Family Law Newsletter

Special Edition

SCHILLER DUCANTO & FLECK LLP

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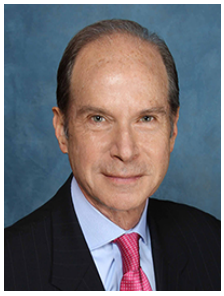
Family Law. Unparalleled.

On January 1, 2016, Public Act 99-90 went into effect. This sweeping legislation rewrote substantial portions of the Illinois Marriage and Dissolution of Marriage Act for the first time since its enactment in 1977. In this first installment of our two-part special edition, we highlight some of the most significant changes.

Judges To Begin Using Financial Advisors

One of the most significant changes to Illinois divorce law, effective January 1, 2016, is that Judges now may seek advice from financial experts or other professionals concerning property settlement issues. This change should better enable judges to decide complicated financial matters and could also be a vehicle to providing the parties and their lawyers with thoughtful recommendations expediting the settlement of cases.

Few judges are well-schooled or experienced in complicated financial deals or business structures, taxes, and valuations. Yet, in divorce matters, they are regularly called upon to make decisions regarding these areas, as well as other complex financial issues that deal with hundreds of millions or billions of dollars.



Donald C. Schiller

Senior Partner
dschiller@sdflaw.com

Complicated property issues in divorce cases include executive compensation plans with assets created through restricted stock, stock options, supplemental bonus and shadow stock plans. Each of these assets requires studying and knowing the terms and conditions of employer plans that authorize them, how they are earned and vest, and how the benefits are to be valued. Retirement plans and various forms of deferred compensation are also assets of significant value that a judge must understand in order to achieve an equitable division. Business financial statements and the valuation process for business interests must also be understood in order to equitably divide that property. In addition, there may be issues concerning whether any of the parties' financial assets are marital property, which can be equitably divided, or non-marital, which cannot be divided, but would remain the sole property of the titled owner. Often, financial tracing is needed to determine the details of how and when an asset was acquired, which is the basis for deciding if an asset is non-marital or marital. Whether the asset is one or the other, financial tracing may be needed to determine if there is some right of reimbursement from one of the estates to the other.

> **"One of the most significant changes to Illinois divorce law, is that Judges now may seek advice from financial experts or other professionals concerning property settlement issues."**

Prior to January 1, 2016, judges only heard from the lawyer for each side describing their respective positions as to what property is owned, what it is worth and how it should be divided. Often, it was necessary for each party to bring in expert witnesses to support their positions concerning the value of the property, the tax effect if transferred, and any tracing used to show how and when the asset was acquired--before or after marriage. Even if an asset was acquired during the marriage, there may be a claim that the property was in exchange for other non-marital property or that non-marital property was used to acquire or improve the property that could be subject to a reimbursement claim. A spouse may also claim dissipation of marital property. Dissipation occurs when one spouse uses marital property for a purpose unrelated to the marriage, after the time when the marriage began to be irreparably broken.

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Congratulations to our new Partners Gregory C. Maksimuk and Karen M. Schetz

Schiller DuCanto & Fleck LLP congratultes Gregory C. Maksimuk and Karen M. Schetz on their promotions to Partner! Gregory practices in our Wheaton office and Karen practices in our Chicago office.

Rewrite of Dissolution Act Reflects Our Changing Society

A major catalyst spurring the current rewrite of the Illinois Marriage and Dissolution of Marriage Act (IMDMA) - which was first enacted in 1977 - was to eliminate outdated notions, and to promote better cooperation and more amicable settlements in domestic relations matters. To that end, the General Assembly has put an end to the "balm" for the broken hearted, while also completely eliminating the concept of "fault" in dissolution proceedings and requiring the trial court to enter timely dissolution judgments.

First, Illinois has finally bid farewell to its "heart balm" statutes. As of January 1, 2016, no longer can a party file an action seeking to recover monetary damages pursuant to a cause of action for Alienation of Affections, Criminal Conversations or Breach of Promise to Marry.

These "heart balm" actions - as they came to be known - were concrete proof that the old adage remains true that "breaking up is hard to do." They were notorious for resulting in particularly contentious litigation, even in cases where the parties were never married. Prior to abolishing these actions, Illinois was one of only eight states which still permitted plaintiffs to file them. Rooted in age-old common law, heart balm actions promoted the concept of women as chattel and embraced traditional gender-based notions that are significantly out-of-date in today's world. The philosophical foundation of these causes of action is inconsistent with our modern and evolving system of law that is intended to be applied without regard to gender. By way of example, while the Alienation of Affections Act was genderless, the cause of action began in common law as a remedy available to husbands only.

Breach of Promise to Marry actions were traditionally brought by women (or a father on behalf of his daughter) who had become financially reliant upon a fiancé prior to the marriage, only to have the marriage scuttled. As the General Assembly itself stated in abolishing these actions, "Society has since recognized that the amicable settlement of domestic relations disputes is beneficial ... [and] [h]eart balm actions are inconsistent with these purposes. Society has also realized that women and men should have equal rights under the law. Heart balm actions are rooted in the now-discredited notion that men and women are unequal."

Finally, to that end, the newly-revised statute also now requires that the court enter a dissolution judgment in a timely fashion. The judgment must be entered within 60 days of the closing of proofs, unless the court enters an order in which it specifically sets forth "good cause" as to why it needs additional time. Notably, the statute allows the court to extend the period only for an additional 30 days. This provision was intended to eliminate long waiting-periods for parties, and to keep them informed as to when to expect a decision.

In this same spirit, the General Assembly has also eliminated all "fault" grounds for divorce, leaving only one single ground for dissolution: that of irreconcilable differences. Parties now need only show that "irreconcilable differences have caused the irretrievable breakdown of the marriage." Further, the traditional six-month waiting period (if the parties agreed) and the two-year waiting period (if the parties were not in agreement)

Meighan A. Harmon

Senior Partner
mharmon@sdflaw.com

has been repealed. In addition, a provision has been added that if the parties have lived separate and apart for a continuous period of not less than 6 months immediately preceding the entry of the judgment dissolving the marriage, an "irrebuttable presumption" arises that the "irreconcilable differences" requirement has been met. The goal of these revisions is to conserve resources by ending litigation over "fault" in the breakdown of the marriage, and to encourage a more speedy resolution of the matter.

In sum, these significant revisions to the IMDMA reflect the broader changes in our society which have occurred in the nearly 40 years since the statute was first enacted, and which are intended to improve domestic relations proceedings for years to come.

Judges To Begin Using Financial Advisors *(Continued from cover)*

A common example of dissipation is when a spouse has an intimate relationship outside of marriage and gives money or other gifts to their paramour. Volumes of financial records may need to be analyzed and sorted through to determine the nature and extent of any dissipation.

To prove their respective positions, attorneys for the parties have needed to hire their own experts, who could be Certified Public Accountants, economists, valuation experts, or other professionals with a variety of business experience and knowledge to analyze and testify concerning property issues. Usually, expert financial testimony is long, dry and difficult to grasp. It takes a certain degree of financial understanding to truly comprehend what the experts are saying. Judges without a good foundation of knowledge of complex financial matters likely have made their decisions based on which expert witnesses seemed more trustworthy, because the judge didn't fully understand the details of how the opinions were reached nor the validity of the process used.

However, the Illinois legislature has now provided judges with a valuable tool to make better decisions concerning complicated financial issues. Judges no longer must rely solely on the parties' respective experts. Section 503(l) of the Illinois Marriage and Dissolution of Marriage Act provides for a procedure for a court to seek advice from their own financial experts or other professionals ("Advisor"). Obviously, there are added costs to the parties if the court uses an Advisor. Under the amended statute, the court will allocate the Advisor costs between the parties considering their respective financial resources. Later, when all the equities are known at the end of the case, the court can reallocate those costs. An Advisor is not a government nor court employee, but an independent professional who the court believes has the skill and knowledge to aid the court concerning the particular issue. When advice is given to the court, it must be done in writing before the trial. Counsel for both parties will be furnished copies of the report. If there is a trial, the Advisor would testify as the court's witness but may be cross- examined by both attorneys to permit the parties an opportunity to expose flaws in the Advisor's opinion.

It is obvious that the Advisor appointed by the court will have substantial influence on the court's decision making. The Advisor will obtain financial information from the parties and study whatever else is needed to properly advise the court. Although the Advisor is not the judge, the parties will likely treat the Advisor like a judge due to the influence he or she will have on the judge. They will try to convince the Advisor of their respective positions and give the Advisor their own expert reports to consider. When the Advisor reports to the court, the report may become the foundation from which the parties may negotiate and perhaps reach a settlement before the need for a trial. The parties may feel satisfied that an impartial financial expert has reviewed and considered all their positions regarding the particular property. The parties should also consider the Advisor's recommendation is likely to be followed by the court, so they might as well use it trying to come to an overall settlement before trial. However, the stakes may be so high, and a party may feel so strongly that the Advisor is wrong, that they will not accept the advisor's opinion. If so, that party would take the case to trial knowing that the odds were against them, but conduct the trial in a manner preparing it for appellate review hoping that the trial court's decision will be overturned.

It will take time to see how often financial advisors are actually used by judges and to what extent they expedite or delay the process of concluding cases. It is very important that lawyers and judges work together to ensure those selected to give advice to the court not only have the requisite expert knowledge and experience to do the job, but importantly have the same independence and integrity we expect from our courts.

Divorcing Parties' Guide to New Limits on Post-High School Educational Expenses

For parties with children, the revisions to section 513 of the Illinois Marriage and Dissolution of Marriage Act (IMDMA) will have a substantial impact on determining their contribution to the post-high school educational expenses. Prior to the 2016 amendments, there were no requirements to request financial aid, no mandated payment of college entrance exams or preparation courses, no limitations or caps on the contribution to a child's college expenses, no statutorily-mandated definition of college expenses, and a child was not required to maintain a certain grade-point average as a condition precedent to contribution. However, as of January 1, 2016, the following changes have occurred:

End-Date for Contribution

Jacqueline S. Breisch

Associate

jbreisch@sdflaw.com

The newly-revised statute provides that, unless otherwise agreed by the parties, all educational expenses which are the subject of a Petition for Contribution shall be incurred "no later than the student's 23rd birthday, *except for good cause shown*, but in no event later than a child's 25th birthday." While there is no definition of "good cause shown," a child simply choosing to defer college education will most likely not meet this standard. On the other hand, if the child's entry into college was delayed by military service or a serious illness, this would likely constitute good cause. However, it is clear that under no circumstances can an award be made after the child's 25th birthday.

FASFA, Examinations and Applications

The court can now require completion of the Free Application for Federal Student Aid ("FASFA") *regardless of whether an award for educational expenses has been made*. Further, the court can require the parties to pay for the cost of up to two standardized college entrance examinations, and also the cost of one course to prepare for the exams. The court may also require the parties to provide funds for the cost of up to 5 college applications. These new provisions will aid parents and their children in reducing college expenses and clarifying when it is appropriate or necessary for parents to chip-in for pre-college expenses.

U of I Sets the Standard

The maximum amount of expenses for tuition, fees, housing and meals is capped at what is charged at the University of Illinois at Champaign-Urbana, unless good cause is shown or the parties otherwise agree. For example, if a party or both parties are alumni of a particular college, or if the child has exhibited a proclivity for a certain college, the court may consider these factors in ordering contribution. In making this determination, the court will look to the resources of the parties and the child.

"College Expenses" Broadened

In the past, when determining college expenses, courts generally ordered parties to pay for tuition, room and board and potentially travel expenses. The new provisions specifically include the child's medical and dental insurance as a reasonable expense to be paid by the parties.

New Burdens on the Student

Two other new provisions place a burden on the child that did not previously exist. The court's authority to order either parent to contribute to college expenses **terminates** if the child fails to maintain a cumulative "C" grade-point average, except in the case of serious illness or other good cause shown. Where one party seeks contribution from an uncooperative parent, it is important to keep this in mind and be sure the child understands the consequences of falling below this average. Along these lines, the child must release his or her academic records to any parent who is financially obligated to provide contribution. This ensures that there will be no hiding from mom or dad that grades have slipped.

Child Has No Right to Bring a Claim

The new provisions make it clear that a child is barred from bringing a petition for contribution, except in the rare case of the death or legal disability of a parent who would have standing to bring such a petition. Therefore, parties could decide that they both lack the financial capacity to contribute to their children's education, agree to bar one another from seeking future contribution in their settlement agreement, and effectively prevent their child or children from seeking help toward the payment of their college expenses.

In sum, many questions and concerns arise for divorcing families in light of the significant changes to section 513 of the IMDMA. If you have a previously-entered judgment which addressed college contribution, you may wish to consult with your attorney to understand how this new provision of the IMDMA may affect your situation.

SDF Welcomes Lateral Associate Anne Prenner Schmidt

Schiller DuCanto & Fleck announces the addition of Anne Prenner Schmidt as a lateral Associate. Prior to joining the firm Anne focused her practice on compliance of employee benefit plans and executive compensation arrangements.

IN THE NEWS

Michele M. Jochner has been appointed by the Illinois Supreme Court to the position of Vice-Chair of the MCLE Board of the Illinois Supreme Court.

Timothy M. Daw has been appointed by the Illinois Department of Professional Regulation as a board member for the Certified Shorthand Reporters Board. He has also been elected as a Director of Flossmoor Country Club.

Jason N.Sposeep presented "Making the Market for the Team-Based Approach" for the Collaborative Law Institute of Illinois' workshop on January 8, 2016. He will be presenting "Considering Your Path to Divorce" for the Lilac Tree on January 14, 2016 at the Evanston Public Library.

Eric L. Schulman and Leslie S. Arenson authored a Chapter in Lexis Nexis Illinois Family Law Practice Guide, 2015 Edition, on Marriage and Dissoltution.

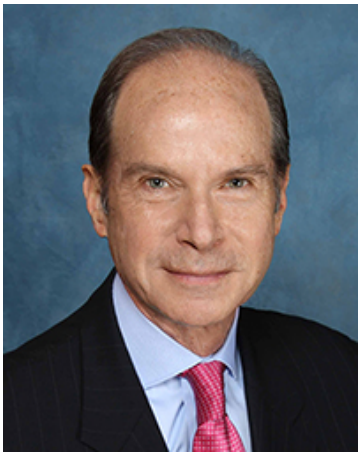
Schiller DuCanto & Fleck had 33 attorneys selected to the 2016 Illinois Super Lawyers and 2016 Illinois Rising Stars list. The 2016 Super Lawyers list includes partners: Timothy M. Daw, Charles J. Fleck, Meighan A. Harmon, Burton S. Hochberg, Carlton R. Marcyan, Karen Pinkert-Lieb, Donald C. Schiller, Eric L. Schulman, Tanya J. Stanish, Arnold B. Stein, Anita M. Ventrelli, Jay P. Dahlin, David H. Hopkins, Michele M. Jochner, Jennifer Dillon Kotz, Michelle A. Lawless, Claire R. MacKenzie, Brian A. Schroeder, Jason N. Sposeep, and Jane D. Waller.

The 2016 Illinois Rising Stars include partners Joshua M. Jackson, Gregory C. Maksimuk, Patrick T. Ryan, and Karen M. Schetz. Associates named Rising Stars are Leslie S. Arenson, Jacqueline Stephens Breisch, Brett M. Buckley, Kimberly A. Cook, Brittany Heitz Goodlett, Patrick M. Kalscheur, Natalie A. Momoh, Thomas F. Villanti, and Evan D. Whitfield.

Schiller DuCanto & Fleck had 28 attorneys selected to Best Lawyers 2016. The 2016 Best Lawyers include partners: Timothy M. Daw, Charles J. Fleck, Meighan A. Harmon, Burton S. Hochberg, Carlton R. Marcyan, Karen Pinkert-Lieb, Donald C. Schiller, Eric L. Schulman, Tanya J. Stanish, Arnold B. Stein, Anita M. Ventrelli, Jay P. Dahlin, David H. Hopkins, Jessica Bank Interlandi, Joshua M. Jackson, Michele M. Jochner, Jennifer Dillon Kotz, Michelle A. Lawless, Claire R. McKenzie, Jason N. Sposeep, Patrick T. Ryan, Jane D. Waller and Erika N. Walsh. Associate honorees are: Leslie S. Arenson, Kimberly A. Cook, Patrick M. Kalscheur, Eric R. Pfanenstiel and Evan D. Whitfield.

Congratulations to Donald C. Schiller and Meighan A. Harmon!

Donald Schiller was selected as a selected as a Top 100 Attorney in Illinois by Super Lawyers.
Meighan Harmon was selected as a Top 50 Woman Attorney in Illinois by Super Lawyers.



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SCHILLER DUCANTO & FLECK LLP

CHICAGO
LAKE FOREST
WHEATON

sdflaw.com

200 North LaSalle Street
30th Floor
Chicago, IL 60601-1089

(312) 641-5560 Phone
(312) 641-6361 Fax

225 East Deerpath Road
Suite 270
Lake Forest, IL 60045-1973

(847) 615-8300 Phone
(847) 615-8284 Fax

310 South County Farm Road
Suite 300
Wheaton, IL 60187-2477

(630) 665-5800 Phone
(630) 665-6082 Fax