

# MEMO

TO: LRB

CC: IFLSC  
STATE REPRESENTATIVE ELAINE NEKRITZ  
ADAM MARGOLIN  
ELANA T. VINER

FROM: P. ANDRÉ KATZ

DATE: MARCH 14, 2011

RE: SECTION 100's – 300's

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## **I. Illinois Marriage and Dissolution of Marriage Act**

### **Part I: General Provisions**

**Section 101 [750 ILCS 5/101] Short title.** While the Act deals with more than marriages and dissolutions, we had no recommended changes to this provision.

### **Section 102 [750 ILCS 5/102] Purposes; Rules of construction.**

**Section 102(4):** This provision should be expanded, as we want to mitigate the potential harm of any action brought under the IMDMA--not only acts for legal dissolutions of marriage.

**Section 102(5):** We recommend that this section should be changed to provide for reasonable provisions for support during and after the underlying divorce action, as well as for timely advances of interim fees to achieve substantial parity in the parties' access to funds for litigation costs in pre-decree dissolution actions.

**Section 102(6):** No recommended changes.

**Section 102(7):** We recommend incorporating the recommendations made by Richard's child custody pod into this provision.

**Section 102(8):** We propose adding the word "marital" before the word "assets" in this provision.

**Section 103 [750 ILCS 5/103] Trial by jury.** Though it is possible that a multi-count action, including a count for dissolution of marriage, may under appropriate circumstances need to be part of a jury trial where the judge would make all findings and rulings for the cause of action brought under the Act, at this point there are no specific recommendations regarding this provision.

**Section 104 [750 ILCS 5/104] Venue:** Based on *Jones* and other considerations, we recommend keeping the venue statute as is but to add in the provisions set forth in the McLean County Rules addressing dissolution venue (Rule 120 3.B), a copy of which is attached.

**Section 105 [750 ILCS 5/105] Application of Civil Practice Law:** As the “civil practice law” is a separate section (Article II) under the IL Code of Civil Procedure, we agreed to leave it as is. The only recommended change to Section (c) is to include “reply.”

**Section 106 [750 ILCS 5/106] Employment of administrative aides:** We recommend no changes. However, we indicated we should ask LRB if this provision belongs in another Act.

**Section 107 [750 ILCS 5/107] Order of protection; Status:** We discussed the issue of the Court having to determine whether an order of protection was previously entered. We agreed to put the burden on the parties to advise the court of this fact.

## **Part II: Marriage**

**Section 201 [750 ILCS 5/201] Formalities:** No recommended changes.

**Section 202 [750 ILCS 5/202] Marriage license and marriage certificate:** No recommended changes.

**Section 203 [750 ILCS 5/203] License to marry:** No recommended changes.

**Section 204 [750 ILCS 5/204] Medical information brochure:** No recommended changes.

**Section 205 [750 ILCS 5/205] Exceptions:** No recommended changes.

**Section 206 [750 ILCS 5/206] Records:** No recommended changes.

**Section 207 [750 ILCS 5/207] Effective date of license:** No recommended changes.

**Section 208 [750 ILCS 5/208] Judicial approval of underage marriages:** No recommended changes.

**Section 209 [750 ILCS 5/209] Solemnization and registration:** We recommend that a provision should be added providing that a person who believes the party to be

qualified to perform the wedding ceremony should have to have “reasonable beliefs” based on an objective or standard such as a “reasonable person’s” beliefs, i.e. an objective standard.

**Section 210 [750 ILCS 5/210] Registration of marriage certificate:** No recommended changes.

**Section 211 [750 ILCS 5/211] Reporting:** We agreed not to address this issue.

**Section 212 [750 ILCS 5/212] Prohibited marriages:** See discussion below regarding timing limitations for such actions (Section 301(4)).

**Section 213 [750 ILCS 5/213] Validity:** See below.

**Section 213.1 [750 ILCS 5/213.1] Same-sex marriages; Public policy:** No recommended changes.

**Section 214 [750 ILCS 5/214] Invalidity of common law marriages:** No recommended changes.

**Section 215 [750 ILCS 5/215] Penalty:** We recommend that violations of this Section and Section 219 should be petty offenses punishable by a fine and a possible jail sentence up to six (6) months.

**Section 216 [750 ILCS 5/216] Prohibited marriages void if contracted in another state:** No recommended changes.

**Section 217 [750 ILCS 5/217] Marriage by non-residents – When void:** No recommended changes.

**Section 218 [750 ILCS 5/218] Duty of officer issuing license:** No recommended changes.

**Section 219 [750 ILCS 5/219] Offenses:** We recommend that violations of this Section and Section 215 should be petty offenses punishable by a fine and a possible jail sentence up to six (6) months.

**Sections 201, 212(c), 213, and 213.1:** We discussed including a very detailed introductory paragraph deferring these issues to the state legislature and indicating that two bills are already pending.

**Sections 215 and 219:** We discussed possibly making the penalty civil and not necessarily criminal. For example, in Section 219 it makes the official issuing a license guilty of a “petty offense.” Should it be defined as a Class B Misdemeanor? (I don’t know what a “petty offense” means). Further, upon reflection, we should ask the LRB to change the word “intermarrying” to a “prohibited marriage.”

### **Part III: Declaration of Invalidity of Marriage**

**Section 301 [750 ILCS 5/301] Declaration of invalidity – Grounds:** No recommended change.

**Section 302 [750 ILCS 5/302] Time of commencement:** No recommended changes at this time. However, the full IFLSC discussed the interrelationship between 302(c) and the Probate Act, as 302(c) provides that a declaration of invalidity brought under 301(4) (i.e. a prohibited marriage) may be sought at any time not to exceed three years following the death of the first party to the prohibited marriage to die. The Committee is further exploring whether any further changes should be recommended.

**Section 303 [750 ILCS 5/303] Legitimacy of children:** No recommended changes.

**Section 304 [750 ILCS 5/304] Retroactivity:** No recommended changes.

**Section 305 [750 ILCS 5/305] Putative spouse:** No recommended changes.

**Section 306 [750 ILCS 5/306] Retroactivity:** No recommended changes.

B. Attorneys seeking appointment in child custody and visitation case shall apply in writing to the Chief Judge of the Eleventh Judicial Circuit. The applicant should set forth his/her qualifications as set forth above. A list of Attorneys so qualified shall be maintained by the Chief Judge's office.

C. To remain on the approved list, each attorney shall attend continuing legal education courses consisting of at least five (5) hours every two year period and submit verification of attendance to the Office of the Chief Judge at the time of attendance or upon request. The five hours should include courses in child development; ethics in child custody cases; relevant substantive law in custody, guardianship and visitation issues; domestic violence; family dynamics including substance abuse and mental health issues; and education on the roles and responsibilities of guardians ad litem, child representatives, and attorneys for children. Attendance at relevant programs sponsored by this circuit may be included as a portion of this continuing education requirement.

## **RULE 120. MATRIMONIAL AND FAMILY CASES**

A. Matrimonial and family cases are defined as any proceedings for an order, judgment or decree relating to dissolution of marriage, parentage, separate maintenance or declaration of invalidity of marriage including proceedings concerning such matters as temporary support, maintenance, child custody or support.

### **1. Affidavit of Parties.**

In all proceedings involving petitions for attorney's fees, court costs, maintenance, support and/or custody of children and modification of any previous orders relating thereto, the parties shall prepare an affidavit (suggested form, Appendix C) with proof of service pursuant to Supreme Court Rule 11, unless for good cause shown the court otherwise directs.

The Affidavits of Income and Expenses shall not be filed with the Circuit Clerk, but counsel may provide a courtesy copy to the judge assigned to the case prior to any hearing. Any financial document, bank record or affidavit of income and expenses offered and received as an exhibit shall be considered impounded, unless the court orders otherwise.

2. Unless otherwise provided in the order for support, all support payments shall be made to the State Disbursement Unit (SDU).

3. No pleading or entry of appearance shall be prepared or acknowledged by any attorney, members of his firm, or employee for an opposing party.

B. **Dissolution Venue.** In any case brought pursuant to the Illinois Marriage and Dissolution of Marriage Act where neither petitioner nor respondent resides in the county; where the initial pleading is filed, counsel for the petitioner shall file with said pleading a written motion, which shall be set for hearing and ruled upon before any other issue is taken up, advising that the forum selected is not one of proper venue and seeking an appropriate order from the court allowing a waiver of the venue requirements of § 104 of said Act.

### **C. Mediation of Child Custody and Visitation.**

1. In any matrimonial and family case involving contested issues of child custody or visitation, either temporary or permanent, the court shall enter an Order for Mediation (suggested form – Appendix D) prior to the setting of any contested hearing unless excused if the court determines an impediment to mediation exists. The Circuit Clerk shall maintain a list of mediators available for all proceedings under Circuit Rule 105 and make said list available to the public.

2. A family mediation referral form shall be sent to the mediator in all cases within three (3) days of the