F A M I L Y S U P P O R T
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The Official Newsletter of the Illinois Family Support Enforcement Association

Vol. 23 **June, 2011** **No. 1**

A Guide to the New Illinois Civil Union Law

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Reprinted with permission of the Illinois Bar Journal,
Vol. 99 #5, May 2011.

The recently enacted and soon-to-be effective Illinois Religious Freedom Protection and Civil Union Act[1] (the "act" or the "Civil Union Act") is a relatively short, relatively simple, and exceptionally comprehensive piece of legislation that creates a status analogous and equal to marriage under Illinois law - without regard to gender - conferring all the rights, interests, benefits and burdens available to spouses without, or short of, marriage itself.

It's called a "civil union." Implicitly promising equality as a matter of state law, under the new act two persons - of either the same or opposite gender and both at least 18 years of age - may elect to enter into a civil union rather than a marriage. And those who do - as well as those who are already married, civilly unioned or united,[2] domestically partnered or in some analogous status conferred by the laws of another state or country - will be entitled to all of the recognitions and benefits available under Illinois law to spouses, including that which is arguably the most important if and when the time comes: divorce.

A close reading of the new act reveals that, as to both policy and formation, it is nearly identical to the existing Illinois Marriage and Dissolution of Marriage Act (IMDMA)[3] (with few relatively inconsequential exceptions discussed below) and, as to dissolution in appropriate instances, expressly incorporates applicable provisions of the IMDMA. If, as is widely assumed, the primary intent of the new law is to provide same-sex couples with the same rights and benefits afforded to opposite-sex couples under the state's laws,[4] it has accomplished just that.

In each "stage" of a civil union - formation, recognition while intact, and dissolution - the procedure by which it is obtained, maintained, and dissolved, including the substantive rights, benefits, and duties and obligations of the parties, differs little from that provided by Illinois law to parties to a marriage. As a

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matter of statutory construction, there isn't much the act does that the IMDMA doesn't do for those who are able to marry under Illinois law. There appear to be only two differences - one of which is an inherent and likely intended consequence of the new law, and the other an extraneous and unavoidable one, whether contemplated or not.

The first is marriage itself. By creating a separate status equivalent or equal in nearly all respects to marriage, the act nonetheless is separate, and is not and does not provide for marriage, which remains available under Illinois law solely to persons of the opposite sex.[5]

The second is the pervasive and likely inescapable reach of federal law, specifically, the Defense of Marriage Act ("DOMA").[6] The DOMA limits the application of the new act in significant ways, both by restricting the use and definition of "spouse" under federal law to two persons of the opposite sex and by permitting states to refuse to recognize same-sex marriages from other states. This produces a conflict between state and federal law where benefits, rights and interests of spouses - in areas such as taxation, social security, retirement or health care benefits from employer plans governed by federal law, immigration benefits, and the like - depend upon the marital relationship, the federal designation of spouse, or both.

This article examines the new law, which takes effect June 1, 2011,[7] in both contexts: first, its structural elements and application as a matter of state law, using marriage and dissolution (the IMDMA) as the measure; and second, the inherent conflicts or limitations in its application in all respects, specifically the unavoidable and significant impact of federal law on the union both while intact and upon dissolution.

This article considers both questions in the context of each of the three aspects of the legal relationship critical to the practitioner: The nuts and bolts of formation of a civil union; the rights, interests, and obligations of a couple who has obtained a valid civil union or a relationship entitled to reciprocal recognition; and a practical guide to dissolution.

An overview of the Civil Union Act

Generally. The Civil Union Act consists of 14 sections ranging from formalities of creation, rights and protections in recognition, and dissolution. Three provisions of the act are particularly significant.

First is the equation - or elevation - of a party to a civil union to the equivalent status of spouse "entitled to the same legal obligations, responsibilities, protections, and benefits as are afforded or recognized by the law of Illinois to spouses…"[8] in section 20. Second is the incorporation of the IMDMA for purposes of dissolution or declaration of invalidity of a civil union, in section 45. Third is the reciprocity provision, section 60, which recognizes same-sex relationships, "legally entered into" in other jurisdictions, that are "substantially similar" to a civil union in Illinois.

Formation. Assuming the parties meet the age threshold of 18 and the union is not otherwise prohibited, the manner in which a civil union is obtained or entered into is, as a matter of law, no different from a marriage. A civil union may be performed (solemnized and "certified") by the same specified officials permitted to do so under the IMDMA[9] - a judge in most instances, and in others, a county clerk or other officiant permitted by law.[10]

One difference between IMDMA and the civil union law is found at section 35 of the act ("Duties of the county clerk"), which enumerates duties and obligations of the clerk

that are to be adhered to after application. Sub-paragraphs (b) and (c) of section 35 are pro forma and consistent with similar provisions for registration of a marriage under the IMDMA.[11] The other two, however - subparagraphs (a) and (d) - have no parallel provision in the IMDMA.

The first, subparagraph (a), is not otherwise explained in the act or elsewhere, and requires that

[(a)] [b]efore issuing a civil union license to a person the county clerk shall satisfy himself or herself by requiring affidavits or otherwise that the person is not prohibited from entering into a civil union or substantially similar legal relationship by the laws of the jurisdiction *where he or she resides*.[12]

This provision places a duty on the county clerk to determine the legal sufficiency of another jurisdiction's "substantially similar legal relationship." This may or may not be as simple as the similar duty of a clerk issuing a marriage license under the IMDMA, where he or she must obtain "satisfactory proof that the marriage is not prohibited."[13] The last, subparagraph (d), makes it a "petty offense" for "any official" who "issu[es] a license with knowledge that the parties are thus prohibited from entering into a civil union."[14]

The act contains no other requirements for formation of a civil union.

Recognition. A civil union obtained in Illinois under the act, as well as any "marriage between persons of the same sex, a civil union, or substantially similar legal relationship other than common law marriage, legally entered into in another jurisdiction" are to be recognized as civil unions in Illinois.[15] Because legal rights are implicated both in the pursuit of recognition for the relationship while intact - or for benefits based upon the status of the relationship - and also in the pursuit of rights and remedies by the parties against one another, or by third parties, upon dissolution[16] and, frankly, because not all relationships end in dissolution, it is important to consider the rights and interests of the parties to a civil union in the relationship while it is intact.

To obtain reciprocal recognition, parties to valid same-sex marriages, civil unions, or "substantially similar legal relationship[s] other than a common law marriage, legally entered into in another jurisdiction" need do nothing further under Illinois law. In fact, they are prohibited from obtaining a civil union under the new act.[17] There is no legal requirement for a party to a foreign, recognized relationship to take any affirmative act in Illinois to have that relationship formally certified, recognized, or otherwise acknowledged.

Specific rights and protections of recognition are not enumerated in the new act. Neither are they found, for the most part, in the comparable provisions of the IMDMA. The act accomplishes its provision of rights and interests by equating, without exception, the status of "party to a civil union" to a spouse under Illinois law.

Any plain reading of the act leads to the conclusion that it enables parties to a civil union to claim a right or interest wherever the word "spouse" or similar marital partner designation appears in Illinois law. This arguably includes, to name but a few, the right to acquire and own property jointly[18] - including tenancy by the entireties - the right of access to and to make decisions on behalf of the other spouse in medical contexts, rights to automatic inheritance, rights as a spouse to state-sponsored (non-federal) or administered health care benefits, and rights to spousal privileges in court including the freedom from compelled testimony.

It also applies to the presumption of parentage and right to recognition of a child as a child of the civil union to both parties jointly, along with other rights, benefits, protections, and

burdens both while the relationship is intact and on dissolution, including division of the estate, spousal support, and contribution to fees.[19]

Dissolution. As with marriage, the legal rights and interests to parties to a civil union will be determined mostly in dissolution. With the enactment of the act, couples who obtain a civil union in Illinois will be able to dissolve it in Illinois - or elsewhere, by express consent to the jurisdiction of Illinois courts under section 45 (see below) - and same-sex couples from other jurisdictions who can establish residency in Illinois may now obtain a dissolution of their marriage, civil union, domestic partnership or similarly recognized legal relationship.[20] This single change in the law provides for the first time the right to divorce otherwise available to all who marry, along with the attendant right to equitable division of property without regard to title.

The undoing of a civil union is, as with marriage under Illinois law, accomplished either by dissolution or a declaration of invalidity. Both are provided for under section 45, which states in full as follows:

Section 45. Dissolution; declaration of invalidity. Any person who enters into a civil union in Illinois consents to the jurisdiction of the courts of Illinois for the purpose of any action relating to the civil union even if one or both parties cease to reside in this State.[21] A court shall enter a judgment of dissolution of a civil union if at the time the action is commenced it meets the grounds for dissolution set forth in Section 401 of the Illinois Marriage and Dissolution of Marriage Act. The provisions of Sections 401 through 413 of the Illinois Marriage and Dissolution of Marriage Act shall apply to a dissolution of a civil union. The provisions of Sections 301 through 306 of the Illinois Marriage and Dissolution of Marriage Act shall apply to the declaration of invalidity of a civil union.[22]

The act provides for the same procedural steps to obtain a dissolution of a civil union as a divorce. Process and procedure are governed by both the Illinois Civil Practice Act, incorporated into the new act in section 50,[23] and the IMDMA.

The only apparent difference is the name of the action: i.e., "[a] proceeding for dissolution of a civil union or declaration of invalidity of a civil union shall be entitled 'In re the Civil Union of … and …'."[24] As with marriage under the IMDMA, the act provides that "[t]he initial pleading in all proceedings under this Act shall be denominated a petition. A responsive pleading shall be denominated a response. All other pleadings under this Act shall be denominated as provided in the Civil Practice Law."[25]

Although it isn't mentioned in the act, a dissolution will likely be known as a "Judgment for Dissolution of Civil Union," much like its counterpart, a "Judgment for Dissolution of Marriage."

Because Illinois law previously would not[26] permit residents of the same sex to marry,[27] recognize their relationships if they chose to do so elsewhere,[28] or recognize same-sex relationships from other jurisdictions,[29] Illinoisans in failed same-sex relationships legally entered into in other jurisdictions were left with few legal protections and difficult choices. Even if they amicably parted, they could not obtain a "dissolution" or "divorce" and lacked a forum before which they could have all of their rights and interests - to property and to children - adjudicated.

A simple example of the benefit of the new law in this context is division of property. Since the reform of Illinois' marriage laws in the 1970s, the law moved from dissolution and the apportionment of marital property based upon fault to equitable division without regard to fault or, for the most part, relative financial contribution.

Thus, for example, under the IMDMA, property acquired after the date of the marriage is presumed to be marital property[30] and vests in the marital estate upon the commencement of dissolution proceedings,[31] without regard to title.[32] Upon dissolution, all marital property is equitably divided between the parties, without regard to who acquired it or in whose name title is held, with few exceptions.[33] Under the act, parties to a dissolution of a civil union are now entitled to the same treatment.[34]

Conflicts with other jurisdictions

Other states. But for the reservation of "marriage" to persons of the opposite sex, the only limitations of the new Illinois law will be in its application. This arises on two levels. The first is where the status is not recognized by another state or similar governmental entity (a typical example being the assertion of spousal rights in another jurisdiction while, for example, traveling). The second is where the fundamental status - "spouse" under Illinois law - itself is wholly at odds with the definition of "spouse" under federal law, limiting rights and interests to a party to a civil union in federal benefits and obligations, and creating a conflict between state and federal law based solely upon gender.

The new act expressly provides in section 45 that "[a]ny person who enters into a civil union in Illinois consents to the jurisdiction of the courts of Illinois for the purpose of any action relating to the civil union even if one or both parties cease to reside in this State." This provision will allow parties access to Illinois courts for the purposes of dissolving their civil union should they live in a jurisdiction where they could not otherwise do so.

Beyond that, Illinois law does little if anything to address the refusal of other jurisdictions, in particular the federal government, to recognize its grant of a civil union. Thus, to be truly protected, clients need to continue securing rights to inheritance through powers of attorney, wills, and trusts; to children through legally recognized parentage independent of the relationship (e.g., adoption or surrogacy); and to property by title. The piecemeal pursuit of securing of rights will and must continue until and unless uniform recognition occurs.

The Defense of Marriage Act. Enacted in 1996, the Defense of Marriage Act was the federal government's first enactment of substantive law pertaining to marriage, which had historically been (and continues to be) otherwise a matter of state law.[35] The DOMA contains two provisions. The first prohibits the recognition of same-sex relationships under federal law, where it expressly provides that "the word 'marriage' means only a legal union between one man and one woman as husband and wife, and the word 'spouse' refers only to a person of the opposite sex who is a husband or a wife."[36] The second permits states to refuse to recognize same-sex relationships from other states.[37]

The impact on same-sex couples is profound. Recent estimates have concluded that over 1,138 federal rules and benefits use the term "spouse."[38] Federal law governs everything from tax filing status (and calculation of tax rates and amounts, where state tax filings are derivative of federal return) to benefits for spouses based upon retirement or disability, or, in the context of employment, health insurance where an insured employee must pay taxes on the coverage of his or her spouse.

Thus, where the DOMA expressly limits federal recognition and provision of such benefits as a matter of federal law to "spouses," none of these benefits is available to same-sex spouses legally married or in valid, recognized same-sex relationships under state law or the laws of other jurisdictions. Under the DOMA, married same-sex couples, or those in civil unions, may also not avail themselves of, e.g., immigration sponsorship available to married Americans with foreign spouses, social security survivor benefits, or

benefits from pensions or retirement plans governed by federal law.

Federal employees are not entitled to spousal benefits where the spouse does not meet the definition of the DOMA. The provision of domestic partner or spousal benefits not recognized under federal law results in taxation to the employee, which is not taxable to employees who have opposite sex spouses.

Finally and importantly, the long-established rule is that the division of the marital estate incident to a divorce is not taxable to either party.[39] But the DOMA will not allow such a benefit to same-sex couples upon dissolution. The same is true of maintenance and spousal support, both taxable to the payee under Illinois and federal law, allowing the payor to declare a deduction. Consequently, practitioners should be aware that parties to a civil union will be entitled to maintenance but will have unequal tax treatment under federal law.

Parentage and the Civil Unions Act

Like the IMDMA, the new act makes no specific provision for parentage. Obviously, one need not be married to be a parent.

There are two important points here for parties to a civil union. First, in Illinois - as in all states - a child born to a married couple is presumed to be a child of the marriage[40] and each party to the marriage is presumed to be a parent. Otherwise, parentage must be established by such means as adoption[41] or surrogacy.[42]

Second, Illinois does not recognize claims of intended parentage, including claims of de facto or psychological parentage.[43] Only a *parent* may legally act on a child's behalf, and only a parent has standing to bring or maintain an action for custody, control, education, support,[44] or indeed any action of any kind pertaining to a child against an existing, present parent.[45]

Given the open questions of recognition both within the state and (because of DOMA) beyond, you should advise a client who is a party to a civil union to obtain a determination of parentage as to any child of the relationship in any case.[46] This is most easily accomplished by adoption.

Conclusion

The new Illinois Civil Union Act grants same sex couples the legal right to the full benefit of Illinois law available to spouses in the recognition, protection, and where necessary, dissolution of their relationships without regard to gender of the parties or whether or not either resides in Illinois.[47] For purposes of state law, a civil union is equal to marriage in nearly every respect but for gender.

Parties to a civil union enjoy the same legal protections, benefits, and burdens the state affords to married spouses - both while their relationship is intact and, as importantly, if and when it dissolves.[48]

Traditional legal advocacy on behalf of same-sex couples has included sophisticated estate planning and other legal constructs to secure rights and interests to property and to children by and between unmarried persons. After the law takes effect, the legal emphasis will shift. Parties will need advice about how to protect their rights in light of both the new state law and the limitations imposed by federal law, particularly DOMA. At presstime, challenges to DOMA were pending in three U.S. circuit courts,[49] and the Obama Administration has announced that it will no longer defend - but will continue to enforce - section 3 of DOMA.[50] Nonetheless, the law remains effective and must be taken into account.

1. Governor Pat Quinn signed the bill January 31, 2011; PA 096-1513 (eff 6-1-11), codified at 750 ILCS 75/1 et seq.

2. There is no generally-accepted verb for either the present or past tense of the act of obtaining a civil union; unlike "to marry," or "married" any number of verb forms of "union" have been used, such as "to unite" or "to unite civilly" and "civilly-unioned," "civilly-united," and even "civilly-unionized."

3. IMDMA, 750 ILCS 5/101 et seq.

4. The act followed earlier introduction, in 2007, of a same-sex marriage bill, which failed in committee.

5. 750 ILCS 5/201 ("A marriage between a man and a woman licensed, solemnized and registered as provided in this Act is valid in this State.").

6. Public Law 104-199 (1996), which, on the one hand "permits" states to refuse to recognize valid marriages between persons of the same-sex performed in other states (29 USC 1738), and on the other created a federal definition of marriage for purposes of federal programs and interests, by declaring that "the word 'marriage' means only a legal union between one man and one woman as husband and wife, and the word 'spouse' refers only to a person of the opposite sex who is a husband or a wife." (1 USC 7).

7. Enacted December 1, 2010, as SB1716 (HR-1), and sent to Governor Pat Quinn on December 17, 2010. The bill was originally introduced February 24, 2009, as HB2234 (Harris, et al), after an earlier version, HB1826, also sponsored and introduced by Representative Greg Harris (D-Chicago) on February 23, 2007, failed to pass the Illinois General Assembly. http://www.ilga.gov/legislation.

8. "…whether they derive from statute, administrative rule, policy, common law or any other source of civil or criminal law." Act, § 20.

9. 750 ILCS 5/209 (Solemnization and Registration).

10. Act § 40. (Certification).

11. See 750 ILCS 5/210.

12. Act, § 35(a) (emphasis added).

13. See 750 ILCS 5/203. Under § 203 of the IMDMA, the clerk must determine that "satisfactory proof" exists that the parties to the marriage are of the minimum age or have otherwise met the exceptions provided (750 ILCS 5/203(1) and 203(3)); and that the marriage is not prohibited" (750 ILCS 5/203(2)), but makes no further provision as to what means the clerk is to use to determine that the "proof" is "satisfactory."

14. Act § 35(d).

15. Act, § 60 (Reciprocity).

16. See, for example, Richard A. Wilson, *The State of the Law of Protecting and Securing the Rights of Same-Sex Partners in Illinois Without Benefit of Statutory Rights Accorded Heterosexual Couples*, 38 Loyola U Chi L J 323, 324 (2007).

17. Act, § 25(2). "[A] civil union entered into prior to the dissolution of a marriage or civil union or substantially similar legal relationship of one of the parties" is prohibited.

18. Under the IMDMA, property acquired by either party after the date of the marriage is presumed to be marital property, the marital estate vests upon the filing of a petition for dissolution of marriage, and such vesting terminates upon the entry of a Judgment for Dissolution of Marriage. 750 ILCS 5/503(a) ("For purposes of this Act, 'marital property' means all property acquired by either spouse subsequent to the marriage, except the following, which is known as 'non-marital property'....).

19. But see below, discussion of parentage under the new act.

20. Act, § 60.

21. The term "any action relating to the civil union" is not otherwise defined in the statute. This sentence, read in its entirety, might imply, for example, that persons who obtain an Illinois civil union may be able to obtain a dissolution of the civil union irrespective of whether either, or both, lives in Illinois. The statute is not clear. It does expressly state that the court "*shall* enter a judgment of dissolution of a civil union if at the time the action is commenced it meets the grounds for dissolution set forth in Section 401" of the IMDMA, which grounds expressly include the requirement that "…if at the time the action was commenced one of the spouses was a resident of this State or was stationed in this State while a member of the armed services, and the residence or military presence had been maintained for 90 days next preceding the commencement of the action or the making of the finding…" 750 ILCS 5/401(a).

22. Act, § 45. The substantive provisions of the IMDMA, for example, 750 ILCS 5/501 et seq, including without limitation, Temporary Relief § 501; Agreements § 502; Division of Property § 503; Maintenance § 504; Child Support § 505; Attorneys' Fees § 508; Custody § 601 et seq, are incorporated through § 45 which expressly provides that "…[t]he provisions of §§ 401 through 413 of the Illinois Marriage and Dissolution of Marriage Act shall apply to a dissolution of a civil union." § 401(b) of the IMDMA, 750 ILCS 5/401(b), provides that "[j]udgment shall not be entered unless, to the extent it has jurisdiction to do so, the court has considered, approved, reserved or made provision for child custody, the support of any child of the marriage entitled to support, the maintenance of either spouse and the disposition of property," and the grant of full rights and interests under § 20 which provides that "[a] party to a civil union is entitled to the same legal obligations, responsibilities, protections, and benefits as are afforded or recognized by the law of Illinois to spouses, whether they derive from statute, administrative rule, policy, common law, or any other source of civil or criminal law."

23. Act, § 50: "Section 50. Application of the Civil Practice Law. The provisions of the Civil Practice Law shall apply to all proceedings under this Act, except as otherwise provided in this Act."

24. Id.

25. Id. And § 55 governs venue: "Section 55. Venue. The proceedings shall be had in the county where the petitioner or respondent resides or where the parties' certificate of civil union was issued, except as otherwise provided herein, but process may be directed to any county in the State. Objection to venue is barred if not made within such time as the respondent's response is due. In no event shall venue be deemed jurisdictional." Act, § 55.

26. These provisions of the IMDMA have neither been addressed nor expressly repealed by the new Act.

27. 750 ILCS 5/212(a)(5) (inclusion of "a marriage between two persons of the same sex" in the list of prohibited marriages under Illinois law; see also 750 ILCS 5/213.1 ("[a] marriage between 2 individuals of the same sex is contrary to the public policy of this state.").

28. 750 ILCS 5/216, which declares void marriages by state residents obtained elsewhere if not permitted under Illinois Law.

29. 750 ILCS 5/212(a)(5); further, § 213 of the IMDMA provides for a presumption of validity of marriages duly contracted elsewhere, "*except where contrary to the public policy of this State."* 750 ILCS 5/213 (emphasis added), and the specially created, sole public policy exception to otherwise valid marriages in the IMDMA follows immediately, in § 213.1, which declares that "A marriage between two individuals of the same sex is contrary to the public policy of this State." 750 ILCS 5/213.1

30. 750 ILCS 5/503(b)(1).

31. 750 ILCS 5/503(e).

32. 750 ILCS 5/503, with certain exceptions for non-marital property.

33. See generally 750 ILCS 5/503.

34. Act, § 45: "…The provisions of §§ 401 through 413 of the Illinois Marriage and Dissolution of Marriage Act shall apply to a dissolution of a civil union." § 401(b) of the IMDMA provides that "Judgment shall not be entered unless, to the extent it has jurisdiction to do so, the court has considered, approved, reserved or made provision for child custody, the support of any child of the marriage entitled to support, the maintenance of either spouse and the disposition of property." 750 ILCS 5/401(b).

35. The federal decisions including for example, *Loving v Virginia*, 388 US 1 (1967), *Zablocki v Redhail*, 434 US 374 (1978), *Turner v Safley*, 482 US 78 (1987); and *Reynolds v United States*, 98 US 145 (1879), were federal constitutional questions and challenges based upon federal review of state law[s] on marriage.

36. 1 USC 7 (1996).

37. 29 USC 1738 (1996).

38. "In January 1997, the General Accounting Office issued a report clarifying the scope of DOMA's effect. It concluded that DOMA implicated at least 1,049 federal laws, including those related to entitlement programs, such as Social Security, health benefits and taxation, which are at issue in this action. A follow-up study conducted in 2004 found that 1,138 federal laws tied benefits, protections, rights, or responsibilities to marital status." *Gill v Office of Personnel Management,* 699 F Supp 2d 374 (D Mass 2010).

39. 26 USC 1041. The rationale of the rule is based solely on the determination that because property acquired during a marriage vests in the marital estate, or community and not in either party, its division upon dissolution between the parties results in no sale, and therefore no taxable event. There is no gender specificity to the rule and, but for DOMA, it would apply equally to all parties to a dissolution.

40. 750 ILCS 45/5(a)(1) and (a)(2).

41. Available in Illinois without regard to marital or other status, or sexual orientation, *In re KM ,* 274 Ill App 3d 189, 205, 653 NE2d 888, 899 (1st D 1995) (expressly holding the Illinois Adoption Act, 750 ILCS 50/1 et seq, "must be construed to give standing to the unmarried persons in these cases, regardless of sex or sexual orientation, to petition for adoption jointly.")

42. 750 ILCS 47/1 et seq (The Illinois Gestational Surrogacy Act); or other legally recognized means such as a Voluntary Acknowledgment of Paternity, 750 ILCS 22/316(j).

43. And a party asserting such claims is likely to lose. See, for example, *In re CBL,* 309 Ill App 3d 888, 723 NE2d 316 (1st D 1999) (unmarried person asserting right to visitation lacked standing under visitation statute, 750 ILCS 5/607, absent legally cognizable claim of parentage).

44. Except in limited, enumerated circumstances where a parent is not present. See, for example, 750 ILCS 5/601.

45. The legal definition of parent for such purposes is set forth in § 601 of the IMDMA. 750 ILCS 5/601 (Jurisdiction - Commencement of proceeding).

46. This is particularly useful advice as to portability, as well; parentage is a judgment entitled to full faith and credit - notwithstanding the DOMA, which speaks to marriages and not parentage. See, for example, *Finstuen v Crutcher,* 496 F3d 1139, 1156 (10th Cir 2007) (holding that "final adoption orders and decrees are judgments that are entitled to recognition by all other states under the Full Faith and Credit Clause [of the U.S. Const Art. IV, § 1]. Therefore, Oklahoma's adoption amendment [Okla Stat tit 10, § 7502-1.4(A)] is unconstitutional in its refusal to recognize final adoption orders of other states that permit adoption by same-sex couples."

47. Act, § 45 (Dissolution; declaration of invalidity) begins with a statement of consent to reservation of jurisdiction, for purposes of dissolution, in Illinois: "Any person who enters into a civil union in Illinois consents to the jurisdiction of the courts of Illinois for the purpose of any action relating to the civil union even if one or both parties cease to reside in this State."

48. Although the act here mandates recognition by type of relationship, it does not restrict its application to residents alone. Neither does it define when reciprocity is warranted or limit it to dissolution, for example; presumably, any person in such a relationship is entitled to the same protections and benefits available whether or not they reside in Illinois, or are seeking a dissolution of the relationship.

49. *Gill v Office of Personnel Management,* 699 F Supp 2d 374 (D Mass 2010); *Pedersen v Office of Personnel Management,* No 3:10 CV 1750 (D Conn 2010); *Commonwealth of Massachusetts v US Dept of Health and Human Services,* 698 F Supp 2d 234 (D Mass 2010); *Dragovich v US Dept of the Treasury,* No 10-01564 CW (ND Cal 2011), 2011 WL 175502; and *Windsor v US,* No 10 CV 8435 (SDNY 2010).

50. See, for example, Adam Liptak, *The President's Courthouse*, New York Times 5, February 27, 2011, sec WK. The official position of the administration was that it had concluded that classifications based solely on sexual orientation are inherently suspect and subject to strict scrutiny. 2011 WLNR 3827856.

IFSEA

From the President . . .

. . .IFSEA UPDATE

By Debbie Packard
IFSEA President

Happy Spring!! As IFSEA first vice-president, I was responsible for coordinating our educational training sessions this past year. Just like many other issues in the child support world, I was presented with some challenges. Because NCSEA's national conference was held in Illinois this year, we altered our normal in-person conference and replaced it with two separate sessions. The first was held in October and members were provided with a case law update provided by Diane Potts, a legislative update provided by Rick Saavedra and an OCSE update from our federal representative, Mike Vicars. Mike discussed OCSE Commissioner Vicki Turetsky's bubble chart that outlines OCSE's vision for the future of the child support program. Illinois IV-D Administrator, Pam Lowry touches on the vision of OCSE in her article in this newsletter.

On March 25th, IFSEA held a plenary session that was broadcast via video. The session covered case-scenarios and the scenario participants consisted of the board members. A huge kudos to Diane Potts and Irene Halkais Curran for putting the materials together and a special thanks to my fellow board members for their willingness to "wear the other shoe" and portray the lives of the customers we serve. We had over 75 attendees for this session and we hope that you found it both entertaining and educational. For the attorneys who attended, know that the MCLE committee is processing the necessary documentation for your CLE credit.
I would also like to publicly thank two individuals. First to Randy Frese for attending the board meeting that followed the plenary session. Randy is an appointed board member who represents the Illinois Association of Circuit Clerks. As you all know, the child support program relies heavily on cooperative relationships with our partners and his presence at the meeting was truly appreciated by all of the board members. Secondly to Irene Halkais Curran, our immediate past-president, for all of the hard work and countless hours she worked to make her term as president a successful one for IFSEA.

IFSEA's 23rd Annual Conference will be held from October 23 – October 25, 2011 at the Springfield Hilton. Bryan Tribble, our first vice-president, is diligently working on the agenda and sponsors to make this another fabulous conference. If any of you have suggestions on session topics, please feel free to contact deborah.packard@illinois.gov or bryan.tribble@illinois.gov with your recommendations.

"Evolution or Revolution? Changes in Direction for the Child Support Program from the Nation's Policymakers"

By Pamela Lowry

The child support provisions of the President's proposed federal budget were released in February. The proposed budget does not include matching authority for expenditure of performance incentive funds. Unless or until that issue is addressed, states will continue to be required to expend incentive funds without claiming federal match. For Illinois, that means approximately $13 million of expenditures are no longer matchable – or about $26 million in lost revenue for program administration. Because this possibility was on the horizon for some time, we have adequately planned for the loss. As we all have experienced, program decisions today hinge on budget and resources. I am proud of everyone in the Illinois IV-D program for the cost-saving measures we've undertaken – from reducing travel to reducing pages in mail packets to recycling supplies – so that we can continue to provide quality services during this time of austerity.

The proposed federal budget also includes recommendations to change the distribution of child support payments. Among other provisions, there is a recommendation that assignment of support by welfare recipients be ended, and that child support instead be a budgeted item with some amount "disregarded" as income. This would be a very significant change, and I will be closely following the discussions on this topic and sharing information as it becomes available.

Another provision included in the proposed budget is the updating of the statutory purposes of the IV-D program. This language would re-state the purpose statement in the Social Security Act to more broadly recognize the IV-D program's goal to help parents take care of children. It's my understanding that this is the vehicle by which the federal Office of Child Support Enforcement hopes to expand the role of the child support program. Some of you may have heard OCSE Commissioner Vicki Turetsky speak about her goals to retain the core mission of child support programs (locate, establishment, collection) but to also address broader goals to increase parental support of children. These expanded goals include engagement of fathers from birth, child support prevention, family violence collaboration, health care coverage, healthy family relationships, and economic stability. Changing the statutory purposes would retain the present program requirements but strengthen states' abilities to provide additional services with federally funded support. A provision in the proposal that states be mandated to establish access and visitations provisions in child support orders would be an additional program requirement.

Other provisions include a proposal that states be required to adopt UIFSA 2008, a proposal that the penalty avoidance threshold for the Paternity Establishment Percentage (PEP- one of the five key performance indicators) be lowered from 90% to 80%, a proposal that states be prohibited from defining incarceration as voluntary unemployment, a proposal to expand data matching access including providing FPLS access to Tribal Child Support programs, and a proposal for states to have the ability to freeze and seize assets of longshoremen.

All of these proposals are simply that – proposals. The federal budget debate and the debate that will occur around TANF reauthorization will incorporate these proposals. Illinois will participate in the debate through a number of venues – including working with the National Child Support Enforcement Association and the National Council of IV-D Directors, communicating with the OCSE both in Region V and in Washington, and working with our own administration. As the proposals are discussed, revised, and adopted or withdrawn I will share information with all of you.

By Randy Frese

On behalf of the statewide membership of the Illinois Association of Court Clerks I am very happy to be included on the Illinois Family Support Enforcement Association Board.

The Circuit Court Clerk's Office is just one of the front lines in the constant battle to fulfill the mission of the IFSEA. Court Clerks are often face-to-face with all of the parties involved in family support issues. We are asked from time to time for legal advice that we are, by Statute, not allowed to give. It is extremely important, therefore, that the Clerk's Association stays on top of current support programs and builds good working relationships with the legal community that can provide the correct and most concise legal counsel. Certainly our presence on the IFSEA Board will help to facilitate and grow the effectiveness of all Court Clerks in this most important endeavor.

I look forward to the good that can become of our association with the Family Support Enforcement Board...the exchange of ideas, the promotion of effective programs, and the development of key relationships...all for the good of the families throughout the State of Illinois. By supporting the family we will help to develop better communities, and by that we will build a stronger State and an even greater Nation. It is, therefore, not our job, but our duty to provide the best service to families that we can possibly provide. It is my desire that the Association of Court Clerks remain dedicated to this proposition.

So I thank you for extending the invitation to our Association to join your effort. I am sure it will prove to be a fruitful union.

CHILD SUPPORT WITHHOLDING--PAYOR BEWARE

By Christine Kovach

With the number of cases under the Income Withholding for Support Act ("Withholding Act") [750 ILCS 28/1 et seq.] on the rise, payors must be especially mindful of their duties and responsibilities under the Withholding Act. Under 750 ILCS 28/50, the obligee, the public office or the obligor may file a complaint with the Court to enforce the statutory penalties of the Withholding Act. Generally the cases involve one or both of the following issues: "Who is a payor?" and "How and when will a penalty under the Withholding Act be assessed for failure to withhold or to timely remit the child support?"

"Illinois has a strong interest in preserving and promoting the welfare of children. Indeed, it is difficult to imagine a more compelling State interest than the support of children. Illinois also has a general interest in effective enforcement of judgments." Sheppard v. Money, 124 Ill.2d 265, 529 N.E.2d 542, 547 124 Ill.Dec. 561 (1988) [citations omitted] Illinois recognizes the significant impact of the payment of child support on Illinois' families and strives to ensure that child support payments are collected and distributed in a timely and reliable fashion.

Who is a payor?

Under 750 ILCS 28/15(g), the Withholding Act defines payor as "any payor of income to an obligor." The Courts have broadly defined "income" in determining who is a "payor." In In re the Marriage of Vaughn, 403 Ill.App.3d 830, 935 N.E.2d 123, 343 Ill.Dec. 483 (First Dist., 2010), the child support obligee served an income withholding notice (IWN) upon Blue Cross. The child support obligor was a chiropractor who received weekly payments from Blue Cross for the services he provided to his patients insured through Blue Cross. The child support obligor was a sole proprietor operating under the fictitious or assumed name of "Vaughn Center." Blue Cross issued checks to Vaughn Center.

The Vaughn Court looked to the definition of income in 750 ILCS 28/15(d) to define a payor. 750 ILCS 28/15(d) is an inclusionary provision, that states:

> "Income" means any form of periodic payment to an individual, regardless of source, including, but not limited to: wages, salary, commission, compensation as an independent contractor, workers' compensation, disability, annuity, pension, and retirement benefits, lottery prize awards, insurance proceeds, vacation pay, bonuses, profit-sharing payments, severance pay, interest, and any other payments, made by a person, private entity, federal or state government, any unit of local government, school district or any entity created by Public Act; however, "income" excludes:
>
> (1) Any amounts required by law to be withheld, other than creditor claims, including, but not limited to, federal, State and local taxes, Social Security and other retirement and disability contributions;
> (2) Union dues;
> (3) Any amounts exempted by the federal Consumer Credit Protection Act;
> (4) Public assistance payments; and
> (5) Unemployment insurance benefits except as provided by law.
>
> Any other State or local laws which limit or exempt income or the amount or percentage of income that can be withheld shall not apply.

The Vaughn Court found that Blue Cross paid income to the child support obligor, was a payor within the definition of the Withholding Act and was subject to provisions of the Withholding Act. The Court added that "Blue Cross cannot avoid the Withholding Act by merely stating that it is not allowed to offer

a 'convenience' to a provider when it is required by statute to do so and has received proper notice." Vaughn, 935 N.E.2d at 130. Further, the Court stated in dicta that "even if a payor does not realize that its payee is in fact the obligor named in the notice, that fact would not provide a valid defense that would exempt it from the Withholding Act's penalty provision." Vaughn, 935 N.E.2d at 129.

This language requires the recipient of an IWN to take proactive steps to determine whether it pays income to the named child support obligor. After receipt of the IWN, a business entity should determine if the obligor listed in the notice receives any form of income from the business entity. The business entity will likely be required to withhold and timely remit the appropriate child support deduction from the income payment to the obligor.

However, it is significant that the Vaughn case involved a child support obligor who was a sole proprietor. The Court may have reached a different opinion if the payments from Blue Cross had been issued to a partnership or corporation.

In a case from the State of Minnesota, the Court found that "[a] religious institution providing in-kind benefits to a church member is a 'payor of funds' under Minn.Stat. Section 518.6111 (2002)." In re the Marriage of Rooney, 669 N.W.2d 362, 365 (Court of Appeals, 2003) In the Rooney case, the child support obligor joined a church which required its members to give all their property and material possessions to the church and in exchange, the church supported its members. The church provided the child support obligor with room, board, in-kind benefits and a small stipend of $39.80 bi-weekly.

The Rooney court quotes from the Minnesota statute, which states, "A 'payor of funds' is 'any person or entity that provides funds to an obligor, including an employer as defined under chapter 24 of the Internal Revenue Code, section 3401(d), an independent contractor, payor of worker's compensation benefits or unemployment benefits, or a financial institution as defined in section 13B.06.'" Rooney, 669 N.W.2d at 372. After examining the definition of employer within the Internal Revenue Code (26 USCA Section 3401(d)), the Minnesota Court concluded, "for purposes of Minn.Stat. Section 518.6111, a 'payor of funds' includes an entity for which a support obligor performs services and which provides the obligor with remuneration, cash-based or otherwise." Rooney, 669 N.W.2d at 372.

After receipt of the IWN and determination of payor status, the recipient of the IWN must initiate income withholding from the obligor within 14 days. Failure to properly initiate income withholding may result in the imposition of a penalty for failure to withhold. The penalty for failure to withhold or to timely remit is discussed in more detail in the next section.

How and when will a penalty under the Withholding Act be assessed for failure to withhold or to timely remit the child support?

Once a business entity determines it pays income to the obligor and is a payor under the Withholding Act, the payor has certain mandatory duties under the Withholding Act. 750 ILCS 28/35, requires the recipient of an IWN to comply with the following duties: a) initiate income withholding within 14 days after receipt of the IWN and b) remit child support payments within 7 business days after the date the payment would have been paid to the obligor.

Upon receipt of the IWN, the payor must initiate child support deductions within 14 calendar days from the date the IWN was mailed to the payor. Further, the Withholding Act states that a payor must "pay the amount withheld to the State Disbursement Unit (SDU) within 7 business days after the date the amount would have been paid or credited to the obligor." The statutory penalty under the Withholding Act requires a payor to "pay a penalty of $100 for each day that the amount designated in the income withholding notice (whether or not withheld by the payor) is not paid to the State Disbursement Unit." Many of the cases under the Withholding Act address the failure of the payor to timely withhold and remit child support.

The Illinois Courts have consistently found that when a payor knowingly fails to remit the child support payment on a timely basis, the payor will be subject to the statutory penalty for failure to remit. In the first Illinois case to examine the statutory and legislative history of the mandatory requirements for income withholding for child support, the Appellate Court in the Fourth District stated, "the employer penalty provision seeks not only to ensure a child support obligee receives the owed child support payments, but also that the obligee receives the support payments ***in a timely manner***." Dunahee v. Chenoa Welding & Fabrication, Inc., 273 Ill.App.3d 201, 652 N.E.2d 438, 209 Ill.Dec. 898, (Fourth Dist, 1995) [Emphasis in original text]

Although Dunahee was decided under the former withholding provisions of the Illinois Marriage and Dissolution Act [750 ILCS 5/706.1], the analysis remains the same. The legislature consolidated the various income withholding provisions under the Illinois Public Aid Code, the Illinois Marriage and Dissolution of Marriage Act, the Non-Support of Spouse and Children Act and the Illinois Parentage Act into the Withholding Act. (750 ILCS 28/5) The most significant change in the statute is the Withholding Act includes a penalty for failure to withhold the child support, in addition to failure to timely remit after withholding the child support payment.

In Vrombaut v. Norcross Safety Products, L.L.C., 298 Ill.App.3d 560, 699 N.E.2d 155, 232 Ill.Dec. 708, (Third Dist., 1998), also decided under the prior withholding provisions, the Court declined to impose a statutory penalty upon a payor who failed to withhold child support payments from the obligor's paycheck. The Income Withholding for Support Act, which was effective January 1, 1999, imposes a penalty on the payor for failure to withhold child support payments. The previous withholding provisions contained under the various Acts did not mandate a penalty for failure to withhold.

In the first case to be decided under the consolidated and revised Withholding Act, Grams v. Autozone, Inc., 319 Ill.App.3d 567, 745 N.E.2d 687, 253 Ill.Dec. 564, (Third Dist., 2001), the payor failed to remit several different child support payments on a timely basis and the Court found that "[a] separate violation occurs each time an employer knowingly fails to remit an amount that it has withheld from an employer's paycheck." The $100 per day penalty was assessed on each individually unremitted child support payment. While Autozone argued that the penalty could be devasting to the payor, the Court stated, "the penalty is justified on the basis that noncompliance with a child support withholding order by an employer may place a substantial burden on a child support obligee, who could be forced to miss mortgage payments or postpone purchasing necessities for a child until the overdue payment arrives." Grams at 691. "[T]he purpose of the Act [which] is to promote self-enforcement and to deter future noncompliance by the employer." Grams at 691.

The Second and Fourth District Appellate Courts both addressed issues arising under the Withholding Act in 2004. Both cases addressed whether the payor knowingly violated the duties of the Withholding Act. In Thomas v. Diener, 351 Ill.App.3d 645, 814 N.E.2d 187, 286 Ill.Dec. 537 (Fourth Dist, 2004), the issues were whether the payor had complied with the mailing requirement and whether the payor had knowingly failed to remit child support payments. The payor testified that the child support checks were mailed every two weeks to the SDU. The SDU did not receive the child support checks within a reasonable time after the obligor was paid, nor after which the employer testified it mailed the payments. The trial court attributed the delay to the employer based on the date the payment was received by the SDU. It is significant that the case involved penalties arising from two late child support remittances: one from January 2000 remitted in October 2001 and a second one from November 2000 remitted in December 2000. Based on the uncontradicted testimony of the payor, the Court found that the payor's conduct "was an oversight and not a knowing violation of the Support [Withholding] Act." Thomas, 814 at 196. Further, the Court found the payor's conduct "was, at worst, negligent." Thomas, 814 at 196. It is significant that the payor avoided the imposition of the penalty by making every effort to timely and substantially comply with the Withholding Act when notified of the withholding and remittance discrepancies.

In Chen v. Ulner, 354 Ill.App.3d 1004, 820 N.E.2d 1136, 290 Ill.Dec.69 (Second Dist., 2004), the court found that the payor had knowingly violated the Withholding Act and increased the statutory penalty imposed by the trial court from $38,100.00 to $90,600.00. Based on representations from the obligor, the payor commenced the income withholding for child support before the IWN was received, but failed to remit any payments to the SDU. The payor received an official IWN from the obligee and realized that the child support payments had not been remitted to the SDU. The payor was placed on actual notice of the duties to withhold and timely remit under the Withholding Act.

The payor "offered no compelling excuse for consistently failing to comply with the statute." Chen, 820 N.E.2d at 1148. The payor was further notified of the discrepancies when the child support obligee filed a complaint to enforce the penalty provisions of the Withholding Act in October 2000. Despite receiving actual notice of the failure to remit, the payor failed to timely remit the missing child support payments despite having adequate time to mitigate the damages. By remitting the child support payments upon notification of the discrepancies, the payor could have reduced the penalty. The final child support payments from the payor were remitted in October 2001, nearly a year after the obligee's complaint.

The Illinois Supreme Court heard its first case involving the Withholding Act in 2007. The Illinois Supreme Court stated, "Our lawmakers are under no obligation to make unlawful conduct affordable, particularly where multiple statutory violations are at issue." In re the Marriage of Miller, 227 Ill.2d 185, 202-203, 879 N.E.2d 292, 303, 316 Ill.Dec.225, 236 (2007

In the Miller case, the payor knowingly failed to timely remit a large number of child support payments for a minimum of 11,721 days and amassed a large statutory penalty of $1,172,100.00. The penalty imposed by the court did not include penalties which may have occurred prior to April 15, 2002 or after October 4, 2004. The parties stipulated to review the withholding period from April 15, 2002 through October 4, 2004, or approximately 128 weeks.

The Miller case, like the Chen case, involved a payor who failed to fully comply with the provisions of the Withholding Act to timely remit child support even after actual knowledge of the potential penalty for failure to timely remit. The court pointed out that the payor "mailed the withheld child support in a timely fashion on only three occasions" during the 128 weeks. Miller, 879 N.E.2d at 297. The payor in Miller also blatantly failed to timely remit the child support payments despite efforts by the obligee to enforce the order for timely remittance of the child support payments and compliance with the Withholding Act.

The Court stated, "Miller, however, could have avoided the imposition of any penalties simply by complying with his statutory obligation upon service of the withholding notice or at least after suit was filed. Miller chose to do otherwise. Because Miller controlled the extent of the penalty, he cannot now complain that the penalty is harsh when compared to the amount of child support at issue." Miller, 879 N.E.2d at 302.

The second case under the Withholding Act to be reviewed by the Illinois Supreme Court was Gulla v. Kanaval, 234 Ill.2d 414, 917 N.E.2d 392, 334 Ill.Dec. 566 (2009). Both the Supreme Court and Appellate court upheld the trial court's finding that the payor knowingly violated the Withholding Act. The payor in Gulla was a Mississippi corporation. After review of both the Withholding Act and the Uniform Interstate Family Support Act (UIFSA) [750 ILCS 22/100 et seq.], the Supreme Court remanded the case to the trial court to recalculate the penalty pursuant to the law of the State of Mississippi. "UIFSA establishes a uniform procedure for enforcing an out-of-state child support order. However, it uniformly directs the employer-violator to the law of its State for the appropriate sanction." Gulla, 917 N.E.2d at 400.

The most recent case under the Withholding Act was heard by the Second District Appellate Court in 2010. In the case of In re the Marriage of Stockton, 401 Ill.App.3d 1064, 937 N.E.2d 657, 344 Ill.Dec. 634 (Second Dist., 2010), the parties' dispute involved one child support payment. The Court found that

the payment had been made and that any claim to the "statutory penalty" in the Act "must commence within two years after the action accrues." Stockton, 937 N.E.2d at 666. However, the Stockton Court expressly stated, "we leave for another court to determine the effect on the statute of limitations of an outstanding payment that continues to accrue penalties." Stockton, 937 N.E.2d at 667.

From the line of cases examined under the Withholding Act, the Courts have broadly defined income for determining who are payors and have consistently applied the statutory penalty to payors who knowingly fail to withhold or timely remit the child support payments. The Courts will not hesitate to impose a statutory penalty upon a payor's knowing and egregious disregard for its duties under the Withholding Act. Payors must be mindful of their responsibilities and duties under the Withholding Act and fully comply to avoid the imposition of a penalty.

Further, should a payor become aware of a non-compliance issue, they should take proactive steps to avoid or minimize the statutory penalty. Once the payor becomes aware of a potential non-compliance issue, the payor should review its records and promptly remit any unremitted child support withholdings. The payor can reduce or avoid the potential statutory penalty by remitting the child support to stop the accrual of the penalty. While the statutory penalties are mandatory, the obligee or public office may forego the filing of a complaint to collect the statutory penalty under the Withholding Act if the payor takes proactive measures to comply with timely remittance of child support payments.

Finally, many of these types of income withholding issues could be resolved through effective communication between the payors, obligors, obligees, public offices and their respective attorneys. Obtaining compliance with an IWN may be as simple as a polite phone conversation between the interested parties. Justice O'Brien, in a concurring opinion in the Vaughn case, states, "A phone call and agreed order could have solved this problem. Instead, countless hours and dollars were spent on this case." Vaughn, 935 N.E.2d at 130.

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[1] 750 ILCS 28/35 states:

> (a) It shall be the duty of any payor who has been served with an income withholding notice to deduct and pay over income as provided in this Section. The payor shall deduct the amount designated in the income withholding notice, as supplemented by any notice provided pursuant to subsection (f) of Section 45, beginning no later than the next payment of income which is payable or creditable to the obligor that occurs 14 days following the date the income withholding notice was mailed, sent by facsimile or other electronic means, or placed for personal delivery to or service on the payor. The payor may combine all amounts withheld for the benefit of an obligee or public office into a single payment and transmit the payment with a listing of obligors from whom withholding has been effected. The payor shall pay the amount withheld to the State Disbursement Unit within 7 business days after the date the amount would (but for the duty to withhold income) have been paid or credited to the obligor. If the payor knowingly fails to withhold the amount designated in the income withholding notice or to pay any amount withheld to the State Disbursement Unit within 7 business days after the date the amount would have been paid or credited to the obligor, then the payor shall pay a penalty of $100 for each day that the amount designated in the income withholding notice (whether or not withheld by the payor) is not paid to the State Disbursement Unit after the period of 7 business days has expired. The failure of a payor, on more than one occasion, to pay amounts withheld to the State Disbursement Unit within 7 business days after the date the amount would have been paid or credited to the obligor creates a presumption that the payor knowingly failed to pay over the amounts. This penalty may be collected in a civil action which may be brought against the payor in favor of the obligee or public office. A finding of a payor's nonperformance within the time required under this Act must be documented by a certified mail return receipt or a sheriff's or private

process server's proof of service showing the date the income withholding notice was served on the payor. For purposes of this Act, a withheld amount shall be considered paid by a payor on the date it is mailed by the payor, or on the date an electronic funds transfer of the amount has been initiated by the payor, or on the date delivery of the amount has been initiated by the payor. For each deduction, the payor shall provide the State Disbursement Unit, at the time of transmittal, with the date the amount would (but for the duty to withhold income) have been paid or credited to the obligor.

After June 30, 2000, every payor that has 250 or more employees shall use electronic funds transfer to pay all amounts withheld under this Section. During the year 2001 and during each year thereafter, every payor that has fewer than 250 employees and that withheld income under this Section pursuant to 10 or more income withholding notices during December of the preceding year shall use electronic funds transfer to pay all amounts withheld under this Section.

Upon receipt of an income withholding notice requiring that a minor child be named as a beneficiary of a health insurance plan available through an employer or labor union or trade union, the employer or labor union or trade union shall immediately enroll the minor child as a beneficiary in the health insurance plan designated by the income withholding notice. The employer shall withhold any required premiums and pay over any amounts so withheld and any additional amounts the employer pays to the insurance carrier in a timely manner. The employer or labor union or trade union shall mail to the obligee, within 15 days of enrollment or upon request, notice of the date of coverage, information on the dependent coverage plan, and all forms necessary to obtain reimbursement for covered health expenses, such as would be made available to a new employee. When an order for dependent coverage is in effect and the insurance coverage is terminated or changed for any reason, the employer or labor union or trade union shall notify the obligee within 10 days of the termination or change date along with notice of conversion privileges.

For withholding of income, the payor shall be entitled to receive a fee not to exceed $5 per month to be taken from the income to be paid to the obligor.

(b) Whenever the obligor is no longer receiving income from the payor, the payor shall return a copy of the income withholding notice to the obligee or public office and shall provide information for the purpose of enforcing this Act.

(c) Withholding of income under this Act shall be made without regard to any prior or subsequent garnishments, attachments, wage assignments, or any other claims or creditors. Withholding of income under this Act shall not be in excess of the maximum amounts permitted under the federal Consumer Credit Protection Act. Income available for withholding shall be applied first to the current support obligation, then to any premium required for employer, labor union, or trade union-related health insurance coverage ordered under the order for support, and then to payments required on past-due support obligations. If there is insufficient available income remaining to pay the full amount of the required health insurance premium after withholding of income for the current support obligation, then the remaining available income shall be applied to payments required on past-due support obligations. If the payor has been served with more than one income withholding notice pertaining to the same obligor, the payor shall allocate income available for withholding on a proportionate share basis, giving priority to current support payments. A payor who complies with an income withholding notice that is regular on its face shall not be subject to civil liability with respect to any individual, any agency, or any creditor of the obligor for conduct in compliance with the notice.

(d) No payor shall discharge, discipline, refuse to hire or otherwise penalize any obligor because of the duty to withhold income.

Annual Conference to Return to Springfield

By Bryan Tribble

Fellow IFSEA Members:

I am pleased to announce that the annual IFSEA conference is returning to Springfield, Illinois, in 2011. The conference will take place October 23 – 25, 2011, at the newly remodeled Hilton located in Springfield's historic downtown area.

This year's conference promises to promote some exciting discussion on the latest changes in family law, including the recently enacted Civil Union Law and its effect on parentage and child support cases and the U.S. Supreme Court's anticipated decision in Turner v. Rogers.

The conference opens on the evening of Sunday, October 23, with the annual banquet and featured guest speaker (to be determined) and continues through Monday and Tuesday with a wide variety of breakout sessions designed both to educate you and to foster discussion on current hot topics.

The conference will conclude on Tuesday morning with the annual judges' panel, which will feature a diverse group of local jurists discussing some of the more controversial issues presently facing family law practitioners.

FAMILY SUPPORT FORUM

is the official newsletter of the

ILLINOIS FAMILY SUPPORT ENFORCEMENT ASSOCIATION

335 E. Geneva Road
Carol Stream, IL 60188

Published and distributed free to members of the Association.

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2010 - 2011

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Rev. 6/11

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