

MEMORANDUM

TO: JUSTIN COX

FROM: P. ANDRÉ KATZ

CC: IFLSC WORKING DRAFTING COMMITTEE: JANE WALLER, STEVEN PESKIND, RICHARD ZUCKERMAN, HOWARD FELDMAN, ELANA T. LAZARUS

REPRESENTATIVE ELAINE NEKRITZ, REPRESENTATIVE KELLY BURKE, JIM COVINGTON

DATE: January 29, 2013

RE: January 26, 2013 Meeting – 9:00 A.M.

This memorandum contains the revisions/corrections to House Bill 6192 filed on May 31, 2012 that the IFLSC is recommending to the LRB.

- I. Sections 100 – 400
 - a. § 404 – page 28, line 10
 - i. The title should read: “Sec. 404. Conciliation.”
 - b. § 404(b) – page 28, line 25
 - i. Delete “, mediation or”

THE PURPOSE OF THE REVISIONS IN a AND b IS TO LIMIT THE SCOPE OF THIS SECTION TO CONCILIATION.

- c. § 404(c) – page 29, lines 2 – 5
 - i. Move § 404(c) to § 501

THE PURPOSE OF THIS RECOMMENDATION IS TO MOVE THE RECOMMENDATION REGARDING COURT-ORDERED PAYMENTS OF COURT-ORDERED MEDIATION FEES TO THE INTERIM FEE PROVISIONS OF SECTION 501.

- d. § 404.1 – pages 29 – 30, lines 7 – 25; 1 – 3
 - i. Delete § 404.1

THE PURPOSE OF THIS RECOMMENDATION IS THAT BASED UPON BELIEF AND UNDERSTANDING ILLINOIS SUPREME COURT RULE 924 MAKES THIS SECTION REDUNDANT.

II. Section 500

- a. § 501(a)(3) – page 38, line 20 – 21
 - i. Delete the sentence beginning on line 20 that reads: “The relief available under this Section is available under subsection (b) of Section 513.”

THE PROVISION AS WRITTEN IS REDUNDANT.

- b. § 501(c-1)(2) – page 42, line 14
 - i. Clarify that there will be a form order labeled, for example, “Interim Fee Award Order”.

THE PURPOSES OF THIS RECOMMENDATION ARE TWO-FOLD. FIRST, IT IS TO PROVIDE FOR A SEPARATE “FORM” INTERIM FEE ORDER THAT WOULD BE USED THROUGHOUT THE STATE. THE FORM WOULD BE AKIN TO A FORM ORDER OF PROTECTION IN THAT ALL THE NECESSARY FINDINGS WOULD BE LISTED (POSSIBLY IN A “CHECK-OFF” FORMAT (“[X]”) TO INSURE THE MANDATORY FINDINGS TO OBTAIN THE INTERIM FEES AND COSTS HAVE BEEN MADE, AND FOR THE COURT TO EASILY LOCATE THE INTERIM FEE ORDERS AT THE TIME OF TRIAL IN ORDER TO EASILY CALCULATE THE PRE-DISTRIBUTION OF MARITAL ASSETS IT NEEDS TO CONSIDER IN ORDER TO ALLOCATE THE MARITAL ESTATE IN DISSOLUTION OF MARRIAGE AND LEGAL SEPARATION ACTIONS. AN ADDITIONAL, BUT ALSO VERY IMPORTANT, REASON FOR THIS RECOMMENDATION IS TO PUT THE CLIENTS ON NOTICE THAT THESE DISTRIBUTIONS ARE ACTUALLY PREJUDGMENT DISTRIBUTIONS OF THEIR SHARE OF THE MARITAL ESTATE (SUBJECT TO ANY COURT-ORDERED CONTRIBUTION AFTER TRIAL). THUS, THE ORDER NEEDS AND SHOULD CLEARLY PROVIDE IN CAPITAL, BLOCK LETTERS A STATEMENT TO THIS EFFECT.

- c. **NEW:** § 503: A provision needs to be included after the factors set forth in Section 503(a) that as opposed to making general findings that it's making its property decisions "after considering all the facts and circumstances," that the court make specific factual findings as to its classification of assets (e.g. marital or non-marital), values, and the factual findings supporting its property award.
- d. § 503(b)(3) – page 53
 - i. Clarify that this section applies to both stock options and restricted stock throughout.
- e. § 504(b-1) – page 65, line 16
 - i. After (b-1)(4), add subsection (b-1)(5) which should include language that permits the court to award non-modifiable maintenance in marriages that are ten years or shorter at the time the action is commenced. All maintenance awards made in cases filed after the ten year anniversary of the parties' marriage shall be either barred, or made in conformity with Section 504 (b-1) (2) (3) or (4).
- f. § 504(b-2) – page 65, line 23
 - i. Clarify that this subsection does not affect the rights of parties to agree to a payment of unallocated maintenance and child support. In other words, the court does not have the authority to award unallocated family support. Rather, absent an agreement by the parties to the contrary, the court may only order maintenance and/or child support, to the extent it determines in

its appropriate after considering Section 504 (as amended) and Section 505.

g. § 504(b-6) – page 66, line 5

- i. Add the following at the end of the sentence: “pursuant to Section 504(f).”

PLEASE NOTE THAT 504(f) WAS ENACTED DURING THE PERIOD THAT THE IFLSC WAS PERFORMING ITS WORK. THUS THE REFERENCE TO § 504(b) NEEDS TO BE REVISED.

h. § 504 – page 65

- i. Add a new provision that states that in making awards of maintenance, the court must make specific factual findings as to why maintenance is being awarded, as well as the specific factual findings as to the type, amount, nature and duration of maintenance.

THE PURPOSE OF THIS PROVISION IS TO PROVIDE CLEAR GUIDANCE TO THE PARTIES, AND ANY REVIEWING COURT OR SUBSEQUENT COURT THAT MUST RULE ON A PETITION REGARDING MAINTENANCE AS TO THE BASIS OF THE AWARD, (AS OPPOSED TO SIMPLY MAKING FINDINGS THAT STATING “AFTER CONSIDERING ALL THE FACTS AND CIRCUMSTANCES.”)

i. § 510(g) – page 104, line 8

- i. Add a requirement that specific factual findings be made as to the reason for the modification, as well as the amount, nature and duration of the modified maintenance award.

THE PURPOSE OF THIS PROVISION IS TO PROVIDE CLEAR GUIDANCE TO THE PARTIES, AND ANY REVIEWING COURT OR SUBSEQUENT COURT THAT MUST RULE ON A PETITION REGARDING MAINTENANCE AS TO THE BASIS OF THE AWARD, (AS OPPOSED TO SIMPLY MAKING FINDINGS THAT STATING

“AFTER CONSIDERING ALL THE FACTS AND CIRCUMSTANCES.”)

III. Section 600

a. No changes.

IV. Additional Comments

- Civil union language will need to be incorporated into the proposed bill. We assume this will be done after the bill is filed?
- The recently enacted changes regarding dissipation in § 503 need to be incorporated into the proposed Bill.
- The Section numbers need to be reviewed overall. For example, the numbering for §§ 607.5 and 609.2 are inaccurate on pages 140 – 143.