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Maintenance, child support reform sounds good, but it's complicated

Illinois' maintenance and child support statutory scheme is complicated and loaded with detail. Recent legislative changes intended to improve, simplify and arrive at predictable decisions has instead complicated the process, made decision-making more difficult and is of questionable fairness.

As one studies and delves into the content of 750 ILCS 504 and 505, one finds more complications and areas for confusion than those apparent on the surface. Both sections' confusing and distracting paragraphs and subparagraphs, numbering and lettering, reflect how this legislation was patched with compromises of competing legislative philosophies.

The purpose of this article is to raise the reader's awareness of the depth of these complexities. First, with Section 504 dealing with maintenance and second, with Section 505 dealing with child support, which is the most complicated and packed with potential litigation.

As a matter of policy, the Illinois maintenance legislation adopted in 2016 and recently amended, effective this July, attempted to create for most cases a streamlined option for courts and parties to employ in determining how much and for how long maintenance should be paid or received.

The first step in dealing with maintenance is to determine whether there should be any maintenance at all (5/504(a) and (b-2)(1)). In doing so, the court must make findings for its reasons for granting or denying maintenance referring to the factors set out in 504(a)(1)-(12). If maintenance is denied, there is no more to do. If it is granted, the court goes to the next step.

The next step deals with the mandatory presumption that

using the guideline formula results in the proper amount and duration of maintenance. Use of the formula is required when the parties' combined income is less than \$250,000 and, from this July forward, the parties combined income is less than \$500,000.

This covers a high percentage of people divorcing in Illinois. The measure for determining the duration of maintenance is the duration of marriage. The statute defines the marriage's duration as being from the date of marriage to the date the dissolution action is filed.

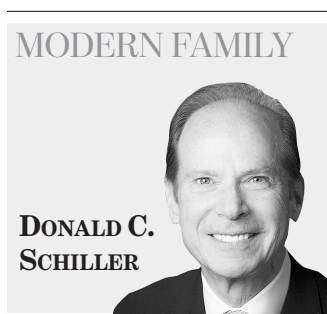
Depending on the marriage duration, the duration for maintenance payments are to be equal to graduating periods of between 20 percent and 80 percent of the duration of the marriage. For periods of more than 20 years, permanent maintenance may be ordered at the court's discretion (504 (b-1)(1)(B)).

If the maintenance is ordered where the marriage is less than 10 years at the time of filing, the court may make the duration period nonmodifiable (b-4.5). The presumptive maintenance uses a formula taking gross income as defined in child support statute 5/505(a)(3)(A) and (3.2). This would include not only actual gross income, but "potential" income for those under employed or unemployed — a major potential issue for litigation.

The formula requires computing 30 percent of the payor's gross income and subtracting from that 20 percent of the payee's gross income with the difference being paid to the payee, so long as the payee is not receiving more than 40 percent of the parties' combined gross income.

Be sure to have a calculator with you at all times.

The court is put in a position



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of needing to make findings explaining reasons whenever it does not follow guidelines. The findings must include what the amount and duration of maintenance would have been using the guideline ((b-2)(2)).

Now, turning to child support Section 5/505, whenever child support is to be determined, maintenance, if any, must be determined first. The principal reason for this is that spousal maintenance received in the proceeding is part of the calculation for "net income" of the recipient as an adjustment downward for the payor (5/505(a)(3)(F)(II)).

To do guideline child support calculations, one must determine the "gross income" and from that calculate the "net income" for each party (5/505(a)(2)(B)). As discussed, "gross income" is broadly defined and includes "potential" income for either party who is unemployed or underemployed (5/505(a)(3.2)).

Next, from each parties' respective gross incomes, there are reductions for permissible deductions and adjustments to get to each parties' "net income"

(505(a)(3)(B)). Specifically, the following may be subtracted: state and federal income taxes, Social Security and the like. These are standardized and netted by using the Adopted Income Conversion Table published by the Illinois Department of Healthcare and Family Services (505(A)(3)(C)).

As an alternative, these deductions may be individualized (505(A)(3)(D)) if the parties agree or, if they do not agree, as ordered by the court (another potential for litigation).

In addition, "adjustments" may be subtracted to get to "net income" for multifamily (505(a)(3)(F)(I)) and spousal maintenance payments (II). For the multifamily adjustment (Subsection (i)), the adjustment is simple as one may subtract what is paid under a court order. However, the multifamily adjustment (Subsection (ii)) would be a subtraction for payments without a court order and another potential for litigation.

The parent with a child from a different relationship may deduct what is actually paid to the other parent or, if the child lives with the party, the lesser of what the party spends for that child or 75 percent of what would have been the child support guideline using the party's income alone without subtracting this adjustment, whichever is less.

This lays the seeds for litigation and the issue of who spent what for whom can waste a lot of time. Even after any dispute and the multifamily adjustment is calculated, the court on finding of hardship for the child can vary from the calculation.

Once the "net income" for each party is determined, the statute sets out the computations for arriving at the "basic child support obligation" in 5/505(a)(1.5). Both parties' net incomes are combined. Then we

must turn to the Income Shares Schedule Based on Net Income published by the Illinois Department of Healthcare and Family Services.

On that schedule, the ranges for combined net income are in the far left column. Once the correct range of combined net income is found, look across the schedule to the column showing the relevant number of children. At the intersection of those columns is the applicable "basic child support obligation."

Once this is found, each party's percentage of their combined income must be determined. Each party's obligation for the "basic child support" is equal to their respective percentages of the combined income used for determining support from the Income Shares Schedule. The party receiving the support does not actually pay his or her percentage share to the party who is the payor, as it is presumed they will spend it directly on the child.

Guidelines are mandatory, unless the court makes detailed, specific findings that application of the guidelines is inappropriate (3.4). The guidelines go up to combined net income of \$30,024.99 per month. Basic

child support for children whose parents' combined net income per month exceeds the maximum is not to be less than the amount based on a combined income of \$30,024.99 per month, and may be more at the court's discretion (3.5).

If the foregoing is not enough, Section 5/505 provides for child support adjustments downward if the payor has the children for 146 or more overnights a year. This is treated under the statute as shared physical care. For this, another formula increases the "basic child support" by 50 percent and then computes each party's share of that based on their respective percentages of the combined net income.

Then, it is further adjusted by the percentage of overnights the payee has and the payor is to pay the payee for their share of the basic child support a sum equal to the percentage of overnights the payee has, multiplied by their share of the previously computed amount calculated from the parties' percentages of net income.

It should be clear by now that in shared physical care cases, lawyers not only need their calculators but well-disciplined minds.

Also, there is a formula for

split custody when children are divided and living with the parents separately (paragraph 3.9). Here, parents compute what would be their respective basic child support obligation using their respective separate incomes. Then, the parent with the greater obligation would subtract the payee's obligation from what they would owe and pay the difference.

Determining the parties' respective shares of the basic child support obligation not only needs knowledge, negotiation and litigation skills, but being computer savvy and having a great software program. Otherwise, be prepared to spend a day just on the math.

The shared parenting downward adjustments are particularly concerning as they incentivize parents to count the number of days and nights a child is with them when negotiating their allocation of parental responsibilities and parenting time.

One parent may want to get a child support discount, while the other would not want to agree to anything that gives the other a break. Giving incentives for this is contrary to the long history of advising parents that quality time is more important than

counting nights, hours or days.

Again, courts are mandated to follow guidelines unless they make findings providing reasons for deviating from them (3.4). The findings must be in writing and the court must specify why following the guidelines would be inequitable, unjust or inappropriate.

The statute gives examples of things that could lead to deviations such as where there may be extraordinary medical expenditures for party or child ((3.4)(A)) and expenses for a special needs child ((3.4)(B)).

This article is not intended to cover all of Sections 504 and 505. There are many more provisions and likely obligations such as costs for medical insurance, medical expenses not covered, child care and extracurricular activities. The purpose here is to raise awareness of just how burdensome and complicated the process has become.

The statutes only pay lip service to judicial discretion. The statutory scheme makes deviating from guidelines more difficult and burdensome for courts, while not saving as much court and lawyer time and costs as intended because there is so much within them to litigate.