

1 AN ACT concerning civil law.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Illinois Marriage and Dissolution of
5 Marriage Act is amended by changing Section 501 as follows:

6 (750 ILCS 5/501) (from Ch. 40, par. 501)

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

9 (a) Either party may petition or move for:

10 (1) temporary maintenance or temporary support of a
11 child of the marriage entitled to support, accompanied by
12 an affidavit as to the factual basis for the relief
13 requested. One form of financial affidavit, as determined
14 by the Supreme Court, shall be used statewide. The
15 financial affidavit shall be supported by documentary
16 evidence including, but not limited to, income tax
17 returns, pay stubs, and banking statements. Unless the
18 court otherwise directs, any affidavit or supporting
19 documentary evidence submitted pursuant to this paragraph
20 shall not be made part of the public record of the
21 proceedings but shall be available to the court or an
22 appellate court in which the proceedings are subject to
23 review, to the parties, their attorneys, and such other

1 persons as the court may direct. Upon motion of a party, a
2 court may hold a hearing to determine whether and why
3 there is a disparity between a party's sworn affidavit and
4 the supporting documentation. If a party intentionally or
5 recklessly files an inaccurate or misleading financial
6 affidavit, the court shall impose significant penalties
7 and sanctions including, but not limited to, costs and
8 attorney's fees;

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

12 (i) restraining any person from transferring,
13 encumbering, concealing or otherwise disposing of any
14 property except in the usual course of business or for
15 the necessities of life, and, if so restrained,
16 requiring him to notify the moving party and his
17 attorney of any proposed extraordinary expenditures
18 made after the order is issued; however, an order need
19 not include an exception for transferring,
20 encumbering, or otherwise disposing of property in the
21 usual course of business or for the necessities of
22 life if the court enters appropriate orders that
23 enable the parties to pay their necessary personal and
24 business expenses including, but not limited to,
25 appropriate professionals to assist the court pursuant
26 to subsection (1) of Section 503 to administer the

1 payment and accounting of such living and business
2 expenses;

3 (ii) enjoining a party from removing a child from
4 the jurisdiction of the court for more than 14 days;

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

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

10 (2.5) an allowance from the other party for a retainer
11 fee to obtain an attorney. The petition shall identify the
12 attorney to be retained and shall be accompanied by:

13 (i) a financial affidavit, supported by
14 documentary evidence;

15 (ii) an affidavit from the identified attorney
16 stating that the moving party has contacted the
17 attorney and agreed to retain the attorney and that
18 the attorney has agreed to enter an appearance if the
19 court grants the relief by the moving party; and

20 (iii) a certificate stating that if an allowance
21 is granted, the party shall use it only for retaining
22 the attorney.

23 The court shall review the financial affidavit and
24 attorney affidavit, and, if appropriate, grant an
25 allowance to the party for a retainer fee. All awards
26 under this paragraph shall be paid directly to the

1 identified attorney; or

2 (3) other appropriate temporary relief including, in
3 the discretion of the court, ordering the purchase or sale
4 of assets and requiring that a party or parties borrow
5 funds in the appropriate circumstances.

6 Issues concerning temporary maintenance or temporary
7 support of a child entitled to support shall be dealt with on a
8 summary basis based on allocated parenting time, financial
9 affidavits, tax returns, pay stubs, banking statements, and
10 other relevant documentation, except an evidentiary hearing
11 may be held upon a showing of good cause. If a party
12 intentionally or recklessly files an inaccurate or misleading
13 financial affidavit, the court shall impose significant
14 penalties and sanctions including, but not limited to, costs
15 and attorney's fees resulting from the improper
16 representation.

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

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

25 (c-1) As used in this subsection (c-1), "interim
26 attorney's fees and costs" means attorney's fees and costs

1 assessed from time to time while a case is pending, in favor of
2 the petitioning party's current counsel, for reasonable fees
3 and costs either already incurred or to be incurred, and
4 "interim award" means an award of interim attorney's fees and
5 costs. Interim awards shall be governed by the following:

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

26 (A) the income and property of each party,

1 including alleged marital property within the sole
2 control of one party and alleged non-marital property
3 within access to a party;

4 (B) the needs of each party;

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

6 (D) any impairment to present earning capacity of
7 either party, including age and physical and emotional
8 health;

9 (E) the standard of living established during the
10 marriage;

11 (F) the degree of complexity of the issues,
12 including allocation of parental responsibility,
13 valuation or division (or both) of closely held
14 businesses, and tax planning, as well as reasonable
15 needs for expert investigations or expert witnesses,
16 or both;

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

18 (H) the amount of the payment or payments made or
19 reasonably expected to be made to the attorney for the
20 other party; and

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

23 (2) Any assessment of an interim award (including one
24 pursuant to an agreed order) shall be without prejudice to
25 any final allocation and without prejudice as to any claim
26 or right of either party or any counsel of record at the

1 time of the award. Any such claim or right may be presented
2 by the appropriate party or counsel at a hearing on
3 contribution under subsection (j) of Section 503 or a
4 hearing on counsel's fees under subsection (c) of Section
5 508. Unless otherwise ordered by the court at the final
6 hearing between the parties or in a hearing under
7 subsection (j) of Section 503 or subsection (c) of Section
8 508, interim awards, as well as the aggregate of all other
9 payments by each party to counsel and related payments to
10 third parties, shall be deemed to have been advances from
11 the parties' marital estate. Any portion of any interim
12 award constituting an overpayment shall be remitted back
13 to the appropriate party or parties, or, alternatively, to
14 successor counsel, as the court determines and directs,
15 after notice in a form designated by the Supreme Court. An
16 order for the award of interim attorney's fees shall be a
17 standardized form order and labeled "Interim Fee Award
18 Order".

19 (3) In any proceeding under this subsection (c-1), the
20 court (or hearing officer) shall assess an interim award
21 against an opposing party in an amount necessary to enable
22 the petitioning party to participate adequately in the
23 litigation, upon findings that the party from whom
24 attorney's fees and costs are sought has the financial
25 ability to pay reasonable amounts and that the party
26 seeking attorney's fees and costs lacks sufficient access

1 to assets or income to pay reasonable amounts. In
2 determining an award, the court shall consider whether
3 adequate participation in the litigation requires
4 expenditure of more fees and costs for a party that is not
5 in control of assets or relevant information. Except for
6 good cause shown, an interim award shall not be less than
7 payments made or reasonably expected to be made to the
8 counsel for the other party. If the court finds that both
9 parties lack financial ability or access to assets or
10 income for reasonable attorney's fees and costs, the court
11 (or hearing officer) shall enter an order that allocates
12 available funds for each party's counsel, including
13 retainers or interim payments, or both, previously paid,
14 in a manner that achieves substantial parity between the
15 parties.

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

19 (c-2) Allocation of use of marital residence. Where there
20 is on file a verified complaint or verified petition seeking
21 temporary eviction from the marital residence, the court may,
22 during the pendency of the proceeding, only in cases where the
23 physical or mental well-being of either spouse or his or her
24 children is jeopardized by occupancy of the marital residence
25 by both spouses, and only upon due notice and full hearing,
26 unless waived by the court on good cause shown, enter orders

1 granting the exclusive possession of the marital residence to
2 either spouse, by eviction from, or restoration of, the
3 marital residence, until the final determination of the cause
4 pursuant to the factors listed in Section 602.7 of this Act. No
5 such order shall in any manner affect any estate in homestead
6 property of either party. In entering orders under this
7 subsection (c-2), the court shall balance hardships to the
8 parties.

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

10 (1) does not prejudice the rights of the parties or
11 the child which are to be adjudicated at subsequent
12 hearings in the proceeding;

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

15 (3) terminates when the final judgment is entered or
16 when the petition for dissolution of marriage or legal
17 separation or declaration of invalidity of marriage is
18 dismissed.

19 (e) The fees or costs of mediation shall be borne by the
20 parties and may be assessed by the court as it deems equitable
21 without prejudice and are subject to reallocation at the
22 conclusion of the case.

23 (f) Companion animals. Either party may petition or move
24 for the temporary allocation of sole or joint possession of
25 and responsibility for a companion animal jointly owned by the
26 parties. In issuing an order under this subsection, the court

1 shall take into consideration the well-being of the companion
2 animal. As used in this Section, "companion animal" does not
3 include a service animal as defined in Section 2.01c of the
4 Humane Care for Animals Act.

5 (Source: P.A. 99-90, eff. 1-1-16; 99-763, eff. 1-1-17;
6 100-422, eff. 1-1-18.)