

**TEMPORARY RELIEF:**  
***90% of the Work We Do,***  
***Explained in 15 Minutes Or Less***

LAKE COUNTY BAR ASSOCIATION  
FAMILY LAW LEGISLATIVE UPDATE  
COLLEGE OF LAKE COUNTY  
GRAYSLAKE, IL  
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Presented by:

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## I. The Old Section 501:



(750 ILCS 5/501) (from Ch. 40, par. 501)

(Text of Section **before amendment by P.A. 99-90**)

Sec. 501. Temporary Relief.) In all proceedings under this Act, temporary relief shall be as follows:

(a) Either party may move for:

(1) temporary maintenance or temporary support of a child of the marriage entitled to support, accompanied by an affidavit as to the factual basis for the relief requested;

(2) a temporary restraining order or preliminary injunction, accompanied by affidavit showing a factual basis for any of the following relief:

(i) restraining any person from transferring, encumbering, concealing or otherwise disposing of any property except in the usual course of business or for the necessities of life, and, if so restrained, requiring him to notify the moving party and his attorney of any proposed extraordinary expenditures made after the order is issued;

(ii) enjoining a party from removing a child from the jurisdiction of the court;

(iii) enjoining a party from striking or interfering with the personal liberty of the other party or of any child; or

(iv) providing other injunctive relief proper in the circumstances; or

(3) other appropriate temporary relief.

(b) The court may issue a temporary restraining order without requiring notice to the other party only if it finds, on the basis of the moving affidavit or other evidence, that irreparable injury will result to the moving party if no order is issued until the time for responding has elapsed.

(c) A response hereunder may be filed within 21 days after service of notice of motion or at the time specified in the temporary restraining order.

(c-1) As used in this subsection (c-1), "interim attorney's fees and costs" means attorney's fees and costs assessed from time to time while a case is pending, in favor of the petitioning party's current counsel, for reasonable fees and costs either already incurred or to be incurred, and "interim award" means an award of interim attorney's fees and costs. Interim awards shall be governed by the following:

(1) Except for good cause shown, a proceeding for (or relating to) interim attorney's fees and costs in a pre-judgment dissolution proceeding shall be nonevidentiary and summary in nature. All hearings for or relating to interim attorney's fees and costs under this subsection shall be scheduled expeditiously by the court. When a party files a petition for interim attorney's fees and costs supported by one or more affidavits that delineate relevant factors, the court (or a hearing officer) shall assess an interim award after affording the opposing party a reasonable opportunity to file a responsive pleading. A responsive pleading shall set out the amount of each retainer or other payment or payments, or both, previously paid to the responding party's counsel by or on behalf of the responding party. In assessing an interim award, the court shall consider all relevant factors, as presented, that appear reasonable and necessary, including to the extent applicable:

- (A) the income and property of each party, including alleged marital property within the sole control of one party and alleged non-marital property within access to a party;
- (B) the needs of each party;
- (C) the realistic earning capacity of each party;
- (D) any impairment to present earning capacity of either party, including age and physical and emotional health;
- (E) the standard of living established during the marriage;
- (F) the degree of complexity of the issues, including custody, valuation or division (or both) of closely held businesses, and tax planning, as well as reasonable needs for expert investigations or expert witnesses, or both;
- (G) each party's access to relevant information;
- (H) the amount of the payment or payments made or reasonably expected to be made to the attorney for the other party; and

(I) any other factor that the court expressly finds to be just and equitable.

(2) Any assessment of an interim award (including one pursuant to an agreed order) shall be without prejudice to any final allocation and without prejudice as to any claim or right of either party or any counsel of record at the time of the award. Any such claim or right may be presented by the appropriate party or counsel at a hearing on contribution under subsection (j) of Section 503 or a hearing on counsel's fees under subsection (c) of Section 508. Unless otherwise ordered by the court at the final hearing between the parties or in a hearing under subsection (j) of Section 503 or subsection (c) of Section 508, interim awards, as well as the aggregate of all other payments by each party to counsel and related payments to third parties, shall be deemed to have been advances from the parties' marital estate. Any portion of any interim award constituting an overpayment shall be remitted back to the appropriate party or parties, or, alternatively, to successor counsel, as the court determines and directs, after notice.

(3) In any proceeding under this subsection (c-1), the court (or hearing officer) shall assess an interim award against an opposing party in an amount necessary to enable the petitioning party to participate adequately in the litigation, upon findings that the party from whom attorney's fees and costs are sought has the financial ability to pay reasonable amounts and that the party seeking attorney's fees and costs lacks sufficient access to assets or income to pay reasonable amounts. In determining an award, the court shall consider whether adequate participation in the litigation requires expenditure of more fees and costs for a party that is not in control of assets or relevant information. Except for good cause shown, an interim award shall not be less than payments made or reasonably expected to be made to the counsel for the other party. If the court finds that both parties lack financial ability or access to assets or income for reasonable attorney's fees and costs, the court (or hearing officer) shall enter an order that allocates available funds for each party's counsel, including retainers or interim payments, or both, previously paid, in a manner that achieves substantial parity between the parties.

(4) The changes to this Section 501 made by this amendatory Act of 1996 apply to cases pending on or after June 1, 1997, except as otherwise provided in Section 508.

(d) A temporary order entered under this Section:

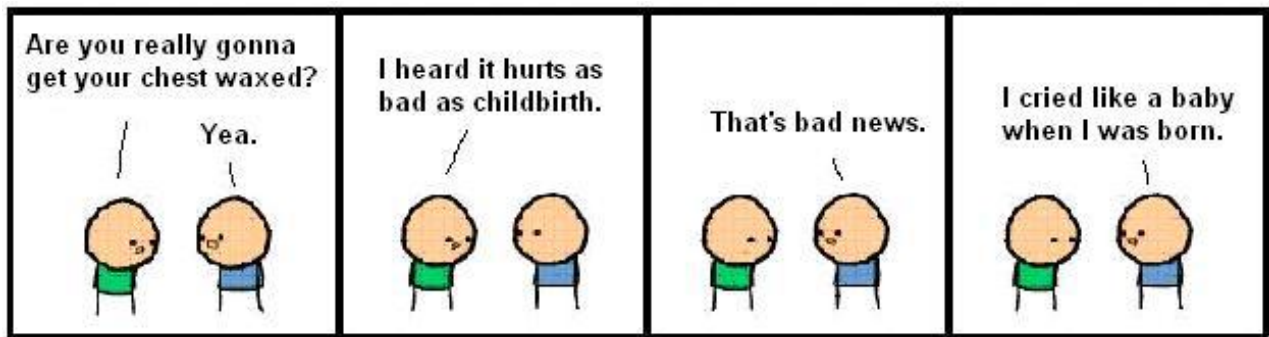
(1) does not prejudice the rights of the parties or the child which are to be adjudicated at subsequent hearings in the proceeding;

(2) may be revoked or modified before final judgment, on a showing by affidavit and upon hearing; and

(3) terminates when the final judgment is entered or when the petition for dissolution of marriage or legal separation or declaration of invalidity of marriage is dismissed.

(Source: P.A. 96-583, eff. 1-1-10.)

## II. The New Section 501:



(Text of Section after amendment by P.A. 99-90)

Sec. 501. Temporary Relief. In all proceedings under this Act, temporary relief shall be as follows:

(a) Either party may petition or move for:

(1) temporary maintenance or temporary support of a child of the marriage entitled to support, accompanied by an affidavit as to the factual basis for the relief requested. One form of financial affidavit, as determined by the Supreme Court, shall be used statewide. The financial affidavit shall be supported by documentary evidence including, but not limited to, income tax returns, pay stubs, and banking statements. Unless the court otherwise directs, any affidavit or supporting documentary evidence submitted pursuant to this paragraph shall not be made part of the public record of the proceedings but shall be available to the court or an appellate court in which the proceedings are subject to review, to the parties, their attorneys, and such other persons as the court may direct. Upon 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 documentation. If a party intentionally or recklessly files an inaccurate or misleading financial affidavit, the court shall impose significant penalties and sanctions including, but not limited to, costs and attorney's fees;

(2) a temporary restraining order or preliminary injunction, accompanied by affidavit showing a factual basis for any of the following relief:

(i) restraining any person from transferring, encumbering, concealing or otherwise disposing of any property except in the usual course of business or for the necessities of life, and, if so restrained, requiring him to notify the moving party and his attorney of any proposed extraordinary expenditures made after the order is issued; however, an order need not include an exception for transferring, encumbering, or otherwise disposing of property in the usual course of business or for the necessities of life if the court enters appropriate orders that enable the parties to pay their necessary personal and business expenses including, but not limited to, appropriate professionals to assist the court pursuant to subsection (1) of Section 503 to administer the payment and accounting of such living and business expenses;

(ii) enjoining a party from removing a child from the jurisdiction of the court;

(iii) enjoining a party from striking or interfering with the personal liberty of the other party or of any child; or

(iv) providing other injunctive relief proper in the circumstances; or

(3) other appropriate temporary relief including, in the discretion of the court, ordering the purchase or sale of assets and requiring that a party or parties borrow funds in the appropriate circumstances.

Issues concerning temporary maintenance or temporary support of a child entitled to support 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, except an evidentiary hearing may be held upon a showing of good cause. If a party intentionally or recklessly files an inaccurate or misleading financial affidavit, the court shall impose significant penalties and

sanctions including, but not limited to, costs and attorney's fees resulting from the improper representation.

(b) The court may issue a temporary restraining order without requiring notice to the other party only if it finds, on the basis of the moving affidavit or other evidence, that irreparable injury will result to the moving party if no order is issued until the time for responding has elapsed.

(c) A response hereunder may be filed within 21 days after service of notice of motion or at the time specified in the temporary restraining order.

(c-1) As used in this subsection (c-1), "interim attorney's fees and costs" means attorney's fees and costs assessed from time to time while a case is pending, in favor of the petitioning party's current counsel, for reasonable fees and costs either already incurred or to be incurred, and "interim award" means an award of interim attorney's fees and costs. Interim awards shall be governed by the following:

(1) Except for good cause shown, a proceeding for (or relating to) interim attorney's fees and costs in a pre-judgment dissolution proceeding shall be nonevidentiary and summary in nature. All hearings for or relating to interim attorney's fees and costs under this subsection shall be scheduled expeditiously by the court. When a party files a petition for interim attorney's fees and costs supported by one or more affidavits that delineate relevant factors, the court (or a hearing officer) shall assess an interim award after affording the opposing party a reasonable opportunity to file a responsive pleading. A responsive pleading shall set out the amount of each retainer or other payment or payments, or both, previously paid to the responding party's counsel by or on behalf of the responding party. A responsive pleading shall include costs incurred, and shall indicate whether the costs are paid or unpaid. In assessing an interim award, the court shall consider all relevant factors, as presented, that appear reasonable and necessary, including to the extent applicable:

(A) the income and property of each party, including alleged marital property within the sole control of one party and alleged non-marital property within access to a party;

(B) the needs of each party;

(C) the realistic earning capacity of each party;

(D) any impairment to present earning capacity of either party, including age and physical and emotional health;

(E) the standard of living established during the marriage;

(F) the degree of complexity of the issues, including allocation of parental responsibility, valuation or division (or both) of closely held businesses, and tax planning, as well as reasonable needs for expert investigations or expert witnesses, or both;

(G) each party's access to relevant information;

(H) the amount of the payment or payments made or reasonably expected to be made to the attorney for the other party; and

(I) any other factor that the court expressly finds to be just and equitable.

(2) Any assessment of an interim award (including one pursuant to an agreed order) shall be without prejudice to any final allocation and without prejudice as to any claim or right of either party or any counsel of record at the time of the award. Any such claim or right may be presented by the appropriate party or counsel at a hearing on contribution under subsection (j) of Section 503 or a hearing on counsel's fees under subsection (c) of Section 508. Unless otherwise ordered by the court at the final hearing between the parties or in a hearing under subsection (j) of Section 503 or subsection (c) of Section 508, interim awards, as well as the aggregate of all other payments by each party to counsel and related payments to third parties, shall be deemed to have been advances from the parties' marital estate. Any portion of any interim award constituting an overpayment shall be remitted back to the appropriate party or parties, or, alternatively, to successor counsel, as the court determines and directs, after notice in a form designated by the Supreme Court. An order for the award of interim attorney's fees shall be a standardized form order and labeled "Interim Fee Award Order".

(3) In any proceeding under this subsection (c-1), the court (or hearing officer) shall assess an interim award against an opposing party in an amount necessary to enable the petitioning party to participate adequately in the litigation, upon findings that the party from whom attorney's fees and costs are sought has the financial ability to pay reasonable amounts and that the party seeking attorney's fees and costs lacks sufficient access to assets or income to



pay reasonable amounts. In determining an award, the court shall consider whether adequate participation in the litigation requires expenditure of more fees and costs for a party that is not in control of assets or relevant information. Except for good cause shown, an interim award shall not be less than payments made or reasonably expected to be made to the counsel for the other party. If the court finds that both parties lack financial ability or access to assets or income for reasonable attorney's fees and costs, the court (or hearing officer) shall enter an order that allocates available funds for each party's counsel, including retainers or interim payments, or both, previously paid, in a manner that achieves substantial parity between the parties.

(4) The changes to this Section 501 made by this amendatory Act of 1996 apply to cases pending on or after June 1, 1997, except as otherwise provided in Section 508.

(c-2) Allocation of use of marital residence. Where there is on file a verified complaint or verified petition seeking temporary eviction from the marital residence, the court may, during the pendency of the proceeding, only in cases where the physical or mental well-being of either spouse or his or her children is jeopardized by occupancy of the marital residence by both spouses, and only upon due notice and full hearing, unless waived by the court on good cause shown, enter orders granting the exclusive possession of the marital residence to either spouse, by eviction from, or restoration of, the marital residence, until the final determination of the cause pursuant to the factors listed in Section 602.7 of this Act. No such order shall in any manner affect any estate in homestead property of either party. In entering orders under this subsection (c-2), the court shall balance hardships to the parties.

(d) A temporary order entered under this Section:

(1) does not prejudice the rights of the parties or the child which are to be adjudicated at subsequent hearings in the proceeding;

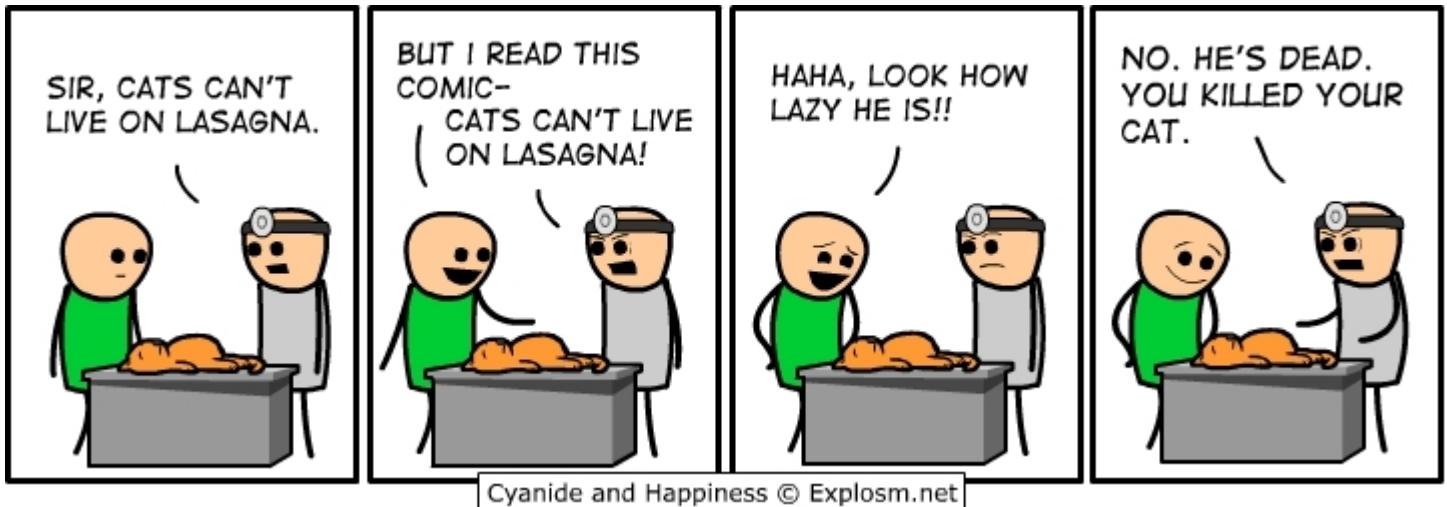
(2) may be revoked or modified before final judgment, on a showing by affidavit and upon hearing; and

(3) terminates when the final judgment is entered or when the petition for dissolution of marriage or legal separation or declaration of invalidity of marriage is dismissed.

(e) The fees or costs of mediation shall be borne by the parties and may be assessed by the court as it deems equitable without prejudice and are subject to reallocation at the conclusion of the case.

(Source: P.A. 99-90, eff. 1-1-16.)

### III. Major Changes



#### a. **Financial Relief**

##### i. Temporary Child Support and Maintenance

##### 1. “Supported by Affidavit”:

- a. *As was the case previously, does not specify “financial affidavit.”*
- b. *Provide a motion certified pursuant to 735 ILCS 5/1-109 with requisite allegations or attach an affidavit attesting to the allegations pled.*

##### 2. Financial Affidavit:

- a. One form to be used statewide, to be issued by the Supreme Court. *When is that coming? We don't know.*
- b. “Shall be” supported by documentary evidence, **“including but not limited to”**:

- i. Income Tax Returns – *Does not specify individual or corporate income tax returns.*
- ii. Paystubs – *Does not limit to only two (2) most recent paystubs. See Local Rule 11.02 for distinguishing features.*
- iii. “Banking statements.”
- iv. Neither the financial affidavits, nor supporting documentation will be placed in the public court file. However, available for appellate review. - *If a summary proceeding, what is “in evidence” for purposes of appellate review? Everything you showed up with? Everything you handed up to the judge?*

### 3. Summary Proceedings:

- a. Expressly requires that the matter be dealt with on a summary basis using:
  - i. Allocated parenting time;
  - ii. Financial Affidavits;
  - iii. Tax returns, paystubs and banking statements.
- b. Evidentiary hearing may be required upon good cause shown.

### 4. **Pitfall:** “Financial Affidavit Veracity Hearing” **OR** “Motion for Sanctions for Filing Inconsistent Affidavit” **OR** The “I Call Bullsh!t on Your Financial Affidavit”<sup>1</sup> hearing.

- a. A party may move for a separate hearing to determine whether and why disparities exist between a party’s sworn affidavit and the supporting documentation.
- b. Does not specify whether this hearing occurs **before** or **following** the hearing on the request for financial relief, as with sanctions.

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- c. *If beforehand, could the **summary** hearing on financial relief be significantly delayed by the need for an **evidentiary** hearing on the validity of an affidavit?*
- d. Note: there is no language in the section with regard to a motion for leave to correct the financial affidavit before or following the ‘validation’ hearing.
  - i. *If opposition files the motion, pointing out the defects in the financial affidavit, can a party correct the affidavit **before** the validation hearing?*
  - ii. *If the affidavit is found to be false at hearing, what’s the next step (other than sanctions)?*
  - iii. *Can the court order that the affidavit be ‘conformed to the proofs’? What is the sanction for failing to do so?*
- e. **Sanctions.** If the court finds that a party “intentionally or recklessly” “files” (keep in mind the Financial Affidavit expressly prohibited from being filed pursuant to the same rule) a Financial Affidavit, the court **shall impose significant penalties and sanctions, including but not limited to costs and attorney’s fees.”**
- f. Note the omission of the word ‘reasonable’ as it relates to attorneys’ fees. Does that mean fees can be unreasonable?
- g. What other “significant” penalties exist which do not result in damage to both parties and/or the marital estate?
- h. No indication as to what these “significant penalties” are or how they will be dealt with in dividing the marital estate.
- i. **Bonus Lesson:** What does “recklessly” mean?
  - i. Black’s Law Dictionary: “Reckless conduct is much more than mere negligence: it is a gross deviation from what a reasonable person would do.”

- ii. Proving “recklessness” as it relates to a Financial Affidavit? What standard should be applied?

- 5. **Captain Naïve says:** “This type of hearing will not occur often, and no judicial resources will be wasted on independent financial affidavit review proceedings.”
- 6. **Curious Counsel posits:** “If you don’t contest the veracity of the affidavit on an interim basis, do you lose the right to do so at trial? Is it a concession that the affidavit is accurate? If a party files a subsequent financial affidavit before trial, do you have to redo the verification hearing relative to the new affidavit before trial commences? Can an affidavit be attacked at trial where it has already been found to be incorrect on an interim basis?”

## b. Injunctive Relief

### i. Types of Injunctive Relief, Both New and Old

- 1. Relief Type #1: The “Be Good” Financially Order – “restraining from transferring, encumbering, concealing or otherwise disposing of property...”
  - a. No reason to include “an exception for transferring, encumbering, or otherwise disposing of property **in the usual course of business or for the necessities of life,**” in the order **IF “the court [previously or concurrently] entered appropriate orders to pay their necessary personal and business expenses.”**
  - b. Or if the Court previously appointed a personal and/or business receivership. (Refers to subsection (“1”) of Section 503 “to administer the payment and accounting of such living and business expenses.”) – *Is the intention to proliferate receiverships?*
  - c. It looks like section “one” in the statute but it’s really subsection lowercase “L”.

- i. There is no subsection 1, but there is a subsection lowercase “L”.

- ii. **Illustration:**

1. See, this is a one – 1
2. And this is a lowercase “L” – 1.
3. Darn, that’s similar.
4. Don’t go looking for subsection one in 503; it’s not there.

2. Relief Type #2: Removing a child from the jurisdiction. No change.

3. Relief Type #3: Beating, striking, inference with personal liberty. No change.

4. Relief Type #4: “Other.”

- ii. **“Other Appropriate Temporary Relief”**

1. Expressly widens trial court’s discretion:

- a. May order the sale of assets on an interim basis (e.g. marital residence? Securities? – *How will tax consequences be dealt with for a year in which the parties will be divorced by year-end?*);
- b. May order the *purchase* of assets on an interim basis (e.g. new residence purchase? vehicle purchase?);
- c. May order a party or both parties to “borrow funds in the appropriate circumstances.”

2. **Curious Counsel posits:** “Wasn’t this previously unconstitutional, i.e. forcing parties to enter into agreements with third parties to borrow funds?”

3. **Simon Shyster says:** “Shhhhh! Interim fees, man!”

4. Do we add a count for “other appropriate temporary relief” in every interim fee petition in order to allow the court adequate room to sell assets or require a party to borrow money to pay fees?

iii. **Ex parte relief remains available**

iv. **Responses due within 21 days of *service* of the notice of motion or as otherwise ordered** (same as before)

c. **Interim Fees (750 ILCS 5/501(c-1))**

i. **The Song Remains the Same**

1. Still non-evidentiary and summary in nature.
2. Still to be “scheduled expeditiously.”
3. Still ordered without prejudice.

ii. **A responsive pleading shall set out:**

1. The amount of each retainer or other payment or payments, or both, previously paid to the responding party’s counsel by or on behalf of the responding party; AND
2. Shall include “costs incurred,” and shall indicate whether the costs are paid or unpaid.
3. Note: the statute still does not require a responding party to identify what his/her counsel is “owed” in fees and costs.

iii. **“Parental responsibility” has replaced “custody.”**

iv. **An order for interim fees shall be in a “standardized form order,” and labeled “Interim Fee Award Order,” making it easy to find in the court file (presumptively; can it be red?). No specific statement that the Supreme Court will be issuing a uniform order, suggesting that the Lake County Forms Committee better get moving.**

**d. Exclusive Possession (Welcome to Section 501, you crazy interim cause of action, you!)**

- i. A kinder, gentler kind of exclusive possession labeled: “Allocation of use of marital residence.”
- ii. Did you like Section 701? Well, too bad because it’s been repealed. Now, your “Petition for Temporary Eviction” is pursuant to 750 ILCS 5/501(c-2).
- iii. Petition or complaint should be verified.
- iv. Court must find “the physical or mental well-being of either spouse or his or her children is jeopardized by the occupancy of the marital residence by both spouses.”
- v. Full hearing (assumedly evidentiary hearing) unless good cause shown.
- vi. Express direction to “balance the hardships to the parties.”

**e. Division of Mediation Costs (Random!)**

- i. New section “e” states that mediation costs shall be borne by the parties; and
- ii. Are subject to reallocation at the conclusion of the case.
- iii. **Practice Pointer:** Stop handwriting: “Subject to Reallocation,” on the court’s handsome typewritten form orders. You don’t need it.

**f. Forthcoming forms we can get really excited about (if forms are your thing):**

- i. All-County Uniform Financial Affidavit.
- ii. County Uniform Interim Fee Order.



#### **IV. The Other One, You Know, the Unconstitutional One – Section 501.1 – Automatic Dissolution Action Stay (750 ILCS 5/501.1)**

- a. Remember the *Messenger* case? (*Messenger v. Edgar*, 157 Ill.2d 162 (1993)). Well that's been codified.
- b. Accordingly, all that unfortunate "unconstitutional stuff" has been pulled from the statute and there is no more reference to automatic injunctive relief as it relates to property.
  - i. So for clarification:
    - 1. Parties are still enjoined from physically abusing their children;
    - 2. Parties are still enjoined from removing the children from Illinois or concealing them.
  - ii. Since 1993, if you want injunctive relief, you need to apply for it via motion. See above.



**CRAIG M. MANDELL** is a partner of Berger Schatz, a matrimonial and family law firm with offices in Chicago and Lake Forest. He has practiced family law exclusively since 2006 and represents clients in connection with domestic relations controversies, prenuptial and postnuptial agreements, dispute resolution and litigation. Mr. Mandell is a contributor to several legal publications and has presented on topics in the areas of family law, civil procedure, and Illinois civil discovery practice. He received his B.S. in journalism from the University of Colorado and his J.D. from DePaul University College of Law. Mr. Mandell is a recipient of the Certificate in Family Law from DePaul University College of Law. Mr. Mandell was named as a Rising Star in Super Lawyers Magazine in 2013 and 2014, and was named as a Leading Lawyers “Emerging Lawyer” in 2015. Mr. Mandell was recently selected by his peers for inclusion in *The Best Lawyers in America* in the field of Family Law. Mr. Mandell is a member of the Lake County Bar Association Family Law Advisory Group.