

Family Law Basics for the Non-Family Law Attorney

Presented by

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in partnership with

The McLean County Bar Association

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Introductions

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Minor Guardianships

- **Governed by the Illinois Probate Act, 755 ILCS 5/11-1, et seq.**
- **Illinois law recognizes the superior rights of parents to the care and custody of their children. As a result, a nonparent cannot petition for guardianship of a child unless both parents agree to it or the nonparent has standing.**

Minor Guardianships

- **Under the Act a non-parent has standing to seek guardianship if each parent:**
 - Voluntarily relinquished physical custody of the child and is unwilling or unable to make and carry out day to day child care decisions.
 - Failed to appear for a hearing after proper notice and is unwilling or unable to make and carry out day to day child care decisions
 - Consented to the guardianship, either in open court or by a written document that is dated, signed and notarized.
- **“Short-term” guardianship is available outside of court as an option to a formal, court-ordered guardianship.**
- **Once a parent establishes, by a preponderance of the evidence, that there has been a material change in circumstances, the guardian has to prove, by clear and convincing evidence, that terminating the guardianship is not in child’s best interests.**

Orders of Protection

- **The State of Illinois offers three types of Orders of Protection**
 - An emergency order of protection
 - Issued by the court based on your client's testimony alone.
 - Designed to protect your client on a short-term basis.
 - Typically good for 14 to 21 days.
 - An interim order of protection
 - Similar to an emergency order of protection
 - Is good for up to 30 days.
 - The key difference is that the abuser is not notified in advance of an emergency order being issued.
 - Generally, Courts will extend an emergency order of protection and interim orders are not used.

Orders of Protection

- **The State of Illinois offers three types of Orders of Protection, continued**
 - Plenary order of protection
 - Can last for up to two years
 - Issued after a hearing where both parties present evidence.
 - All of three types of orders provide several remedies.
 - Prohibit the other party from contacting your client or being anywhere near your client or his/her family.
 - Certain family members, pets and property can also be covered by these orders.
- **Governed by the Illinois Domestic Violence Act, 750 ILCS 60..**

No Stalking Orders

- **A Stalking No Contact Order is issued when an Order of Protection is not appropriate**
- **Purpose is to request relief from individuals engaging in stalking.**
 - Generally proven by two or more acts of any method, including following a person, conducting surveillance of the person, appearing at the person's home, work or school, making unwanted phone calls, sending unwanted emails or text messages, leaving objects for the person, vandalizing the person's property, or injuring a pet.
- **Governed by the Stalking No Contact Order Act, 740 ILCS 21.**

No Stalking Orders

- **There are two types of Stalking No Contact Orders**
 - Emergency Stalking No Contact Order.
 - Only lasts for 14 to 21 days, after which it may be extended.
 - An individual should file an Emergency Order when the harm which the Order is intended to prevent would likely occur if the Respondent were given any prior notice of the Order being requested
 - A Plenary Stalking No Contact Order
 - Requires that notice be given to the other side, and a hearing date set.
 - Can last up to two years. At the conclusion of the two years, the Order can be extended.
 - If the individual is convicted of stalking at a criminal trial, the Order will be permanent in nature.

No Stalking Orders

- Relief Available
 - Prohibit the Respondent from threatening to commit or committing stalking
 - Order the Respondent not to have contact with the Petitioner or any other third person specifically named by the Court
 - Prohibit the Respondent from coming within a specified distance of the Petitioner or Petitioner's residence, school, daycare, place of employment, or any specified place frequented by the Petitioner
 - Prohibiting the Respondent from possessing a Firearm Owner's Identification Card or possessing or buying firearms
 - Any other injunctive relief the Court deems necessary.

Child Support Enforcement

- **Illinois Marriage and Dissolution of Marriage Act, 750 ILCS 5/505.**
- **“Child” shall include any child under age 18 and any child age 19 or younger who is still attending high school.**
- **Child support based on statutory formula.**

Child Support Enforcement

- **Enforcement through:**
 - Petition for Indirect Civil Contempt
 - The Department of Public Aid's Division of Child Support Enforcement (DCSE) provides services for dependent children who receive cash or medical benefits
 - Child Support Enforcement Division of the Attorney General's office works closely with the Department of Healthcare and Family Services to provide child support enforcement in 89 counties in Illinois
 - In other counties, including McLean, the State's Attorney's Office handles child support enforcement.
- **Illinois State Disbursement Unit(ILSDU).**
- **The ILSDU is the payment processing center for Illinois child support payments.**

Child Support Modification

- **Illinois Marriage and Dissolution of Marriage Act, 750 ILCS 5/505.**
- **Modifiable every three years; or**
- **A substantial change in circumstances:**
 - an ongoing and substantial change in circumstances, such as a change in either parent's income, expenses, geographical location, or health insurance rates, or
 - a 20% difference between the amount of the existing child support order and the amount that would result from a current and updated application of the guidelines (this applies only in cases where a parent is receiving child support enforcement services from the Department of Healthcare and Family Services and only when at least 36 months have elapsed since the first child support order was entered or last modified), or
 - a need to provide for the health care needs of a child under the order through health insurance or other means.

Child Support Calculation

- **Child support estimator and worksheets are available at: www.childsupport.illinois.gov.**
- **Computation of basic child support obligation.**
 - The court shall compute the basic child support obligation by taking the following steps:
 - determine each parent's monthly net income;
 - add the parents' monthly net incomes together to determine the combined monthly net income of the parents;
 - select the corresponding appropriate amount from the schedule of basic child support obligations based on the parties' combined monthly net income and number of children of the parties; and
 - calculate each parent's percentage share of the basic child support obligation.
- **Although a monetary obligation is computed for each parent as child support, the receiving parent's share is not payable to the other parent and is presumed to be spent directly on the child.**
- **The court shall determine child support in each case by applying the child support guidelines unless the court makes a finding that application of the guidelines would be inappropriate, after considering the best interests of the child and evidence which shows relevant factors including, but not limited to, one or more of the following:**
 - the financial resources and needs of the child;
 - the financial resources and needs of the parents;
 - the standard of living the child would have enjoyed had the marriage or civil union not been dissolved; and
 - the physical and emotional condition of the child and his or her educational needs.

Child Support Calculation

- **Gross Income is income from all sources before any adjustment and includes spousal support (maintenance)**
- **The following are not considered:**
 - Temporary Assistance to Needy Families
 - Supplemental Security Income
 - Supplemental Nutrition Assistance Program
 - Benefits or income received for other household children, e.g. child support, survivor benefits, or foster care payment.

Child Support Calculation

- **Net Income is gross income minus the following:**
 - Standardized tax amount or individualized tax amount.
 - Multi-Family adjustment for support paid for another child or for spousal support.
 - Calculated from a Gross to Net Income Conversion Table

Child Support Calculation

- **Net Income is gross income minus the following:**
 - Standardized tax amount or individualized tax amount.
 - Multi-Family adjustment for support paid for another child or for spousal support.
 - Calculated from a Gross to Net Income Conversion Table.
- **Basic Child Support Obligation is “pulled” from the Income Shares Schedule based on combined Adjusted Net Income.**
- **Allocated to parents based on percentage of Adjusted Net Income.**

Child Support Calculation

- **Shared Physical Care Allowance**
 - Shared Physical Care occurs when each parent has at least 146 overnights, which is 40%, with the child per year.
 - Overnight stays of at least 146 per year for each parent in a Parenting Time schedule is a consideration of the Illinois Income Shares Support Guideline Model.
 - Basic Shared Physical Care Allowance is 1.5 multiplier.
 - Based on each parents portion of over-nights.

Child Support Calculation

- **Split Physical Care** occurs when there is more than one child and each parent has physical care of at least one, but not all, of the children.
 - Support is calculated to determine what each parent owes the other parent; thus, two calculations are performed.
 - The respective child support amounts are then offset with one parent owing the other parent the difference.

Child Support Calculation

- **Minimum Support Amount**
 - For a parent with gross income at/below 75% of the Federal Poverty Level, child support is set at \$40.00/mo. per child.
 - Total support for all of a payor's children is capped at \$120/month with all children sharing equal portions of the support amount.
- **Maximum Support Amount**
 - The Schedule of Basic Child Support Obligations provides calculated amounts of child support up to a combined adjusted gross income level of \$30,000/mo.
 - For cases exceeding this level, the court may use discretion to determine the support amount.

Terminating Parent's Rights

- **Parental rights can be terminated in two ways**
 - An adoption case, 750 ILCS 50.
 - As part of a juvenile case under the Juvenile Court Act, 705 ILCS 405/1-1 et seq. and the rules and regulations of DCFS.

Terminating Parent's Rights - Adoption

- **Parental rights can be terminated in an adoption case, 750 ILCS 50.**
 - Generally requires someone new to step into the shoes of the parent whose rights are terminated.
 - Courts generally won't terminate a parent's rights under the Adoption Act and only leave the child with one parent.
 - If the other parent does not consent to the adoption, one must prove that the non-consenting parent is "unfit." Examples include:
 - Abandoned the child;
 - Failed to show a reasonable degree of interest, concern or responsibility in their child's welfare;
 - Deserted or neglected their child; or
 - Treated their child with extreme or repeated cruelty.

Terminating Parent's Rights – Juvenile

- **A parent's rights can be terminated as part of a juvenile case.**
 - Requires abuse and neglect (generally a finding by the Illinois Department of Children and Family Services).
 - Juvenile cases are filed by the State.
 - Governed by the Juvenile Court Act, 705 ILCS 405/1-1 et seq. and the rules and regulations of DCFS.

Step-Parent Adoption

- **Governed by 750 ILCS 50.**
- **Generally easiest if the ex-spouse agrees to the adoption.**
- **If the other parent does not consent to the adoption, one must prove that the non-consenting parent is “unfit.” Examples include:**
 - Abandoned the child;
 - Failed to show a reasonable degree of interest, concern or responsibility in their child's welfare;
 - Deserted or neglected their child; or
 - Treated their child with extreme or repeated cruelty.

Parentage

- **Establishing parentage is important to both mothers and father.**
- **Parentage establishment gives a father parenting rights, including the right to pursue custody of the child(ren).**
- **Parentage establishment gives mothers the right to seek support from the child(ren)'s father.**
- **Illinois Parentage Act, 750 ILCS 46/100 et seq.**

Parentage

- **The Act establishes several ways to establish the parent-child relationship and are similar to the methods in the prior law. Section 201 provides:**
- **The parent-child relationship is established between a woman and a child by:**
 - the woman having given birth to the child, except as otherwise provided in a valid gestational surrogacy contract;
 - an adjudication of the woman's parentage;
 - adoption of the child by the woman;
 - a valid gestational surrogacy contract under the Gestational Surrogacy Act or other law; or
 - an un rebutted presumption of the woman's parentage of the child under Section 204 of this Act.

Parentage

- **The parent-child relationship is established between a man and a child by:**
 - an un rebutted presumption of the man's parentage of the child under Section 204 of this Act;
 - an effective voluntary acknowledgment of paternity by the man under Article 3 of this Act, unless the acknowledgment has been rescinded or successfully challenged;
 - an adjudication of the man's parentage;
 - adoption of the child by the man; or
 - a valid gestational surrogacy contract under the Gestational Surrogacy Act or other law.

Parentage

- **Under the Act, the presumptions of parentage are similar to existing law with some minor changes for gender-neutrality and the addition of specific time frames. Section 204 provides:**
- **A person is presumed to be the parent of a child if:**
 - the person and the mother of the child have entered into a marriage, civil union, or substantially similar legal relationship, and the child is born to the mother during the marriage, civil union, or substantially similar legal relationship, except as provided by a valid gestational surrogacy contract, or other law;
 - the person and the mother of the child were in a marriage, civil union, or substantially similar legal relationship and the child is born to the mother within 300 days after the marriage, civil union, or substantially similar legal relationship is terminated by death, declaration of invalidity of marriage, judgment for dissolution of marriage, civil union, or substantially similar legal relationship, or after a judgment for legal separation, except as provided by a valid gestational surrogacy contract, or other law;
 - before the birth of the child, the person and the mother of the child entered into a marriage, civil union, or substantially similar legal relationship in apparent compliance with law, even if the attempted marriage, civil union, or substantially similar legal relationship is or could be declared invalid, and the child is born during the invalid marriage, civil union, or substantially similar legal relationship or within 300 days after its termination by death, declaration of invalidity of marriage, judgment for dissolution of marriage, civil union, or substantially similar legal relationship, or after a judgment for legal separation, except as provided by a valid gestational surrogacy contract, or other law; or
 - after the child's birth, the person and the child's mother have entered into a marriage, civil union, or substantially similar legal relationship, even if the marriage, civil union, or substantially similar legal relationship is or could be declared invalid, and the person is named, with the person's written consent, as the child's parent on the child's birth certificate.

Parentage

- Under the new law, for a child who has a presumed parent by marriage, a paternity suit can only be brought by an alleged father within two years of when he knew, or should have known, about the relevant facts. 750 ILCS 46/608. For a child who has an acknowledged parent or an adjudicated parent, the time limit is two years after the effective date of the adjudication or acknowledgment for a person other than the child or a party to the adjudication or signatory to the acknowledgement to seek to establish parentage. 750 ILCS 46/609.
- For establishing non-existence of a parent/child relationship, the time limit is also two years after when the petitioner knew or should have known of the relevant facts. However, a presumed father can maintain an action to declare the non-existence of a parent/child relationship at any time if the court determines that the presumed father and mother neither co-habited nor engaged in sexual intercourse during the probable time period of conception. 750 ILCS 46/608.

Parentage

- **Genetic Testing - Section 610 of the Act states that the court must consider the best interests of the child before ordering genetic testing.**
- **Courts can deny genetic testing in the following circumstances:**
 - the conduct of the parent, acknowledged parent, adjudicated parent, or the presumed parent estops that party from denying parentage;
 - it would be inequitable to disprove the parent-child relationship between the child and the presumed, acknowledged, or adjudicated parent; and
 - it is in the child's best interests to deny genetic testing.
- **If the court denies a motion seeking an order for genetic testing, it shall issue an order adjudicating the presumed parent to be the parent of the child.**
- **Court has authority to order family members of the presumed father tested if the presumed father is not available.**

Parentage

- **Genetic Testing - Best interest factors:**

- the length of time between the current proceeding to adjudicate parentage and the time that the presumed, acknowledged, or adjudicated parent was placed on notice that he or she might not be the biological parent;
- the length of time during which the presumed, acknowledged, or adjudicated parent has assumed the role of parent of the child;
- the facts surrounding the presumed, acknowledged, or adjudicated parent's discovery of his or her possible non-parentage;
- the nature of the relationship between the child and the presumed, acknowledged, or adjudicated parent;
- the age of the child;
- the harm that may result to the child if the presumed, acknowledged, or adjudicated parentage is successfully disproved;
- the nature of the relationship between the child and any alleged parent;
- the extent to which the passage of time reduces the chances of establishing the parentage of another person and a child support obligation in favor of the child;
- other factors that may affect the equities arising from the disruption of the parent-child relationship between the child and the presumed, acknowledged, or adjudicated parent or the chance of other harm to the child; and
- any other factors the court determines to be equitable.

Parentage

- **Voluntary Acknowledgment of Paternity (VAP)**
 - The VAP can now be signed before birth but is not effective until the child's birth or filing with IDHFS, whichever occurs later.
 - The VAP still becomes conclusive 60 days after its effective date or a court or administrative proceeding, whichever is earlier.
 - Finally, a VAP can only be challenged in court based on fraud, duress, or material mistake of fact.
 - An action to challenge a VAP may only be brought within two years of the VAP's effective date, except that time during which the person challenging the VAP is under legal disability or duress.
 - Unmarried same sex couples still cannot establish a parent/child relationship by signing the VAP as Section 201 is limited to a father and a mother.

Allocation of Parental Responsibility

- **“Custody” and “Visitation” are now “Allocation of Parental Responsibility” 750 ILCS 5/600**
- **Courts will allocate “parental responsibilities” (formerly custody) and “parenting time” (formerly visitation).**
- **“Parental responsibility” encompasses both significant decision-making responsibility and parenting time.**
- **Under the statute, there are separate best interest factors for significant decision-making responsibility and parenting time.**
- **There is nothing in the Act that requires that each parent be allocated decision-making responsibilities.**
- **The term “visitation” now refers only to time a non-parent spends with the child, such as grandparent’s visitation.**

Allocation of Parental Responsibility

- **The Act now requires allocation of significant decision-making responsibility in four major life areas:**
 - education,
 - religion (with some exceptions),
 - health, and
 - extra-curricular activities.
- **Either or both parents can be allocated responsibility in any of these areas. 750 ILCS 5/602.5(b).**

Allocation of Parental Responsibility

- **In determining the child's best interests for purposes of allocating significant decision-making responsibilities, the court shall consider all relevant factors, including, without limitation, the following:**
 - the wishes of the child, taking into account the child's maturity and ability to express reasoned and independent preferences as to decision-making;
 - the child's adjustment to his or her home, school, and community;
 - the mental and physical health of all individuals involved;
 - the ability of the parents to cooperate to make decisions, or the level of conflict between the parties that may affect their ability to share decision-making;
 - the level of each parent's participation in past significant decision-making with respect to the child;
 - any prior agreement or course of conduct between the parents relating to decision-making with respect to the child;
 - the wishes of the parents;

Allocation of Parental Responsibility

- **In determining the child's best interests for purposes of allocating significant decision-making responsibilities, the court shall consider all relevant factors, including, without limitation, the following, continued:**
 - the child's needs;
 - the distance between the parents' residences, the cost and difficulty of transporting the child, each parent's and the child's daily schedules, and the ability of the parents to cooperate in the arrangement;
 - whether a restriction on decision-making is appropriate under Section 603.10;
 - the willingness and ability of each parent to facilitate and encourage a close and continuing relationship between the other parent and the child;
 - the physical violence or threat of physical violence by the child's parent directed against the child;
 - the occurrence of abuse against the child or other member of the child's household;
 - whether one of the parents is a sex offender, and if so, the exact nature of the offense and what, if any, treatment in which the parent has successfully participated; and
 - any other factor that the court expressly finds to be relevant.

Allocation of Parental Responsibility

- **With regards to allocation of parenting time, 750 ILCS 5/602.7 contains most of the same best interest factors as the significant decision-making section, except that it includes as a factor the relationship between child and parent, and lacks the factor of history of decision making.**

Allocation of Parental Responsibility

- **Parenting Plan**
 - Under the Act, all parents in cases involving allocation of parental responsibilities must file a parenting plan within 120 days of service.
 - If either parent fails to file a plan, the court will conduct an evidentiary hearing to allocate parental responsibilities.
 - If the parents can agree on a plan, the court will approve it unless it is unconscionable but can, on its own motion, conduct a hearing to determine whether it is in the child's best interests.
 - If the parents do not agree on a plan, then the court will determine parental responsibilities and will take the proposed plans into account. The requirements for what must be in a parenting plan are specified in 750 ILCS 5/602.10(f).

Allocation of Parental Responsibility

- **Under the Act, the general rule is that a court is required to modify a parenting plan or allocation judgment if necessary to serve the child's best interests if the court finds by a preponderance of the evidence:**
 - a substantial change of circumstances has occurred with the child or of any parent caused by facts that have arisen since the entry of the existing parenting plan or allocation judgment or were not anticipated in the plan or judgment; or
 - that the existing allocation of parental responsibilities seriously endangers the child's physical, mental, moral, or emotional health.

Allocation of Parental Responsibility

- **The court may also modify a parenting plan or allocation judgment without a showing of changed circumstances if it is in the child's best interests and any of the following circumstances occur:**
 - the modification is minor;
 - the modification reflects the actual arrangement under which the child has been living for the six months preceding the filing of the petition for modification, and the other parent has not objected;
 - the modification is necessary to modify an agreed parenting plan or allocation judgment that the court would not have approved or ordered if the court had been aware of the circumstances at the time of the order or approval; or
 - the parties agree to the modification.

Relocation

- **Relocation Replaced Removal 750 ILCS 5/609.2**
- **The prior law:**
 - Allowed a parent to move with the child anywhere within the state without court permission,
 - Court permission was only required to move a child across state lines.
- **The new law:**
 - Relocation is defined in 750 ILCS 5/600(g) and means to move the child more than 25 miles from his or her home if the original home is Cook County or the collar counties and more than 50 miles if the original home is anywhere else in Illinois; and more than 25 miles from his or her original home if the move is out of state.
 - Under the Act, Illinois remains the home state in case of an out of state relocation within 25 miles of the original home.

Maintenance Calculation

- 750 ILCS 5/504(b-1) - Maintenance award in accordance with guidelines.
- Applicable when the combined gross annual income of the parties is less than \$500,000 and the payor has no obligation to pay child support or maintenance or both from a prior relationship.
- Court can make a finding that the application of the guidelines would be inappropriate.
- **Calculation:**
 - 30% of the payor's gross annual income minus 20% of the payee's gross annual income.
 - The amount calculated as maintenance, however, when added to the gross income of the payee, may not result in the payee receiving an amount that is in excess of 40% of the combined gross income of the parties.
- **Duration calculated by multiplying the length of the marriage at the time the action was commenced by the following factors:**
- less than 5 years (.20)
- 5 years or more but less than 6 years (.24)
- 6 years or more but less than 7 years (.28)
- 7 years or more but less than 8 years (.32)
- 8 years or more but less than 9 years (.36)
- 9 years or more but less than 10 years (.40)
- 10 years or more but less than 11 years (.44)
- 11 years or more but less than 12 years (.48)
- 12 years or more but less than 13 years (.52)
- 13 years or more but less than 14 years (.56)
- 14 years or more but less than 15 years (.60)
- 15 years or more but less than 16 years (.64)
- 16 years or more but less than 17 years (.68)
- 17 years or more but less than 18 years (.72)
- 18 years or more but less than 19 years (.76)
- 19 years or more but less than 20 years (.80)
- For a marriage of 20 or more years, the court, in its discretion, shall order either permanent maintenance or maintenance for a period equal to the length of the marriage or for an indefinite term.

Maintenance Calculation Example

- Parties were married 16 years
- Payor spouse earns \$150,000
- Payee spouse earns \$50,000
- **Calculation:**
 - 30% of the payor's gross annual income (\$45,000) minus 20% of the payee's gross annual income (\$10,000) = \$35,000.
 - 40% of the combined gross income of the parties equals (\$80,000).
 - \$35,000 plus \$50,000 equals \$85,000 and is over the 40% cap.
 - Maintenance is therefore limited to \$30,000.
- **Duration calculated by multiplying the length of the marriage at the time the action was commenced by the following factors:**
 - 16 year marriage times .68 equals 10.88 years of maintenance.

Q&A

**If you have any questions after the seminar, we'd be happy to help.
Please email us or visit our website:**

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