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The new Illinois marriage act: Striving for accountability, prompt resolutions

A significant change in the law as a result of the recent changes to the Illinois Marriage and Dissolution of Marriage Act creates accountability to counteract abuses that were unfortunately commonplace.

Parties have been required to present affidavits as to their income, expenses, assets, debts and claims for many years. Individual counties had put in place forms to be filled out for these disclosures (commonly referred to as "financial disclosures" or "financial affidavits"). These forms have varied from county to county, although the information sought was similar.

The first change in the law is the requirement that uniform forms be developed and used throughout the state for financial disclosures during dissolution of marriage and related proceedings (750 ILCS 501(a)(1)). Even though the changes to the law went into effect on Jan. 1, this form was only recently approved by the Illinois Supreme Court. It can be found at illinoiscourts.gov.

A more significant change in the law is the codification of local rules that had been enacted in many circuits that such forms and disclosures be accompanied by supporting documents as to the information disclosed (750 ILCS 501(a)(1) "shall be supported by documentary evidence including, but not limited to, income tax returns, pay stubs, and banking statements").

This is independent of any discovery requests that may be

made. This is a mandatory disclosure to be made by each litigant. In some counties (Cook and DuPage, for example) discovery is not allowed to be initiated without leave of court until the disclosure has been tendered to the other side.

The most significant changes relating to support is the process for obtaining temporary support and accountability required by this process. Like the prior statutory modifications regarding interim fees, requests for temporary support now "shall be dealt with on a summary basis based on allocated parenting time, financial affidavits, tax returns, pay stubs, banking statements and other relevant documentation" (750 ILCS 501 (a) (1)).

Absent special findings by the court, the determinations will be made based upon the pleadings, supporting documents submitted and the arguments of counsel. Because these orders are temporary

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and therefore interlocutory in nature, the orders can be modified during the proceeding as additional information is developed as the court, in its discretion, deems appropriate (750 ILCS 5/501(d)(2)).

MODERN FAMILY

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An exception to the summary determination of the issues is built into the statute. The statute in fact addresses two separate types of hearings. The statute provides that "an evidentiary hearing may be held upon a showing of good cause." This language requires the

for the granting of an evidentiary hearing. This will be up to the court's discretion.

The second type of hearing is to provide for the new statutory requirement of accountability. The statute (750 ILCS 5/501(a)) provides that "[u]pon motion of a party, a court may hold a hearing to determine whether and why there is a disparity between a party's sworn affidavit and the supporting documents." This section of the statute does not require the hearing to be evidentiary. This language is in the same section of the statute that provides if the court finds that "a party has intentionally or recklessly filed an inaccurate or misleading financial affidavit," it is mandatory that the court impose "significant penalties and sanctions, including but not limited to, costs and attorney's fees resulting from the improper representations" (750 ILCS 501(a)(1)). It is important to note that the sanctions are on the "party." The party is the person signing the affidavit as to his or her financial information.

The focus of the revisions to the temporary relief statute is to provide an expeditious mechanism for the resolution of temporary issues based on accurate and complete information to enable the parties and the court to focus on the resolution of the entire matter. To protect the mechanism, the parties are required to be held accountable for providing less than truthful or accurate information. These are lofty goals. It remains to be seen how this will be implemented.