

HOW TO COLLECT AN INTERIM FEE AWARD

Section 501(c-1)(1) provides that the court has the power to “assess an interim fee award”. This article will explore the manner in which such an award may be “assessed” and then the appropriate steps for enforcement of the order and collection of the fees.

Depending upon the exact language utilized in the fee award, differing mechanisms of enforcement and collection are available. The court may award the fees with an order simply providing for payment and reading something like the following:

“Mary Doe’s Petition for Interim Counsel Fees is sustained and John Doe shall pay the sum of \$5,000 as and for interim fees within 30 days.”

Although there is no particular form for a judgment in Illinois, such an order may not rise to the level of a judgment. Custom and practice in the Illinois courts suggest that the word “judgment” should be mentioned in the order.

Alternatively, the fee award order could incorporate language unmistakably rendering a judgment and reading as follows:

“Mary Doe’s Petition for Interim Counsel Fees is sustained, and judgment is hereby entered in favor of Mary Doe and against John Doe in the amount of \$5,000.”

Temporary awards, such as an award of interim fees, even though not final or appealable, are enforceable. In Re The Marriage Of Dunseth, 633 N.E.2d 82, 92, 260 Ill.App.3d 816, 828 (4th Dist. 1994). Enforcement of the award may be had via the court’s contempt powers or by the entry of a

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judgment. In Re The Marriage Of Ryan, 544 N.E.2d 454, 456, 188 Ill.App.3d 679, 682 (2nd Dist. 1989); Haymond v. Haymond, 377 N.E.2d 563, 568, 60 Ill.App. 3d 969, 976 (2nd Dist. 1978).

When the fee award does not contain judgment language as in the first order referenced above, the award is enforceable only by means of contempt. This situation may present difficulties in collecting on the award as inability to pay is a defense to contempt proceedings and as a contempt finding is appealable. Thus, collection of the fee award can be delayed:

Until a hearing can be had regarding the Respondent's ability to pay the fee award or While the issue is on appeal (normally, orders for interim fees are not appealable, In Re The Marriage Of Tetzlaff, 711 N.E.2d 346, 352-353, 304 Ill.App.3d 1030, 1039 (1st Dist. 1999), but the contempt finding changes everything).

On the other hand, if the fee award is in the form of a judgment, traditional methods of collection such as execution, citation to discover assets or garnishment may be immediately employed. In Re The Marriage Of Schmitt, 747 N.E.2d 524, 321 Ill.App.3d 360 (2nd Dist. 2001). The judgment evidencing the fee award is enforceable even though it is not appealable. To deny enforcement of the judgment would run counter to the avowed purposes of the "leveling of the playing field" philosophy of Section 501 as the disadvantaged spouse would be unable to collect and therefore be blocked from having the funds needed for representation.

In conclusion, the quickest and most streamlined approach to collection of the interim fee award is to have the award evidenced by a judgment and then to proceed with execution of the

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judgment. Consequently, the practitioner should ensure that the order evidencing the fee award contains the appropriate language so as to constitute a judgment.

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