

MEMO

DATE: NOVEMBER 10, 2008

FROM: JOHN

**FOR MEN ONLY**

If you are a Father paying child support you must keep very accurate records along with receipts and cancelled checks. Do not pay a child support payment in cash directly to the Mother without obtaining a receipt that she has signed. If there is a dispute about a child support amount due, it is the Father's burden of proof to prove each and every payment that he has made. For example if the Father says that he paid the Mother in cash and has no receipts, the Court almost universally will not allow a credit for the monies paid, and the Father will have to make the same payments again.

Don't try to offset child support by paying the Mother in the form of buying clothing or other items for your child. If there is a Child Support Order the Court will not give you credit unless the payments were made in money.

If a child support collection case is filed against you by the Mother or by the State of Illinois, you will be required to furnish proof of your payments in the form of cancelled checks, or receipts signed by the Mother. If you have none of these as proof and the Mother denies payments, you will not be given credit for the payments that you actually made. It is also very difficult to obtain copies of cancelled checks from your bank more than two or three years after the checks were issued. Banks are not required to maintain the records much longer than that period and frequently a bank that has been bought out by another bank does not have the old bank's records available.

If you are a Father under a Court Order and required to make child support payments to the Mother, the Mother's promise to waive the payment or not to collect payments will not be honored by the Court. The Court sits as a parent for your children and is required to protect them despite any agreements that you may make with the Mother. For example, an agreement made between you and the Mother that you will not have visitation with your children in exchange for her promise not to collect child support from you is completely unenforceable in Illinois. In other words, you and the Mother could agree in writing that you would not pay child support and forgo your right to see the children. At any time, even up to age eighteen, the Mother of your children can still demand full payment of all amounts that were due for child support and the Court will not honor her written agreement not to collect from you.

If you are a self employed Father, keep complete and detailed records of your earnings and your expenses. If child support is going to be set by the Court, either initially at the time of the first Court date or sometime later, if the Mother seeks an increase from you in child support, the Court will require you to prove what your actual income is and what your business expenses are. Business expenses are deductible from your gross income in determining child support.

Illinois uses guidelines for child support. The guidelines are 20% for one child, 28% for two children, 32% for three children, 40% for four or more children. This percentage is applied against your net income. Net income in general means gross income from all sources less properly computed Federal income tax, FICA, Medicare, and State of Illinois income tax. Certain additional deductions are made for things like union dues and medical insurance payments. If you over or under withhold from your paychecks, the Court will use only the proper number of exemptions in collecting child support.

All money that you as the Father earn is fair game for child support. In other words, child support is not based simply upon regular time wages earned but includes, bonuses, commissions, investment earnings, dividends, interest and even some items that you would not assume would be income for child support purposes. An example would be periodic gifts given to you and could be included in your income for child support purposes.

Overdue child support payments. If you are a Father who is overdue in your child support payments, the State of Illinois or the Mother may seek to collect these payments from you. Such overdue payments are called "child support arrearage" or "child support out of compliance arrears". If you are paying pursuant to a Court Order you may be faced with a "child support arrearage". It is important to know that if you lose your job or become temporarily unemployed for some extended period, your child support obligation does not automatically stop. You must file a Petition with the Court in order to obtain a reduction or suspension in your child support payments. If you do not do so you will owe the full amount of money due despite the fact that you are unemployed or your income has been reduced.

Again, do not be caught in the trap of believing that because you are not paying and no one has sought to enforce child support against you that somehow you will not be obligated to make up those payments in the future. Your payments remain due and owing. You must Petition the Court for a reduction in child support.

Child support interest. Interest on child support, at 9% at the present time, is mandatory in Illinois beginning 30 days after each payment is due. It is mandatory because the Court has no choice in granting or not granting these interest charges. Over an extended period, the interest charges may become enormous. That is why paying child support in a timely manner is so important. That is why seeking a reduction in child support if you are unemployed or your income is reduced is so important. In addition to interest, the Mother of your children can seek attorneys fees from you if she has employed an attorney if there is a finding by the Court that you wilfully failed to pay child support as ordered.

Child Support System. Husbands and Fathers are under the mistaken belief that there is a "system" that will take care of them with respect to their child support obligations. Fathers frequently think that a proper determination of their child support obligation as well as determining whether that obligation goes up or goes down will be taken care of automatically by "the system". There is no system. Let me repeat that, *THERE IS NO SYSTEM that takes care of you*. The only person responsible to enforce your rights is you. Frequently, the agencies responsible for the collection of child support make frequent errors when it comes to the calculation of amounts that are due or the payments that have been received. It is therefore

important that you keep exacting records of the payments that you have made and make each payment by check so that you have proof that the payment was made and received even if the payment was made to the State of Illinois. Also keep copies of all documents and notices received from the Court system or the State Collection Unit. Likewise, if you call, follow up in writing and keep a copy. Get the name and telephone number of the person who spoke to you. Remember that if a governmental agency gives you advise, they are not bound by any mistakes or erroneous advise that they may give you.

Child Support Enforcement. Child support enforcement has become increasingly more serious to Fathers in Illinois. The Mother can seek enforcement through the State of Illinois or privately by herself or through an attorney. In order to collect child support, Courts in Illinois have the authority to do many things which years ago would have been beyond anyone's imagination. The Court can revoke your driver's license, take away your passport, intercept your Federal and State of Illinois income tax refunds, deny you a licence if you are in a profession and many other remedies which are to numerous to list here. There are also interstate registries of information available to Mothers who are seeking enforcement of child support which allow you to be tracked down and located even if you are out of state.

Visitation. If you are a Father in Illinois who has visitation rights with your children it is important that you know the following:

A. Make sure that your visitation rights are spelled out accurately and completely in a written Court Order. The Court Order that says "reasonable visitation" is extremely difficult to enforce. The Court Order that fails to specify the specific days of the week and times to pick up and drop off of the children for your visitation is also unlikely to be enforced regularly. It is difficult to enforce provision in a child visitation order if for example the Order grants the Father alternating weekend visitation but fails to state when the rotation of visitation begins. Does it begin this weekend or next weekend? Without such specifics, the Mother can argue that this was not in fact the Father's weekend but her own weekend instead.

B. The times of visitation are important as well since pick up and drop off times if not specified may make the order difficult if not impossible to enforce.

C. Each visitation provision whether it is weekend visitation, weekday visitation holiday visitation, or vacation visitation needs to be very specific. With specific start times and end times, days of the week or holidays specifically set forth.

D. Don't forget to provide in any visitation order who is to pick up and drop off the children otherwise it will become the Father's responsibility to do all of the transportation of the children back and forth for your visitation. Make sure that the order provides that the transportation visitation is at least split equally.

Income tax exemptions. If you are a Father paying child support you would certainly like to claim all or some of the income tax exemptions for your children. If the Court Order specifying child support does not state that you as the Father can claim the children as an income tax exemption on your Federal and State of Illinois income tax returns, then the Mother who has

custody automatically can claim them. In other words the default position is that the Mother claims the children as dependants unless the written Order specifies otherwise.

Joint Custody versus Sole Custody. Joint custody is not the amount of time that you spend with your children during visitation. Visitation periods are independent of joint versus sole custody. Joint custody on the other hand is joint decision making for the children. Who makes decisions such as "what religion are the children brought up in, do the children attend public or parochial schools, what type of medical treatment do the children receive, for example mainstream treatments or elective surgeries." Another example would be if your 17 year old daughter wants plastic surgery to her nose would be an example of an elective procedure. Such other decisions such as what extracurricular activities the children participate in are included within joint decision making. Does your son play football or take ballet lessons instead?

If there is sole custody then the custodial parent, many times the Mother, makes all such decisions herself without the input of the Father.

If there is joint custody then both parents decide such issues jointly, if they cannot reach a decision then they usually go to a mediator and if that fails finally to the Court for a decision on the issue at hand.

Courts usually encourage Fathers to have joint custody. The social studies that have been done all suggest that Fathers who have joint custody are more engaged in the children's lives and the children generally do better in those circumstances. However, if the parents cannot agree on anything and cannot reasonable co-parent their children the Court does not grant joint custody. Courts in Illinois usually will not grant joint custody to a Mother who rejects it. A Father's success in seeking joint custody over the objection of the Mother is a very difficult task indeed.

Enforcement of child visitation through the Criminal Courts. Up until several years ago, if a Father was denied visitation, even though the visitation had been ordered by a Court, the Father had no option but to file a Civil Petition for enforcement before the Divorce Court, have a hearing, find the Mother in contempt and seek sanctions against her, all which was usually a time consuming process.

Now, there has been a change in the law which permits the Father to go to the police if he has been denied his visitation set forth in a Court Order. It is important for you to know that unless the visitation is specific as to the day and the time of day, the police may not be willing to issue charges against the Mother who has violating your visitation. An example of a Court Order that the police will not follow is one that does not state when an alternating weekend visitation schedule begins. If the Court order simply says alternating weekends for the Father but does not specify a starting date, the police will usually not file charges against her.

No access to Criminal Court to Mother's who violate visitation if Father has joint custody of the children. In Illinois by case law, although the Statute provides for Fathers who are denied visitation to have access to the criminal Courts and to bring charges against Mothers who deny visitation, if the Father has joint custody, he does not in fact have visitation with his own

children. He has instead what are called "parenting periods". The Court has decided that parenting periods and visitation are not the same under the Criminal Statute and that the Father cannot seek to use the police or the criminal Court to enforce his visitation rights. Joint visitation is therefore not necessarily the best option for a Father who is dealing with a Mother who simply does everything possible to stop his visitation.

**FOR MOTHERS ONLY. TAPE ENDS.**

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