

AN ACT concerning families.

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

Section 5. The Illinois Marriage and Dissolution of Marriage Act is amended by changing Section 508 as follows:

(750 ILCS 5/508) (from Ch. 40, par. 508)

Sec. 508. Attorney's Fees; Client's Rights and Responsibilities Respecting Fees and Costs.

(a) The court from time to time, after due notice and hearing, and after considering the financial resources of the parties, may order any party to pay a reasonable amount for his own or the other party's costs and attorney's fees. Interim attorney's fees and costs may be awarded from the opposing party, in accordance with subsection (c-1) of Section 501. At the conclusion of the case, contribution to attorney's fees and costs may be awarded from the opposing party in accordance with subsection (j) of Section 503. Fees and costs may be awarded to counsel from a former client in accordance with subsection (c) of this Section. Awards may be made in connection with the following:

(1) The maintenance or defense of any proceeding under this Act.

(2) The enforcement or modification of any order or judgment under this Act.

(3) The defense of an appeal of any order or judgment under this Act, including the defense of appeals of post-judgment orders.

(3.1) The prosecution of any claim on appeal (if the prosecuting party has substantially prevailed).

(4) The maintenance or defense of a petition brought under Section 2-1401 of the Code of Civil Procedure seeking relief from a final order or judgment under this Act.

(5) The costs and legal services of an attorney rendered in preparation of the commencement of the proceeding brought under this Act.

(6) Ancillary litigation incident to, or reasonably connected with, a proceeding under this Act.

The court may order that the award of attorney's fees and costs (including an interim or contribution award) shall be paid directly to the attorney, who may enforce the order in his or her name, or that it shall be paid to the appropriate party. Judgment may be entered and enforcement had accordingly. Except as otherwise provided in subdivision (e)(1) of this Section, subsection (c) of this Section is exclusive as to the right of any counsel (or former counsel) of record to petition a court for an award and judgment for final fees and costs during the pendency of a proceeding under this Act.

(b) In every proceeding for the enforcement of an order or judgment when the court finds that the failure to comply with the order or judgment was without compelling cause or justification, the court shall order the party against whom the proceeding is brought to pay promptly the costs and reasonable attorney's fees of the prevailing party. If non-compliance is with respect to a discovery order, the non-compliance is presumptively without compelling cause or justification, and the presumption may only be rebutted by clear and convincing evidence. If at any time a court finds that a hearing under this Section was precipitated or conducted for any improper purpose, the court shall allocate fees and costs of all parties for the hearing to the party or counsel found to have acted improperly. Improper purposes include, but are not limited to, harassment, unnecessary delay, or other acts needlessly increasing the cost of litigation.

(c) Final hearings for attorney's fees and costs against an attorney's own client, pursuant to a Petition for Setting Final Fees and Costs of either a counsel or a client, shall be governed by the following:

(1) No petition of a counsel of record may be filed

against a client unless the filing counsel previously has been granted leave to withdraw as counsel of record or has filed a motion for leave to withdraw as counsel. On receipt of a petition of a client under this subsection (c), the counsel of record shall promptly file a motion for leave to withdraw as counsel. If the client and the counsel of record agree, however, a hearing on the motion for leave to withdraw as counsel filed pursuant to this subdivision (c)(1) may be deferred until completion of any alternative dispute resolution procedure under subdivision (c)(4). As to any Petition for Setting Final Fees and Costs against a client or counsel over whom the court has not obtained jurisdiction, a separate summons shall issue. Whenever a separate summons is not required, original notice as to a Petition for Setting Final Fees and Costs may be given, and documents served, in accordance with Illinois Supreme Court Rules 11 and 12.

(2) No final hearing under this subsection (c) is permitted unless: (i) the counsel and the client had entered into a written engagement agreement at the time the client retained the counsel (or reasonably soon thereafter) and the agreement meets the requirements of subsection (f); (ii) the written engagement agreement is attached to an affidavit of counsel that is filed with the petition or with the counsel's response to a client's petition; (iii) judgment in any contribution hearing on behalf of the client has been entered or the right to a contribution hearing under subsection (j) of Section 503 has been waived; (iv) the counsel has withdrawn as counsel of record; and (v) the petition seeks adjudication of all unresolved claims for fees and costs between the counsel and the client. Irrespective of a Petition for Setting Final Fees and Costs being heard in conjunction with an original proceeding under this Act, the relief requested under a Petition for Setting Final Fees and Costs constitutes a distinct cause of action. A pending but

undetermined Petition for Setting Final Fees and Costs shall not affect appealability of any judgment or other adjudication in the original proceeding.

(3) The determination of reasonable attorney's fees and costs either under this subsection (c), whether initiated by a counsel or a client, or in an independent proceeding for services within the scope of subdivisions (1) through (5) of subsection (a), is within the sound discretion of the trial court. The court shall first consider the written engagement agreement and, if the court finds that the former client and the filing counsel, pursuant to their written engagement agreement, entered into a contract which meets applicable requirements of court rules and addresses all material terms, then the contract shall be enforceable in accordance with its terms, subject to the further requirements of this subdivision (c)(3). Before ordering enforcement, however, the court shall consider the performance pursuant to the contract. Any amount awarded by the court must be found to be fair compensation for the services, pursuant to the contract, that the court finds were reasonable and necessary. Quantum meruit principles shall govern any award for legal services performed that is not based on the terms of the written engagement agreement (except that, if a court expressly finds in a particular case that aggregate billings to a client were unconscionably excessive, the court in its discretion may reduce the award otherwise determined appropriate or deny fees altogether).

(4) No final hearing under this subsection (c) is permitted unless any controversy over fees and costs (that is not otherwise subject to some form of alternative dispute resolution) has first been submitted to mediation, arbitration, or any other court approved alternative dispute resolution procedure, except as follows:

(A) In any circuit court for a single county with a population in excess of 1,000,000, the requirement of

the controversy being submitted to an alternative dispute resolution procedure is mandatory unless the client and the counsel both affirmatively opt out of such procedures; or

(B) In any other circuit court, the requirement of the controversy being submitted to an alternative dispute resolution procedure is mandatory only if neither the client nor the counsel affirmatively opts out of such procedures.

After completion of any such procedure (or after one or both sides has opted out of such procedures), if the dispute is unresolved, any pending motion for leave to withdraw as counsel shall be promptly granted and a final hearing under this subsection (c) shall be expeditiously set and completed.

(5) A petition (or a praecipe for fee hearing without the petition) shall be filed no later than the end of the period in which it is permissible to file a motion pursuant to Section 2-1203 of the Code of Civil Procedure. A praecipe for fee hearing shall be dismissed if a Petition for Setting Final Fees and Costs is not filed within 60 days after the filing of the praecipe. A counsel who becomes a party by filing a Petition for Setting Final Fees and Costs, or as a result of the client filing a Petition for Setting Final Fees and Costs, shall not be entitled to exercise the right to a substitution of a judge without cause under subdivision (a)(2) of Section 2-1001 of the Code of Civil Procedure.

(d) A consent judgment, in favor of a current counsel of record against his or her own client for a specific amount in a marital settlement agreement, dissolution judgment, or any other instrument involving the other litigant, is prohibited. A consent judgment between client and counsel, however, is permissible if it is entered pursuant to a verified petition for entry of consent judgment, supported by an affidavit of the counsel of record that incorporates an itemization of the

billing or billings to the client, detailing hourly costs, time spent, and tasks performed, and by an affidavit of the client acknowledging receipt of that documentation, awareness of the right to a hearing, the right to be represented by counsel (other than counsel to whom the consent judgment is in favor), and the right to be present at the time of presentation of the petition, and agreement to the terms of the judgment. The petition may be filed at any time during which it is permissible for counsel of record to file a petition (or a praecipe) for a final fee hearing, except that no such petition for entry of consent judgment may be filed before adjudication (or waiver) of the client's right to contribution under subsection (j) of Section 503 or filed after the filing of a petition (or a praecipe) by counsel of record for a fee hearing under subsection (c) if the petition (or praecipe) remains pending. No consent security arrangement between a client and a counsel of record, pursuant to which assets of a client are collateralized to secure payment of legal fees or costs, is permissible unless approved in advance by the court as being reasonable under the circumstances.

(e) Counsel may pursue an award and judgment against a former client for legal fees and costs in an independent proceeding in the following circumstances:

(1) While a case under this Act is still pending ~~pends~~, a former counsel may pursue such an award and judgment at any time subsequent to 90 days after the entry of an order granting counsel leave to withdraw; and

(2) After the close of the period during which a petition (or praecipe) may be filed under subdivision (c) (5), if no such petition (or praecipe) for the counsel remains pending, any counsel or former counsel may pursue such an award and judgment in an independent proceeding, ~~provided the complaint in the independent proceeding is filed within one year after the close of the foregoing period.~~

In an independent proceeding, the prior applicability of this

Section shall in no way be deemed to have diminished any other right of any counsel (or former counsel) to pursue an award and judgment for legal fees and costs on the basis of remedies that may otherwise exist under applicable law; and the limitations period for breach of contract shall apply. In an independent proceeding under subdivision (e) (1) in which the former counsel had represented a former client in a dissolution case that is still pending ~~pende~~, the former client may bring in his or her spouse as a third-party defendant, provided on or before the final date for filing a petition (or praecipe) under subsection (c), the party files an appropriate third-party complaint under Section 2-406 of the Code of Civil Procedure. In any such case, any judgment later obtained by the former counsel shall be against both spouses or ex-spouses, jointly and severally (except that, if a hearing under subsection (j) of Section 503 has already been concluded and the court hearing the contribution issue has imposed a percentage allocation between the parties as to fees and costs otherwise being adjudicated in the independent proceeding, the allocation shall be applied without deviation by the court in the independent proceeding and a separate judgment shall be entered against each spouse for the appropriate amount). After the period for the commencement of a proceeding under subsection (c), the provisions of this Section (other than the standard set forth in subdivision (c) (3) and the terms respecting consent security arrangements in subsection (d) of this Section 508) shall be inapplicable.

The changes made by this amendatory Act of the 94th General Assembly are declarative of existing law.

(f) Unless the Supreme Court by rule addresses the matters set out in this subsection (f), a written engagement agreement within the scope of subdivision (c) (2) shall have appended to it verbatim the following Statement:

"STATEMENT OF CLIENT'S RIGHTS AND RESPONSIBILITIES

(1) WRITTEN ENGAGEMENT AGREEMENT. The written engagement

agreement, prepared by the counsel, shall clearly address the objectives of representation and detail the fee arrangement, including all material terms. If fees are to be based on criteria apart from, or in addition to, hourly rates, such criteria (e.g., unique time demands and/or utilization of unique expertise) shall be delineated. The client shall receive a copy of the written engagement agreement and any additional clarification requested and is advised not to sign any such agreement which the client finds to be unsatisfactory or does not understand.

(2) REPRESENTATION. Representation will commence upon the signing of the written engagement agreement. The counsel will provide competent representation, which requires legal knowledge, skill, thoroughness and preparation to handle those matters set forth in the written engagement agreement. Once employed, the counsel will act with reasonable diligence and promptness, as well as use his best efforts on behalf of the client, but he cannot guarantee results. The counsel will abide by the client's decision concerning the objectives of representation, including whether or not to accept an offer of settlement, and will endeavor to explain any matter to the extent reasonably necessary to permit the client to make informed decisions regarding representation. During the course of representation and afterwards, the counsel may not use or reveal a client's confidence or secrets, except as required or permitted by law.

(3) COMMUNICATION. The counsel will keep the client reasonably informed about the status of representation and will promptly respond to reasonable requests for information, including any reasonable request for an estimate respecting future costs of the representation or an appropriate portion of it. The client shall be truthful in all discussions with the counsel and provide all information or documentation required to enable the counsel to provide competent representation. During representation, the client is entitled to receive all pleadings and substantive documents prepared on behalf of the

client and every document received from any other counsel of record. At the end of the representation and on written request from the client, the counsel will return to the client all original documents and exhibits. In the event that the counsel withdraws from representation, or is discharged by the client, the counsel will turn over to the substituting counsel (or, if no substitutions, to the client) all original documents and exhibits together with complete copies of all pleadings and discovery within thirty (30) days of the counsel's withdrawal or discharge.

(4) ETHICAL CONDUCT. The counsel cannot be required to engage in conduct which is illegal, unethical, or fraudulent. In matters involving minor children, the counsel may refuse to engage in conduct which, in the counsel's professional judgment, would be contrary to the best interest of the client's minor child or children. A counsel who cannot ethically abide by his client's directions shall be allowed to withdraw from representation.

(5) FEES. The counsel's fee for services may not be contingent upon the securing of a dissolution of marriage, upon obtaining custody, or be based upon the amount of maintenance, child support, or property settlement received, except as specifically permitted under Supreme Court rules. The counsel may not require a non-refundable retainer fee, but must remit back any overpayment at the end of the representation. The counsel may enter into a consensual security arrangement with the client whereby assets of the client are pledged to secure payment of legal fees or costs, but only if the counsel first obtains approval of the Court. The counsel will prepare and provide the client with an itemized billing statement detailing hourly rates (and/or other criteria), time spent, tasks performed, and costs incurred on a regular basis, at least quarterly. The client should review each billing statement promptly and address any objection or error in a timely manner. The client will not be billed for time spent to explain or correct a billing statement. If an appropriately detailed

written estimate is submitted to a client as to future costs for a counsel's representation or a portion of the contemplated services (i.e., relative to specific steps recommended by the counsel in the estimate) and, without objection from the client, the counsel then performs the contemplated services, all such services are presumptively reasonable and necessary, as well as to be deemed pursuant to the client's direction. In an appropriate case, the client may pursue contribution to his or her fees and costs from the other party.

(6) DISPUTES. The counsel-client relationship is regulated by the Illinois Rules of Professional Conduct (Article VIII of the Illinois Supreme Court Rules), and any dispute shall be reviewed under the terms of such Rules."

(g) The changes to this Section 508 made by this amendatory Act of 1996 apply to cases pending on or after June 1, 1997, except as follows:

(1) Subdivisions (c) (1) and (c) (2) of this Section 508, as well as provisions of subdivision (c) (3) of this Section 508 pertaining to written engagement agreements, apply only to cases filed on or after June 1, 1997.

(2) The following do not apply in the case of a hearing under this Section that began before June 1, 1997:

(A) Subsection (c-1) of Section 501.

(B) Subsection (j) of Section 503.

(C) The changes to this Section 508 made by this amendatory Act of 1996 pertaining to the final setting of fees.

(Source: P.A. 89-712, eff. 6-1-97.)

Section 99. Effective date. This Act takes effect upon becoming law.