagel v. Wessels, 314 Ill. App. 3d 330, 732 N.E. 2d 320 (4th Dist., 6/27/00), [Income from invested life insurance proceeds attributable to children properly excluded from mother's income.]

[C&C, 12/00-3/01]

New Spouse:

In Re Marriage of Drysch, 314 Ill. App. 3d 640, 732 N.E. 2d 125 (2nd Dist., 6/23/00), [New spouses' income properly considered in allocation of post-majority educational expenses (or child support).]

[C&C, 12/00-3/01]

Unrealized Earning Capacity:

In Re Marriage of Sweet, 316 Ill. App. 3d 101, 785 N.E. 2d 1037 (2nd Dist., 9/5/00), [Where court finds bad faith in employment efforts and lack of credibility, support may be ordered commensurate with obligor's unrealized earning ability.]

[C&C, 12/00-3/01]

- JURISDICTION -

Extradition:

Behr v. Ramsey, et al., 230 F. 3d 268 (7th Circuit, 10/2/00), [Defenses to state's jurisdiction to order support is no defense to extradition from another state for violating order.]

[C&C, 12/00-3/01]

Tax Refund Seizure:

James v. Mims, 316 Ill. App. 3d 1179, 738 N.E. 2d 213 (1st Dist., 9/29/00), [Circuit court lacks jurisdiction to order return of improperly seized tax refund.]

[C&C, 12/00-3/01]

- MODIFICATION -

Incarceration:

In Re Marriage of Burbridge, 317 Ill. App. 3d 190, 739 N.E. 2d 979 (3rd Dist., 10/23/00), [Incarceration may justify support modification.]

[C&C, 12/00-3/01]

Post-Majority Support:

In Re Marriage of Mulry, 314 Ill. App. 3d 756, 732 N.E. 2d 667 (4th Dist., 6/22/00), [Child support and post-majority educational expenses may both be due when order provides.]

[C&C, 12/00-3/01]

Retroactivity:

In Re Marriage of Semonchik, 315 Ill. App. 3d 395, 733 N.E. 2d 811 (1st Dist., 6/30/00), [Support modifiable retroactive only to date of petition.]

[C&C, 12/00-3/01]

Unallocated Maintenance & Support:

In Re Marriage of Semonchik, 315 Ill. App. 3d 395, 733 N.E. 2d 811 (1st Dist., 6/30/00), [Unallocated support and maintenance is modifiable.]

[C&C, 12/00-3/01]

- NON-PARENTAGE -

DNA Results:

In Re Marriage of Lubbs, 313 Ill. App. 3d 968, 730 N.E. 2d 1139 (3rd Dist., 3/9/00), [DNA results showing paternity exclusion are required before filing petition to establish non-paternity after adjudication.] [C&C, 3-6/00]

- ORDER OF PROTECTION -

Paternity:

Wilson v. Jackson, 312 Ill. App. 3d 1156, 728 N.E. 2d 832 (3rd Dist., 4/20/00), [Under Domestic Violence Act putative father's rights or responsibilities for a child born outside marriage do not attach until father-child relationship has been legally established.] [C&C, 3-6/00]

- PATERNITY -

Acknowledgment:

Wilson v. Jackson, 312 Ill. App. 3d 1156, 728 N.E. 2d 832 (3rd Dist., 4/20/00), [Mere acknowledgment of paternity does not entitle father to visitation without order granting visitation.] [C&C, 3-6/00]

Removal:

In Re Parentage of Melton, 314 Ill. App. 3d 476, 732 N. E. 2d 11 (1st Dist., 5/30/00), [Removal provisions of IMDMA not applicable to Parentage cases.] [C&C, 3-6/00]

Visitation:

Wilson v. Jackson, 312 Ill. App. 3d 1156, 728 N.E. 2d 832 (3rd Dist., 4/20/00), [Mere acknowledgment of paternity does not entitle father to visitation without order granting visitation.] [C&C, 3-6/00]

- POST-MAJORITY SUPPORT -

Disabled Adult:

In Re Marriage of Lerner, 316 Ill. App. 3d 1072, 738 N.E. 2d 183 (1st Dist., 9/29/00), [Prior disability finding under Probate Act not required in § 513 support action; alleged disabled adult child not "necessary party."] [C&C, 12/00-3/01]

Necessary Party:

In Re Marriage of Lerner, 316 Ill. App. 3d 1072, 738 N.E. 2d 183 (1st Dist., 9/29/00), [Alleged disabled adult child not "necessary party" in § 513 support action for his benefit.] [C&C, 12/00-3/01]

Resource Allocation:

In Re Marriage of Drysch, 314 Ill. App. 3d 640, 732 N.E. 2d 125 (2nd Dist., 6/23/00), [New spouses' income properly considered in allocation of post-majority educational expenses (or child support).] [C&C, 12/00-3/01]

Termination:

In Re Marriage of Mulry, 314 Ill. App. 3d 756, 732 N.E. 2d 667 (4th Dist., 6/22/00), [Child support and post-majority educational expenses may both be due when order provides.] [C&C, 12/00-3/01]

- REMOVAL -

Paternity:

In Re Parentage of Melton, 314 Ill. App. 3d 476, 732 N. E. 2d 11 (1st Dist., 5/30/00), [Removal provisions of IMDMA not applicable to Parentage cases.] [C&C, 3-6/00]

- SANCTIONS -

Non-disclosure of Financial Affidavit:

In Re Marriage of Booher, 313 Ill. App. 3d 356, 728 N.E. 2d 1230 (4th Dist., 5/3/00), [Disallowance of evidence on custody issues held unreasonable sanction for failure to file financial affidavit.] [C&C, 12/00-3/01]

- SUPPORT -

Termination:

In Re Marriage of Mulry, 314 Ill. App. 3d 756, 732 N.E. 2d 667 (4th Dist., 6/22/00), [Child support and post-majority educational expenses may both be due when order provides.] [C&C, 12/00-3/01]

- TAX REFUND SEIZURE -

Court Jurisdiction:

James v. Mims, 316 Ill. App. 3d 1179, 738 N.E. 2d 213 (1st Dist., 9/29/00), [Circuit court lacks jurisdiction to order return of improperly seized tax refund.] [C&C, 12/00-3/01]

Alphabetical Listing of Cases

- Behr v. Ramsey, et al.***, 230 F. 3d 268 (7th Circuit, 10/2/00), Extradition, Jurisdiction; Jurisdiction, Extradition.
- In Re Marriage of Booher***, 313 Ill. App. 3d 356, 728 N.E. 2d 1230 (4th Dist., 5/3/00), Discovery, Sanctions; Sanctions, Non-disclosure of Financial Affidavit.
- In Re Marriage of Burbridge***, 317 Ill. App. 3d 190, 739 N.E. 2d 979 (3rd Dist., 10/23/00), Modification, Incarceration.
- In Re Marriage of Drysch***, 314 Ill. App. 3d 640, 732 N.E. 2d 125 (2nd Dist., 6/23/00), Income, New Spouse; Post-Majority Support, Resource Allocation.
- In Re Marriage of Jorczak***, 315 Ill. App. 3d 954, 735 N.E. 2d 182 (4th Dist., 8/29/00), Arrearages, Burden of Proof; Enforcement, Burden of Proof.
- In Re Marriage of Lerner***, 316 Ill. App. 3d 1072, 738 N.E. 2d 183 (1st Dist., 9/29/00), Post-Majority Support, Disabled Adult, Necessary Party.
- In Re Marriage of Lubbs***, 313 Ill. App. 3d 968, 730 N.E. 2d 1139 (3rd Dist., 3/9/00), Blood Tests, Non-Parentage; Non-Parentage, DNA Results.
- In Re Marriage of Mulry***, 314 Ill. App. 3d 756, 732 N.E. 2d 667 (4th Dist., 6/22/00), Modification, Post-Majority Support; Post-Majority Support, Termination; Support, Termination.
- In Re Marriage of Semonchik***, 315 Ill. App. 3d 395, 733 N.E. 2d 811 (1st Dist., 6/30/00), Modification, Retroactivity, Unallocated Maintenance & Support.
- In Re Marriage of Sweet***, 316 Ill. App. 3d 101, 785 N.E. 2d 1037 (2nd Dist., 9/5/00), Employment Search; Guidelines, Deviation; Guidelines, Express Findings for Deviation; Income, Unrealized Earning Capacity.
- In Re Parentage of Melton***, 314 Ill. App. 3d 476, 732 N. E. 2d 11 (1st Dist., 5/30/00), Paternity, Removal; Removal, Paternity.
- James v. Mims***, 316 Ill. App. 3d 1179, 738 N.E. 2d 213 (1st Dist., 9/29/00), Jurisdiction, Tax Refund Seizure; Tax Refund Seizure, Court Jurisdiction.
- McDade v. West, et al.***, 223 F. 3d 1135 (9th Circuit, 9/15/00), Confidentiality, Employee Liability.
- Salahuddin v. Alaji***, 232 F. 3d 305 (2nd Circuit., 11/13/00), Child Support Recovery Act, Private Cause of Action.
- Slagel v. Wessels***, 314 Ill. App. 3d 330, 732 N.E. 2d 320 (4th Dist., 6/27/00), Income, Insurance Proceeds.
- United States v. Faasse***, 227 F. 3d 660 (6th Circuit, 9/25/00, withdrawn and vacated for rehearing, 234 F.3d 234, 12/1/00), Child Support Recovery Act, Constitutionality.
- Wilson v. Jackson***, 312 Ill. App. 3d 1156, 728 N.E. 2d 832 (3rd Dist., 4/20/00), Order of Protection, Paternity; Paternity, Acknowledgment, Visitation.
- Yowell v. Pedersen***, 315 Ill. App. 3d 665, 734 N.E. 2d 169 (2nd Dist., 8/1/00), Contempt, Final, Appealable Orders.

From the I D P A . . .

. . . ILLINOIS IV-D UPDATE

(From the Office of the Administrator, Illinois Dept. of Public Aid, Division of Child Support Enforcement)

Selection of Permanent SDU Operator Postponed

On March 2, 2001, newly appointed Illinois Department of Public Aid Director Jackie Garner announced that the Department will postpone selection of a new permanent operator of the SDU. After careful analysis of vendor proposals, review of the complex processing operations and systems, and consideration of the difficulties experienced in other states, the Department determined that a transition at this time could potentially disrupt the flow of child support payments to custodial parents.

"Currently the child support payment system is working reasonably well and has shown consistent improvement. However, we are concerned that a transition process of this magnitude may place too great a burden on the system at this time," Director Garner said. "This process is not a race. We will not proceed too quickly and risk potential hardships. We will move ahead thoughtfully and proceed with caution."

Deloitte & Touche, the professional services firm providing its expertise at the SDU, has advised the Department of the risks associated with transitioning to a new vendor given the system's current state. The Department will take immediate action to provide increased stability and efficiency before a transition to a new SDU operator. These improvements could take up to 24 months.

"Over the next year, it is estimated that the child support payment system will collect and disburse more than \$725 million in child support payments. In order to reduce the risk of any potential difficulties and to provide for a safe and secure transition, the Department will undertake these critical improvements before moving ahead. Many parents are relying on us, so we are going to take the time necessary in order to get it right."

The permanent vendor selection process is now postponed until the Department is prepared to initiate a new Request for Proposal process. Vendors who have submitted proposals for review have been notified of the Department's decision to enhance the system before transitioning to a new vendor.

Working Together for Illinois Families

Collaborative efforts between the Illinois Department of Public Aid's Division of Child Support Enforcement (DCSE), state, federal and private agencies are bringing more child support to Illinois families.

Since 1996, DCSE and the Illinois Department of Revenue have worked together to collect over \$104 million in past due child support owed. This program began in Fiscal Year (FY)1996, and in its first year generated \$2,608,564. Collections in FY2000 reached \$29,971,819. Thus far in FY2001, DCSE has collected \$30.6 million as of June 1, 2001.

Each month, DCSE sends the U.S. State Department an electronic listing of non-custodial parents who owe more than \$5,000 in past due support. In accordance with federal law, the State Department will not renew passports of the delinquent parents until a satisfactory payment plan is reached. The program began in 1998 and as of May 1, 2001, DCSE has collected over \$236,000 in delinquent child support.

In July 1999, DCSE reinstated the use of private collection agencies to secure payments on severely delinquent accounts. The total amount of past due child support collected from July 1999 through April 2001 exceed \$43 million, with monthly totals averaging over \$4 million. Current estimates reveal that for every dollar expended on this program, DCSE receives over \$18 in collections. "Credit should be given to the hard-working staff in DCSE's Central Operations Unit who work in conjunction with these entities calculating balances, verifying debts, serving withholding orders, and locating non-custodial parents," says Lonnie Nasatir, Deputy Administrator for Central Operations. "We will continue to use all available methods to collect child support for deserving families."



From the Courthouse . . .

. . .CASES & COMMENTARY

As a regular feature the Family Support FORUM will endeavor to provide timely summaries of court decisions, both published and unpublished, and information about pending decisions of general interest to the support enforcement community. Any one who becomes aware of significant decisions or cases, whether pending or decided at any level, is encouraged to submit them for inclusion in future editions.

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

Lack of State Jurisdiction to Enter Support Order is Defense to Prosecution Under Federal Child Support Recovery Act

United States v. Kramer, 225 F. 3d 847 (7th Circuit, 9/5/00), reversed conviction under federal Child Support Recovery Act where defendant claimed support order he was convicted of violating had been entered without establishing jurisdiction by service of process.

In 1980 Mr. Kramer was a truck driver for Mayflower Van Lines residing in Minnesota. While in Indianapolis for three weeks training in January of that year he had a sexual relationship with Janice Jacobs, a resident of Indiana, resulting in the birth of a baby in November, 1980. By that time Kramer had returned to Minnesota. In late 1982, a paternity action was filed in Indiana, but Kramer was never served with process or other notice and never appeared in that proceeding. Nevertheless the Indiana court found paternity and ordered Kramer to pay support of \$25 per week, all by default.

Kramer first learned of the order in the fall of 1990 when his employer was served with a withholding order. Kramer hired an attorney to contest the Indiana paternity order, but never appeared personally and did not pursue the matter. Kramer stopped working for Mayflower in January, 1992, worked for another trucking company from June, 1993 to February, 1994, but had not worked at all after that date.

Kramer moved to Washington in September, 1996. In July, 1998, he was visited by an FBI agent regarding the unpaid support order. On October 15, 1998, he was indicted by a federal grand jury in Indiana for willful failure to pay the Indiana support order between October, 1993 and December 1995. (The significance of those dates is not indicated.)

Following a bench trial the federal District Court found Kramer guilty of willful failure to pay a past due child support order for the resident of Indiana, sentenced him to one year probation including 60 days confinement, and order restitution of \$19,750. The

court rejected Kramer's defense that he had never been served in the Indiana paternity action, finding that the Court was not required to question the validity of the state support orders being enforced. Whether there were procedural defects in 1982, Kramer knew of the order as early as 1990 and could have challenged it in Indiana but chose not to pursue that remedy. Kramer appeals.

Reversed. While it is generally true that the Child Support Recovery Act does not permit a contest of the substantive merits of the underlying state support order as a defense, it is well established that an order obtained without jurisdiction may be collaterally attacked. And while no mention is made of jurisdiction or the validity of the state's underlying order in the legislative history of the CSRA, "[w]hen we scrutinize the entire legal landscape surrounding the CSRA . . . it is clear that, as Congress legislated, it was well aware of the long-standing rule, both in federal and state jurisprudence, that a default judgment in a civil case is void if there is no personal jurisdiction over the defendant and that a judgment may be attacked collaterally on that basis." Referring extensively to provisions of URESA, the recommendations of the U.S. Commission of Interstate Child Support, UIFSA and other statutes resulting from the Commission's recommendations, the Court concluded:

"Subjecting Mr. Kramer to criminal penalties for non-compliance with the state support judgment without allowing him to challenge the state court's personal jurisdiction would permit the federal criminal law to accomplish what the states forbid in their own civil and criminal courts and, indeed, what Congress had forbidden in the civil remedies it has created. In a carefully coordinated statutory scheme that places great emphasis on federal-state cooperation, such a result makes no sense. . . . Mr. Kramer should be

(Cont'd. on page 15)

able to attack the Indiana child support order that formed the basis for his federal conviction for the willful failure to pay a past due support obligation. The failure of the district court to afford him the opportunity to do so constitutes reversible error."

The Court went on to suggest that, even if it turns out Kramer is wrong about Indiana's lack of jurisdiction he may still have a defense to the element of willfulness if he had a legitimate belief the order was invalid. Ironically, Indiana probably had valid long-arm jurisdiction over him in 1980 had it bothered to serve him with process.

Minor May Not Pursue Own Parentage Action Without Parent, Guardian

Klak v. Skellion, 317 Ill. App. 3d 1092, 741 N.E. 2d 288 (1st Dist., 11/29/00), reversed denial of defendant's motion to dismiss a paternity action brought by the minor child.

On August 3, 1999, then-17-year-old Mary Klak filed a complaint under the Parentage Act seeking to establish Skellion as her father, further seeking support, maintenance and educational expenses from him. Though she was represented by counsel, the action was brought in her own name, not through a parent, guardian or guardian-ad-litem. Skellion moved to dismiss on the basis Klak, as a minor, had no legal standing to sue on her own behalf. The trial court denied that motion, but certified the question for appeal whether a minor may bring such an action without a parent, guardian or guardian-ad-litem.

The Appellate Court's answer: No. As a rule a minor does not have legal capacity to initiate legal action in his or her own name. While Section 7 of the Parentage Act provides that an action to determine parent-child relationship "may be brought by the child," among others, the Court found "nothing in the Act which indicates that the legislature intended to change the settled common law rule that minors are unable to initiate or pursue civil litigation in their own name although they may be a party to such a suit." "In keeping with common law principles, we interpret the word 'child' in it's statutory context to mean 'adult offspring' or 'offspring having reached the age of majority' as opposed to a minor child." The Court went on to point out that a child may initiate such an action within two years after attaining majority, so Mary has until July 9, 2002 to try again. (She had already attained majority before the Appellate Court ruled.)

Statute of Limitations Bars Action to Vacate Consent Parentage Adjudication - Despite DNA Test Showing Non-Parentage

Donath v. Buckley, 319 Ill. App. 3d 83, 744 N.E. 2d 385 (3rd Dist., 2/20/01), affirmed denial of a mother's petition to declare non-existence of parent-

child relationship previously adjudicated by consent as barred by the statute of limitations.

In October, 1996, the parties presented to the Court a Petition to Establish Parent and Child Relationship by Consent. In November, 1996, the court granted the petition, establishing Daniel Donath as the father of Katelin, then already 14-months-old, awarding custody to Deanna Buckley, and allowing Daniel visitation.

In February, 1999, Deanna filed a Petition to Declare the Non-Existence of paternity, stating that Daniel was not Katelin's father. Daniel asserted his belief that he was Katelin's father, and sought enforcement of his visitation rights. DNA tests were ordered, and concluded that Daniel is not Katelin's father.

Deanna moved to vacate the prior visitation order and dismiss Daniel's petition to enforce visitation. Daniel contended that, regardless of his non-paternity, his visitation was in the best interests of the child. At the hearings Deanna testified that both she and he knew from the beginning that Daniel was not Katelin's father, but Daniel testified he believed he was her father at least until February, 1999. In April, 2000, the court denied Deanna's petition as barred by the two-year limitation to challenges of paternity., and ordered the parties to arrive at an appropriate visitation schedule. Deanna appeals.

Affirmed. Section 7 (b) of the Parentage Act governs circumstances under which a natural mother may challenge paternity. The applicable statute of limitations for challenges under that paragraph is found in Section 8 (3), requiring that the action must be brought no later than two years after the petitioner obtains knowledge of the relevant facts. Here Deanna testified she always knew Daniel was not Katelin's father, and her petition was brought more than three years after Katelin's birth. Too late!

Deanna also argued she should be allowed to petition under Section 7 (b-5), allowing fathers whose paternity is adjudicated to declare non-existence of the parent-child relationship if DNA tests establish non-paternity. The Court found that, while Deanna's petition was filed within six months of that amendment, that section required DNA results prior to such a filing, and the DNA tests were not conducted here until later. More importantly, that provision is available only to fathers whose paternity was adjudicated, and denying that remedy to mothers did not constitute impermissible discrimination based on gender.

Delayed Forwarding of Withheld Support Requires \$100 per Day Penalty for Each Payment Delayed

Grams v. Autozone, Inc., 319 Ill. App. 3d 567, 745 N.E. 2d 687 (3rd Dist., 3/12/01), affirmed award of \$20,700 in penalties for delayed payment of withheld support.

Autozone was served with a withholding order on

(Cont'd. on page 16)

(“Cases & Commentary,” cont’d. from page 15)

January 19, 1999, and withheld support from its employee beginning February 19, 1999 and each two weeks thereafter. However it willfully failed to send any of the payments withheld until late April. In all, six payments were a total of 207 days late, the first being 69 days late, the second 55 days late, the third 41 days late, the fourth 27 days late, the fifth 13 days late and the sixth 3 days late. Autozone argued the penalty should be for the number of days late for all payments – 72 days -- rather than the number of days for each payment – 207. The trial court awarded \$20,700, and Autozone appeals.

Affirmed. The language of § 35 of the withholding act, imposing a penalty of \$100 per day for each day “the withheld amount” is not paid, is neither ambiguous nor absurd. The Court rejected Autozone’s argument that interpreting the statute as the court did is absurd because an employer would be subject to a lower penalty if it failed to turn over withholdings from an employee paid monthly rather than weekly.

“A separate violation occurs each time an employer knowingly fails to remit an amount that it has withheld from an employee’s paycheck. Under Autozone’s interpretation of the statute, the penalty could be assessed only for the first of a series of violations. Such construction would undermine the purpose of the Act which is to promote self-enforcement and to deter future noncompliance by the employer. . . . The fact that the penalty assessment may result in a ‘windfall’ to the recipient is irrelevant because the penalty is not solely related to the hardship suffered by the recipient.”

Also rejected as irrelevant was Autozon’s argument that the award is unjust because it could have been fined only \$200 if it had not withheld at all.

Support Accrued from First Divorce Unenforceable After Parties Remarriage; Parent’s Visitation May Not be Mandated

In Re Marriage of Mitchell, 319 Ill. App. 3d 17, 745 N.E. 2d 167 (2nd Dist., 3/2/01), affirmed denial of support arrearages claimed to have accrued after the parties second marriage and denial of order requiring exercise of visitation.

The parties were first divorced in April, 1991, Elena was awarded custody and Kevin was ordered to pay \$73 per week in child support. The parties remarried each other February 14, 1992 (Valentine’s Day – how nice!), but separated in May, 1994. Elena filed for dissolution in March, 1999, was again awarded custody and child support of \$96.60 per week. In connection with the second dissolution Elena sought arrearages of more than \$20,000, including support of \$73 per week accrued under the first dissolution judgment through the date she filed for the second divorce, and \$96.60 per week thereafter. The trial court entered judgment for

\$4,864.60, including arrearages accrued under the first judgment only to the date of remarriage. Elena appeals.

Affirmed. First the Court noted that Kevin did not file a brief in the case or cross-appeal the award of arrearages accrued under the first dissolution judgment, hinting that the propriety of that award might be questionable but was not being decided.

“We agree with [cited cases] that it would be undesirable to hold that parties to a divorce decree who later remarry may continue to enforce provisions of the prior decree against each other. [Cited cases] make it clear that parties, once married, can thereafter either be married to each other or divorced from each other; they cannot be both at the same time. Parties who choose to remarry cannot continue to enforce selected provisions of the prior decree relating to child custody and support. To do so would inevitably create friction in the marriage, and any attempt by a court to enforce such a right would likely be viewed as an unwarranted governmental interference in the marital relationship. . . . Because the prior decree is unenforceable as to installments accruing after the parties’ remarriage, the receiving spouse cannot have a vested right to those payments.”

The Court also affirmed denial of Elena’s request that Kevin be required to exercise visitation with the children. Dissolution of marriage and related matters are entirely statutory in origin and there is no authority in the IMDMA to mandate exercise of visitation. “[A] court simply cannot order a parent to love his or her children or to maintain a meaningful relationship with them. We are not convinced that forcing the children to spend time with a parent who views the visit as punishment or obligation would truly be in the children’s best interests.”

Trial Court Retains Jurisdiction to Enforce, Modify Orders Not Part of Issues Pending on Appeal

In Re Parentage of Melton, ___ Ill. App. 3d ___, ___ N.E. 2d ___ (1st Dist., No. 1-00-2221, 4/15/01), affirmed modification and subsequent enforcement of visitation and support orders while an earlier appeal of removal issues was still pending in the Appellate Court.

In this paternity action Lynn had been enjoined from removing the child from Illinois in April, 1999. In January, 2000, while that issue was on appeal (subsequently decided in Lynn’s favor, *In Re Parentage of Melton*, 314 Ill. App. 3d 476, 732 N.E. 2d 11 (1st Dist., 5/30/00) – See Cases and Commentary, Feb-March/May-June, 2000 *FORUM*), the trial court modified the existing support order to require payment of \$140 per week in child support plus half of Lynn’s day care cost (subject to reduction for reduced costs). Brace was given visitation of almost two days whenever he

(Cont’d. on page 17)

had days off work, with the child to be picked up and dropped off at Lynn’s residence or the babysitter’s. Lynn promptly moved to Vermont, apparently before the Appellate Court held she could not be enjoined from doing so.

Before the Appellate Court’s mandate returned all jurisdiction to the trial court Brace petitioned to terminate the day care payments and for a rule to show cause against Lynn for not allowing visitation. On June 12, 2000, the Court entered the rule against Lynn and set a hearing for June 28th. On June 19 the court terminated the day care payment requirement. Lynn filed notices of appeal, contending the court did not have jurisdiction over these issues prior to return of the Appellate Court’s mandate. On June 28 Lynn was found in contempt for denying visitation, and on July 6 was committed to jail until she complied with visitation. Lynn appeals the contempt finding, again claiming the court had no jurisdiction until the mandate was returned or subsequent to her Notice of Appeal from the June orders.

On appeal Lynn first claims all the orders entered before return of the mandate are void, including the orders entered in January, 2000, modifying support and visitation. No. The appeal from the injunction against removal was an interlocutory appeal. Filing of the notice of appeal in that case does not deprive the trial court of all jurisdiction over a case, but only restrains it from changing or modifying the injunction order or from taking any other action which would interfere with appellate review of that order. Pendency of the first appeal did not effect jurisdiction of the trial court to modify or enforce visitation or support orders not involved in the injunction order being reviewed.

Lynn’s Notice of Appeal from the June 12 order did not remove jurisdiction from the trial court because it was premature. An order on a contempt petition is not final and appealable until sanctions are imposed, which did not occur until July 6. Appeal of the June 19 order terminating day care payments could only be had as an interlocutory appeal pursuant to petition for leave to appeal under Supreme Court Rule 306 granted by the Court. Until that petition is granted the trial court does not lose jurisdiction over the subject of that petition. In short, the trial court had jurisdiction in each of the orders challenged, and ruled properly on the evidence presented. Affirmed.

Financial Change Contemplated by Order Not a Substantial Change Justifying Modification

In Re Marriage of Hughes, ___ Ill. App. 3d ___, ___ N.E. 2d ___ (2nd Dist., 2-00-0069, 4/25/01), reversed modification of child support based on termination of maintenance and debt payment contemplated by the original order.

In their December, 1998 dissolution Ronald was ordered to pay child support of \$1,113 per month, maintenance of \$788 per month for twelve months commencing September, 1998, and 12 monthly payments on the car awarded to Stacy. In September, 1999, Stacy petitioned for increase in child support, claiming as changed circumstances an increase in Ronald’s available income equivalent to the maintenance and car payments that were ending, an increase in her expenses resulting from having to take over the car payment, and a reduction in her income resulting from loss of the maintenance (as well as an additional increase in Ronald’s income and other increases in children’s expenses). The trial court granted an increase to \$1,275 per month, finding the substantial change in Ronald’s financial situation essentially attributable to the termination of maintenance and car payments.. Ronald appeals.

Reversed. The increase in Ronald’s available income to pay child support following the termination of maintenance and car payments did not constitute a substantial change in circumstances because these events were contemplated and expected by the court when the judgment for dissolution of marriage was entered. Even if the original order was not properly calculated, a petition to modify cannot be used to correct it. The increase amounting to less than 20% of the old order, modification without a showing of substantial change in circumstances under § 510 (a)(2) of the IMDMA is not available either.

Bankruptcy Discharge of Share of Marital Debts Is Changed Circumstance, Justifies Increase, Deviation in Child Support Equal to Debts Shifted to Obligee

In Re Marriage of Letsinger, ___ Ill. App. 3d ___, ___ N.E. 2d ___ (2nd Dist., No. 2-00-0462, 5/7/01), affirmed in part and remanded in part with directions modification of child support based on the obligor’s bankruptcy and resulting shift of debts to the obligee.

In their August, 1997, dissolution Marvin was ordered to pay child support of \$145 per week and maintenance of \$98 per week for two years. He was also ordered to provide medical insurance continuation coverage (COBRA) for his ex-wife, Marcella, until the coverage expired or she became eligible for group insurance coverage, whichever occurred first, and to pay a portion of debts (including his attorney’s fees of \$5,304) totaling \$17,925. Following reconsideration of an initial order granting each party a share of the equity in the marital residence, Marcella was awarded all the equity in the residence. However, before that happened Marvin’s attorneys placed a lien against the residence for their attorney’s fees.

In November, 1997, Marvin filed bankruptcy, and discharged all the marital debts assigned to him. He stopped providing COBRA coverage, requiring

Marcella to spend \$3,226 for premiums. He also failed to pay half the costs for the child's extracurricular activities as ordered. In November, 1998, Marcella petitioned for relief, including modification of child support and contempt for the failure to provide COBRA and the share of extra-curricular expenses.

Evidence showed that Marvin's annual income had declined from \$52,000 to \$46,000, that he had not paid any of the marital debts assigned to him, and had dropped COBRA and not paid the extra-curricular expenses. Marcella had take home pay of \$1,466 per month, a student loan debt of \$16,000, and her share of the marital debts. In addition to the debts shifted to her by Marvin's bankruptcy, Marcella established that needs of the child had also increased beyond her ability to pay.

The trial court found Marvin's bankruptcy amounted to a substantial change in the parties' circumstances justifying an increase in child support and a deviation from guidelines. Following another reconsideration the court increased child support to \$229 per week, retroactive to the date of filing, amounting to \$132 per week "statutory support" plus \$97 per week calculated as the \$17,925 debt shifted to Marcella divided by the number of weeks remaining until the child attained majority. The court added another \$20 per week toward arrearages of \$6,596 attributable to the retroactive increase, and held Marvin in contempt for failure to pay the extra-curricular expenses. The court awarded Marcella \$3,304 in attorneys fees connected with the proceedings, but denied her an additional \$890 attributed to efforts to remove the liens from the marital residence. The court did nothing with Marcella's claim for COBRA expenses incurred when Marvin stopped providing it.

Both parties appeal. The finding of substantial change in circumstances was affirmed.

"The basis for determining a substantial change in circumstances is the needs of the child and the ability of the parents to respond to those needs. Certainly, Marvin's discharge of his marital debt affected the ability of both parents to respond to Shana's needs. The discharge in bankruptcy relieved Marvin of the legal obligation of paying certain debts, thereby affecting a significant change in his financial condition. In response, an equal but opposing significant change occurred in Marcella's financial condition. Because Marcella is now responsible for a substantial debt due to Marvin's discharge of that debt, Marcella's expenses have so increased beyond what they were at the time of the dissolution that she must have more money to care for Shana properly."

The Court concluded that the trial court properly considered the discharge of marital debt in bankruptcy to

constitute a substantial change in circumstances to warrant an increase in child support. And in considering the bankruptcy as a basis for modification the trial court did not circumvent or infringe on the jurisdiction of the bankruptcy court. The finding of contempt was not based on his filing bankruptcy but on his failure to make the extra-curricular expense payments ordered.

Marvin argued that his \$5,304 attorney's fee debt was not shifted to Marcella but was discharged in the bankruptcy. However Marcella had testified that the lien on the marital residence kept her from refinancing, and her attempts to remove that lien had been rejected by the court. The Appellate Court remanded this to the trial court to determine if the liens were valid, with directions to recalculate the increased support appropriately if the liens were found to be invalid.

On the issue of attorney's fees, Marcella's efforts to remove the liens on the marital residence were related to the central issue of her enforcement action, so all those attorney's fees should also have been assessed against Marvin. Marvin was under an obligation to provide COBRA which was not discharged in bankruptcy or terminated with maintenance. Thus the trial court was directed to assess him the additional \$3,226 incurred by Marcella to meet his obligation.

An Interesting Approach from Wisconsin –

Judge Orders Man to Keep It In His Pants

The Wisconsin Supreme Court was scheduled to hear arguments in May on whether a deadbeat dad's constitutional rights were violated by a judge's order prohibiting him from fathering any more children until he can prove he's supporting the nine he already has. David Oakley, 34, was sentenced to three years in prison for failing to pay \$25,000 in child support for nine children born to four different women, followed by five years probation during which he cannot father any more children.

On appeal Oakley argued the condition was not reasonable or appropriate and violates his state and federal constitutional rights to privacy and procreation. The Appellate Court, in an unpublished opinion, affirmed the trial court, noting: "Oakley's condition of probation does not prohibit him from engaging in sexual activity. It merely prohibits Oakley from having additional children whom he cannot support, a task at which Oakley has wholly failed and for which he has been held criminally liable. The condition is narrowly drawn and is reasonably related to Oakley's rehabilitation and protection of the public."

Oakley's ex-wife and mother of four has little sympathy for him. "All he does is get women pregnant all the time and then not pay child support."

(from www.bizarrenews.com)

Costs to Raise Children Increase

by Thomas P. Sweeney

A middle-income, two parent family with the younger of two children born in 2000, can expect to spend about \$165,630 (\$233,530 when factoring in inflation) for food, shelter, and other necessities to raise that child over the next 17 years. So says the latest annual report of the U.S. Department of Agriculture released in May.

The USDA's 1999 report estimated comparable expenses at \$160,140, but adjusted to \$236,660 when factoring in inflation. The reduction in adjusted projections is attributable to a reduction in the projected rate of inflation over the next 17 years from 4.3 % in 1999 to 3.8% in 2000.

Now in its 40th year, the USDA report, "Expenditures on Children by Families," has proven to be a valuable resource for state agencies and courts in determining child support guidelines and foster care payments. The report points out that the estimates are also used in educational programs for parents and teenagers to show how much raising children really costs. "One intent of providing this information is to encourage teenagers to wait until they are adults and more financially secure before having children."

Cost Estimated for Husband-Wife Families

The report, compiled by USDA's Center for Nutrition Policy and Promotion, notes that family income affects child rearing costs, with low-income families projected to spend \$121,230; middle-income families \$165,630; and upper-income families \$241,770 (all in 2000 dollars) over a 17-year period. With adjustment for inflation these figures increase to \$171,460, \$233,530 and \$340,130 respectively; see Table 12 below). Of primary focus are the child-rearing cost estimates for middle-income, two-parent families, which in 2000, ranged from \$8,740 to \$9,860, depending on the age of the child. See Table 1 on page 20 for overall estimates for husband-wife families.

(For purposes of this report, a family of four with a year 2000 income of less than \$38,000 is defined as low-income, with income between \$38,000 and \$64,000 is considered middle-income, and with income of

more than \$64,000 is considered high-income. These cut-off points represent income tertiles (thirds) of all husband-wife households with two children. In other words, approximately one-third of all four-person households in American fall within one of these categories.)

Since 1960, expenses on children have changed considerably. In 1960, a middle-income family could expect to spend \$25,230 to raise a child through age 17. Since 1960 expenditures for food have decreased from 24 percent to 18 percent of total child-rearing costs, while child care and education expenses have increased from 1 percent to 10 percent. Housing cost was the single largest expenditure on a child in 2000, averaging 33 percent of the total costs over 17 years, compared with 32 percent in 1960. In real dollars, the overall cost of raising a child has increased 13 percent from 1960 to 2000.

Estimates of expenditures by husband-wife families do not apply to single-parent families, which

(Cont'd. on page 20)

Table 12. Estimated annual expenditures* on children born in 2000, by income group, overall United States

		Income Group		
Year	Age	Lowest	Middle	Highest
2000	< 1	\$6,280	\$8,740	\$13,000
2001	1	6,520	9,070	13,490
2002	2	6,770	9,420	14,010
2003	3	7,180	10,040	14,850
2004	4	7,450	10,420	15,420
2005	5	7,740	10,820	16,000
2006	6	8,160	11,240	16,460
2007	7	8,470	11,670	17,090
2008	8	8,790	12,120	17,740
2009	9	9,130	12,520	18,210
2010	10	9,480	13,000	18,910
2011	11	9,840	13,490	19,620
2012	12	11,550	15,160	21,700
2013	13	11,980	15,740	22,520
2014	14	12,440	16,330	23,380
2015	15	12,740	17,250	24,950
2016	16	13,220	17,910	25,900
2017	17	13,720	18,590	26,880
Total		\$171,460	\$233,530	\$340,130

(*Estimates are for the younger child in husband-wife families with two children.)

Single-Parent Family Estimates

account for an increasing percentage of families with children. The primary difference is that the majority of single-parent households are in the lower income group. Accordingly the two higher income groups used for two-parent family estimates were combined for single-parent family estimates, since only 17% of single-parent families had income – including child support -- above the \$38,000 figure. See Table 7, reproduced on page 21).

A comparison of expenditures by single-parent and husband-wife families in the lower income group (see Table 10, page 21), shows that expenditures on a child up to age 18 were, on average, 5 percent lower in single-parent households than in husband-wife households. But more single-parent than husband-wife families fell in the bottom range of this lower income group. Average income for single-parent families in the lower income group was \$15,900, compared with \$23,800 for

(Cont'd. on page 21)

Table 1. Estimated annual expenditures* on a child by husband-wife families, overall United States, 2000

Age of Child	Total	Housing	Food	Transportation	Clothing	Health care	Child Care and Education	Miscellaneous †
Before-tax income: Less than \$38,000 (Average = \$23,800)								
0 - 2	\$6,280	\$2,400	\$880	\$770	\$380	\$440	\$800	\$610
3 - 5	6,420	2,370	980	750	370	420	900	630
6 - 8	6,520	2,290	1,260	870	410	490	530	670
9 - 11	6,530	2,070	1,510	950	450	530	320	700
12 - 14	7,380	2,310	1,590	1,070	760	540	230	880
15 - 17	7,280	1,860	1,720	1,440	670	570	380	640
Total	\$121,230	\$39,900	\$23,820	\$17,550	\$9,120	\$8,970	\$9,480	\$12,390
Before-tax income: \$38,000 to \$64,000 (Average = \$50,600)								
0 - 2	\$8,740	\$3,250	\$1,060	\$1,150	\$440	\$580	\$1,310	\$950
3 - 5	8,980	3,220	1,220	1,130	430	560	1,450	970
6 - 8	8,990	3,140	1,550	1,250	480	630	930	1,010
9 - 11	8,950	2,920	1,830	1,330	530	690	610	1,040
12 - 14	9,690	3,150	1,840	1,450	890	690	450	1,220
15 - 17	9,860	2,710	2,050	1,830	790	730	770	980
Total	\$165,630	\$55,170	\$28,650	\$24,420	\$10,680	\$11,640	\$16,560	\$18,510
Before-tax income: More than \$64,000 (Average = \$95,800)								
0 - 2	\$13,000	\$5,160	\$1,400	\$1,610	\$580	\$670	\$1,980	\$1,600
3 - 5	13,280	5,130	1,580	1,590	570	640	2,160	1,610
6 - 8	13,160	5,050	1,910	1,710	620	730	1,490	1,650
9 - 11	13,020	4,830	2,220	1,790	680	790	1,030	1,680
12 - 14	13,870	5,070	2,330	1,910	1,120	790	790	1,860
15 - 17	14,260	4,620	2,450	2,310	1,020	840	1,390	1,630
Total	\$241,770	\$89,580	\$35,670	\$32,760	\$13,770	\$13,380	\$26,520	\$30,090

*Estimates are based on 1990-92 Consumer Expenditure Survey data updated to 2000 dollars using the Consumer Price Index. For each age category, the expense estimates represent average child-rearing expenditures for each age (e.g., the expense for the 3-5 age category, on average, applies to the 3-year-old, the 4-year-old, or the 5-year old). The figures represent estimated expenses on the younger child in a two-child family. Estimates are about the same for the older child, so to calculate expenses for two children, figures should be summed for the appropriate age categories. To estimate expenses for an only child, multiply the total expense for the appropriate age category by 1.24. To estimate expenses for each child in a family with three or more children, multiply the total expense for each appropriate age category by 0.77. For expenses on all children in a family, these totals should be summed.

† Miscellaneous expenses include personal care items, entertainment, and reading materials.

(“Costs to Raise Children,” cont’d. from page 20)

husband-wife families. Single-parent families in this lower income group, therefore, spent a larger proportion of their income on their children.

The report also concluded that in single-parent households with two children, about 7 percent less is spent on the older child than on the younger child at a specific age category. In addition more is spent if a single-parent household has only one child, and less is spent per child if a single-parent household has three or more children.

The report notes geographic variations in the cost of raising a child, with expenses the highest for families living in the urban west, followed by the urban northeast and urban south. Families living in the urban midwest and all rural areas have the lowest expenses.

A limited number of copies of the report are available and may be requested by writing to USDA’s Center for Nutrition Policy and Promotion, 1120 20th Street, NW, Suite 200 – North Lobby, Washington, DC 20036-3406. The report is also available on the CNPP web

site at www.usda.gov/cnpp (and through a direct link on the “Useful Links” page of IFSEA’s web site, www.illinoisfamilysupport.org).

Table 10. Comparison of estimated expenditures* on children by single-parent and husband-wife families, overall United States, 2000

Age of child	Single-parent households	Husband-wife households
0 - 2	\$5,270	\$6,280
3 - 5	5,950	6,420
6 - 8	6,710	6,520
9 - 11	6,260	6,530
12 - 14	6,730	7,380
15 - 17	7,460	7,280
Total	\$115,140	\$121,230

(*Estimates are for the younger child in two-child families with 2000 before-tax income less than \$38,000.)

Table 7. Estimated annual expenditures* on a child by single-parent families, overall United States, 2000

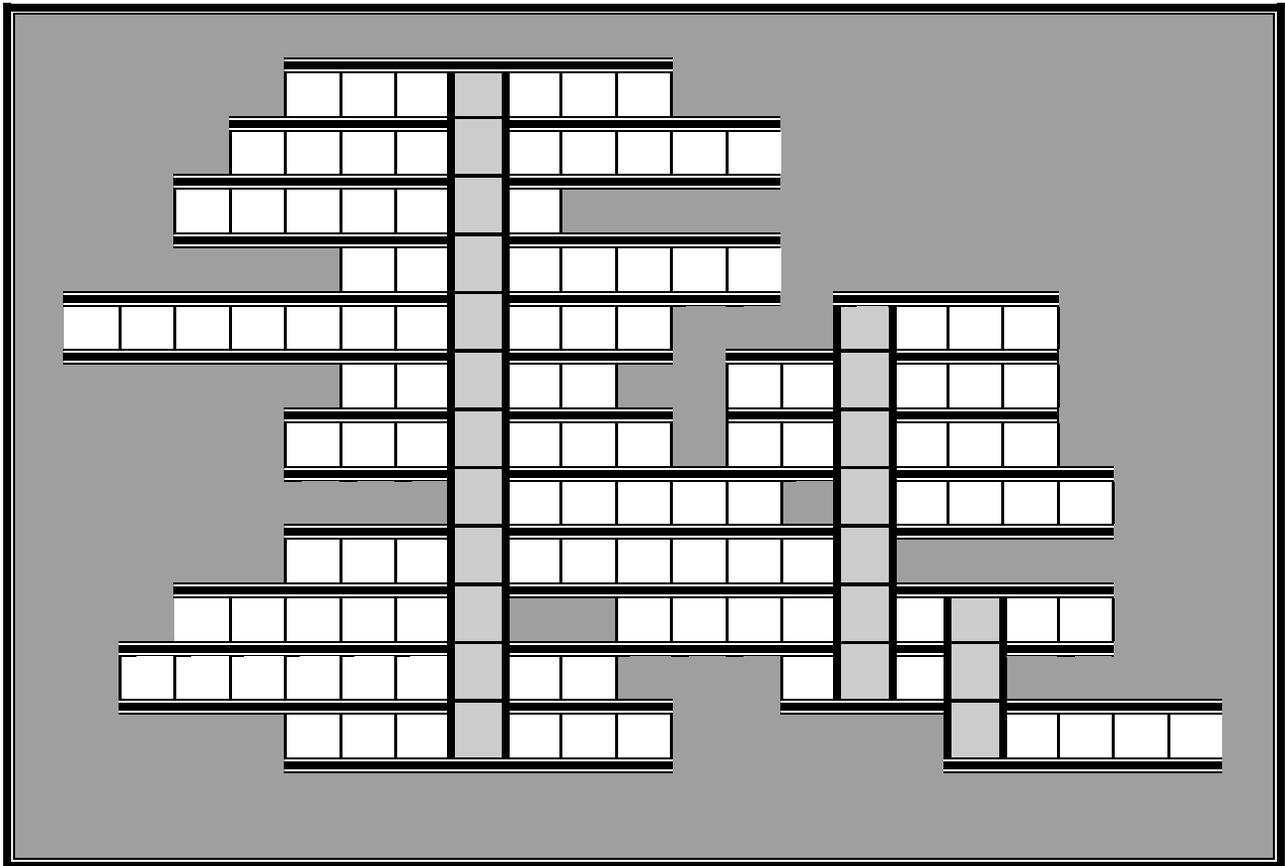
Age of Child	Total	Housing	Food	Transportation	Clothing	Health care	Child Care and Education	Miscellaneous †
Before-tax income: Less than \$38,000 (Average = \$15,900)								
0 - 2	\$5,270	\$2,150	\$980	\$720	\$340	\$210	\$500	\$370
3 - 5	5,950	2,450	1,030	630	360	310	680	490
6 - 8	6,710	2,600	1,300	740	420	370	620	660
9 - 11	6,260	2,500	1,500	530	430	470	300	530
12 - 14	6,730	2,500	1,510	610	720	500	380	510
15 - 17	7,460	2,650	1,640	960	840	490	290	590
Total	\$115,140	\$44,550	\$23,880	\$12,570	\$9,330	\$7,050	\$8,310	\$9,450
Before-tax income: \$38,000 or more (Average = \$57,800)								
0 - 2	\$12,100	\$4,640	\$1,510	\$2,210	\$480	\$490	\$1,230	\$1,540
3 - 5	13,000	4,930	1,600	2,120	500	660	1,540	1,650
6 - 8	13,820	5,080	1,920	2,220	580	750	1,440	1,830
9 - 11	13,330	4,980	2,300	2,020	590	900	840	1,700
12 - 14	14,140	4,990	2,260	2,100	970	950	1,190	1,680
15 - 17	14,580	5,140	2,390	2,270	1,110	940	970	1,760
Total	\$242,910	\$89,280	\$35,940	\$38,820	\$12,690	\$14,070	\$21,630	\$30,480

*Estimates are based on 1990-92 Consumer Expenditure Survey data updated to 2000 dollars using the Consumer Price Index. For each age category, the expense estimates represent average child-rearing expenditures for each age (e.g., the expense for the 3-5 age category, on average, applies to the 3-year-old, the 4-year-old, or the 5-year old). The figures represent estimated expenses on the younger child in a single-parent, two-child family. For estimated expenses on the older child, multiply the total expenses for the appropriate age category by 0.93. To estimate expenses for two children, the expenses on the younger child and older child after adjusting the expenses on the older child downward should be summed for the appropriate age categories. To estimate expenses for an only child, multiply the total expense for the appropriate age category by 1.35. To estimate expenses for each child in a family with three or more children, multiply the total expense for each appropriate age category by 0.72 after adjusting the expenses on the older children downward. For expenses on all children in a family, these totals should be summed.

† Miscellaneous expenses include personal care items, entertainment, and reading materials.

IFSEA – Then and Now

Test your knowledge of the people and places that have played significant roles in the history of IFSEA. Answer the questions below, then place your answers where they fit in the horizontal blanks in the grid. If your answers and placements are correct, the highlighted vertical lines will spell out where IFSEA’s 2001 conference will be held. (Only the highlighted vertical columns have meaning.) Good luck! (*Answers: at the conference.*)



- A city that has hosted two IFSEA conferences (11 letters): -----
- Former Kane County Asst. State’s Attorney; 1995-96 IFSEA President (11 letters) -----
- Site of IFSEA’s 4th (1992) conference (remember the “Buffalo Tro?”) (10 letters): -----
- First IFSEA Secretary and 4th IFSEA President (1991-92) (9 letters): -----
- Suburban site of IFSEA’s 7th conference (1995) (2 words; 9 letters): -----
- The state IFSEA focuses on (if you get this wrong, there’s no hope!) (8 letters): -----
- The site of two IFSEA conferences, including the first (7 letters): -----
- Current IFSEA officer, with more than 40 years support enforcement service (7 letters): -----
- Veteran Cook County Asst. State’s Attorney, host of first IFSEA conference (7 letters): -----
- IFSEA founder, first President, and long-time IFSEA Director (7 letters): -----
- Veteran Asst. Attorney General, hosted 9th conference (1997) (6 letters): -----
- Site of IFSEA’s 1996 conference, adjacent to “below Normal” college town (6 letters): -----
- Site of IFSEA’s 1993 conference, just west of “Paradise” (6 letters): -----
- IFSEA co-founder and 3rd President, hosted IFSEA’s 2nd conference (1990) (6 letters): -----
- Springfield Asst. Attorney General, 11th IFSEA President (1998-99) (5 letters): -----
- 9th IFSEA President, first IDPA executive to head IFSEA (1996-97) (5 letters): -----
- The acronym for this organization (another freebee!) (5 letters): -----
- Peoria Asst. Attorney General, 6th IFSEA President (1993-94) (4 letters): -----
- We now have two of these veteran attorneys on IFSEA’s current Board of Directors (4 letters): -----

(“Challenges to Paternity , , ,” cont’d. from page 1)

of Mark’s petition to establish non-paternity.

On April 4th the Supreme Court granted Mark’s petition for leave to appeal. The State’s brief is due in mid-July. Oral arguments are expected in September.

Dept. of Public Aid ex rel. Allen vs. Dixon

In *Dept. of Public Aid ex rel. Allen v. Dixon* (3rd Dist., No. 3-00-0647), Fred Dixon had executed a written Voluntary Acknowledgment of Paternity admitting to being he father of Fred, Jr.. But when subsequently faced with the prospect of paying child support and providing health insurance for Fred, Jr., he moved for genetic testing. The trial court granted the motion and ordered DNA tests. IDPA filed its interlocutory appeal.

In its unpublished order entered June 5, 2001, the Third District Appellate Court reversed. His execution of the voluntary acknowledgment created the presumption that Fred is Fred, Jr.’s father, and that presumption became conclusive when neither party attempted to rescind that acknowledgment in a timely fashion. He cannot challenge the acknowledgment except on the basis of fraud, duress or mistake, none of which he has alleged. By signing the acknowledgment he waived rights to contest paternity or have genetic tests done. “Statutory and constitutional rights may be waived as long as the waiver is knowing, voluntary, and intentional. [Citation] A waiver is permanent and cannot be

withdrawn without an unequivocal showing that it was unknowing, involuntary, or unintentional.” The order for genetic tests is reversed.

In light of the frequency with which courts have been ordering genetic tests in acknowledged paternity cases consideration is being given to requesting the Court to release this decision for publication.

IDPA v. Graham

In *IDPA v. Graham*, (3rd Dist., No. 3-01-0229), the circuit court had granted IDPA’s motion for summary judgment rejecting Graham’s attempts to deny parentage. He had executed a Voluntary Acknowledgment of Paternity several years ago, but now seeks to contest paternity. Briefs have yet to be filed in this case, and oral argument is not expected until the fall.

However, the Assistant Attorney General handling the appeal advises that a review of the record has disclosed that Graham had asserted the existence of fraud, duress or mistake in his execution of the acknowledgment, so the strength of the state’s case is being re-evaluated. This case has not raised Graham’s ability to “un-do” the paternity determination by way of a petition under § 7 (b-5) of the Parentage Act. Ironically he does have results of DNA tests showing his non-parentage. The tests were ordered in connection with a separate juvenile proceeding in which the IV-D legal representatives were not involved.

Stay tuned.

**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: _____

Is this a New Application Renewal Address Correction ONLY?

Please return with dues to: IFSEA, P. O. Box 370, Tolono, IL 61880-0370

(FEIN: 37-1274237)

(12/00)

Nominations Sought for IFSEA Awards

by Jeanne Fitzpatrick, IFSEA President

This year IFSEA plans to recognize one or more Illinois child support professionals who have made a difference in children's lives due to that "extra effort" in child support enforcement. For example, I know someone in the Circuit Clerk's office who is always cheerful and helpful to everyone. She tries to get information from the SDU and works with employers and IDPA to keep accounts straight. Not only does she make my job easier, but non-custodial parents are more willing to cooperate when they understand the account balances.

If you know someone who is involved in child support enforcement -- maybe a judge, clerk, account reviewer, family support specialist, attorney, secretary, or supervisor -- who makes a difference in child support, please send a letter nominating that person for this special award to:

Jeanne Fitzpatrick,
Assistant Attorney General
690 Centennial Drive
Ottawa, IL 61350

All letters must be received by September 1, 2001. A committee will review the letters and will choose worthy recipients. The letter will be read at the award presentation at the IFSEA Conference in Collinsville in October.

Plan Now to Attend IFSEA's 2001 Conference

October 14-16 - Collinsville, IL

Details in the Next FORUM

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