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ILLINOIS STATE BAR ASSOCIATION

FAMILY LAW

The newsletter of the Illinois State Bar Association's Section on Family Law

Outgoing Chair's column

By Ross S. Levey

I cannot believe how fast this year has flown by. I have had the privilege of being involved with the Family Law Section Council for the past 10 years. As Chair, I have had the privilege of working with some fantastic people on the 2009-2010 Section Council and applaud their hard work and dedication in trying to improve the practice of family law. A special thank you to the many judges on the council who have volunteered their time and put forth outstanding effort. Their input is greatly valued. The Section Council accomplished a lot this session and look forward to seeing the changes we proposed ultimately become law. While my time as Chair is done, I look forward to this upcoming year. I wish the incoming Chair, Rory Weiler, the best of luck and thank him for the opportunity to be a part of a sub-committee addressing Section 513 of the IMDMA. Please enjoy this issue of the newsletter and I look forward to the next. ■

Ross S. Levey
Yavitz & Levey, LLP

Chair's column

By Rory Weiler

By way of introductions, I am Rory Weiler, incoming chair and steward of the Illinois State Bar Association's Family Law Council for the upcoming 2010-11 year. I am excited about the opportunity to lead the finest family lawyers in Illinois for the next year, and I confess I have some trepidation, and a great deal of very uncharacteristic humility about the assignment. I want to thank incoming ISBA president Mark Hassakis for this honor, and pledge to do my best to be worthy of the appointment and the confidence he has expressed in me.

That will, of course, be a tall order, given the accomplishments of my predecessors in office. Specifically, I want to thank and acknowledge the outgoing chair, Ross Levey, who led us through an active, and sometimes controversial year with great accomplishment and aplomb. During Ross' tenure, the Council was able, with the invaluable assistance of our legislative liaison Jim Covington, to successfully shepherd a bill significantly modifying, for the first time in the more than 25 years since its enactment, the Illinois Parentage Act of 1984. Ross also guided substantial changes to Section 504 of the IMDMA through our Council, and up the chain of command at ISBA, where we hope favorable comment will result in these changes becoming part of the ISBA legislative package. These are but two of the many achievements on which Ross took the lead, and I congratulate him on a job well done.

The upcoming year promises to be equally active, and currently the Council is considering statutory changes designed to clarify and codify the law of dissipation, along with the addition of a completely new provision to the IMDMA that would enable the courts to consider family pets as something more than mere chattel, and empower the court to consider the human element when it comes to the distribution of family pets between consenting and non-consenting parties. We will also be considering modifications

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***(Notice to librarians:** The following issues were published in Volume 53 of this newsletter during the fiscal year ending June 30, 2009: July, No. 1; September, No. 2; November, No. 3; December, No. 4; February, No. 5; April, No. 6; May, No. 7).*

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Chair's column

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to section 604(b) to give the court greater authority to monitor and approve expert's fees and to insure the appearance of expert's at trial. Discussions are ongoing regarding suggesting modifications to the Illinois Mental Health and Developmental Disabilities Confidentiality Act which would specifically exclude the reports of mental health experts from the confidentiality provisions of the Act.

Our Council is one of our Association's most active when it comes to the presentation of Continuing Legal Education Programs, and we have, and we will continue to employ innovative new concepts for the conduct of CLE. Our CLE presentations are done almost entirely by Council members, and if you've ever had to give a speech or presentation, you no doubt know the expenditure of time and effort preparing and presenting involves. This task is an ongoing one, and the upcoming programs promise to be every bit as informative and entertaining as in the past. In fact, the articles you read in this newsletter form a part of that effort. Our CLE tries to alert lawyers to changes in the practice as well. Our group will be right alongside you in dealing with the implementation of the new "unbundling" provisions of the new Rules of Professional Conduct, which became effective last year. We have already begun our discussions and intend to be the voice of family lawyers addressing the peculiar issues that this concept raises for those of us in the divorce practice.

The legislature's Family Law Study Committee (no relations, as "Da Coach" would say, to our "Council") is scheduled to give its report in December of 2010. That Committee is charge by the legislature with reviewing the entire IMDMA and making recommendations as to changes and modifications to the IMDMA. The publication of the report, and the recommendations of the Committee, will no doubt reverberate throughout the state, and our Council is planning on being ready to review and comment upon legislative changes suggested by the Committee. Reviewing, commenting upon, suggesting changes to, and proposing legislation is probably the most significant, and certainly most time consuming task of the Council. Our fifty members spend countless hours engaged in this exercise, and the result of their efforts, and their commitment to the cause, is to improve the lot in life of divorce litigants and their lawyers alike.

While nearly all of this work goes unnoticed, the end product of the efforts of our Council members rarely does. Within the last year, our Council members drafted and secured the passage of sweeping changes to the interim and attorney's fees provisions of the IMDMA which took effect in January. We reviewed dozens of pieces of legislation which were introduced, and we commented upon, criticized and sought changes to, if not the outright defeat of, most of them. This somewhat thankless task not only improved family law in Illinois through new and necessary changes, but also prevented bad legislation from being adopted.

The purpose of this preamble is not to pat ourselves on the back, or ask that you do so. Rather, I think it is important for our colleagues in the ISBA who do not serve on our Council to know what the Council is about and what it is doing. I believe this to be important, because in the final analysis, we are serving the interests of the general membership, specifically you. Many of the items we discuss, and much of the success we have had over the years in developing CLE, legislation, rules changes and other matters affecting the family bar has been the result of inquiries or comments from ISBA members. We rely upon your eyes, ears and experience in great measure to bring to our attention problems that have arisen which require action from the legislature, the Supreme Court, or the other agencies and individuals that affect our practices. Your input is an important part of the ongoing process we engage in to try to improve the family law practice in Illinois.

Yes, our Council views our practice from the perspective of practitioners from Cary to Cairo, Moline to Marshall. Our members are drawn from throughout the state, and represent all geographic quadrants of the state. As a result, our Council is constantly discussing and trying to address family law issues which not only impact some areas of the state and not others, but also the differences in the day to day practice throughout the state. It is our goal to bring some uniformity to the practice, and in furtherance of that goal, we have developed and forwarded to the ISBA Supreme Court Rules Committee for action, a uniform comprehensive financial declaration for use in divorce cases, and a proposed Supreme Court Rule which would implement use of the form state wide.

I would like for us to be your sounding board, and the answer people for you, the practitioner, and I encourage you to contact me with your thoughts, concerns, questions, problems, complaints, suggestions and anything about the family law practice which you think we need to know about, or about which you think some action needs to be taken. My e-mail address is rweiler@foxvalleylawyers.net, and you can send your comments to me. I promise you your thoughts will be heard, and if there is some action which we can take to improve the practice, we will do our best to make that happen. Our group is a tremendously talented, experienced, and diverse group of some of the best family law professionals I have ever met. I have enjoyed working with them in the past, and I know that much more work lies ahead of us. I look forward to what I hope will be an extremely productive year. I hope that you will help me in achieving that goal. ■

Attorney fees: Avoiding pitfalls to preserve the right of contribution

By Douglas B. Warlick

Although there has been a significant amount of published information explaining how to obtain attorney fees in domestic relations cases, including articles regarding the relatively recent revisions affecting interim fees, there does not appear to be any recent literature warning family law attorneys how they can lose their right to recover fees from the other party. This article will address how bad business decisions may affect one's ability to recover fees from the opposing party.

Any analysis of the ability to obtain fees must begin with the premise that attorney fees are the primary responsibility of the party for whom the services are rendered. From there statutory exceptions have been developed to permit one party to recover fees from the other party. Historically, case law established that the right of contribution was based upon the other party's ability to pay coupled with the movant's inability to pay in accordance with Section 508(a). 750 ILCS 5/508(a).

Equally well established is the absolute right to recover fees under Section 508(b) that were wrongfully generated by the other party's non-compliance with an order without compelling cause or justification. 750 ILCS 5/508(b). Later the right to recover interim attorney fees developed essentially as a vehicle to level the playing field, particularly in pre-decree divorce cases pursuant to Section 501(c-1). 750 ILCS 501(c-1). Subsequently, contribution awards were governed by principles set forth in Section 503, and there have been recent revisions to that statute as well. 750 ILCS 5/503.[1]

While fees owed to you by your own client are dischargeable in bankruptcy, fees owed to you by the opposing party in a domestic relations case are not, as those fees are deemed a domestic support obligation under Section 523 of the U.S. Bankruptcy Code. Clearly, the advantage of obtaining a non-dischargeable domestic support obligation is an inducement to always seek unpaid fees from the other party. But there are limitations restricting the opportunity to obtain that judgment, to wit: First, it is a right that belongs to the client, not the attorney; and second, it can be lost through overly aggressive litigation.

I. Client's Right

The plain language of the statute provides,

> 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 [750 ILCS 5/503]. Fees and costs may be awarded to counsel from a former client in accordance with subsection (c) of this Section. 750 ILCS 5/508(a).

Insofar as the right to recover attorney fees from the other party must be strictly construed pursuant to statute, then the literal language of the statute does not provide for a contribution award in favor of a former attorney against the opposing party without that former client's cooperation. Although there is no case law interpreting the current statute in this regard, it clearly follows that since the contribution award is sought by the client or on behalf of the client and the former attorney no longer represents that client, a petition seeking a contribution award could not be filed by a former attorney.[2] That is true in spite of the language of Section 503(j)(5) that provides a contribution award may be payable to either the party or the party's counsel or jointly. 750 ILCS 5/530(j)(5). As a practical matter a party typically has an incentive to seek contribution even for the fees generated by former counsel; however, under the current statute the former client must initiate the request.

II. Unnecessary or improper litigation

The overly zealous litigator may also lose the ability to obtain fees from the other party. Our Supreme Court upheld the appellate and circuit court finding that because both parties were unreasonable, litigious and quarrelsome, resulting in an unnecessarily expensive divorce, each party was responsible for his/her respective fees and costs. *IRMO Schneider*, 214 Ill.2d 152 (2005). The reviewing courts have consistently held that the ability to pay fees will not be considered

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when a party has needlessly precipitated litigation or if the result would be inequitable. See also *IRMO Cotton*, 103 Ill.2d 346 (1984).

However, not every act of misconduct will result in a contribution award. In 2009, the Third District Appellate Court found that the failure to pay child support was insufficient to shift the burden to pay the other party's fees. *IRMO Reimer*, 387 Ill.App.3d 1066 (3rd Dist. 2009). In *Reimer*, the mother lost custody in post decree proceedings and she failed to pay child support before and after her petition to abate was granted (she was unaware of Supreme Court Rule 296 at that time and the support arrearage continued to accrue to nearly $60,000). The trial court ordered her to pay the father's fees but the Appellate Court distinguished other decisions where misconduct led to a contribution award, and reversed the trial court.

Nevertheless, the prevailing view remains the same, namely, that contribution awards ought to be denied regardless of relative abilities to pay when a party engages in improper tactics, including unnecessary litigation or with a campaign of economic coercion. In 1972, long before the enactment of the IMDMA, the First District Appellate Court stated,

> Similarly, we believe the defendant in the instant case may make use of whatever procedures are open to him under the law, but if there is a lack of good faith he is under an obligation to pay for the resulting litigation. *Albert v. Albert*, 10 Ill.App.3d 539 (1st Dist. 1972).

Also see *Van Fleet v. Van Fleet*, 50 Ill.App.3d 172 (3rd Dist. 1977), and *IRMO Armstrong*, 278 Ill.App.3d 53 (3rd Dist. 1996), where a partial contribution award was made based upon Section 508(a). What has changed, however, is the statute. Furthermore, recent decisions have also relied upon Section 508(b), quoting the statute in the decision,

> If at any time a court finds that a hearing under this [s]ection was precipitated or conducted for any improper purposes, 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. 750 ILCS 5/508(b). *IRMO Haken*, 394 Ill.App.3d 155 (4th Dist. 2009).

The Fourth District Appellate Court likewise quoted the statute in another case, again correcting the typo in the statute by replacing the uppercase "S" with a lower case "s," in order to clarify the fact that the sanctionable misconduct under Section 508(b) applied to any conduct under the IMDMA, and not solely to Section 508 petitions. See, *IRMO Mouschovias*, 359 Ill.App.3d 348 (4th Dist. 2005). Then on January 10, 2010, Section 508(b) of the statute was amended to change the word "Section" to "Act," to further clarify that improper conduct shall result in the award of attorney fees.[3]

In *Mouschovias*, the appellate court upheld the trial court's decision that the husband had unreasonably continued a custody dispute after the court ruled against him on temporary custody, and he was ordered to contribute $40,000 toward the wife's fees. In *Haken*, the Court found that the husband needlessly increased the cost of the litigation by retaining experts at a tremendous expense (securing an opinion favorable to him), and then settling the case without using their testimony and agreeing to residential custody with the mother. In *Haken*, the father argued that Section 508(b) was inapplicable because he did not violate an order and no hearing was conducted for an improper purpose. The appellate court stated in dicta that the father's interpretation of Section 508(b) was too limited, but they affirmed the contribution award based upon vexatious litigation under Section 508(a). The Court stated,

> We believe the language in section 503 allows a court to consider an "unnecessary increase in the cost of litigation" when determining a fee award under section 508(a). Section 503 provides "[the court] also shall divide the marital property . . . in just proportions considering all relevant factors . . . Unnecessarily increasing the cost of litigation is a relevant factor in the division of property as well as in allocating attorney fees. *Haken*.

Therefore, even though both parties had the ability to pay their respective fees in *Haken*, the court found that the litigiousness of the husband merited a contribution award. Thus, once again, if a litigant engages in any improper conduct or improper litigation techniques, the ability to pay is not relevant in connection with a petition for a contribution award.

However, the *Haken* decision is potentially explosive, especially within the Fourth District, because it went beyond vexatious litigation finding that there is no statutory requirement to show inability to pay as a prerequisite to contribution even in cases not involving the overly litigious litigant. The appellate court quoted the trial court stating,

> The entire "inability to pay/ability to pay" mantra has been carried over from prior case law established before the substantial amendments to the attorney fees provisions of the Dissolution Act over the years, including the "Leveling the Playing Field" provisions in 1997. This has been further muddled by the extremely loose language in this regard in many appellate opinions. *Haken*.

The court further determined that the analysis in Section 503(d) for non-maintenance cases (and Section 504 in maintenance cases) enables a trial court to examine the relative financial standing of the parties which is all that is required by statute. Indeed, Section 508(a) does expressly state that criteria and does not refer to one's ability to pay. In other words, under Section 508(a) contribution awards are governed by Section 503(j), and per *Haken* there is no need to address the ability to pay in any contribution hearing. That is clearly a departure from all of the other case law and something to at least be aware of hereafter.

In conclusion, the *Haken* court's interpretation of the statute relative to a party's ability to pay raises serious questions beyond the vexatious litigation issue. Perhaps the same result or contribution award would typically be reached with an analysis of the Section 503 factors, but under *Haken*, the trial court would certainly have much greater discretion determining such awards.

For the purpose of this article, however, the family law attorney with an exhausted retainer and mounting receivables that wants a non-dischargeable fee award needs to follow the case to the end in order to prosecute a contribution petition on behalf of the client and the attorney, and at the same time, avoid overly zealous, unnecessary litigation.

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1. This article is not intended to review the full scope of contribution permitted under 503(j) or interim fees under 501(c-1) or 508(a).

2. This is a different result than that which was obtained under the prior statute before the

sweeping revisions made in 1997 and thereafter. See *Lee v. Lee*, 302 Ill. App.3d 607 (1st Dist. 1998); and *Heiden v. Ottinger*, 245 Ill.App.3d 612 (2nd Dist. 1993). These cases address a former attorney's right to file a contribution claim against his/her former opposing party under peculiar situations. In *Heiden*, the former client had no ability to pay and that client essentially conspired to cheat the attorney out of his right to recover any fees. The Lee court interpreted the statute based upon the provisions of the Act as it existed prior to the 1997 amendments, and it permitted former attorneys to recover against the former opposing party once again after the trial court heard evidence of inability to pay.

3. While this article is not intended to address Illinois Supreme Court Rule 137 that imposes sanctions for signing any pleading, motion or other paper improperly as set forth in the Rule, family law attorneys are reminded that any gaps left open by Rule 137 are filled in by Section 508(b).

Who is going to pay for college?

By Kelli E. Gordon

College expenses are increasingly being litigated as the need for a college diploma increases. Twenty two of the 30 fastest-growing career fields require some post-secondary education. Section 513 sets forth the factors the court will analyze when determining the allocation of college expenses among the parents. You should ask your client the following questions and start building your case from there.

1. What school is the child attending?
   - Private vs. Public?
   - In-State vs. Out-of-state?
   - Why are they going there?
2. What are the "educational expenses"?
3. What are the financial resources of the parties?
4. How much can the child pay?

What school is the child attending?

The first fact you will need to ascertain is where the child will be going to school. If the child has applied to several schools and is waiting to hear back to see if they have been accepted, you can still file the petition and list all of the schools. By the time you complete discovery on the parties' finances, the child should know where she will be attending.

The courts have previously favored the costs of in-state schools over out of-state schools. For example, in 1986, the Supreme Court in *In re Support of Pearson*, 111 Ill.2d 545, 96 Ill.Dec. 69 (1986), found that private school tuition was an inappropriate benchmark for determining the tuition award, especially when there were less expensive state institutions and where there was no showing that the private institution was superior to the state institution.

However, there is a trend away from this distinction and the courts are looking more at why the child is wanting to go to that school. If the child wants to attend a specialized school, you will need to have testimony as to how that school is specialized and different from a less expensive school. In *Sussen v. Keller*, 382 Ill.App.3d 872, 322 Ill. Dec. 764 (4th Dist. 2008), the child wanted to go to an out-of-state school for automotive training. The out-of-state program was 15 months and was going to cost approximately $34,000. The Respondent father was able to show that the in state school was only going to be approximately $17,000 per year for a 21-month program. The Respondent father presented evidence of all of the classes in the two specific programs and compared them showing that they were similar programs. If the Petitioner fails to present evidence as to why the more expensive program is appropriate, then the Respondent only needs to show the costs of an in-state/public school. *In re Marriage of Schmidt*, 292 Ill.App.3d 229, 226 Ill.Dec. 152 (4th Dist. 1997).

If possible, you may want to have a dean from the school testify regarding the specifics of the particular program the child wishes to follow. Depending upon the program, it would also be helpful to have the Dean testify as to the employment placement rate after graduation. See *In re Marriage of Spear*, 244 Ill. App.3d 626, 184 Ill.Dec. 331 (4th Dist. 1993).

What are the "educational expenses"?

Once you have determined where the school is and why the child wants to attend that school, you must delve into the expenses. In *In re Marriage of Dieke*, 381 Ill.App.3d 620, 320 Ill.Dec. 484 (4th Dist. 2008), the court defined "college expenses" as tuition, fees, room, board, books, personal expenses, and transportation costs; medical and dental insurance contribution, uninsured medical, dental, vision, orthodontia and other health related expenses not covered by medical and dental insurance and to make reasonable contribution toward living expenses of the children during the summer months. Virtually all colleges and professional institutions have Web sites that have the costs of the different programs. Of course, there are some programs that have extra costs associated with a particular program. You need to determine what, if any, extra costs are associated with that program. For example, the airway science degree at the University of North Dakota requires a flight instruction class. The cost of the flight instruction class was not part of the "tuition." However, Petitioner successfully argued that the class was needed for him to receive a bachelor degree in airway science. *In re Marriage of Dieter*, 271 Ill.App.3d 181, 207 Ill.Dec. 848 (1st Dist. 1995).

In re Marriage of Holderrieth, 181 Ill.App.3d 199 (1st Dist.1989), the parties had a settlement agreement providing the father would pay for the "college or professional school" of the child. The program the child was attending at Denver Automotive and Diesel College did not include any courses in English, literature, social studies, math or the fine arts. The court did a lengthy analysis of the definitions of "college" "professional school," vocational school" and "trade school." Ultimately, the court held that the automotive school was not a college or professional school. Therefore, under the settlement agreement, father did not have to the pay the expenses. The court further stated that if the parties wanted to include such a school they should have had a boarder term such as "post highschool education" or specifically included "vocational" school. However, two years later in *In re Marriage of Oldham,* 222 Ill.App.3d 744, 165 Ill.Dec. 206 (1st Dist. 1991), a similar issue was raised. Again, this was a marital separation agreement that provided language regarding education. The settlement agreement provided that father would pay for "all necessary and reasonable expenses in-

cident to an education at the college or university level for each of the aforesaid minor children." The children were going to DeVry Institute of Technology. Respondent argued that DeVry was not a "college or university" pursuant to the settlement agreement. However, the mother presented evidence from the Dean of academic affairs that DeVry did offer a baccalaureate degree. Moreover, the students were required to take traditional courses such as English, speech and writing. The court in this case, citing to the lengthy definitions of a "college" in *Holderrieth* found that DeVry was a "college."

What are the financial resources of the parties?

Even though children do not have an absolute right to college education *(In re Marriage of Spear*, 244 Ill.App.3d 626, 630, 184 Ill. Dec. 331 (4th Dist. 1993)), the courts generally will find since the payor spouse had been paying child support, then the payor can continue to pay at least something to college expenses. The ability to pay is determined based upon the party's resources at the time of the hearing. A court may award sums of money out of the property and income of the other parent. For example, in *Sussen v. Keller*, 382 Ill.App.3d 872, 322 Ill.Dec. 764 (4th Dist. 2008), the court did take into consideration that the father was not working, but he had a Harley Davidson motorcycle worth approximately $10,000 and a trust worth $5,000. Father was getting disability of $300 per week. The mother earned approximately $400 per week and $720 per month from boarders. Court ordered him to pay one-third of the child's college expenses, which amounted to approximately $6,000 for the 21-month program. The court relied on the fact that he had property that could be used for the college expenses.

There has been a noticeable trend with regards to a new spouse's income. Prior to 1980, the courts did not look at the new spouse's income. In *Robin v. Robin*, 45 Ill. App.3d 365, 371-372, 3 Ill.Dec. 950 (1st Dist. 1977), the court held the current spouse's income is not considered in a proceeding to modify support because the new spouse has no legal obligation for the support of step-children. However, in 1980 a trend started in that the courts started to look at the payor's new family expenses in determining the amount money available for college. *In Greiman v. Friedman*, 90 Ill.App.3d. 941 46 Ill. Dec. 355 (1st Dist. 1980), the appellate court found that the trial court abused its discretion in not allowing testimony about the father's financial obligation to his second family. Also, in *In re Marriage of Garelick,* 168 Ill. App.3d 321, 119 Ill. Dec. 76 (1st Dist.1988) the appellate court reviewed the non-custodial parent's current spouse's income.

In 2000, the courts began also to look at the payee's new spouse's income. The court in *In re Marriage of Drysch*, 314 Ill.App.3d 640, 247 Ill.Dec. 409 (2nd Dist. 2000), did look at the new spouse's income. In *Drysch*, the father and his new spouse made approximately $92,000. Mother and her new spouse made approximately $621,000, of which $50,000 was mother's income. The child was going to Purdue, costing $20,000 per year. The court considered that the mother had funds for the expenses since her new husband was supporting her. The court ordered father to pay only 10 percent of the college expenses.

Likewise in 2001, *Street v. Street*, 325 Ill. App.3d 108, 258 Ill.Dec. 613 (3rd Dist. 2001), the court also recognized that previous cases did not look at the new spouse's income, but with *Drycsh*, the new trend was moving away from *Robin* and leaning towards reviewing the spouse's income. The court, therefore, considered that mother had a new spouse that was helping her support herself. Specifically, the court reasoned, "to the extent that the current spouse of the payee has income or assets which are or can be used to contribute to the living expense of the payee, his or her income and assets should be considered by the court in making its determination regarding the amount the payee is able to contribute to the child's education." *Street*, 325 Ill. App. 3d at 114.

In *In re Marriage of Cianchetti*, 351 Ill. App.3d 832, 286 Ill.Dec. 807 (3rd Dist. 2004), the mother only made $42,000 compared to father's $75,000. However, the mother's new spouse earned approximately $140,000 per year. Mother admitted that the majority of her money was spent on the parties' daughters, buying them clothes and taking them on vacations. Father was ordered to 50 percent of the children's schooling.

How much can the child pay?

The courts have found that the children have a duty, when going to an expensive school, to lessen the load on their parents. In *In re Marriage of Calisoff*, 176 Ill.App.3d 721, 126 Ill.Dec. 183 (1st Dist. 1988), the children were both attending the University of Southern California at the time of the divorce. The daughter received a scholarship and her tuition was going to be $6,500. The son, however, did not receive any scholarships or loans; his cost was going to be $20,000 per year. The trial court ordered father to pay all of the college for the children excluding scholarships and loans. The appellate court remanded the case, stating that while $6,500 may be equivalent to the annual tuition and expenses at an in-state school, $20,000 is not. The appellate court went on to say that the children themselves have an obligation to lessen their parent's financial burden in this regard.

On the other hand, the courts have said that children should not have to go into debt. In *In re Marriage of Korte*, 193 Ill.App.3d 243, 140 Ill.Dec. 255 (4th Dist. 1990),the child was going to SIU and after scholarships she had a shortfall of approximately $3,500. Her admittance into the SIU was probationary. She had not applied for loans and she did not intend to work while going to school. Since the tuition was not $20,000 per year like in *Calisoff* and was only $3,500, which the father had the ability to pay, the court found that there was no error in not requiring the child to contribute money.

College expense litigation will continue to expand as different kinds of education becomes available to students. The goal should be an education, whatever kind it maybe, that will advance the child so that neither party has to continue supporting the child. ■

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