
IN THE SUPREME COURT OF ILLINOIS

IN RE THE MARRIAGE OF:)	On Appeal from the Appellate Court
	)	of Illinois, Third Judicial District
CHRISTINE GOESEL,	)	2017 IL App (3d) 150101
Petitioner-Appellant,)	
)	
v.	)	On Appeal from the Twelfth Judicial
	)	Circuit Court of Will County, Illinois
	)	Circuit No. 2013 D 107
)	
ANDREW GOESEL,)	
Respondent,	)	Honorable Dinah Archambeault
)	Judge Presiding
(Laura A. Holwell, Contemnor-Appellee).)	

BRIEF OF THE CONTEMNOR-APPELLEE

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ISSUES PRESENTED

1. Whether the Third District Appellate Court of Illinois properly reversed the Circuit Court of the Twelfth Judicial Circuit of Will County's order disgorging Contemnor's fees in the amount of \$40,952.61 pursuant to Section 501(c-1)(3) of the Illinois Marriage and Dissolution of Marriage Act.
2. Whether funds earned by and paid to an attorney in the normal course of representation for past services rendered are 'available funds' within the meaning of Section 501(c-1)(3) of the Illinois Marriage and Dissolution of Marriage Act.

STATEMENT OF FACTS

The Petitioner, CHRISTINE GOESEL ("CHRISTINE"), filed a Petition for Dissolution of Marriage from the Respondent, ANDREW GOESEL ("ANDREW"), on January 18, 2013. (C-003-07). At that time, the Circuit Court of the Twelfth Judicial Circuit of Will County entered an order stating in part that "[b]oth parties' legal fees shall be paid from the HELOC until further order of court without prejudice." (C-016). The Contemnor, LAURA A. HOLWELL ("HOLWELL"), was retained by ANDREW on or about October 8, 2013. (C-1103-06). By the time HOLWELL was retained by ANDREW, the home equity line of credit ("HELOC") referred to in the January 18, 2013 order had already been fully utilized by the parties and all attorneys of record had been paid from sources outside of the HELOC. (C-899; C-1281; R-113, line 24, R-114, lines 1-12; R-280, lines 20-24).

Prior to HOLWELL appearing on behalf of ANDREW, his previous attorneys, ANDERSON & BOBACK ("ANDERSON"), filed a Motion to Disqualify CHRISTINE's former attorneys, GOLDSTINE, SKRODZKI, RUSSIAN, NEMEC, and HOFF, LTD. ("GOLDSTINE"). (C-069-72). The Motion to Disqualify alleged in pertinent part that GOLDSTINE advised CHRISTINE to send ANDREW's personal mail to their office, where they proceeded to open, scan, view, and copy his mail without his knowledge or permission. (C-070). ANDREW's Motion to Disqualify was presented to the Court on October 10, 2013. (C-068). On that same date, HOLWELL substituted as counsel for ANDREW. (C-086-87).

From October 2013 to March 2014, the disqualification issue was extensively litigated, as many motions and pleadings were filed with respect to same. (C-091-104; C-

212-26; C-369-72). Ultimately, on March 4, 2014, the Circuit Court disqualified GOLDSTINE as counsel for CHRISTINE for opening, viewing, copying, and scanning thirty-one (31) pieces of ANDREW's personal mail. (C-070; C-476). ANDREW incurred \$37,094.49 in fees with HOLWELL in disqualifying GOLDSTINE, whereas CHRISTINE was not charged by GOLDSTINE in defending against the Motion to Disqualify. (C-1074-75; C-1110-49; R-309, lines 13-24; R-310, lines 1-5). Thereafter, on March 10, 2014, THE LAW OFFICES OF EDWARD R. JAQUAYS ("JAQUAYS") appeared as Counsel on behalf of CHRISTINE. (C-478). On June 6, 2014, LEVINE, WITTENBERG, SHUGAN & SCHATZ, LTD. ("LEVINE") filed an appearance as co-counsel for ANDREW. (C-688).

On June 12, 2014, CHRISTINE filed a Petition for Interim Attorney's Fees, Costs, and Other Relief alleging that ANDREW had the ability to contribute to her attorney's fees and costs. (C-709-18). On June 17, 2014, CHRISTINE filed an Emergency Petition for Temporary Restraining Order alleging that ANDREW had withdrawn fees from various assets to pay his attorney's fees. (C-743-47). CHRISTINE's Counsel, JAQUAYS, did not provide notice of the Emergency Petition to HOLWELL. (C-750-51). Rather, notice was only provided to LEVINE in open court. (C-742; C-750-51). The Emergency Petition was granted that same day. (C-750).

On June 20, 2014, CHRISTINE filed an Amended Petition for Interim Attorney's Fees, Costs, and Expenses, requesting, in part, that HOLWELL's previously paid attorney's fees be disgorged "in the event this Court finds that the Defendant, ANDREW GOESEL, lacks the ability to pay interim fees" (C-770; C-766-75). On June 24, 2014, ANDREW filed an Emergency Petition for Temporary Restraining Order alleging

that CHRISTINE withdrew \$22,000.00 from her retirement account to pay her attorney's fees. (C-778-84). ANDREW also filed a Petition for Prospective Attorney's Fees and Costs alleging that "CHRISTINE GOESEL is gainfully employed and in control of substantial funds and assets." (C-787; C-785-95).

On June 27, 2014, HOLWELL withdrew as counsel of record for ANDREW. (C-796). At CHRISTINE's request, the Circuit Court's June 27, 2014 withdraw order specifically stated "[t]he court retains jurisdiction over Ms. Holwell should the Court find disgorgement to be an issue." (C-796). The Circuit Court also ordered that CHRISTINE's Counsel must "notify Ms. Holwell of any future dates pertaining to disgorgement." (C-796). Pursuant to a separate order, the Circuit Court also enjoined ANDREW from withdrawing any additional amounts from his retirement accounts. (C-797-98).

On July 29, 2014, July 30, 2014, and July 31, 2014 a hearing was held on CHRISTINE's Amended Petition for Interim Fees, Costs, and Expenses, ANDREW's Petition for Prospective Fees, and ANDREW's Temporary Restraining Order. (C-841; C-865; C-871). The parties' exhibits were entered by agreement and HOLWELL was the only witness called to testify for the hearing. (C-920; R-007, lines 16-21; R-010-012; R-166, lines 7-9). HOLWELL was excluded from the hearing pursuant to JAQUAYS' oral motion to exclude witnesses. (R-007, lines 16-23; R-008, lines 21-24). The evidence presented at this hearing showed that CHRISTINE earned \$110,632.04 in 2013. (C-863-64; C-1077; Appendix to Contemnor-Appellee's Brief, A-6). At the time of the hearing, CHRISTINE earned \$9,500.03 per month, or \$114,000.46 per year. (C-292; C-863-64; C-1084; R-198, lines 1-14; Appendix to Contemnor-Appellee's Brief, A-11). With respect to CHRISTINE's expenses, the evidence showed that she had no mortgage or car

payment. (C-863-64; C-1077; Appendix to Contemnor-Appellee's Brief, A-11-12). Finally, the evidence showed that CHRISTINE had access to several assets of value, including but not limited to a brand new car, a checking account, \$90,000.00 of equity in the marital home, a vacation residence, and several retirement accounts valued at \$137,759.93 total. (C-863-64; C-1077-78; Appendix to Contemnor-Appellee's Brief, A-6-9).

The evidence also showed that HOLWELL was paid \$51,382.28 in fees that she had earned throughout the proceedings and that HOLWELL was in possession of approximately \$13,000.00 which was in dispute as to whether this amount belonged to HOLWELL or ANDERSON. (C-1077; R-017, lines 7-8; R-052, line 7; R-062, lines 22-24; R-098-101). Without accounting for the funds in dispute, HOLWELL was owed \$17,583.00 in fees. (R-050, lines 10-12; R-052, lines 18-20). In addition, the evidence showed that ANDREW tendered an additional \$10,000.00 to HOLWELL above and beyond the \$51,382.28 and approximately \$13,000.00 in dispute; however, HOLWELL tendered this amount to LEVINE. (R-051, lines 10-24, R-052, lines 1-12). At the time of the July 2014 hearing, LEVINE was holding the \$10,000.00 in its trust account. (R-052, line 3). The parties stipulated that HOLWELL's attorney's fees were reasonable and necessary. (R-165, lines 5-12).

During the July 2014 hearing, CHRISTINE did not argue whether ANDREW had the ability to pay CHRISTINE's attorney's fees as the Petition for Interim Fees and Amended Petition for Interim Fees both alleged. Rather, CHRISTINE's attorneys only argued why HOLWELL's fees should be disgorged. (R-166-190; R-211-217). Throughout HOLWELL's testimony, JAQUAYS questioned HOLWELL regarding any

and all payments received from ANDREW and her various business practices, even though it was stipulated her fees were reasonable and necessary. (R-056, lines 7-24; R-057, lines 1-4; R-106, lines 6-24; R-117, line 24, R-118, lines 1-4). During her testimony, HOLWELL attempted to defend her interests, however, the Circuit Court repeatedly ordered HOLWELL to simply answer the questions asked of her. (R-058, line 24, R-059, lines 1-4; R-82, lines 6-9). At the end of the hearing, JAQUAYS requested leave to file an Amended Petition for Interim Attorney's Fees and Costs to Conform to the Proofs, over LEVINE's objection. (R-217, lines 2-24, R-218, lines 1-20).

On August 4, 2014, HOLWELL requested that the Circuit Court allow her to intervene to defend her interests in addressing JAQUAYS' Motion for Leave to Amend Pleadings to Conform to Proofs. (C-877-78). The Circuit Court allowed HOLWELL to intervene and entered an order stating in pertinent part that it "reaffirms its jurisdiction over Attorney Laura Holwell and allows her to intervene for purposes of addressing Plaintiff's Motion for Leave to Amend Pleadings to Conform to Proofs." (C-877). On August 13, 2014, ANDREW filed a Motion to Dismiss Count I of the Motion for Leave to Amend the Pleadings to Conform to Proofs and a Response to Count II of the Motion. (C-881-85). On August 15, 2014, CHRISTINE filed a Motion to Modify the January 18, 2013 Court Order to allow the parties' attorneys to be paid from sources outside of the HELOC. (C-898-99). This Motion was ultimately granted on December 12, 2014. (C-1281).

On September 15, 2014, a hearing was held with respect to CHRISTINE's Motion for Leave to Amend Pleadings to Conform to Proofs. (C-915). On September 29, 2014, the Circuit Court denied CHRISTINE's Motion for Leave to Amend Pleadings to

Conform to the Proofs for CHRISTINE's failure to attach the requisite affidavit. (C-923-24). However, the Circuit Court disgorged HOLWELL's fees in the amount of \$40,952.61 and ordered that these funds be directly turned over to JAQUAYS within fourteen (14) days. (C-924). In so ordering, the Circuit Court found that ANDREW lacked the ability to pay interim fees because "Husband claims current monthly net income of \$3,343.56, with expenses exceeding income." (C-920). With respect to CHRISTINE's ability to pay for her attorney's fees, the Circuit Court found that "Wife seeks contribution as she has the inability to pay her attorney fees." (C-920).

On October 16, 2014, JAQUAYS filed a citation against HOLWELL and froze her personal bank accounts in an attempt to collect on the disgorgement order. (C-963-66). HOLWELL immediately filed an Emergency Motion to Quash on October 17, 2014, which was heard in front of the Honorable Judge Mark Thomas Carney. (C-967-71). As part of those proceedings, the Honorable Judge Mark Thomas Carney ordered both HOLWELL and JAQUAYS ask the Honorable Judge Dinah Archambeault whether she intended the September 29, 2014 order to be a judgment, over HOLWELL's objection. (C-978; R-243, lines 18-24, R-244, line 1). At that time, the Honorable Judge Dinah Archambeault advised both HOLWELL and JAQUAYS that the disgorgement order was not a judgment, and that a rule was a more appropriate action. (R-259, lines 21-22). As a result, the citation was quashed pursuant to HOLWELL's motion. (C-979). Thereafter, on October 24, 2014, CHRISTINE filed a Petition for Adjudication of Indirect Civil Contempt against HOLWELL for her alleged failure to pay the monies pursuant to the Circuit Court's September 29, 2014 disgorgement order. (C-982-87).

On October 29, 2014, HOLWELL timely filed a Motion to Reconsider the September 29, 2014 Order. (C-1072-175). The Motion to Reconsider alleged, in part, that CHRISTINE had an ability to pay her own attorney's fees due to newly discovered evidence. (C-1087). In or about November 2014, the parties received approximately \$160,000.00 in proceeds from the sale of commercial real property located at 10339 W. Lincoln Highway, Frankfort, Illinois. (C-1087; C-1254; R-293, lines 9-24; R-294-97). These funds were being held in JAQUAYS' trust account pursuant to an order entered on October 7, 2014. (C-953; C-1388). On December 18, 2014, the date of the hearing on the Motion to Reconsider, it was undisputed the parties had access to the approximately \$160,000.00 in proceeds. (R-294-97). On December 18, 2014, the Court denied HOLWELL's Motion to Reconsider September 29, 2014 Order. (C-1350-51). With respect to the \$160,000.00 in proceeds being held by CHRISTINE's attorney, the Circuit Court found that HOLWELL could still be disgorged despite the parties having access to the \$160,000.00, because the \$160,000.00 was acquired after the July 2014 hearing. (R-297, lines 20-24, R-298, lines 1-3). With respect to CHRISTINE's October 24, 2014 Petition for Adjudication of Indirect Civil Contempt against HOLWELL for her alleged failure to pay the monies pursuant to the September 29, 2014 disgorgement order, HOLWELL specifically requested to be held in friendly contempt pursuant to Supreme Court Rule 304(b)(5) for the purposes of an appeal. (R-343, lines 20-24, 344, line 1; R-366, lines 1-20). The Circuit Court entered an order stating, in pertinent part, that "[t]o allow jurisdiction to appeal, Attorney Holwell requests to be held in friendly contempt for 10/24/14 Rule and is held in contempt pursuant to said request." (C-1350). Also on December 18, 2014, the Circuit Court reconsidered its previous October 17, 2014 ruling

that the September 29, 2014 disgorgement order was a temporary order and not a judgment, and held that the disgorgement order constituted a judgment, over HOLWELL's objection. (C-1350).

On December 22, 2014, HOLWELL filed a Motion to Reconsider the December 18, 2014 order wherein the Circuit Court ruled the disgorgement order was a final, collectible judgment. (C-1406-18). On December 23, 2014, HOLWELL filed a Motion to Dismiss CHRISTINE's Petition for Indirect Civil Contempt and Other Relief against HOLWELL for lack of jurisdiction. (C-1420-38). On January 16, 2015, the Circuit Court denied HOLWELL's Motion to Reconsider, holding that the September 29, 2014 disgorgement order constituted a final, collectible judgment. (C-1547-48). In the January 16, 2015 order, the Circuit Court made the express finding that there is no just reason for delaying enforcement and appeal of this finding. (C-1547).

Also on January 16, 2015, CHRISTINE presented a Motion to Clarify the Court's December 18, 2014 contempt finding, which was previously filed on January 13, 2015. (C-1460; C-1464-65). The Motion to Clarify requested that "this Court impose a monetary or other penalty against Ms. HOLWELL for the contempt finding made on December 18, 2014" (C-1465). Based upon the Motion to Clarify, the Circuit Court *sua sponte* vacated the previous December 18, 2014 finding of friendly contempt, held HOLWELL in indirect civil contempt, charged HOLWELL \$10 per day each day she did not pay the disgorgement, and sentenced HOLWELL to the Will County Adult Detention Facility for an indeterminate amount of time not to exceed one hundred seventy-nine (179) days. (C-1547). HOLWELL's imprisonment was stayed for thirty (30) days to provide her time to file her appeal. (C-1547). The Circuit Court also ordered HOLWELL

to pay the \$40,952.61 by January 21, 2015 as her purge. (C-1548). This was done without notice to HOLWELL, without a hearing, and over HOLWELL's strenuous objection. (R-463, lines 17-24, 464, lines 1-2).

On January 21, 2015, the Circuit Court denied HOLWELL's Motion to Dismiss Petition for Indirect Civil Contempt for lack of jurisdiction, finding that HOLWELL had filed her additional appearance on September 15, 2014. (C-1576-77; R-523, lines 12-16). Also on January 21, 2015, the Circuit Court reaffirmed the January 16, 2015 order finding HOLWELL in indirect civil contempt, reaffirmed its previous penalty of incarceration, to be stayed pending the filing of a notice of appeal and pending any appeal filed, and reaffirmed the imposition of a penalty of \$10.00 per day, to begin on January 21, 2015. (C-1576). HOLWELL timely filed her Notice of Appeal On February 13, 2015. (C-1654-56). On January 24, 2017, the Third District Appellate Court issued its opinion, holding that "a trial court may not require payment of interim attorney fees by way of disgorgement of retainer funds previously paid to an attorney when, prior to the attorney receiving notice of the petition for interim fees, the attorney has already earned those funds and the attorney is under no obligation to otherwise return those funds to the client." *In re Marriage of Goesel*, 2017 IL App (3d) 150101, ¶34. (Appendix to Petitioner-Appellant's Brief, A-68). As a result, the Third District reversed the Circuit Court's September 29, 2014 disgorgement order and vacated the finding of contempt. *In re Marriage of Goesel*, 2017 IL App (3d) 150101, ¶36. (Appendix to Petitioner-Appellant's Brief, A-68).

ARGUMENT

I. CHRISTINE OMITTS FACTS PERTINENT TO THE COURT'S UNDERSTANDING OF THE INSTANT MATTER IN A MISGUIDED ATTEMPT TO DISPARAGE HOLWELL.

In the Brief and Argument for Petitioner-Appellant, CHRISTINE admits that “[t]he issues in this appeal mainly deal with the statutory definition of the word ‘available’ within Section 501(c-1)(3) of the Illinois Marriage and Dissolution of Marriage Act regarding the disgorgement of attorney’s fees.” (*Brief and Argument for Petitioner-Appellant*, page 2). However, throughout her Brief and Argument for Petitioner-Appellant, CHRISTINE hardly addresses the answer to this question. (*See Generally Brief and Argument for Petitioner-Appellant*). Rather than address the law, CHRISTINE and her Counsel go to great lengths to omit pertinent facts as well as misrepresent other facts and circumstances in the instant matter in an attempt to disparage HOLWELL’s reputation in the eyes of the Court. (*See Generally Brief and Argument for Petitioner-Appellant*).

For instance, CHRISTINE focuses on the January 18, 2013 Order providing that both parties’ legal fees were to be “paid from the HELOC until further order of Court *without prejudice*.” (C-016) (emphasis added). CHRISTINE then states that HOLWELL was paid from sources outside of the HELOC, implying that HOLWELL somehow violated this order, even though the Circuit Court subsequently agreed HOLWELL was not in violation of this order, as all attorneys of record had been paid from sources outside of the HELOC. (R-114, lines 5-16; *Brief and Argument for Petitioner-Appellant*, pages 11-12). CHRISTINE then refers to a motion that was filed prior to HOLWELL being paid which indicated the parties were in “financial straits.” (C-375-80; *Brief and*

Argument for Petitioner-Appellant, pages 11-12). It is clear CHRISTINE does this in an attempt to make HOLWELL look like a hypocrite; however, CHRISTINE is the one who is withholding pertinent facts which would aide this Honorable Court's understanding of the pending issues.

Although CHRISTINE is eager to demonize HOLWELL, CHRISTINE neglects to inform this Honorable Court that, at the time the Emergency Motion to Sign Listing Agreement was filed in February 2014, the parties were in financial straits because CHRISTINE arbitrarily and voluntarily quit her job without cause while ANDREW's business was failing, such that the parties were not generating any income. (C-376). Thereafter, the parties' finances improved when CHRISTINE obtained alternative employment and the parties acquired additional funds of approximately \$160,000.00 from which attorney's fees could be paid when they sold their commercial property. (C-787; C-1087; C-1254; R-293, lines 9-24; R-294-97; Appendix to Contemnor-Appellee's Brief, A-5). In addition, ANDREW and HOLWELL were forced to file the Emergency Motion to Sign Listing Agreement because, although the parties had agreed to sell their home due to their financial troubles, CHRISTINE refused to sign the listing agreement. (C-375-76). Finally, ANDREW incurred \$37,094.49 in attorney's fees to disqualify GOLDSTINE for improperly opening, viewing, copying, and scanning thirty-one (31) pieces of ANDREW's personal mail. (C-070; C-476; C-1074-75; C-1110-49). Thus, ANDREW was forced to incur thousands of dollars in fees to protect his privacy and the integrity of the underlying proceedings due to CHRISTINE and GOLDSTINE's wrongdoing. (C-070; C-476; C-1074-75; C-1110-49).

CHRISTINE is likewise eager to demonize ANDREW, claiming he engaged in a “scorched earth campaign” and falsely alleging ANDREW withdrew “nearly all of the parties’ marital retirement assets” from January 2014 through June 2014. (*Brief and Argument for Petitioner-Appellant*, pages 7, 12-13). However, ANDREW did not engage in a “scorched earth campaign” to deprive CHRISTINE of assets and did not withdraw nearly all of the parties’ retirement assets. Rather, CHRISTINE’s litigious and unacceptable behavior throughout the proceedings as set forth above forced ANDREW to withdraw funds from his own retirement to keep the family afloat, which was done without HOLWELL’s knowledge. (R-117, lines 18-24, R-118, lines 1-7). Of the total funds withdrawn from the retirement accounts, HOLWELL received little of it. (Appendix to Petitioner-Appellant’s Brief, A-105-10; C-1074-75; C-1110-49). Rather, the bulk of these funds were used to pay the parties’ various marital bills, including but not limited to mortgage payments, water bills, rent, and credit cards. (Appendix to Petitioner-Appellant’s Brief, A-105-06). To keep the family afloat, ANDREW only withdrew funds from his own retirement accounts and left CHRISTINE’s retirement accounts, totaling \$137,759.93, untouched. (Appendix to Petitioner-Appellant’s Brief, A-105-10; Appendix to Contemnor-Appellee’s Brief, A-8-9). In addition to CHRISTINE’s retirement accounts, CHRISTINE had access to several assets of value that ANDREW did not utilize in maintaining the parties’ marital expenses, including but not limited to a brand new car, a checking account, \$90,000.00 of equity in the marital home, a commercial property, and a vacation residence. (C-863-64; C-1077-78; Appendix to Contemnor-Appellee’s Brief, A-6-9). As a result, this was not a “scorched earth

campaign” as characterized by CHRISTINE, as ANDREW preserved several assets of value from which CHRISTINE could be reimbursed for any alleged dissipation.

Finally, although CHRISTINE is attempting to paint HOLWELL in a negative light for accepting funds outside of the HELOC, CHRISTINE neglects to inform this Honorable Court that, by the time HOLWELL appeared on behalf of ANDREW, the HELOC had been exhausted. (C-899; C-1281; R-113, line 24, R-114, lines 1-12; R-280, lines 20-24). In addition, CHRISTINE neglects to inform this Honorable Court that all of the attorneys, including her own attorney, received funds outside of the HELOC prior to the December 12, 2014 Order being entered allowing the parties to pay attorney’s fees from other sources. (C-898-99; C-1281; R-113, line 24; R-114, lines 1-12). As a result, it appears that CHRISTINE is suggesting that, while all the other attorneys in this matter can and should be paid regardless of the January 18, 2013 Order, HOLWELL is “bad” for accepting funds and should not be paid. This type of trivial argument has no place in this Honorable Court as it is not well founded in fact and does not speak to the legal merits of the case. As a result, CHRISTINE’s argument should be disregarded by this Honorable Court as misguided and irrelevant.

II. THE THIRD DISTRICT APPELLATE COURT ERRED IN FINDING THAT NEITHER PARTY HAD AN ABILITY TO PAY THEIR ATTORNEY’S FEES BECAUSE THE PARTIES HAD SUFFICIENT FUNDS AND ACCESS TO ASSETS FROM WHICH TO PAY THEIR OWN ATTORNEY’S FEES.

STANDARD OF REVIEW

An award of interim attorney’s fees is generally reviewed for an abuse of discretion. *Nash v Alberola*, 2012 IL App (1st) 113724, ¶15. A reviewing Court must reverse a trial court’s decision under the abuse of discretion standard if “no reasonable

person would take the view adopted by the circuit court.” *In re the Marriage of Davis*, 215 Ill. App. 3d 763, 774 (1st Dist., 1991). Although the actual award of attorney’s fees is reviewed for an abuse of discretion, if an appeal from an award of attorney’s fees “hinges on issues of statutory construction and constitutionality, our standard of review is *de novo*.” *Nash v Alberola*, 2012 IL App (1st) 113724, ¶15 (quoting *In re Marriage of Beyer*, 324 Ill. App. 3d 305, 309 (1st Dist., 2001) (internal quotations omitted)).

A. The Third District Appellate Court erred in finding that the parties were unable to pay their own attorney’s fees because the evidence showed CHRISTINE had the ability to pay her own attorney’s fees.

With respect to the legal merits of the pending issues, generally, a party is obligated to pay any attorney’s fees and costs incurred by that party. *In re the Marriage of Mantei*, 222 Ill. App. 3d 933, 941 (4th Dist., 1991). However, Section 501(c-1)(3) of the Illinois Marriage and Dissolution of Marriage Act provides for the disgorgement of fees in situations where neither party has the ability to pay their fees. 750 ILCS 5/501(c-1)(3). Section 501(c-1)(3) states that, “[i]f the court finds that both parties lack financial ability or access to assets or income for reasonable attorney’s fees and costs, the court (or hearing officer) shall enter an order that allocates available funds for each party’s counsel, including retainers or interim payments, or both, previously paid, in a manner that achieves substantial parity between the parties.” 750 ILCS 5/501(c-1)(3). A party’s inability to pay his or her own attorney’s fees may be shown if the “payment of fees would strip the individual of his or her means of support and undermine his or her economic stability.” *In re the Marriage of Smith*, 128 Ill. App. 3d 1017, 1027 (2d Dist., 1984). However, “[f]ew can afford the expense of divorce without incurring debt . . .

Ability to pay does not mean ability to pay without pain or sacrifice.” *In re the Marriage of McCoy*, 272 Ill. App. 3d 125, 132 (4th Dist., 1995).

In the instant matter, the Third District Appellate Court specifically found that neither party had the ability to pay their own attorney’s fees. *In re Marriage of Goesel*, 2017 IL App (3d) 150101, ¶18. (Appendix to Petitioner-Appellant’s Brief, A-57). Respectfully, the Third District Appellate Court erred in finding neither party had an ability to pay their own attorney’s fees. Although the Third District Appellate Court is correct in asserting that a party need not be destitute in order to determine that he or she is unable to pay his or her own attorney’s fees, both CHRISTINE and ANDREW were far from destitute by the time the disgorgement order was entered on September 29, 2014 and affirmed on January 16, 2015. (C-1547-48). *In re Marriage of Goesel*, 2017 IL App (3d) 150101, ¶17; *See In re Marriage of Vance*, 2016 IL App (3d) 150717, ¶61 (“[F]inancial inability does not mean destitution; the spouse need not exhaust his or her own estate.”) (internal quotations omitted).

The Fifth District denied a wife’s request for attorney’s fees where wife failed to show she was unable to pay her own attorney’s fees, despite the fact the parties earned disparate incomes. *In re the Marriage of Keip*, 332 Ill. App. 3d 876; 773 N.E.2d 1227, 1234 (5th Dist., 2002). In *Keip*, Wife filed a Petition for Contribution requesting that Husband pay a portion of her attorney’s fees, which the Circuit Court denied. *Id.* The evidence showed Wife had a certificate to be a teacher’s aide and worked as a cook’s helper at the local grade school, whereas Husband worked as a finance manager. *Id.* at 1229. The evidence also showed that Wife earned \$14,001.00 in 1999 whereas Husband earned \$100,489.00 in 1999. *Id.* Wife argued that Husband should contribute to her

attorney's fees simply due to his superior financial position. *Id.* at 1233-34. The Fifth District rejected this argument and upheld the Circuit Court's decision. *Id.* at 1234. In doing so, the Fifth District stated that Wife had the burden to show that she was unable to pay her fees and that Wife simply "failed to show that she was unable to pay the fees herself," despite Husband's superior financial position. *Id.*

Similarly to the Wife in *Keip*, CHRISTINE failed to show that she is unable to pay her own attorney's fees. CHRISTINE presented absolutely no evidence during the July 2014 hearing that she was "unable" to pay her attorney's fees herself. (R-197, lines 11-22). Rather, it appears that this important statutory element was merely assumed throughout the proceedings. (R-197, lines 17-22). Regardless, the evidence presented unequivocally showed CHRISTINE is capable of paying her own attorney's fees. (C-863-64; C-1077-78; Appendix to Contemnor-Appellee's Brief, A-5-9). Pursuant to CHRISTINE's own Disclosure Statement and Affidavit of Income and Expenses, her gross income from all sources for 2013 was \$110,632.04. (C-863-64; C-1077; Appendix to Contemnor-Appellee's Brief, A-6). Further, her gross monthly income from her salary and rental income was \$6,000.03 per month. (C-863-64; C-1084; Appendix to Contemnor-Appellee's Brief, A-11). Additionally, at the time of the July 2014 hearing, CHRISTINE received \$3,500.00 per month in child support. (C-292; C-1084). As a result, her total monthly income at the time of the hearing was \$9,500.03, or \$114,000.46 per year. (C-292; C-863-64; C-1084; Appendix to Contemnor-Appellee's Brief, A-11). With respect to CHRISTINE's expenses, the evidence showed that, at the time of the July 2014 hearing, CHRISTINE was not paying the mortgage or household expenses on the marital home and that she had no car payment. (C-863-64; C-1077; Appendix to

Contemnor-Appellee's Brief, A-11-12). As a result, at the time of the hearing, CHRISTINE's monthly income exceeded her expenses. (R-198, lines 15-16; Appendix to Contemnor-Appellee's Brief, A-14). Furthermore, CHRISTINE's Disclosure Statement listed several assets of value from which she could pay her own attorney's fees, including but not limited to: (1) a checking account with a value of \$4,610.99 as of May 2014; (2) \$200.00 cash on hand; (3) \$90,000.00 of equity in the marital home; (4) a Michigan Residence, with a supposedly unknown value, that her "Husband gifted" to her; and (5) a brand new 2014 Honda CRV allegedly purchased for her, with no value stated. (C-1085; Appendix to Contemnor-Appellee's Brief, A-6-9).

It was unreasonable for the Third District Appellate Court to find CHRISTINE had an inability to pay her attorney's fees given that CHRISTINE earned \$9,500.03 gross income per month, that her monthly income exceeded her expenses, and she had access to several valuable assets from which to pay her own attorney's fees. (C-1077-78; C-1085; R-197-98; Appendix to Contemnor-Appellee's Brief, A-6-11). Because CHRISTINE earned nearly \$114,000.00 per year and did not have a mortgage or a car payment, it is clear that she could afford to pay her own attorney's fees without "stripping her means of support." However, even if CHRISTINE did not have the funds or access to assets to pay her attorneys in one lump sum, the Third District Appellate Court cannot ignore that CHRISTINE could easily pay her attorneys in monthly installments. The Fourth District has specifically stated that "[a] party who does not have the present ability to pay his own attorney fees can nevertheless be ordered to pay his own attorney, although enforcement might have to be accomplished by an installment order." *McCoy*, 272 Ill. App. 3d at 131-32. Given that CHRISTINE's monthly income exceeded her expenses, she at the very

least had the ability to pay her own attorney's fees pursuant to an installment order. (R-198, lines 15-16; Appendix to Contemnor-Appellee's Brief, A-14). Thus, the Third District erred in finding that CHRISTINE did not have the ability to pay her own attorney's fees.

B. The Third District Appellate Court erred in finding that the parties were unable to pay their own attorney's fees because the evidence showed the parties had access to various assets from which to pay their attorney's fees.

1. The Third District Appellate Court erred in finding that the parties were unable to pay their own attorney's fees because this finding was contrary to the Circuit Court's finding that the parties had access to assets to pay their attorney's fees as of August 15, 2014.

Although the Circuit Court found on September 29, 2014 that both parties lacked the ability to pay for their own attorney's fees and costs, on December 12, 2014, the Circuit Court found the opposite. (C-1281). On August 15, 2014, CHRISTINE filed her Motion to Modify the January 18, 2013 Court Order to allow the parties' attorneys to be paid from sources outside of the HELOC. (C-898-99). This Motion was ultimately granted on December 12, 2014. (C-1281). In granting CHRISTINE's Motion to Modify, the Circuit Court held that "[b]y agreement of the Plaintiff and Defendant, the Plaintiff's Motion filed August 15, 2014 is granted. The parties may pay their attorney's fees from funds other than the line of credit. Authorization to do so is *retroactive to August 15, 2014.*" (C-1281) (emphasis added).

It is clear the Circuit Court's December 12, 2014 order suggests the parties had access to assets and additional income from which to pay their own attorney's fees as of August 15, 2014, *six weeks prior to* the entry of the order for disgorgement, because, if the parties did not have access to additional assets or income to pay their attorney's fees

outside of the HELOC on August 15, 2014, CHRISTINE would not have requested the Circuit Court to allow the parties to pay their attorney's fees from the additional assets or income retroactive to August 15, 2014. (C-898-99). By making this order retroactive to August 15, 2014, the Circuit Court essentially found that the parties had access to income and assets from which to pay their own attorney's fees as early as August 15, 2014, over one month *prior to* the Circuit Court's finding that the parties lacked the ability to pay their own attorney's fees on September 29, 2014. (C-1281). As a result, the Circuit Court's implication that the parties had access to income and assets from which to pay their own attorney's fees as of August 15, 2014 is in direct conflict with the Circuit Court's finding that the parties did not have the ability to pay their own attorney's fees on September 29, 2014.

In *Nash v Alberola*, the Circuit Court entered an order stating "Respondent 'shall pay to . . . Christine Svenson [interim attorney fees of] \$5,000 . . . within 14 days' . . . if Respondent failed to make the \$5,000.00 payment to Ms. Svenson within 14 days, then 'Mr. Mirabelli shall disgorge [the \$5,000] to . . . Svenson within said time frame.'" 2012 IL App (1st) 113724, ¶7. The First District held that the Circuit Court's order was ambiguous in that the interim fee award required a finding that Respondent had the ability to pay attorney's fees and the disgorgement required a finding that neither party had the ability to pay their attorney's fees. *Id.* at ¶23. As a result, the First District reversed the disgorgement order because the Circuit Court failed to properly find that both parties were unable to pay their fees. *Id.*

Similarly to the findings in *Nash*, the Circuit Court's findings in the instant matter are ambiguous. The Circuit Court's December 12, 2014 order implies that the parties had

access to additional income and assets from which to pay their own attorney's fees as of August 15, 2014, yet on September 29, 2014, the Circuit Court found that the parties lacked the ability to pay their own attorney's fees. (C-920; C-1281). Pursuant to *Nash*, the Circuit Court cannot imply that the parties have access to assets and income from which to pay their attorney's fees on August 15, 2014, then, six weeks later, rule that the parties had insufficient access to assets or income from which to pay their own attorney's fees. Because the Circuit Court's findings with respect to the parties' ability to pay their own attorney's fees were ambiguous and inconsistent with one another, the Third District erred in finding that neither party had an ability to pay their attorney's fees pursuant to Section 501(c-1)(3) of the Illinois Marriage and Dissolution of Marriage Act.

2. The Third District Appellate Court erred in finding that the parties were unable to pay their own attorney's fees because the evidence showed the parties had access to approximately \$160,000.00 in liquid proceeds from the sale of commercial property.

Finally, the Third District erred in finding that neither party had an ability to pay their attorney's fees because the evidence showed that, subsequent to the July 2014 hearing, but prior to the entry of the final order on HOLWELL's Motion to Reconsider, the parties had access to approximately \$160,000.00 in proceeds from the sale of commercial property. (C-1087; C-1254; R-293, lines 9-24; R-294-97). A party may file a motion to reconsider within 30 days after an order is entered. 735 ILCS 5/2-1203. In a motion to reconsider, a party should bring before the court errors in the prior application of the existing law, newly discovered evidence, or changes in law. *Universal Scrap Metals, Inc. V. J. Sandman and Sons, Inc.*, 337 Ill. App. 3d 501, 786 N.E.2d 574, 581 (1st Dist., 2003).

On October 29, 2014, HOLWELL filed a Motion to Reconsider the September 29, 2014 Order disgorging the attorney's fees which had been already earned by her. (C-1072-175). The Motion to Reconsider alleged, in part, that CHRISTINE had an ability to pay her attorney's fees because the parties had recently sold their commercial property located at 10339 W. Lincoln Highway, Frankfort, Illinois and received approximately \$160,000.00 in proceeds. (C-1087). At the hearing on the Motion to Reconsider, the evidence showed the parties received approximately \$160,000.00 in proceeds from the sale of commercial real property and that these funds were being held in JAQUAYS' trust account at that time, pursuant to an order entered on October 7, 2014. (C-953; C-1087; C-1254; C-1388; R-293, lines 9-24; R-294-297). On December 18, 2014, the date of the hearing on the Motion to Reconsider, it was undisputed the parties had access to the approximately \$160,000.00 in proceeds. (R-294-297). Despite the fact it was uncontested the parties had access to \$160,000.00 cash, the Circuit Court found that HOLWELL could still be disgorged, because the \$160,000.00 was acquired *after* the July 2014 hearing. (R-297, lines 29-24, R-298, lines 1-3).

It is true that, with respect to newly discovered evidence, the Fourth District has held "[t]o present newly discovered evidence, a party must show that the newly discovered evidence existed before the initial hearing but had not yet been discovered or was otherwise unobtainable." *Stringer v. Packaging Corp. of America*, 351 Ill. App. 3d 1135, 1141 (4th Dist., 2004). However, the Second District expanded the meaning of "newly discovered evidence" to include certain evidence that existed after the initial hearing. *In re Marriage of Wolff*, 355 Ill. App. 3d 403; 822 N.E.2d 596, 604-05 (2d Dist., 2005). In *Wolff*, the Second District adopted the federal rule with respect to newly

discovered evidence, which defines newly discovered evidence as “evidence [that] was in existence at the time of trial or pertains to facts in existence at the time of trial.” *Id.* at 604 (internal citations omitted). While adopting the federal rule, the Second District specifically held that “newly discovered evidence must pertain to ‘facts’ that were in existence at the time of trial, not to opinions, estimates, evaluations, or predictions.” *Id.* In the instant matter, the \$160,000.00 in proceeds from the sale of commercial property pertained to facts in existence at the time of the initial hearing because the commercial property was an asset the parties owned and had full access to at the time of the initial hearing on interim attorney’s fees in July 2014. (C-1087; Appendix to Contemnor-Appellee’s Brief, A-7). As a result, the parties’ sale of the commercial property and acquisition of the \$160,000.00 cash constitutes “newly discovered evidence” pursuant to *Wolff*. (C-1087).

As set forth more fully by the Second District in *Wolff* and as evidenced by the instant matter, the expanded definition of “newly discovered evidence” provides a more equitable result in that “i[t] more completely allows courts to ensure the correctness and fairness of judgments.” *Id.* For example, in the instant matter, it would be wholly inequitable to disgorge HOLWELL of the fees she has already earned when the parties acquired \$160,000.00 subsequent to the initial hearing in July 2014, but prior to the ruling on the Motion to Reconsider the disgorgement order. In holding that newly discovered evidence must be in existence at the time of the initial hearing and thus, denying HOLWELL’s Motion to Reconsider, the Circuit Court essentially ensured that JAQUAYS would be paid but that HOLWELL would not be paid. (R-297, lines 20-24, R-298, lines 1-3). In the instant matter, the Circuit Court disgorged the amounts

HOLWELL had already earned and required her to turn said amounts over to JAQUAYS, even though JAQUAYS already had access to \$160,000.00 cash in his trust account from which he could be paid. (C-953; C-1087; C-1254; C-1388; R-293, lines 9-24; R-294-297).

In holding the \$160,000.00 held by JAQUAYS in his trust account did not constitute newly discovered evidence, the Circuit Court enabled JAQUAYS to be paid any further fees incurred by CHRISTINE from this amount, which, at the time of the hearing on the Motion to Reconsider the Disgorgement Order, was in his possession. (C-953; C-1087; C-1254; C-1388; R-293, lines 9-24; R-294-297). The result of all of this is that JAQUAYS received HOLWELL's earned fees and had possession of \$160,000.00 funds from which he could negotiate further payment of fees, whereas HOLWELL was paid nothing, had access to no further funds, and is forced to sue her former client for attorney's fees he has already paid her. This result is in direct conflict with the spirit of Section 501(c-1)(c) of the Illinois Marriage and Dissolution of Marriage Act, which clearly indicates that neither attorney should be paid less than the other. See 750 ILCS 5/501(c-1)(3) ("Except for good cause shown, an interim award shall not be less than payments made or reasonably expected to be made to the counsel for the other party."). As a result, this Honorable Court should adopt the Second District's definition of newly discovered evidence in *Wolff*, and find that the parties had access to \$160,000.00 from which to pay their own attorney's fees.

III. HOLWELL’S ATTORNEY’S FEES CANNOT BE DISGORGED BECAUSE THE FEES PAID TO HOLWELL WERE ALREADY EARNED BY HER FOR PAST SERVICES RENDERED AND THEREFORE, WERE NOT “AVAILABLE” FOR DISGORGEMENT UNDER SECTION 501(C-1)(3) OF THE ILLINOIS MARRIAGE AND DISSOLUTION OF MARRIAGE ACT.

STANDARD OF REVIEW

If an appeal from an award of attorney’s fees “hinges on issues of statutory construction and constitutionality, our standard of review is *de novo*.” *Nash v Alberola*, 2012 IL App (1st) 113724, ¶15 (quoting *In re Marriage of Beyer*, 324 Ill. App. 3d 305, 309 (1st Dist., 2001) (internal quotations omitted)).

A. The Second District, First District, and Third District are split regarding the definition of “available funds” as set forth in Section 501(c-1)(3) of the Illinois Marriage and Dissolution of Marriage Act.

As set forth in CHRISTINE’s Brief and Argument for Petitioner-Appellant, “[t]he issues in this appeal mainly deal with the statutory definition of the word ‘available’ within Section 501(c-1)(3) of the Illinois Marriage and Dissolution of Marriage Act regarding the disgorgement of attorney’s fees.” (*Brief and Argument for Petitioner-Appellant*, page 2). Section 501(c-1)(3) of the Illinois Marriage and dissolution of Marriage Act states in pertinent part that “[i]f the court finds that both parties lack financial ability or access to assets or income for reasonable attorney’s fees and costs, the court (or hearing officer) shall enter an order that allocates *available funds* for each party’s counsel, including retainers or interim payments, or both, previously paid, in a manner that achieves substantial parity between the parties.” 750 ILCS 5/501(c-1)(3) (emphasis added). On December 16, 2015, the Second District held that funds which have been previously earned by an attorney may still be subject to disgorgement because “it is clear that ‘available’ as used in the statute simply means that the funds exist

somewhere.” *In re Marriage of Squire*, 2015 IL App (2d) 150271, ¶22. However, on July 27, 2016, the First District held that “funds earned by and paid to a party’s lawyer in the normal course of representation for *past services rendered* are not ‘available funds’ within the meaning of Section 501(c-1)(3). . . .” *In re the Marriage of Altman and Block*, 2016 IL App (1st) 143076, ¶36 (emphasis added). In the instant matter, the Third District similarly held that “a trial court may not require payment of interim attorney fees by way of disgorgement of retainer funds previously paid to an attorney when, prior to the attorney receiving notice of the petition for interim fees, the attorney has already earned those funds and the attorney is under no obligation to otherwise return those funds to the client.” *In re Marriage of Goesel*, 2017 IL App (3d) 150101, ¶34. (Appendix to Petitioner-Appellant’s Brief, A-68). As a result, the Districts are split regarding the statutory definition of the term “available” as set forth in Section 501(c-1)(3) of the Illinois Marriage and Dissolution of Marriage Act.

In construing the language of a statute, “the goal of the court is to effectuate the legislature’s intent.” *In re the Marriage of Altman and Block*, 2016 IL App (1st) 143076, ¶17 (citing *People v. Pullen*, 192 Ill. 2d 36, 42 (2000)). The language of the statute “is the surest and most reliable indicator of legislative intent.” *Altman*, 2016 IL App (1st) 143076, at ¶17. (internal citations omitted). If the language set forth in the statute is clear, “its plain and ordinary meaning must be given effect without resorting to other aids of construction.” *Id.* (citing *In re Marriage of Mitchell*, 181 Ill. 2d 169, 173 (1998); *In re Marriage of Beyer*, 324 Ill. App. 3d 305, 309-10 (2001)). Even if this Honorable Court finds that neither party had adequate access to income or assets with which to pay their own attorney’s fees, HOLWELL’s fees cannot be disgorged because the fees paid to

HOLWELL had already been paid to and earned by her for past services rendered, and therefore, were not “available” for disgorgement pursuant to Section 501(c-1)(3) of the Illinois Marriage and Dissolution of Marriage Act.

B. The Third District properly reversed the Circuit Court’s September 29, 2014 disgorgement order because the legislature intended disgorged funds to be “available” to the attorney being disgorged and HOLWELL’s attorney’s fees were no longer “available” to her.

In *Squire*, the Wife was unemployed, but borrowed approximately \$130,000.00 to pay her attorney’s fees, \$10,000.00 of which was paid to a previous attorney, the remainder of which was paid to her current attorney at that time, The Stogsdill Law Firm (“Stogsdill”), as a retainer. 2015 IL App (2d) 150271, ¶4. On June 2, 2014, Husband filed a Petition for Interim and Prospective Attorney’s fees, requesting that Wife contribute to his fees. *Id.* at ¶2. During the hearing, Stogsdill asserted that the retainer had been earned and the funds deposited into its general account. *Id.* at ¶5. The Circuit Court found that the parties were not “financially secure,” disgorged \$60,000.00 of funds previously earned by Stogsdill, and ordered Stogsdill to turn over the \$60,000.00 to Husband’s attorney. *Id.* at ¶¶6-7.

On appeal, Stogsdill argued the Circuit Court had no authority to disgorge fees that had already been earned by its office. *Id.* at ¶15. The Second District disagreed, holding that Stogsdill could be disgorged even though Stogsdill had already earned the fees being disgorged. *Id.* In so holding, the Second District reasoned that the *Earlywine* matter suggests the term “available” as set forth in the statute “simply means that the funds exist somewhere.” *Id.* at ¶22 (discussing *In re the Marriage of Earlywine*, 2013 IL 114779). The Second District further reasoned that holding otherwise would frustrate the statute’s purpose in “leveling the playing field” because “the attorney representing the

advantaged spouse would have a strong incentive to earn the fees at an early stage of the litigation.” *Squire*, 2015 IL App (2d) 150271, ¶21.

In *Altman*, the Wife delayed filing a Petition for Interim Attorney’s Fees until nine (9) months after initially filing an Order of Protection against her Husband, after extensive attorney’s fees had already been incurred by both parties for various motions and hearings. 2016 IL App (1st) 143076, ¶8. In her initial Petition for Interim Attorney’s Fees, Wife requested \$36,864.30 in fees already incurred by her and \$25,000.00 in prospective attorney’s fees expected to be incurred. *Id.* Three (3) months thereafter, Wife filed an Amended Petition for Interim Attorney’s Fees, this time requesting \$54,098.68 in fees already incurred. *Id.* In her Amended Petition, Wife alleged she had incurred \$63,598.68 in fees, and only paid \$9,500.00. *Id.* She requested that Husband be ordered to pay the outstanding balance, or, in the alternative, that Husband’s attorney be disgorged sums that had been previously paid to him. *Id.* At that time, Husband represented that he had paid his current attorney, Gerage, \$41,500.00 for services already rendered, and that he owed Gerage \$17,112.50. *Id.* at ¶9. Husband further represented that he paid his former attorney, Tzinberg, \$25,000.00 and that he owed Tzinberg \$18,542.00. *Id.*

After hearing, the trial court found that both parties lacked sufficient access to assets or income to pay their reasonable attorney’s fees and costs. *Id.* at ¶10. The trial court further found that Husband had paid a total of \$66,500.00 to his attorneys, whereas Wife had only paid \$9,500.00 to her attorneys. *Id.* At the time of the hearing, Wife’s attorney was holding \$35,000.00 of Husband’s retirement assets in his trust account. *Id.* As a result, the trial court allocated \$50,500.00 to each party’s attorney as follows: (1) the

trial court allocated \$33,284.00 of the \$35,000.00 held in trust to Wife's attorney; and (2) the trial court disgorged \$16,000.00 in fees paid to Gerage for services already rendered by him, and ordered the \$16,000.00 be paid to Wife's attorney within seven (7) days. *Id.* When Gerage failed to pay the \$16,000.00 within seven (7) days, Wife's attorney filed a Petition for Rule to Show Cause. *Id.* at ¶11. Gerage was ultimately held in contempt of court, and appealed the contempt finding. *Id.* The First District Appellate Court reversed the disgorgement order and the finding of contempt against Gerage, holding that the funds earned by and paid to Gerage for services already rendered were not "available" for disgorgement under Section 501(c-1)(3). *Id.* at ¶36. In so holding, the First District reasoned that the legislature's use of the phrase "available funds" in Section 501(c-1)(3) indicates that only funds which are available to the attorney being disgorged or the parties, "whether in the form of a retainer or interim payments," can be subject to disgorgement. *Id.* at ¶33. The First District further reasoned "it seems to us a tortured reading of the statute to say that even though the firm has earned the fees, paid itself (as it was entitled to do), and used that income to pay salaries, overhead and litigation expenses for items such as experts and court reporters, it can nonetheless be required to refund those fees, not to its client, but to a third party." *Id.*

As set forth in Section 501(c-1)(3) of the Illinois Marriage and Dissolution of Marriage Act, it is clear that any funds being "disgorged" must be "available" before they can be disgorged, as the statute states that the Court "shall enter an order that allocates *available funds* for each party's counsel" if disgorgement is proper under the circumstances. 750 ILCS 5/501(c-1)(3) (emphasis added). In determining the meaning of the term "available" as set forth in Section 501(c-1)(3), this Honorable Court must look

to the plain and ordinary meaning of the term “available.” *In re the Marriage of Altman and Block*, 2016 IL App (1st) 143076, ¶17 (internal citations omitted). Merriam-Webster’s Dictionary defines “available” as “present or ready for immediate use; Accessible, obtainable. . .” MERRIAM-WEBSTER DICTIONARY, www.merriam-webster.com/dictionary/available (last visited Aug. 16, 2017). Thus, the plain and ordinary meaning of the term “available” is “present or ready for immediate use, accessible, obtainable.”

1. The Second District’s interpretation of the term “available” as set forth in Section 501(c-1)(3) ignores the plain and ordinary meaning of the term “available,” and therefore, does not effectuate the legislature’s intent.

In *Squire*, the Second District determined that Section 501(c-1)(3) only requires the funds being disgorged to “exist somewhere.” 2015 IL App (2d) 150271, ¶22. In finding that the funds being disgorged need only “exist somewhere,” the Second District relied upon the Illinois Supreme Court’s decision in *Earlywine. Id.* The Second District interpreted *Earlywine* to hold that *any funds* placed into a law firm’s operating account are “available” for disgorgement pursuant to Section 501(c-1)(3) of the Act. *Id.* (discussing *In re the Marriage of Earlywine*, 2013 IL 114779). However, *Earlywine* simply does not hold this. Rather, *Earlywine* merely holds that advanced payment retainers may be disgorged pursuant to Section 501(c-1)(3). *In re Marriage of Earlywine*, 2013 IL 114779, ¶29. Thus, the holding in *Earlywine* does not address the meaning of the term “available” as set forth in Section 501(c-1)(3) of the Act.

Furthermore, Section 501(c-1)(3) does not require the disgorged funds to “exist somewhere.” Rather, Section 501(c-1)(3) requires the disgorged funds to be “available.” See 750 ILCS 5/501(c-1)(3) (stating the Court “shall enter an order that allocates

available funds for each party’s counsel” if disgorgement is proper under the circumstances.) (emphasis added). Again, the language of the statute itself “is the surest and most reliable indicator of legislative intent.” *In re the Marriage of Altman and Block*, 2016 IL App (1st) 143076, ¶17 (internal citations omitted). If the statute required disgorged funds to “exist somewhere,” it would say “available funds” that “exist somewhere.” However, the statute does not state this – it merely states “available funds.” 750 ILCS 5/501(c-1)(3). Since the statute does not state this, it is unreasonable to determine that the legislature intended any and all funds to be “available” for disgorgement as long as those funds continue to “exist somewhere.”

Finally, by holding that disgorged funds need only “exist somewhere,” the Second District is suggesting that the disgorged funds could be *anywhere* as long as the funds “exist somewhere.” Under this interpretation of the term “available,” it is possible to disgorge an attorney even if the attorney being disgorged no longer has possession of the funds because the funds simply exist somewhere outside of the possession of the attorney being disgorged. In other words, the Second District’s interpretation of the statute allows an attorney to be disgorged even if the funds are no longer accessible or obtainable to the attorney being disgorged. This result is directly contrary to the plain and ordinary meaning of the term “available,” which is “present or ready for immediately use, accessible, obtainable.” The law does not require parties, attorneys, and the courts to abandon common sense. If the legislature has used the term “available” to describe these funds, it follows that the funds must be “available” to the attorney being disgorged (whether it is being held as a retainer or interim payment), before the attorney may be disgorged. If those funds simply exist anywhere, outside of the attorney’s possession,

those funds are no longer available to the attorney being disgorged. Thus, the Second District's decision renders the term "available" moot and does not speak to the legislature's intent. The legislature deliberately used the phrase "available funds" to characterize the type of funds that may be disgorged. 750 ILCS 5/501(c-1)(3). Ignoring this directive is not an option. As a result, this Honorable Court must overturn the Second District's holding in *Squire*.

2. The First District's interpretation of the term "available" as set forth in Section 501(c-1)(3) comports with the plain and ordinary meaning of the term "available" and therefore, effectuates the legislature's intent.

On the contrary, the First District's interpretation of the term "available" comports with the term's plain and ordinary meaning. In *Altman*, the First District held "funds earned by and paid to a party's lawyer in the normal course of representation for past services rendered are not 'available funds' within the meaning of Section 501(c-1)(3). . . ." 2016 IL App (1st) 143076, ¶36. In declaring that courts "shall enter an order that allocates available funds for each party's counsel" if disgorgement is appropriate, Section 501(c-1)(3) specifically characterizes "available funds" to include "retainers or interim payments, or both, previously paid" 750 ILCS 5/501(c-1)(3). Thus, the statute makes it clear that retainers and interim payments are "available funds" for disgorgement purposes. However, the statute *does not* state that fees earned by and paid to an attorney are considered "available funds" for purposes of the disgorgement. Because the statute specifically declares that "retainers or interim payments, or both, previously paid" are "available funds" for disgorgement, but does not specifically declare that fees paid to and earned by an attorney are "available funds" for disgorgement, it is clear that the legislature intended retainers and interim payments to be subject to

disgorgement, but did not intend fees earned by and paid to an attorney to be subject to disgorgement.

The *Altman* decision's explanation of "available funds" encompasses the legislature's intent because this explanation still allows interim payments and retainers to be subject to disgorgement, but determines fees earned by and paid to an attorney are not subject to disgorgement. 2016 IL App (1st) 143076, ¶36. Under the *Altman* decision, interim payments are still subject to disgorgement because interim payments may be intercepted prior to being earned by the attorney intending to receive the interim payments. Likewise, security retainers are still subject to disgorgement because, although the retainer will be in the attorney's possession, the retainer does not belong to the attorney. IL RULES OF PROF'L CONDUCT R. 1.15(c) ("A lawyer shall deposit in a client trust account funds received to secure payment of legal fees and expenses, to be withdrawn by the lawyer only as fees are earned and expenses incurred."); *In re Marriage of Goesel*, 2017 IL App (3d) 150101, ¶28. Rather, the retainer continues to belong to the party who paid it until the retainer is earned by the attorney. *Id.* As set forth above, the Illinois Supreme Court has previously held that advanced payment retainers are also subject to disgorgement. *In re Marriage of Earlywine*, 2013 IL 114779, ¶29. Although advanced payment retainers must be deposited into an attorney's general account upon receipt, the retainer must still be earned by the attorney and any unearned portion is to be returned to the client. IL RULES OF PROF'L CONDUCT R. 1.15(c)(4); *In re Marriage of Goesel*, 2017 IL App (3d) 150101, ¶28. As a result, it is possible for an advanced payment retainer to be unearned, which would subject it to disgorgement per the *Altman* decision. Because the *Altman* decision allows for interim payments and

retainers to be disgorged as set forth in the statute, but does not allow courts to disgorge fees paid to and earned by attorneys, this Honorable Court should uphold the First District's decision in *Altman*.

Similarly to the First District *Altman*, the Third District addressed this issue in the instant matter by holding “a trial court may not require payment of interim attorney fees by way of disgorgement of retainer funds previously paid to an attorney when, prior to the attorney receiving notice of the petition for interim fees, the attorney has already earned those funds and the attorney is under no obligation to otherwise return those funds to the client.” *In re Marriage of Goesel*, 2017 IL App (3d) 150101, ¶34. Although the Third District's definition of “available funds” is similar to the First District's definition in that the Third District declared “retainer funds previously paid to an attorney” may not be disgorged, the Third District appears to suggest that these funds must be paid “prior to the attorney receiving notice of the petition for interim fees.” *Id.* Otherwise funds paid to and earned by an attorney *after* receiving notice of an interim fee petition may be subject to disgorgement. *Id.* Respectfully, Section 501(c-1)(3) does not require attorneys to return fees paid to and earned by them for past services rendered, even after a petition for interim attorney's fees has been filed, because the plain language of the statute does not state this requirement. 750 ILCS 5/501(c-1)(3). However, if this Honorable Court were to include this requirement, HOLWELL's fees still cannot be disgorged in the instant matter. Rather, HOLWELL had received and earned all of the funds tendered to her for past services rendered prior to CHRISTINE filing her Petition for Interim Attorney's Fees. (C-003; C-709-18). By the time CHRISTINE filed her Petition for Interim Attorney's Fees and served ANDREW with same, HOLWELL had already been

gradually paid over the course of nine months. (C-1030-31; C-1064). Recognizing that HOLWELL had been paid and earned her fees prior to CHRISTINE filing her Petition, the Third District reversed the disgorgement order and vacated the findings of contempt against HOLWELL. *In re Marriage of Goesel*, 2017 IL App (3d) 150101, ¶36. (Appendix to Petitioner-Appellant's Brief, A-68). As a result, even if this Honorable Court finds that funds paid to and earned by an attorney after receiving notice of a petition for interim attorney's fees may be subject to disgorgement, HOLWELL's fees were paid to and earned by her prior to receiving notice of CHRISTINE's Petition for Interim Attorney's fees and thus, HOLWELL cannot be disgorged.

3. The First District's interpretation of the term "available" as set forth in Section 501(c-1)(3) avoids unjust results.

Furthermore, in defining "available funds" to exclude fees paid to and earned by an attorney for past services rendered, the First District recognized that funds paid to and earned by a party's attorney throughout the normal course of representation would likely not be "present or ready for immediate use, accessible, or obtainable" to the attorney being disgorged because the earned funds have likely been utilized by the attorney. *In re the Marriage of Altman and Block*, 2016 IL App (1st) 143076, ¶34. The First District reasoned that, "[i]t is not speculation to predict that some lawyers, particularly solo practitioners and those in small law firms, may be unable to comply with orders to disgorge funds that they have earned over several months and that have been transferred into (and out of) their operating accounts, at least not without serious financial hardship." *Id.* at ¶34. The First District further reasoned that, even if an attorney is not capable of complying with the disgorgement order because the funds have already been paid to, earned by, and used by the attorney, that attorney can nonetheless be threatened with

contempt if fees paid to and earned by an attorney are considered “available” for disgorgement. *Id.* at ¶36. Thus, the First District reasonably interpreted Section 501(c-1)(3) to exclude funds which have been paid to and earned by an attorney during the normal course of representation in order to avoid this inequitable result. *Id.*

The instant matter is a perfect example of how disgorging an attorney’s fees that have already been paid to and earned by the attorney for past services rendered is impractical, ignores the reality of how attorneys run their businesses, and achieves inequitable results. CHRISTINE delayed filing her Petition for Interim Attorney’s Fees nearly one (1) year, five (5) months after initiating her case. (C-003; C-709-18). At the time of the hearing, HOLWELL had already been paid \$51,382.28 in fees that she had earned for past services rendered throughout the proceedings. (C-1030-31; C-1064; C-1077; R-017, lines 7-8; R-052, line 7; R-062, lines 22-24). HOLWELL was paid this sum gradually, over a period of nine (9) months. (C-1030-31; C-1064). On September 29, 2014, after HOLWELL had already withdrawn from the case, the Circuit Court of the Twelfth Judicial Circuit disgorged HOLWELL’s fees in the amount of \$40,952.61 (nearly 80% of all funds paid to her) and ordered that these funds be directly turned over to CHRISTINE’s attorneys within fourteen (14) days. (C-924; C-796). On October 24, 2014, CHRISTINE filed a Petition for Adjudication of Indirect Civil Contempt against HOLWELL for her alleged failure to pay the monies pursuant to the Circuit Court’s September 29, 2014 disgorgement order. (C-982-87). On December 18, 2014, HOLWELL requested to be held in friendly contempt in good faith for purposes of an appeal, and the Circuit Court granted that request. (C-1350; R-343, lines 20-24, R-344, line 1; R-366, lines 1-20). However, on January 16, 2015, HOLWELL was held in

indirect civil contempt and ordered to pay \$40,952.61 as and for her purge without a proper evidentiary hearing. (C-1547-48; R-463, lines 17-24, R-464, lines 1-2). After the Circuit Court held HOLWELL in indirect civil contempt, HOLWELL made it very clear that she was *unable* to pay the \$40,952.61. (R-472, lines 8-13). In fact, HOLWELL informed the Circuit Court that, “I am not going to willfully disobey your order, but I don’t have \$40,000.00 to give them. I’m unable to give him \$40,000.00 . . .” (R-472, line 24, R-473, lines 1-3). Despite her inability to pay, HOLWELL was held in indirect civil contempt on January 16, 2015. (C-1547-48; C-1576).

As evident by the instant matter, authorizing Courts to disgorge fees paid to and earned by attorneys for past services rendered places Illinois attorneys in a precarious situation. It is well established that an attorney may accept and utilize fees that he or she has earned. IL RULE OF PROF’L CONDUCT R. 1.15(c) (“A lawyer shall deposit in a client trust account funds received to secure payment of legal fees and expenses, to be withdrawn by the lawyer only as fees are earned and expenses incurred.”). However, if this Honorable Court holds that Section 501(c-1)(3) authorizes courts to disgorge fees paid to and earned by attorneys, then Illinois attorneys will be required to give back fees they have already lawfully utilized. As HOLWELL unfairly discovered, if the attorney no longer has the funds to repay them pursuant to a disgorgement order because the attorney lawfully utilized those funds, the attorney can still be held in contempt. (C-1547-48; C-1576). As a result, if this Honorable Court finds that fees paid to and earned by an attorney for past services rendered are subject to disgorgement, Illinois attorneys must question whether they should utilize the funds they have rightfully earned to run their businesses, or hoard the funds for fear of disgorgement and place their businesses at risk.

As set forth in *Altman*, the Second District simply failed to consider this harsh reality in rendering its decision in *Squire*. *In re Marriage of Altman and Block*, 2016 IL App (1st) 143076, ¶34. To avoid these unjust results, this Honorable Court should uphold the First District's decision in *Altman*.

C. It is unreasonable to disgorge an attorney's fees previously paid to and earned by the attorney for past services rendered because litigants have other remedies to protect their finances whereas attorneys have no remedies to protect themselves from threat of contempt.

Both the Second District in *Squire* and CHRISTINE in her Brief and Argument for Petitioner-Appellant argue that the purpose of the act would be “frustrated” if this Honorable Court were to find that fees earned by and paid to an attorney for past services rendered are not subject to disgorgement because the purpose of the Act is to “make reasonable provision for support during and after an underlying dissolution of marriage, . . . including provision for timely advances of interim fees and costs to all attorneys, experts, and opinion witnesses . . . to achieve substantial parity in the parties’ access to funds for pre-judgment litigation costs” 750 ILCS 5/102(8); *See In re Marriage of Squire*, 2015 IL app (2d) 150271, ¶20 (quoting 750 ILCS 5/102(5) (West 2010)). Both the Second District and CHRISTINE allege that, if this Honorable Court were to find that fees earned by and paid to an attorney for past services rendered are not subject to disgorgement, it would allow parties to engage in a “scorched earth campaign,” leaving the disadvantaged spouse with little to no assets. Although the Second District and CHRISTINE are both correct that “achieving substantial parity between the parties” is one of the stated purposes of the Act, excluding fees earned by and paid to an attorney for past services rendered from the list of “available funds” which may be disgorged simply does not frustrate this purpose. Rather, it encourages parties to timely file their claims for

attorney's fees and avoids unreasonably delaying those claims to the detriment of the other party or the other party's attorney.

Section 102(8) of the Illinois Marriage and Dissolution of Marriage Act requires provisions for timely advances of interim fees and costs to be "reasonable." 750 ILCS 5/102(8). It is unreasonable for a party to delay filing their Petition for Interim Attorney's Fees for one (1) year, five (5) months, as CHRISTINE did in the instant matter. (C-003; C-709-18). The longer a party waits to request contribution to their attorney's fees, the higher the financial burden can be on the attorney being disgorged. *In re the Marriage of Altman and Block*, 2016 IL App (1st) 143076, ¶34. ("Where . . . the petitioning law firm delays filing an interim fee petition, the financial risk disgorgement poses for the respondent's attorney increases correspondingly."). Furthermore, it is unreasonable to disgorge an attorney's fees after the attorney has already been paid and earned those fees because, as set forth above, it is highly likely the attorney has already lawfully utilized those fees such that they are no longer "available" to the attorney being disgorged. As set forth in *Altman*, despite the serious financial burden disgorging fees already earned by and paid to an attorney for past services rendered can pose, if an attorney is unable to pay the disgorged amounts because of this financial burden, that attorney risks being held in contempt. *Id.* at ¶36. In fact, in the instant matter, HOLWELL was unlawfully held in indirect civil contempt without an evidentiary hearing even though she informed the Circuit Court she was unable to pay the amount disgorged because she no longer had the funds. (C-1547-48; R-463, lines 17-24, R-464, lines 1-2; R-472, lines 8-13; R-472, line 24, R-473, lines 1-3). This outcome is simply absurd and cannot possibly be what the legislature intended. *See Id.* at ¶33 ("[I]t seems to us a tortured reading of the statute to

say that even though the firm has earned the fees, paid itself (as it was entitled to do), and used that income to pay salaries, overhead and litigation expenses for items such as experts and court reporters, it can nonetheless be required to refund those fees, not to its client, but to a third party.”).

If an attorney is held in contempt for failure to pay a disgorgement order because the funds have already been paid to, earned by, and lawfully utilized by the attorney such that the attorney no longer has the funds to pay, the attorney has no remedy at law to protect himself or herself. On the contrary, if this Honorable Court were to exclude fees already paid to and earned by attorneys from the types of funds that may be disgorged pursuant to Section 501(c-1)(3), the alleged “disadvantaged spouse” has several remedies at law and best practices that can be used to avoid the problem of the “scorched earth campaign.” First, the disadvantaged spouse can simply file a Petition for Interim Attorney’s Fees at the beginning of the case, such that any retainers paid to but not yet earned by the other attorney are still “available” for disgorgement. Although the Second District seems to suggest that this may encourage attorneys representing the advantaged spouse to “earn the fees at an early stage of the litigation,” this concern assumes that all attorneys lack integrity and would falsely attempt to “earn” their fees in an effort to avoid disgorgement. *In re Marriage of Squire*, 2015 IL App (2d) 150271, ¶21. It is well established that any and all attorney’s fees earned must be reasonable. 750 ILCS 5/501(c-1). If an attorney were to falsely “earn” the fees in an effort to avoid disgorgement, the fees are not truly reasonable and the attorney could be required to return those fees to the client. In the instant matter, the parties stipulated that HOLWELL’s attorney’s fees were reasonable and necessary. (R-165, lines 5-12). As a result, not only is this not a concern

in the instant matter, but it is a misplaced concern based upon the false assumption that most attorneys lack integrity.

Furthermore, if the disadvantaged spouse has good cause to believe the advantaged spouse is going to engage in a “scorched earth campaign,” the disadvantaged spouse may request the court freeze any assets to preserve the marital estate. See 750 ILCS 5/501(a)(2)(i) (“Either party may petition or move for: . . . a temporary restraining order or preliminary injunction . . . restraining any person from transferring, encumbering, concealing or otherwise disposing of any property except in the usual course of business or for the necessities of life”). Finally, a disadvantaged spouse may also file a motion for support to enable the disadvantaged spouse to pay his or her own attorney’s fees from any support received. See 750 ILCS 5/501(a)(1) (“Either party may petition or move for: (1) temporary maintenance or temporary support of a child of the marriage entitled to support. . . .”). Because it is clear the disadvantaged spouse has several remedies and best practices he or she can use in assuring he or she has “achieve[d] substantial parity in the parties’ access to funds for pre-judgment litigation costs,” yet an attorney who is disgorged funds already paid to and earned by the attorney has no remedy with which to protect himself or herself from the threat of contempt, this Honorable Court should hold that fees earned by and paid to an attorney for past services rendered are not subject to disgorgement pursuant to Section 501(c-1)(3).

It is worth noting that ANDREW did not engage in a “scorched earth campaign” in the instant matter. As set forth above, CHRISTINE arbitrarily and voluntarily quit her job without cause, which significantly reduced the parties’ income at a time when ANDREW’s business was failing to generate income. (C-376). In addition, ANDREW

incurred \$37,094.49 in attorney's fees to disqualify GOLDSTINE for improperly opening, viewing, copying, and scanning thirty-one (31) pieces of ANDREW's personal mail. (C-070; C-476; C-1074-75; C-1110-49). CHRISTINE's litigious and unacceptable behavior throughout the proceedings forced ANDREW to withdraw funds from his own retirement accounts to keep the family afloat, which was done without HOLWELL's knowledge. (R-117, lines 18-24, R-118, lines 1-7; Appendix to Petitioner-Appellant's Brief, A-105-06). These funds were not arbitrarily spent by ANDREW or entirely utilized to pay his attorney's fees. Rather, the bulk of these funds were used to pay the parties' various marital bills, including but not limited to mortgage payments, water bills, rent, and credit cards. (Appendix to Petitioner-Appellant's Brief, A-105-06). Although CHRISTINE suggests that ANDREW left her "without any remaining marital assets" from which to be reimbursed for any alleged dissipation by ANDREW, this is simply false. (*Brief and Argument for Petitioner-Appellant*, page 15). ANDREW preserved several assets of value from which CHRISTINE could be reimbursed for any alleged dissipation, including but not limited to a brand new car, a checking account, \$90,000.00 of equity in the marital home, a vacation residence, several retirement accounts in CHRISTINE's own name valued at \$137,759.93 total, and \$160,000.00 in proceeds from the sale of commercial real property located at 10339 W. Lincoln Highway, Frankfort, Illinois. (C-863-64; C-1077-78; C-1087; C-1254; R-293, lines 9-24; R-294-297; Appendix to Contemnor-Appellee's Brief A-6-9). As a result, CHRISTINE is asking this Honorable Court to blame ANDREW for having to withdraw all of his own retirement accounts to maintain the parties' marital expenses when CHRISTINE arbitrarily quit her job, disgorge all of the fees HOLWELL earned in disqualifying CHRISTINE's attorneys

for the wrongdoing committed by CHRISTINE and GOLDSTINE in illegally opening, viewing, and scanning ANDREW's mail, and allow her attorneys to be paid from HOLWELL's disgorged funds. Thus, CHRISTINE is asking this Honorable Court to absolve her of her own wrongdoing to ensure that HOLWELL is not paid. This request is entirely inequitable. As a result, this Honorable Court should uphold the Third District Appellate Court's decisions to reverse the Circuit Court's disgorgement order and to vacate any contempt findings against HOLWELL.

D. Even if this Honorable Court were to uphold the Second District's decision in *Squire*, the *Squire* matter is distinguishable from the instant matter because the *Squire* matter did not discuss the inequities that arise when a party delays filing their Petition for Interim Attorney's Fees, whereas CHRISTINE delayed filing her Petition for Interim Attorney's Fees to the detriment of HOLWELL.

In the alternative, were this Honorable Court to uphold the Second District's decision in *Squire*, the *Squire* matter is distinguishable to the instant matter. As set forth by the First District in *Altman*, the Second District does not address the risk and burden placed upon a disgorged attorney when the other party delays filing their Petition for Interim Fees in the *Squire* matter. *Altman*, 2015 IL App (1st) 143076, ¶34. As set forth above, the First District was persuaded by the inequities that result from disgorging fees already earned by and paid to an attorney for services already rendered, especially where the party requesting attorney's fees delays filing her fee petition. *Id.* ("Where . . . the petitioning law firm delays filing an interim fee petition, the financial risk disgorgement poses for the respondent's attorney increases correspondingly."). These inequities were neither discussed nor considered in the *Squire* matter. *See generally In re Marriage of Squire*, 2015 IL App (2d) 150271, ¶22 (holding funds are available for disgorgement if they exist somewhere). Because CHRISTINE waited nearly one (1) year five (5) months

after initiating her case to file her Petition for Interim Attorney's Fees, after extensive attorney's fees had already been incurred due to her and her Counsel's wrongdoing, and this delay severely burdened HOLWELL as set forth above, the Second District's reasoning in *Squire* is incompatible with the instant matter as it fails to address this concern. (C-003; C-709-18). As a result, this Honorable Court should disregard *Squire*'s reasoning as distinguishable and uphold the Third District Appellate Court's decisions to reverse the Circuit Court's disgorgement order and to vacate any contempt findings against HOLWELL.

IV. THE CONTEMPT ORDERS AND SANCTIONS ENTERED AGAINST HOLWELL ON DECEMBER 18, 2014, JANUARY 16, 2015, AND JANUARY 21, 2015 SHOULD BE VACATED BECAUSE HOLWELL'S REFUSAL TO COMPLY WITH THE COURT'S DISGORGEMENT ORDER CONSTITUTES A GOOD FAITH EFFORT TO DETERMINE IF THE DISGORGEMENT WAS PROPER.

It is well settled that, "where a refusal to comply with a court's order constitutes a good-faith effort to secure an interpretation of an issue without direct precedent, it is appropriate to vacate a contempt order on appeal." *In re Marriage of Earlywine*, 2013 IL 114779, ¶36 (citing *In re Marriage of Beyer*, 324 Ill. App. 3d 305, 321-22 (1st Dist., 2001)). In the instant matter, HOLWELL requested to be held in friendly contempt in a good-faith effort to test the validity of the Circuit Court's September 29, 2014 disgorgement order. On December 18, 2014, through Counsel, HOLWELL requested that the Circuit Court hold her in friendly contempt for purposes of appealing the disgorgement order. (R-343, lines 20-24, R-344, line 1). At that time, the Circuit Court found HOLWELL in friendly contempt "pursuant to said request." (C-1350-51; R-366, lines 1-20). Although the Circuit Court *sua sponte* held HOLWELL in indirect civil contempt on January 16, 2015 and January 21, 2015, this was improperly done without

notice to HOLWELL, without a hearing, and over HOLWELL's strenuous objection. (R-463, lines 17-24, R-464, lines 1-2). See *In re the Marriage of Betts*, 200 Ill. App. 3d 26, 52 (4th Dist., 1990) (holding that parties charged with indirect civil contempt are entitled to notice and an opportunity to be heard pursuant to the due process clause of the Illinois Constitution and United States Constitution).

CHRISTINE's claims that HOLWELL acted in bad faith and that the contempt findings against HOLWELL should not be vacated are disingenuous at best. It is clear that HOLWELL requested to be held in friendly contempt on December 18, 2014 for purposes of an appeal, and that this request was done in good faith. First, the Third District reversed the disgorgement order and vacated the contempt findings against HOLWELL. *In re Marriage of Goesel*, 2017 IL App (3d) 150101, ¶36. In vacating the contempt findings against HOLWELL, the Third District stated "[i]t is appropriate to vacate a contempt finding on appeal where the refusal to comply with the court's order constitutes a good-faith effort to secure an interpretation of an issue without direct precedent." *Id.* (quoting *In re Marriage of Radzik*, 2011 IL App (2d) 100374, ¶67) (Appendix to Petitioner-Appellant's Brief, A-68). As a result, the Third District found that HOLWELL had acted in good faith to secure an interpretation of an issue without direct precedent. Otherwise, the Third District would not have vacated the contempt findings against HOLWELL. Second, it is clear that this matter involves "an issue without direct precedent" because the First, Second, and Third Districts have all reached different conclusions in deciphering whether funds are "available" for disgorgement as set forth in Section 501(c-1)(3) of the Act. *In re Marriage of Squire*, 2015 IL App (2d) 150271, ¶22; *In re the Marriage of Altman and Block*, 2016 IL App (1st) 143076, ¶36; *In*

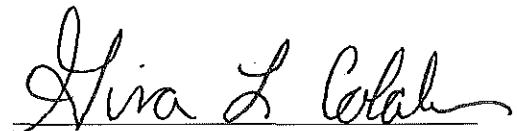
re Marriage of Goesel, 2017 IL App (3d) 150101, ¶34. Finally, it is clear HOLWELL acted in good faith because HOLWELL was successful in testing the validity of the Circuit Court's disgorgement order. *Id.* at ¶38. As a result, any claims that HOLWELL has acted in bad faith should be disregarded by this Honorable Court, and the Circuit Court's December 18, 2014, January 16, 2015, and January 21, 2015 findings of contempt against HOLWELL should be vacated.

CONCLUSION

For the foregoing reasons, the Contemnor-Appellee, Laura A. Holwell, requests that this Honorable Court hold that funds earned by and paid to a party's lawyer in the normal course of representation for past services rendered are not "available funds" within the meaning of Section 501(c-1)(3) of the Illinois Marriage and Dissolution of Marriage Act, uphold the Third District Appellate Court's decision to reverse the Circuit Court of the Twelfth Judicial Circuit of Will County's September 29, 2014 order for disgorgement, and uphold the Third District Appellate Court's decision to vacate the Circuit Court of the Twelfth Judicial Circuit of Will County's December 18 2015, January 16, 2015, and January 21, 2015 findings of contempt.

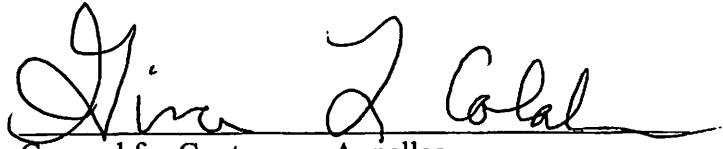
Respectfully Submitted,

Dated: August 21, 2017


Counsel for Contemnor-Appellee

CERTIFICATE OF COMPLIANCE

I certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the pages or words contained in the Rule 341(d) cover, the Rule 341(h)(1) statement of points and authorities, the Rule 341(c) certificate of compliance, the certificate of service, and those matters to be appended to the brief under Rule 342(a), is 47 pages.


Counsel for Contemnor-Appellee

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Counsel for Contemnor-Appellee

**APPENDIX FOR
BRIEF OF THE CONTEMNOR-APPELLEE**

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Counsel for Contemnor-Appellee

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CONTEMNOR-APPELLEE

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3-15-0101

12/19/14 13:40:27 WCH

STATE OF ILLINOIS)
)SS
 COUNTY OF WILL)

IN THE CIRCUIT COURT OF THE TWELFTH JUDICIAL CIRCUIT
 WILL COUNTY, ILLINOIS

IN RE THE DISSOLUTION OF:

14 DEC 18 PM 2:13

CLERK CIRCUIT COURT
 WILL COUNTY, ILLINOISCHRISTINE GOESEL

Plaintiff

VS

ANDREW GOESEL

Defendant

CASE NO. 13 D 107

ORDER

Page 1 of 2

PLAINTIFF PRESENT	<input checked="" type="checkbox"/> YES <input type="checkbox"/> NO	Judge <u>ARCHAMBEAULT</u>	PLAINTIFF ATTORNEY <u>JAGWAHS</u>	<input checked="" type="checkbox"/> YES <input type="checkbox"/> NO
DEFENDANT PRESENT	<input checked="" type="checkbox"/> YES <input type="checkbox"/> NO		DEFENDANT ATTORNEY <u>LEVINE</u>	<input checked="" type="checkbox"/> YES <input type="checkbox"/> NO

COLALUCA FOR HOWELL
 THIS MATTER COMING BEFORE THE COURT FOR HEARING ON ATTORNEY
 HOWELL'S MOTION TO RECONSIDER, PETITIONS FOR INDIRECT CONTEMPT
 FILED 10/1/2014 AND 10/24/14 AGAINST ATTORNEY HOWELL, BRIDGING HEARING
 IN RULES AGAINST DEFENDANT, MOTION TO COMPEL, AND PRESENTATION
 OF ATTORNEY LEVINE'S SUPPLEMENTAL PETITION FOR PROSPECTIVE ATTORNEY'S
 FEES AND COSTS,

ATTORNEY COLALUCA PRESENTING EMERGENCY MOTION TO
 CONTINUE HEARING ON MOTION TO RECONSIDER AND COURT HEARING
 ARGUMENTS THE EMERGENCY MOTION TO CONTINUE IS DENIED;

MATTER PROCEEDS TO HEARING ON MOTION TO RECONSIDER;
 IT IS HEREBY ORDERED:

① ATTORNEY HOWELL'S MOTION TO RECONSIDER IS DENIED
 FOR REASONS SET FORTH ON THE RECORD WHICH ARE INCORPORATED
 HEREIN;

② MATTER PROCEEDS ON COUNT II OF PETITION FOR ^{RULE FILED ON} ~~OVER~~ ^{objection,} ~~HOWELL'S~~ ^{objection,}
 OCTOBER 24, 2014 AFTER HEARING ARGUMENT, COURT DETERMINES IT
 ERRED AND FINDS SEPTEMBER 29, 2014 ORDER DID CONSTITUTE A
 JUDGMENT AGAINST ATTORNEY HOWELL IN AMOUNT OF \$40,952.61
 IN FAVOR OF ~~THE~~ THE LAW OFFICES OF EDWARD JAGWAHS. ~~SAYD~~ SAID FINES
 SHALL BE APPLIED AS SET FORTH IN SEPTEMBER 29, 2014 ORDER,

TO ALLOW JURISDICTION TO APPEAL,
 ATTORNEY HOWELL REQUESTS TO BE HELD
 IN FRIENDLY CONTEMPT FOR 10/24/14
 RULE AND IS HELD IN CONTEMPT PURSUANT
 TO SAID REQUEST.
 Attorneys or Party Present: [Signature]

Dated

DECEMBER 18, 2014

Enter

Judge

[Signature]

PAMELA J. MCGUIRE, CLERK OF THE CIRCUIT COURT OF WILL COUNTY

3-15-0101

12/19/14 13:40:27 WCCH

STATE OF ILLINOIS)
)SS
 COUNTY OF WILL)

IN THE CIRCUIT COURT OF THE TWELFTH JUDICIAL CIRCUIT
 WILL COUNTY, ILLINOIS

FILED

IN RE THE DISSOLUTION OF:

14 DEC 18 PM 2:13

CLERK CIRCUIT COURT
 WILL COUNTY ILLINOISCHRISTINE GOESEL

Plaintiff

vs

ANDREW GOESEL

Defendant

CASE NO. 13 D 107

ORDER

PAGE 2 OF 2

PLAINTIFF PRESENT	<input checked="" type="checkbox"/> YES <input type="checkbox"/> NO	Judge <u>ARCHAMBEAULT</u>	PLAINTIFF ATTORNEY <u>JADAMS</u>	<input checked="" type="checkbox"/> YES <input type="checkbox"/> NO
DEFENDANT PRESENT	<input checked="" type="checkbox"/> YES <input type="checkbox"/> NO		DEFENDANT ATTORNEY <u>LEVINE</u>	<input checked="" type="checkbox"/> YES <input type="checkbox"/> NO

- COLALUCA FOR HOWELL
- ④ MATTER IS SET FOR HEARING ON JANUARY 8, 2015 AT 9:30 A.M. ON ATTORNEY LEVINE'S SUPPLEMENTAL PETITION FOR PROSPECTIVE FEES, MOTION TO WITHDRAW, PETITION FOR RULE FILED ON OCTOBER 1, 2014, ATTORNEY HOWELL'S MOTION TO DISMISS SAID PETITION FOR RULE (MOTION TO DISMISS TO BE FILED WITHIN 7 DAYS).
- ⑤ ATTORNEY LAURA HOWELL IS TO BE PRESENT IN COURT ON JANUARY 8, 2015 AT 9:30 A.M.
- ⑥ ~~THE ONGOING HEARING IS~~ ~~THE ONGOING HEARING IS~~ SET FOR STATUS/SETTING ON 1/8/2015.
- ⑦ ATTORNEY LEVINE IS GRANTED LEAVE TO SUPPLEMENT PETITION FOR PROSPECTIVE FEES WITH ENGAGEMENT CONTRACT EXECUTED BY DEFENDANT.
- ⑧ 1/6/15 DATE IS STRICKEN.

Dated

Enter

Judge

Attorneys or Party Present: Mahe Ede

PAMELA J. MCGUIRE, CLERK OF THE CIRCUIT COURT OF WILL COUNTY

3-15-0101
07/29/14 15:18:33 WCCB

STATE OF ILLINOIS

COUNTY OF WILL

SS

FILED

IN THE CIRCUIT COURT OF THE TWELFTH JUDICIAL CIRCUIT, 39
WILL COUNTY, ILLINOISFILED
APR 1 10 14IN RE THE MARRIAGE OF:
CHRISTINE GOESEL,

Plaintiff,

vs

Case No 13 D 107

ANDREW GOESEL,
DefendantNOTICE OF FILINGTO Ms Laura Holwell
Attorney at Law
115 S LaSalle Street, Suite 2600
Chicago, IL 60603Ms Nancy Donlon
Panos & Assoc
12820 S Ridgeland Avenue, Suite A
Palos Heights, IL 60463Mr Howard Levine
Attorney at Law
18400 Maple Creek Drive, Suite 600
Tinley Park, IL 60477PLEASE TAKE NOTICE that on the 27th day of June, 2014, there was filed with the Clerk of the Circuit Court of Will County, Illinois, the following Plaintiff's Updated Financial Disclosure Statement, copy of which is attached hereto

BY

Mark Ellis
MARK ELLIS, Attorney for PlaintiffPROOF OF SERVICEThe undersigned being first duly sworn upon oath deposes and the within Notice of Filing and Updated Financial Disclosure were served upon the above-named individuals - via hand delivery in open court on the 27th day of June, 2014Edward R. JaquaysSubscribed and sworn to before me
this 27th day of June, 2014Mark Ellis

NOTARY PUBLIC

Notary Public State of Illinois
My Commission Expires 06-14-16MARK ELLIS
Notary Public State of Illinois
My Commission Expires 06-14-16THE LAW OFFICES OF EDWARD R. JAQUAYS
FREEDOM COURT BUILDING
FIVE WEST JEFFERSON STREET, SUITE 200
JOLIET, ILLINOIS 60432
(815) 727-7600- ATTY #6281341

07-29-14 15 18 33 WCCB

STATE OF ILLINOIS)
)
 COUNTY OF WILL) SS.

IN THE CIRCUIT COURT OF THE TWELFTH JUDICIAL CIRCUIT
 WILL COUNTY, ILLINOIS

IN RE: ☒ DISSOLUTION OF ☐ PARENTAGE
 (Please check appropriate box)

CHRISTINE GOESEL
 Petitioner

vs.

CASE NO: 13 D 107

ANDREW GOESEL
 Respondent

UPDATED FINANCIAL DISCLOSURE STATEMENT
 (Pursuant to Local Court Rule)

Instructions:

1. All questions require a written response. If you do not have the information requested or do not know the answer to a particular question, indicate that as your answer.
2. You must attach copies of the following:
 - Your personal federal and state income tax returns (including all W-2, 1099 and supporting schedules) for the last three (3) calendar years; and
 - Your three (3) most current pay stubs.
3. Use additional sheets if necessary.

CHRISTINE GOESEL, under oath states,
 (Petitioner)

that the following is an accurate statement as of, 6/25/14, of my net worth (assets of whatsoever kind and nature and wherever situated minus liabilities), statement of income from all sources, statement of monthly living expenses, a statement of health insurance coverage, and statement of assets transferred of whatsoever kind and nature and wherever situated to whomever. (or as dates may be indicated herein)

I. GENERAL INFORMATION

Name: Christine Goesel
 Address: 21016 St. James Court, Mokena, IL 60448
 Telephone: 708-717-6063 Current Age: 42
 Date of Marriage 3/4/95 Date of Separation: December, 2012
 Reside in same household? ☐ Yes ☒ No
 Minor and/or dependent children of this ☒ marriage ☐ civil union or ☐ parentage,
 Initials for minors/dependent children: Age: Residing with:
P.G. 17 Mother
B.G. 15 Mother
C.G. 11 Mother
 Current Employer: Parkview Orthopedics (Commenced employment April 2014)
 Address: 7600 W. College Dr. Palos Heights, Illinois

Self Employment: N/A

Address: _____

Other Employment: None

Address: _____

Other income other than employment:

child support being received from trust account of Nancy Donlon \$3,500.00 per month

☐ Check if unemployed

Number of paychecks per year ☐ 12 ☐ 24 ☒ 26 ☐ 52 ☐ Other: _____

Number of Exemptions Claimed: _____

Gross income from all sources last year: \$110,632.04 (inc. \$34,000 from retirement disbursement)

Gross income from all sources this year through 5/1/14: \$7,000.00 from Parkview Orthopedics

II. STATEMENT OF HEALTH INSURANCE COVERAGE

Currently effective health insurance coverage: ☒ Yes ☐ No

Name of the insurance carrier: United Healthcare

Name of the policy holder: Christine Gossel

Policy or Group No. 0U5189 Type of insurance: ☒ Medical ☐ Dental ☐ Optical

Health savings Account? ☐ Yes ☒ No Pre-Tax? ☐ Yes ☐ No

Deductible: Per Individual \$1,500.00 Per Family \$3,000.00

Persons covered: ☒ Self ☐ Self/Partner ☒ Dependents

Type of Policy: ☐ HMO ☒ PPO ☐ Standard Indemnity (i.e. 80/20)

Provided by: ☐ Employer ☐ Private Policy ☐ Other Group

Monthly cost: ☐ Paid by Employer or Union ☐ Paid by Employee:

Cost to Employee: \$94.42 per month for family \$_____ for self

III. POTENTIAL AREAS OF DISAGREEMENT

(Check all that may apply. The failure to identify an issue shall not be a bar to raising the issue at a later date.)

☒ Grounds

☒ Asset values

☒ Custody

☒ Responsibility for debts

☒ Visitation

☒ Dissipation of the marital estate

☒ Child Support/Daycare/Extracurricular

☒ Maintenance

☒ Responsibility for health insurance costs

☒ Tax liabilities

☐ Removal from Illinois

☐ Other _____

☒ College

☐ _____

☒ Asset Identification

IV. STATEMENT OF ASSETS ACQUIRED DURING MARRIAGE/CIVIL UNION – The date of valuation is _____ unless otherwise specified. Attach current statements to show the current balance.

Cash or cash equivalents:

Description of asset	Title in Name of	Date Acquired	Name of Financial Institution	Fair Market Value
1. Savings or interest bearing accounts				
None				
2. Checking accounts				
Account #4848	Christine		BMO Harris Bank	\$4,610.99 (5/10/14)

	Goesel			
3. Certificates of Deposits				
None				
4. Money Market Accounts				
None				
5. Cash				
				\$200.00 (vary on hand)
6. Other (specify)				

Real Property: Provide address, type and description, current fair market value, amounts of mortgages, loans, or liens.				
Description of asset	Title in Name of	Date Acquired	Mortgage Balance	Fair Market Value
1. Residence				
21016 St. James Court, Mokena, IL	Christine & Andrew Goesel	12/2000	\$350,000.00	\$440,000.00
2. Secondary or Vacation Residence				
Michigan Home				Husband gifted
3. Investment or Business Real Estate				
227 Laurel Hollow Dr, Florida	Christine & Andrew Goesel	2004	\$115,000.00	Unknown
4. Vacant Land				
5. Other (specify)				

Motor Vehicle(s), Boats, Trailers, Etc.: Provide year, model, maker, lien, debtor, amount.				
Description of asset	Title in Name of (include lien holder, if any)	Date Acquired	Lien Balance	Fair Market Value
2014 Honda CRV (Wife drives)	Connie Schmall	2014	None	Unknown
Honda Civic	Christine & Andrew Goesel			Unknown - In Husband's possession
Acura MDX	Christine & Andrew Goesel	2009	None	Unknown
Jet Ski	Andrew Goesel	Summer 2013	Unknown	Unknown

Motorcycle				
Chrysler LeBaron	Christine & Andrew Goesel	Unknown	None	Unknown

Business Interest: Type of entity, i.e. Corporation, Partnership, Sole Proprietorships (Provide percentage interest and number of shares, names of business, type of business.)

Description of Entity	Owner & Percentage Ownership	Date Acquired	Type of Business	Parties' Fair Market Value
Goesel Chiropractic	Andrew Goesel 100%	Incorporated 6/8/00		Unknown at present
Comprehensive Physical Medicine	Andrew Goesel 100%	Incorporated 3/5/12		Unknown at present
Husband merged his practice with Dr. Bernard O'Brien in May of 2014. Value of these businesses is unknown and under investigation, but Wife has a marital interest in the income derived therefrom.				

Insurance Policies: Type of insurance, i.e. Life, Medical, Disability, Business Overhead, Property, etc. Provide name of insurer, policy number, name of insured, owner of policy, face amount, beneficiary, cash value, cash surrender value.

Name of Insurance Carrier	Title in Name of	Term or Whole?	Death Benefit	Actual Cash Value
West Coast Life Insurance	Christine Goesel	Term	\$1,500,000.00	None
West Coast Life Insurance	Andrew Goesel	Term	\$2,000,000.00	None

Retirement, Pension Plans, Defined Benefit Plans, IRA Accounts, Deferred Compensation, Annuities, 401k, Defined Contribution Plan, Profit Sharing, etc.: Provide name, type of plan, trustee of plan, beneficiary, vested or non-vested, most current value.

Description of Asset	Title in Name of	Date Acquired	Name of Financial Institution	Fair Market Value
ROTH IRA	Christine Goesel		T. Rowe Price	Unknown
Simple IRA	Christine Goesel		Fidelity	\$32,819.88 (4/30/14)
Palos Hospital Retirement Plan(403b) Plan ID # PALO -001	Christine Goesel		Lincoln Financial Group	\$42,498.86 (3/31/14)
Palos Hospital Pension Plan (401a) Plan ID #PALO - 002	Christine Goesel		Lincoln Financial Group	\$13,292.21 (3/31/14)

St. George Corp. Rollover Plan #G73559	Christine Goesel	10/16/1995	American United Life Ins. Company	\$3,838.04 (3/31/14)
St. George Corp. - 403(b) Plan #G73559	Christine Goesel	10/16/1995	American United Life Ins. Company	\$27,954.71 (3/31/14)
Retirement & Savings Plan (Amgen, Inc.)	Christine Goesel		Merrill Lynch	\$17,356.23 (6/25/14)

Stock Options, ESOPs, Other Deferred Compensation or Employment Benefits: (Describe fully)

Description of asset	Title in Name of	Date Acquired	Number of Options	Option Price
None to Wife's knowledge Husband may have stock ownership which may be marital in nature, but Wife has no information relative to the same.				

Other Investment Accounts and Securities:

Description of asset	Title in Name of	Date Acquired	Name of Financial Institution	Fair Market Value
1. Stocks				
None to Wife's knowledge				
2. Bonds				
None to Wife's knowledge				
3. Tax Exempt Securities				
None to Wife's knowledge				
4. Secured or Unsecured Notes				
None to Wife's knowledge				
5. Collectibles: Coins, stamps, art, antiques, etc.				
None to Wife's knowledge				
6. All Other Property: Personal or Real. (not previously listed), valued in excess of \$500.00, excluding normal household furniture and furnishings.				
None to Wife's knowledge				

V. STATEMENT OF ASSETS TRANSFERRED:

(List all assets transferred in any manner during the preceding (6) months)

Description of property	To Whom Transferred and Relationship to Transferee	Date of Transfer	Value
Wife has not transferred any property within 6 months			

VI. STATEMENT OF ASSETS CLAIMED TO BE NON-MARITAL AS DEFINED BY STATUTE:

List all property and your basis for claiming it as non-marital (property owned prior to the marriage/civil union, property received as inheritance or gift during the marriage/civil union), identifying each item of property (real

property, personal property, financial accounts, etc.). As to the type of property, list the date received, the basis on which you claim it is non-marital property, its location, and the present value of the property.

Description of Asset	Fair Market Value	Basis for Non-Marital Claim (inheritance, gift or other)	When Acquired	Title Held Name of

VII. STATEMENT OF DEBT/LIABILITIES. Include all contingent debt/liabilities

Creditor's Name	Payment for	Who incurred	Balance due	Minimum monthly payment
BMO Harris Bank Signature Card	Rolling credit	Christine Gossel	\$11,743.34	
Southwest Credit Card	Rolling Credit	Christine Gossel	\$ 4,595.78	\$110.00
Promissory Note loans	Household expenses	Christine Gossel		
TOTAL LIABILITIES				

Attorney Name	Amount Paid	Amount due		
Gwendolyn Sterk	Reviewing records	\$12,817.72		
Nancy Dunlon	Reviewing records	\$12,408.25		
Edward Jagnays	\$5,000.00	\$9,334.89 (5/14/14)		

Have you ever filed for bankruptcy relief ☐ Yes ☒ No If so, when? _____ Case No. _____

VIII. SPECIFIC REQUEST OF PERSONAL PROPERTY (List items requested)

To be supplemented

IX. PHYSICAL AND MENTAL STATUS

Are you in any manner incapacitated or limited in your ability to earn income at the present time? If so, define and describe such incapacity or limitation, and state when such incapacity or limitation commenced and when it is expected to end.

None.

I, Christine Gossel, under penalties of perjury, provided by law in

Please check appropriate box ☒ Petitioner ☐ Respondant

Section 1-109 of the Code of Civil Procedure certify that the information and attached corroborating documents are all the documents I have in my possession or that I can obtain upon reasonable effort as of this date. The undersigned certifies that he/she has read the above and foregoing Financial Disclosure Statement; that he/she knows the contents thereof, and that the information therein contained is true and correct.

Date

Christine Gossel

AFFIDAVIT OF INCOME AND EXPENSES

CURRENT MONTHLY INCOME AS OF: May, 2014

Salary/wages/base pay	\$ 5,833.36
Overtime/Commission	\$
Bonus	\$
Draw	\$
Pension and retirement benefits	\$
Interest income	\$
Dividend income	\$
Trust income	\$
Social Security Payment	\$
Unemployment benefits	\$
Disability payment	\$
Worker's compensation	\$
Public Aid/Food Stamps	\$
Investment income	\$
Rental income (\$4,000 total for few months Florida property rented) • The parties split the income received	\$ 166.67
Business income, Partnership, Sub-Chapter S, or LLC Income	\$
Royalty income, Fellowships, Stipends, Annuity	\$
Other:	\$
TOTAL MONTHLY GROSS FROM ALL SOURCES	\$6,000.03
Required Monthly Deductions	
Federal Tax (based on 0 exemptions)	\$ 1,040.68
State Tax (based on 3 exemptions)	\$ 260.00
FICA (or Social Security equivalent or Self Employment Tax)	\$ 355.64
Medicare Tax	\$ 83.12
Mandatory retirement contributions required by law or as condition of Employment	\$
Union Dues (Name of Union:)	\$
Health/Hospitalization Premiums (is this a Pre Tax Plan? <input type="checkbox"/> Yes <input type="checkbox"/> No)	\$ 102.21
Prior obligation(s) of support actually paid pursuant to Court Order	\$
Other:	\$
TOTAL REQUIRED DEDUCTIONS	\$
Voluntary deductions from income	\$
401k	\$
Flexible Spending Health Savings Account Plan	\$
Other:	\$
Total Voluntary Deductions	\$1,841.65

CURRENT MONTHLY LIVING EXPENSES AS OF:

1. HOUSEHOLD EXPENSES	
a. Mortgage (2 mo's in arrears - pymt \$3,249.00) * Can not afford to pay - house is being listed for sale	-0-
b. Home equity loan/Second mortgage	\$ 30.00
c. Real estate taxes, assessments(\$9,730.92 year)	\$ 810.91
d. Homeowners or renters insurance	\$ 77.67
e. Natural Gas/Heat	\$ 231.00

f. Electricity	\$ 350.00
g. Telephone, long distance, cell phone(s),	\$ 400.00
h. Cable and Internet Access	\$ 170.00
i. Water/sewer & refuse removal	\$ 130.00
j. Laundry/dry cleaning	\$ 100.00
k. Maid/cleaning service	-0-
l. Furniture and appliance repair/replacement	\$ 50.00
m. Repairs and maintenance to dwelling	\$ 245.00
n. Lawn and garden/snow removal	\$ 100.00
o. Food (groceries, liquor, household supplies, etc.)	\$ 1,200.00
p. Other	-0-
SUBTOTAL HOUSEHOLD EXPENSES	\$3,849.58
RENTAL HOME -227 LAUREL RD., FLORIDA	
* It is belleyed that Husband pays these expenses	
a. Mortgage or rent:	\$1,811.00
b. Home equity loan/Second mortgage	-0-
c. Real estate taxes, assessments	\$ 375.00
d. Homeowners or renters insurance	\$ 349.67
e. Natural Gas/Heat	n/a
f. Electricity	n/a
g. Telephone, long distance, cell phone(s), modem lines	n/a
h. Cable and Internet Access, Satellite	n/a
i. Water/sewer & refuse removal	n/a
j. Laundry/dry cleaning	n/a
k. Maid/cleaning service	n/a
l. Furniture and appliance repair/replacement	n/a
m. Repairs and maintenance to dwelling	n/a
n. Lawn and garden/snow removal	n/a
o. Food (groceries, liquor, household supplies, etc.)	n/a
p. Other: Association Fees	\$201.67
TOTAL RENTAL HOME EXPENSES:	\$2,737.34 *
* if property is not rented out, these expenses vary	
2. TRANSPORTATION EXPENSES:	
a. Gasoline	\$ 400.00
b. Repairs, Maintenance	\$ 200.00
c. Insurance/license/city stickers	\$ 200.00
d. Payments/replacement	-0-
e. Alternative transportation	-0-
f. Parking/tolls	\$ 40.00
g. Other:	-0-
TOTAL TRANSPORTATION EXPENSES:	\$840.00
3.PERSONAL EXPENSES (excluding children's expenses)	
a. Clothing	\$ 75.00
b. Grooming	\$ 100.00
c. Medical (after insurance proceeds/reimbursement):	
(1) Doctor	\$ 235.00
(2) Dentist	\$ 25.00
(3) Optical	\$ 50.00
(4) Medication	\$ 25.00
(5) Counseling	-0-

(6) Other:	-0-
d. Insurance:	
(1) Life Insurance Premiums (\$590.00 yearly)	\$ 49.17
(2) Medical/Hospitalization Insurance Premiums (if not deducted from paycheck)	-0-
(3) Dental/Optical Insurance Premiums (if not deducted from paycheck)	-0-
(4) Other:	-0-
SUBTOTAL PERSONAL EXPENSES:	\$559.17
4. MISCELLANEOUS EXPENSES	
a. Clubs/social obligations/entertainment/dining out	\$ 100.00
b. Newspaper, magazines, books	-0-
c. Gifts	\$ 100.00
d. Donations, church or religious affiliation	\$ 40.00
e. Vacations (not including children)	\$ 100.00
f. Computer/supplies/software	\$ 25.00
g. Other: Gym membership	\$ 60.00
SUBTOTAL MISCELLANEOUS EXPENSES:	\$325.00
5. CHILD(REN)'S SEPARATE EXPENSES	
a. Clothing	\$ 200.00
b. Grooming	\$ 50.00
c. Education	
(1) Tuition	\$ 166.67
(2) Books/fees	\$ 25.00
(3) Lunches	\$ 16.67
(4) Transportation	\$ 16.67
(5) School Sponsored Activities	\$ 20.00
d. Medical (after insurance proceeds):	
(1) Doctor	\$ 50.00
(2) Dentist	\$100.00
(3) Optical	\$ 75.00
(4) Medication	\$ 30.00
(5) Counseling	\$430.00
(6) Other:	-0-
e. Allowance	\$ 25.00
f. Child care/Pre-School/Before and after school care/sitters	-0-
g. Lessons/Extracurricular activities supplies	\$ 100.00
h. Clubs/summer camps	\$ 83.34
i. Vacation (children only)	\$275.00
j. Entertainment	\$100.00
k. Gifts to others	\$ 25.00
l. Other:	-0-
SUBTOTAL CHILD(REN)'S EXPENSES:	\$1,688.35
6. BUSINESS EXPENSES (not reimbursed by employer)	
a. Membership/Trade association/other dues for fees	\$ 17.50
b. Malpractice/Professional Liability Insurance Premiums	\$ 11.67
c. Accountants/Other Professional Services Utilized	\$
d. Political contributions	\$
e. Office upkeep expenses (cleaning services, etc.)	\$
f. Postage	\$

g. Travel	\$
h. Client/Business Entertainment	\$
i. Other: CPR license	\$4.17
SUBTOTAL BUSINESS EXPENSES:	\$33.34
TOTAL MONTHLY LIVING EXPENSES:	\$7,295.44
RECAP	
NET MONTHLY INCOME	\$ 4,158.38
TOTAL MONTHLY INCOME	\$ 7,658.38
(includes \$3,500 in child support being received)	
DIFFERENCE BETWEEN NET INCOME AND EXPENSES	\$ 362.94
LESS MONTHLY DEBT SERVICE	Included with household expenses.
INCOME AVAILABLE PER MONTH **	\$ 362.94

**** Note:** Income available per month does not include payment of mortgage for marital residence or Florida home expenses. Presently no payment is being made towards the mortgage of the marital residence in the amount of \$3,249.00 per month. It is believed Husband is paying the Florida rental home expenses in the amount of \$2,734.00 per month. Without the court ordered support payment of \$3,500.00, Wife's expenses would be greater than her income by \$3,137.06 per month without including the costs of the marital residence mortgage or the Florida home expenses. The total of all monthly expenses is \$13,278.78. Based on Wife's present net income (not including the \$3,500.00 in support), the payment of all expenses would result in a monthly deficit of \$9,120.40. **

I, CHRISTINE GOESSEL, under penalties of perjury, provide by law in

Please check appropriate box ☒ Petitioner ☐ Respondent

Section 1-109 of the Code of Civil Procedure, I certify that the information in this Affidavit of Income and Expenses are true, correct and complete.

Date

6-27-14

CHRISTINE GOESSEL

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Financial Disclosure about Wife revised 062314 eb

IN THE APPELLATE COURT OF ILLINOIS

THIRD JUDICIAL DISTRICT

IN RE THE MARRIAGE OF:)	Appeal from Will County Circuit Court
	)	Circuit Number: 2013 D 107
CHRISTINE GOESEL,	)	Trial Judge: Hon. Judge Archambeault
Petitioner-Appellee,	)	Date of Notice of Appeal: Feb. 13, 2015
	)	Date of Judgment: September 29, 2014
v.	)	Date of Post-judgment Motion Orders:
	)	December 18, 2014, January 16, 2015,
ANDREW GOESEL,	)	January 21, 2015
Respondent-Appellee,	)	Supreme Court Rules which confer
v.	)	jurisdiction upon reviewing court:
)	304(b)(5) and 304(a).
LAURA A. HOLWELL,)	
Contemnor-Appellant.)	

BRIEF OF THE CONTEMNOR-APPELLANT

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Chicago, Illinois 60603
312-523-2103
Counsel for Contemnor-Appellant

ORAL ARGUMENT REQUESTED

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INTRODUCTORY PARAGRAPH

The instant appeal stems from a disgorgement order entered on September 29, 2014, whereby the Circuit Court of the Twelfth Judicial Circuit of Will County disgorged Contemnor's fees in the amount of \$40,952.61. (C-919-24). The instant appeal is a request for a reversal of the Circuit Court of the Twelfth Judicial Circuit's decision to first hold Contemnor in friendly contempt pursuant to Contemnor's request to be held in friendly contempt for purposes of appealing the disgorgement order, and to thereafter hold the Contemnor in indirect civil contempt, to sentence Contemnor to the Will County Adult Detention Facility for an indeterminate amount of time not to exceed 179 days, and to impose a penalty of \$10.00 per day on Contemnor. (C-1547-48; 1576-77). The instant appeal is also a request for a reversal of the Circuit Court of the Twelfth Judicial Circuit's finding that the September 29, 2014 disgorgement order constitutes a final, collectible judgment. (C-1350-51). No jury is available for a Dissolution of Marriage action, and thus, the judgments appealed from in this case are based upon bench trials. No questions are raised on the pleadings.

ISSUES PRESENTED

1. Whether the Circuit Court of the Twelfth Judicial Circuit of Will County erred in disgorging Contemnor's fees in the amount of \$40,952.61 pursuant to Section 501(c-1)(3) of the Illinois Marriage and Dissolution of Marriage Act where the evidence presented showed the Petitioner is capable of paying her own attorney's fees and where Contemnor was denied her right to be heard and present evidence at the hearing on said disgorgement.
2. Whether the Circuit Court of the Twelfth Judicial Circuit of Will County erred in finding that the September 29, 2014 disgorgement order constituted a final judgment, thereby allowing collection proceedings to commence on same.
3. Whether the Circuit Court of the Twelfth Judicial Circuit of Will County erred in holding Contemnor in indirect civil contempt, sentencing Contemnor to the Will County Adult Detention Facility for an indeterminate amount of time not to exceed 179 days, and imposing a penalty of \$10.00 per day on Contemnor due to Contemnor's desire to appeal the September 29, 2014 disgorgement order, without a hearing, after previously holding Contemnor in friendly contempt pursuant to Contemnor's own request.
4. Whether the Circuit Court of the Twelfth Judicial Circuit of Will County's finding of friendly contempt against Contemnor should be vacated.

JURISDICTION

This Honorable Court has jurisdiction of the appeal of the Circuit Court of the Twelfth Judicial Circuit of Will County's December 18, 2014, January 16, 2015, and January 21, 2015 orders holding Contemnor initially in friendly contempt, and thereafter holding Contemnor in indirect civil contempt, pursuant to Supreme Court Rule 304(b)(5). (C-1351-50; 1547-48; 1576-77). This Honorable Court has jurisdiction over these orders and the underlying September 29, 2014 disgorgement order because these orders found Contemnor in contempt, sentenced Contemnor to the Will County Adult Detention Facility for an indeterminate amount of time not to exceed 179 days, and imposed a penalty of \$10.00 per day on Contemnor for her inability to pay funds disgorged from her on September 29, 2014. (C-1547-48; 1576-77). A timely Notice of Appeal was filed on February 13, 2015. (C-1654-56).

This Honorable Court has jurisdiction of the appeal of the Circuit Court of the Twelfth Judicial Circuit of Will County's January 16, 2015 order in which the Circuit Court held the September 29, 2014 disgorgement order constitutes a final judgment. (C-1547-48). The Circuit Court's January 16, 2015 order did not dispose of the entire proceeding, but was declared by the Circuit Court to be a final judgment. (C-1547). The January 16, 2015 order contains the requisite language that "[t]he Court finds there is no just reason for delaying enforcement and appeal of this issue at Ms. Holwell's request pursuant to 304(a)." (C-1547). As a result, this Honorable Court has jurisdiction of the appeal of the January 16, 2015 finding that the disgorgement order constitutes a final judgment pursuant to Supreme Court Rule 304(a). A timely Notice of Appeal was filed on February 13, 2015. (C-1654-56).

STATUTES INVOLVED

750 ILL. COMP. STAT. 5/501(c-1):

(c-1) As used in this subsection (c-1), "interim attorney's fees and costs" means attorney's fees and costs assessed from time to time while a case is pending, in favor of the petitioning party's current counsel, for reasonable fees and costs either already incurred or to be incurred, and "interim award" means an award of interim attorney's fees and costs. Interim awards shall be governed by the following:

(1) Except for good cause shown, a proceeding for (or relating to) interim attorney's fees and costs in a pre-judgment dissolution proceeding shall be nonevidentiary and summary in nature. All hearings for or relating to interim attorney's fees and costs under this subsection shall be scheduled expeditiously by the court. When a party files a petition for interim attorney's fees and costs supported by one or more affidavits that delineate relevant factors, the court (or a hearing officer) shall assess an interim award after affording the opposing party a reasonable opportunity to file a responsive pleading. A responsive pleading shall set out the amount of each retainer or other payment or payments, or both, previously paid to the responding party's counsel by or on behalf of the responding party. In assessing an interim award, the court shall consider all relevant factors, as presented, that appear reasonable and necessary, including to the extent applicable:

(A) the income and property of each party, including alleged marital property within the sole control of one party and alleged non-marital property within access to a party; (B) the needs of each party; (C) the realistic earning capacity of each party; (D) any impairment to present earning capacity of either party, including age and physical and emotional health; (E) the standard of living established during the marriage; (F) the degree of complexity of the issues, including custody, valuation or division (or both) of closely held businesses, and tax planning, as well as reasonable needs for expert investigations or expert witnesses, or both; (G) each party's access to relevant information; (H) the amount of the payment or payments made or reasonably expected to be made to the attorney for the other party; and (I) any other factor that the court expressly finds to be just and equitable.

(2) Any assessment of an interim award (including one pursuant to an agreed order) shall be without prejudice to any final allocation and without prejudice as to any claim or right of either party or any counsel of record at the time of the award. Any such claim or right may be presented by the appropriate party or counsel

at a hearing on contribution under subsection (j) of Section 503 or a hearing on counsel's fees under subsection (c) of Section 508. Unless otherwise ordered by the court at the final hearing between the parties or in a hearing under subsection (j) of Section 503 or subsection (c) of Section 508, interim awards, as well as the aggregate of all other payments by each party to counsel and related payments to third parties, shall be deemed to have been advances from the parties' marital estate. Any portion of any interim award constituting an overpayment shall be remitted back to the appropriate party or parties, or, alternatively, to successor counsel, as the court determines and directs, after notice.

(3) In any proceeding under this subsection (c-1), the court (or hearing officer) shall assess an interim award against an opposing party in an amount necessary to enable the petitioning party to participate adequately in the litigation, upon findings that the party from whom attorney's fees and costs are sought has the financial ability to pay reasonable amounts and that the party seeking attorney's fees and costs lacks sufficient access to assets or income to pay reasonable amounts. In determining an award, the court shall consider whether adequate participation in the litigation requires expenditure of more fees and costs for a party that is not in control of assets or relevant information. Except for good cause shown, an interim award shall not be less than payments made or reasonably expected to be made to the counsel for the other party. If the court finds that both parties lack financial ability or access to assets or income for reasonable attorney's fees and costs, the court (or hearing officer) shall enter an order that allocates available funds for each party's counsel, including retainers or interim payments, or both, previously paid, in a manner that achieves substantial parity between the parties.

(4) The changes to this Section 501 made by this amendatory Act of 1996 apply to cases pending on or after June 1, 1997, except as otherwise provided in Section 508.

CONSTITUTIONAL PROVISIONS

U.S. CONST. amend. XIV § 1

No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF FACTS

The parties were married on March 4, 1995. (C-003). The Petitioner, CHRISTINE GOESEL ("CHRISTINE"), filed her Petition for Dissolution of Marriage on January 18, 2013. (C-003-07). On January 18, 2013, at the outset of the case, the Circuit Court entered an order directing the parties to pay their legal fees from an existing home equity line of credit ("HELOC"). (C-015-16). That the Contemnor, LAURA A. HOLWELL ("HOLWELL"), was retained by the Respondent, ANDREW GOESEL ("ANDREW"), on or about October 8, 2013. (C-1103-06). Around the time HOLWELL was retained by ANDREW, ANDREW's previous attorney, Anderson & Boback, filed a Motion to Disqualify CHRISTINE's former attorneys, GOLDSTINE, SKRODZKI, RUSSIAN, NEMEC, and HOFF, LTD. ("GOLDSTINE"). (C-069-72). The Motion to Disqualify alleged, in pertinent part, that CHRISTINE had sole possession of the parties' marital home, that she had previously forwarded all of ANDREW's mail to him and that, on or about September 2013, CHRISTINE's attorneys advised her to send ANDREW's mail to their office, where they proceeded to open, scan, view, and copy ANDREW's mail. (C-069-72). ANDREW's Motion to Disqualify was presented to the Court on October 10, 2013. (C-068). On that same date, HOLWELL substituted as counsel for ANDREW pursuant to the Court's order. (C-086-87).

From October 2013 to March 2014, the disqualification issue was extensively litigated, as many motions and pleadings were filed with respect to same. (C-091-104; C-212-26; C-369-72). Ultimately, on March 4, 2014, the Circuit Court for the Twelfth Judicial Circuit disqualified GOLDSTINE as counsel for CHRISTINE for opening, viewing, copying, and scanning thirty-one pieces ANDREW's personal mail. (C-070; C-

476). ANDREW incurred \$37,094.49 in fees with HOLWELL in disqualifying GOLDSTINE, whereas CHRISTINE was not charged by GOLDSTINE in defending against the Motion to Disqualify. (C-1074-75; C-1110-1149). Thereafter, on March 10, 2014, THE LAW OFFICES OF EDWARD R. JAQUAYS (“JAQUAYS”) appeared as Counsel on behalf of CHRISTINE. (C-478). On June 6, 2014, LEVINE, WITTENBERG, SHUGAN & SCHATZ, LTD. (“LEVINE”) filed an appearance as co-counsel for ANDREW. (C-688).

On June 12, 2014, CHRISTINE filed a Petition for Interim Attorney’s Fees, Costs, and Other Relief alleging, in pertinent part, that ANDREW had the ability to contribute to her attorney’s fees and costs. (C-709-718). On June 17, 2014, CHRISTINE filed an Emergency Petition for Temporary Restraining Order alleging, in part, that ANDREW had withdrawn fees from various assets to pay his attorney’s fees. (C-743-747). CHRISTINE’s Counsel, JAQUAYS, did not provide notice of the Emergency Petition to HOLWELL. (C-750-51). Rather, notice was only provided to LEVINE in open court on June 17, 2014. (C-750-51). HOLWELL did not appear in Court on June 17, 2014 because HOLWELL, LEVINE, and ANDREW previously agreed LEVINE would appear instead. (C-750-51; C-1380). HOLWELL, LEVINE, and ANDREW agreed LEVINE would appear instead because HOLWELL would soon be withdrawing from the case. (C-750-51; C-1380). As a result, notice was only provided to co-counsel, LEVINE, in open Court. (C-742). On June 17, 2014, the court granted the Emergency Petition for Temporary Restraining Order without HOLWELL’s presence. (C-750). The Court’s June 17, 2014 order set the matter for hearing on June 27, 2014 and states in pertinent part that “the Defendant, ANDREW GOESEL, is prohibited and restrained from withdrawing any

funds from retirement accounts and from utilizing, spending, transferring, or disposing of any of the funds previously withdrawn.” (C-750).

On June 20, 2014, CHRISTINE filed an Amended Petition for Interim Attorney’s Fees, Costs, and Expenses, requesting, in part, that HOLWELL’s previously paid attorney’s fees be disgorged “in the event this Court finds that the Defendant, ANDREW GOESEL, lacks the ability to pay interim fees” (C-770; 766-75). On June 24, 2014, ANDREW filed an Emergency Petition for Temporary Restraining Order, alleging, in part, that CHRISTINE also withdrew \$22,000.00 from her retirement account to pay her attorney’s fees. (C-778-84). Likewise, ANDREW also filed a Petition for Prospective Attorney’s Fees and Costs alleging that “CHRISTINE GOESEL is gainfully employed and in control of substantial funds and assets.” (C-787; 785-95).

On June 27, 2014, HOLWELL withdrew as counsel of record for ANDREW. (C-796). At CHRISTINE’s request, the Court’s June 27, 2014 withdraw order specifically stated “3. The court retains jurisdiction over Ms. Holwell should the Court find disgorgement to be an issue. 4. Counsel shall notify Ms. Holwell of any future dates pertaining to disgorgement.” (C-796). The Court also ordered that CHRISTINE must “notify Ms. Holwell of any future dates pertaining to disgorgement.” (C-796). Pursuant to a separate order, the court also enjoined ANDREW from withdrawing any additional amounts from his retirement accounts and set CHRISTINE’s Amended Petition for Interim Fees, Costs, and Expenses for hearing on July 21, 2014. (C-797-98). On July 22, 2014, CHRISTINE’s Amended Petition for Interim Fees, Costs, and Expenses and ANDREW’s Petition for Prospective Fees and ANDREW’s Temporary Restraining Order were continued for hearing on July 29, 2014. (C-841).

On July 23, 2014, CHRISTINE filed a Petition for Indirect Civil Contempt and Other Relief purportedly against ANDREW, but requested relief against HOLWELL. (C-849-55). The Petition alleges in pertinent part that the June 17, 2014 Temporary Restraining Order was violated, and requested that HOLWELL be compelled to return funds paid to her to the marital estate. (C-854). Although the Motion requested HOLWELL to return certain earned fees already paid to her, HOLWELL was not provided with service of the Petition for Indirect Civil Contempt and Other Relief, despite the Court's June 27, 2014 order. (C-848). CHRISTINE's Petition for Indirect Civil Contempt and Other Relief was set for presentment on July 29, 2014. (C-848).

Pursuant to the July 22, 2014 order, a hearing was held on CHRISTINE's Amended Petition for Interim Fees, Costs, and Expenses, ANDREW's Petition for Prospective Fees, and ANDREW's Temporary Restraining Order were continued for hearing on July 29, 2014, July 30, 2014, and July 31, 2014. (C-841; C-865; C-871). The parties' exhibits were entered by agreement and HOLWELL was the only witness called to testify for the hearing. (C-920; R-166, lines 7-9; R-007, lines 16-20; R-010-083; R-091-157). HOLWELL was excluded from the hearing pursuant to JAQUAYS' oral motion to exclude witnesses. (R-007, lines 16-23; R-008, lines 21-24). The evidence presented at this hearing showed that CHRISTINE earned \$110,632.04 in 2013. (C-863-64; C-1077; A-29). At the time of the hearing, CHRISTINE earned \$9,500.03 per month, or \$114,000.46 per year. (C-863-64; R-198). With respect to CHRISTINE's expenses, the evidence showed that CHRISTINE had no mortgage or car payment. (C-863-64; C-1077; A-34-35). Finally, the evidence showed that CHRISTINE had access to several assets of value, including but not limited to a brand new car, a checking account, \$90,000.00 of

equity in the marital home, a vacation residence, and several retirement accounts valued at \$137,759.93 total. (C-863-64; C-1077-78; A-29-32).

The evidence also showed that, on the date of the hearing, HOLWELL was paid \$51,382.28 in fees that she had earned throughout the proceedings and that approximately \$13,000.00 was currently in dispute as to whether this amount would be paid to HOLWELL or ANDREW's former attorneys, ANDERSON & BOBACK. (C-1077; R-017, lines 7-8; R-052, line 71; R-062, lines 22-24; R-098-101). Without accounting for the approximately \$13,000.00 in dispute, HOLWELL was owed \$17,583.00 in fees. (R-050, line 12). The parties stipulated for purposes of this hearing that HOLWELL's attorney's fees were reasonable and necessary. (R-165, lines 5-12).

During the July 2014 hearing, CHRISTINE did not argue whether ANDREW had the ability to pay CHRISTINE's attorney's fees as the Petition for Interim Fees and Amended Petition for Interim Fees both alleged. Rather, CHRISTINE's attorneys repeatedly argued CHRISTINE's position as stated in her Petition for Adjudication of Indirect Civil Contempt filed on July 23, 2014, and requested HOLWELL's fees be disgorged. (R-166-190; R-211-217). This was done over ANDREW's objection, as this Petition was not set for hearing at that time. (R-014, lines 6-19; R-196, lines 3-12). Throughout HOLWELL's testimony, JAQUAYS questioned HOLWELL regarding any and all payments received from ANDREW and her various business practices, all in an attempt to disgorge HOLWELL's fees. During her testimony, HOLWELL attempted to defend her interests, however, the Circuit Court repeatedly ordered HOLWELL to simply answer questions and act as a witness. (R-58, line 24, R-59, lines 1-4; R-82, lines 6-9). At the end of the hearing, JAQUAYS requested leave to file an Amended Petition for

Interim Attorney's Fees and Costs to Conform to the Proofs, over LEVINE's objection. (R-217, lines 2-24; R-218, lines 1-20).

On August 4, 2014, HOLWELL appeared in Court and requested that the Court allow her to intervene to defend her interests in addressing JAQUAYS' Motion for Leave to Amend Pleadings to Conform to Proofs. (R-877-78). The Court allowed HOLWELL to intervene and entered an order stating in pertinent part that it "reaffirms its jurisdiction over Attorney Laura Holwell and allows her to intervene for purposes of addressing Plaintiff's Motion for Leave to Amend Pleadings to Conform to Proofs." (R-877). This matter was set for status or hearing on August 13, 2014, subject to HOLWELL obtaining counsel. (R-877-78).

On August 13, 2014, ANDREW filed a Motion to Dismiss Count I of the Motion for Leave to Amend the Pleadings to Conform to Proofs and his Response to Count II of the Motion. (C-881-85). The Circuit Court set the Motion for Leave to Amend Pleadings to Conform to Proofs for hearing on August 27, 2014 over HOLWELL's objection, as she had not obtained counsel yet and was requested additional time to obtain counsel. (C-896). On August 15, 2014, CHRISTINE filed a Motion to Modify the January 18, 2013 Court Order to allow the parties' attorneys to be paid from sources outside of the Home Equity Line of Credit. (C-898-99). This Motion to Modify was ultimately granted on December 12, 2014. (C-1281).

On August 18, 2014, Grotta & Associates, P.C. requested the court to enter its appearance on behalf of HOLWELL and requested the Circuit Court to continue the hearing. (C-900). The Circuit Court continued the hearing to September 15, 2014 pursuant to this request. (C-900). On September 15, 2014, a hearing was held with

respect to CHRISTINE's Motion for Leave to Amend Pleadings to Conform to Proofs. (C-915). On that date, the Circuit Court set the matter for ruling on the Motion for Leave to Amend Pleadings to Conform to Proofs for September 29, 2014. (C-915). On September 29, 2014, the Circuit Court denied CHRISTINE's Motion for Leave to Amend Pleadings to Conform to the Proofs for a failure to attach the requisite affidavit. (C-923-24). However, the Circuit Court disgorged HOLWELL's fees in the amount of \$40,952.61 and ordered that these funds be directly turned over to JAQUAYS within fourteen (14) days. (C-924). In so ordering, the Circuit Court found that ANDREW lacked the ability to pay interim fees because "Husband claims current monthly net income of \$3,343.56, with expenses exceeding income." (C-920). With respect to CHRISTINE's ability to pay for her attorney's fees, the Circuit Court found that "Wife seeks contribution as she has the inability to pay her attorney fees. Both parties currently lack the financial ability to pay reasonable attorney fees." (C-920).

On October 1, 2014, CHRISTINE filed a Petition for Indirect Civil Contempt and Other Relief Against Attorney Laura Holwell, alleging, in part, that HOLWELL violated the January 18, 2013 court order requiring the parties to deposit their income into a joint account and the June 17, 2014 restraining order entered against ANDREW. (C-927-37). On October 16, 2014, JAQUAYS filed a citation against HOLWELL and froze her personal bank accounts in an attempt to collect on the disgorgement order. (C-963-66). HOLWELL immediately filed an Emergency Motion to Quash on October 17, 2014, which was heard in front of the Honorable Judge Mark Thomas Carney. (C-967-71). HOLWELL alleged that improperly freezing HOLWELL's accounts not only caused her much embarrassment, as it caused her to bounce several checks, but it caused her

husband embarrassment, as he was running for judge at the time. (R-228, lines 23-24; R-229, lines 1-9). As part of those proceedings, the Honorable Judge Mark Thomas Carney ordered both HOLWELL and JAQUAYS ask the Honorable Judge Dinah Archambeault whether she intended the September 29, 2014 order to be a judgment, over HOLWELL's objection. (C-978; R-243, lines 18-24, R-244, line 1). At that time, the Honorable Judge Dinah Archambeault advised both HOLWELL and JAQUAYS that the disgorgement order was not a judgment, and that a rule was a more appropriate action. (R-259, lines 21-22). As a result, the citation was quashed pursuant to HOLWELL's motion. (C-979). Thereafter, on October 24, 2014, CHRISTINE filed a Petition for Adjudication of Indirect Civil Contempt against HOLWELL for her alleged failure to pay the monies pursuant to the Circuit Court's September 29, 2014 disgorgement order. (C-982-987).

On October 29, 2014, HOLWELL filed a Motion to Reconsider the September 29, 2014 Order. (R-1072-1175). On December 18, 2014, the Court denied HOLWELL's Motion to Reconsider September 29, 2014 Order. (C-1350-51). With respect to CHRISTINE's October 24, 2014 Rule, HOLWELL specifically requested to be held in friendly contempt pursuant to Supreme Court Rule 304(b)(5) for the purposes of an appeal. (R-343, lines 20-24; 344, line 1; R-366, lines 1-20). The Circuit Court entered an order stating, in pertinent part, that "[t]o allow jurisdiction to appeal, Attorney Holwell requests to be held in friendly contempt for 10/24/14 Rule and is held in contempt pursuant to said request." (C-1350). Also on December 18, 2014, the Circuit Court reconsidered its previous October 17, 2014 ruling that the September 29, 2014 disgorgement order was a temporary order and not a judgment, over HOLWELL's objection. (C-1350).

On December 22, 2014, HOLWELL filed a Motion to Reconsider the December 18, 2014 order wherein the Circuit Court ruled the disgorgement order was a final, collectible judgment. (C-1406-18). On December 23, 2014, HOLWELL filed a Motion to Dismiss CHRISTINE's Petition for Indirect Civil Contempt and Other Relief against HOLWELL for lack of jurisdiction. (C-1420-38). On January 16, 2015, the Circuit Court denied HOLWELL's Motion to Reconsider, holding that the September 29, 2014 disgorgement order constituted a final, collectible judgment. (C-1547-48). In the January 16, 2015 order, the Circuit Court made the express finding that there is no just reason for delaying enforcement and appeal of this finding. (C-1547).

Also on January 16, 2015, CHRISTINE presented her Motion to Clarify the Court's December 18, 2014 contempt finding, which was previously filed on January 13, 2015. (C-1460, 1464-65). The Motion to Clarify requested that "this Court impose a monetary or other penalty against Ms. HOLWELL for the contempt finding made on December 18, 2014" (C-1465). Based upon the Motion to Clarify, the Circuit Court *sua sponte* vacated the previous December 18, 2014 finding of friendly contempt, held HOLWELL in indirect civil contempt, charged HOLWELL \$10 per day each day she did not pay the disgorgement, and sentenced HOLWELL to the Will County Adult Detention Facility for an indeterminate amount of time not to exceed one hundred seventy-nine (179) days. HOLWELL's imprisonment was stayed for thirty (30) days to provide her time to file her appeal. (C-1547-48). The Circuit Court also ordered HOLWELL to pay the \$40,952.61 by January 21, 2015 as her purge. (C-1548). This was done without notice to HOLWELL, without a hearing, and over HOLWELL's strenuous objection. (R-463, lines 17-21; R-463, lines 23-24; 464, lines 1-2).

Thereafter, HOLWELL's Motion to Dismiss Petition for Indirect Civil Contempt was continued for hearing on January 21, 2015. (C-1548). At that time, the Circuit Court denied HOLWELL's Motion to Dismiss Petition for Indirect Civil Contempt for lack of jurisdiction, finding that HOLWELL had filed her additional appearance on September 15, 2014. (C-1576-77; R-523, lines 12-16). Also on this date, the Circuit Court reaffirmed the January 16, 2015 order finding HOLWELL in indirect civil contempt, reaffirmed its previous penalty of incarceration, to be stayed pending the filing of a notice of appeal and pending any appeal filed, and reaffirmed the imposition of a penalty of \$10.00 per day, to begin on January 21, 2015. (C-1576). HOLWELL timely filed her Notice of Appeal On February 13, 2015. (C-1654-56). HOLWELL also filed an Appellate Bond of \$44,000.00 on February 13, 2015. (C-1658).

ARGUMENT

I. THE CIRCUIT COURT ERRED IN DISGORGING HOLWELL'S FEES BECAUSE IT FAILED TO MAKE THE REQUISITE FINDINGS PURSUANT TO *NASH*, CHRISTINE HAD THE ABILITY TO PAY HER ATTORNEY'S FEES, AND THE COURT'S ORDER VIOLATED HOLWELL'S DUE PROCESS.

STANDARD OF REVIEW

An award of interim attorney's fees is generally reviewed for an abuse of discretion. *Nash v Alberola*, 2012 IL App (1st) 113724, ¶15. A reviewing Court must reverse a trial court's decision under the abuse of discretion standard if "no reasonable person would take the view adopted by the circuit court." *In re the Marriage of Davis*, 215 Ill. App. 3d 763, 774 (1st Dist., 1991). Although the actual award of attorney's fees is reviewed for an abuse of discretion, if an appeal from an award of attorney's fees "hinges on issues of statutory construction and constitutionality, our standard of review is *de novo*." *Nash v Alberola*, 2012 IL App (1st) 113724, ¶15 (quoting *In re Marriage of Beyer*, 324 Ill. App. 3d 305, 309 (1st Dist., 2001) (internal quotations omitted)).

A. The Circuit Court erred in disgorging HOLWELL's fees because it failed to make a specific finding with respect to CHRISTINE' ability to pay her attorney's fees.

Determining whether the Circuit Court erred in failing to make a specific finding with respect to CHRISTINE's ability to pay her attorney's fees "hinges on issues of statutory construction," and thus, is reviewed *de novo*. *Nash*, 2012 IL App (1st) 113724, ¶15. Generally, a party is obligated to pay any attorney's fees and costs incurred by that party. *In re the Marriage of Mantei*, 222 Ill. App. 3d 933, 941 (4th Dist., 1991). However, Section 501(c-1)(3) of the Illinois Marriage and Dissolution of Marriage Act provides for the disgorgement of fees in situations where neither party has the ability to

pay their fees. Section 501(c-1)(3) states that, “[i]f the court finds that both parties lack financial ability or access to assets or income for reasonable attorney’s fees and costs, the court (or hearing officer) shall enter an order that allocates available funds for each party’s counsel, including retainers or interim payments, or both, previously paid, in a manner that achieves substantial parity between the parties.” 750 ILCS 5/501(c-1)(3).

In *Nash*, the First District held that an attorney may not be disgorged where the Court has failed to find that both the Petitioner and Respondent lacked the financial ability or access to assets or income to pay reasonable attorney’s fees and costs. 2012 IL App (1st) 113724, ¶23. In *Nash*, the Circuit Court entered an order stating “Respondent ‘shall pay to . . . Christine Svenson [interim attorney fees of] \$5,000 . . . within 14 days’ . . . if Respondent failed to make the \$5,000.00 payment to Ms. Svenson within 14 days, then ‘Mr. Mirabelli shall disgorge [the \$5,000] to . . . Svenson within said time frame.’” *Id.* at ¶7. The Appellate Court held that the Circuit Court’s order was ambiguous in that the interim fee award required a finding that Respondent had the ability to pay the fees and the disgorgement required a finding that neither party had the ability to pay the fees. *Id.* at ¶23. As a result, the Appellate Court reversed the disgorgement order because the Circuit Court failed to properly find that both parties were unable to pay their fees. *Id.* The Illinois Supreme Court reiterated this principle in *In re the Marriage of Earlywine*, 2013 IL 114779. In *Earlywine*, the Illinois Supreme Court ruled that advanced payment retainers may be disgorged pursuant to Section 501(c-1)(3). 2013 IL 114779, ¶29. However, in so ruling, the Illinois Supreme Court stated that the disgorgement of fees occurs in cases where “the court finds that both parties lack the financial ability or access to assets or income to pay reasonable attorney fees and costs” *Id.* at ¶23. *See also In*

re the Marriage of Radzik and Agrella, 2011 IL App (2d) 100374, ¶51 (finding that “the court abused its discretion in determining that petitioner established respondent’s ability to pay, because it received virtually no evidence regarding respondent’s present ability to pay the amount that the court awarded.”).

In the instant matter, the September 29, 2014 disgorgement order makes a specific finding with respect to ANDREW’s inability to pay his attorney’s fees by stating “Husband claims current monthly net income of \$3,343.56, with expenses exceeding income.” (C-920). However, the September 29, 2014 disgorgement order fails to make a similar, particular finding with respect to CHRISTINE’s inability to pay her attorney’s fees. (C-920). Rather, the September 29, 2014 order merely states, “Wife seeks contribution as she has the inability to pay her attorney fees. Both parties currently lack the financial ability to pay reasonable attorney fees.” (C-920). The Circuit Court’s finding that CHRISTINE “has the inability to pay her attorney fees” is conclusory, which simply does not suffice under *Nash* and *Earlywine*. Pursuant to *Nash* and *Earlywine*, the Circuit Court needs to make a specific finding as to why CHRISTINE is unable to pay her attorney fees. The Circuit Court simply failed to explain why it found CHRISTINE is unable to pay her attorney’s fees in its September 29, 2014 disgorgement order pursuant to *Nash* and *Earlywine*. (C-919-24). As a result, the Circuit Court erred in disgorging HOLWELL’s fees in the amount of \$40,952.61 and this decision must be reversed.

B. The Circuit Court erred in disgorging HOLWELL’s fees because the evidence showed CHRISTINE had the ability to pay her own attorney’s fees.

The Circuit Court erred in blankly finding CHRISTINE has an inability to pay her attorney’s fees under Section 501(c-1)(3) of the Illinois Marriage and Dissolution of Marriage Act because the evidence presented in this matter clearly indicates the contrary.

(C-863-64; C-1077-78; A-27). A party's inability to pay his or her attorney's fees may be shown if the "payment of fees would strip the individual of his or her means of support and undermine his or her economic stability." *In re the Marriage of Smith*, 128 Ill. App. 3d 1017, 1027 (2d Dist., 1984). However, "[f]ew can afford the expense of divorce without incurring debt Ability to pay does not mean ability to pay without pain or sacrifice." *In re the Marriage of McCoy*, 272 Ill. App. 3d 125, 132 (4th Dist. 1995).

1. CHRISTINE has the ability to pay for her attorney's fees under Section 501(c-1)(3) of the Illinois Marriage and Dissolution of Marriage Act because she earned sufficient monthly income and had access to assets from which to pay her own attorney's fees.

The Fifth District denied a wife's request for attorney's fees where wife failed to show she was unable to pay her own attorney's fees, despite the fact the parties earned disparate incomes. *See generally In re the Marriage of Keip*, 773 N.E.2d 1228 (Ill. App. 5th Dist., 2002). In *Keip*, Wife filed a Petition for Contribution requesting that Husband pay a portion of her attorney's fees, which the Circuit Court denied. *Id.* at 1234. The evidence showed wife had a certificate to be a teacher's aide and worked as a cook's helper at the local grade school, whereas husband worked as a finance manager. *Id.* at 1129. The evidence also showed that wife earned \$14,001.00 in 1999 whereas Husband earned \$100,489.00 in 1999. *Id.* The Wife argued that, Husband should contribute to her attorney's fees simply due to his superior financial position. *Id.* at 1233-34. The Fifth District rejected this argument and upheld the circuit court's decision. *Id.* at 1234. In doing so, the Fifth District stated that Wife had the burden to show that she was unable to pay her fees and that wife simply "failed to show that she was unable to pay the fees herself," despite husband's superior financial position. *Id.*

Similarly to the Wife in *Keip*, CHRISTINE failed to show that she is unable to pay her own attorney's fees. CHRISTINE presented absolutely no evidence during the July 2014 three day hearing that she was "unable" to pay her attorney's fees herself. (R-197, lines 11-22). Rather, it appears that this important statutory element was merely assumed throughout the proceedings. (R-197, lines 17-22). Regardless, the evidence presented unequivocally showed CHRISTINE is capable of paying her own attorney's fees. (C-863-64; C-1077-78; A-27). Pursuant to CHRISTINE's own Disclosure Statement and Affidavit of Income and Expenses, her gross income from all sources for 2013 was \$110,632.04. (C-863-64; C-1077; A-29). Further, her gross monthly income from her salary and rental income was \$6,000.03 per month. (C-863-64; C-1084; A-34). Additionally, at the time of the hearing, CHRISTINE received \$3,500.00 per month in child support. (C-292, 1084). As a result, her total monthly income at the time of the hearing was \$9,500.03, or \$114,000.46 per year. (C-863-64; C-1084). With respect to CHRISTINE's expenses, the evidence showed that, at the time of the July 2014 hearing, CHRISTINE was not paying the mortgage or household expenses on the marital home and that she has no car payment. C-863-64; C-1077; A-34-35). As a result, at the time of the hearing, CHRISTINE's monthly income exceeded her expenses. (R-198, lines 15-16; A-37). Furthermore, CHRISTINE's Disclosure Statement listed several assets of value from which she could pay her own attorney's fees, including but not limited to: (1) a checking account with a value of \$4,610.99 as of May 2014; (2) \$200.00 cash on hand; (3) \$90,000.00 of equity in the marital home; (4) a Michigan Residence, with a supposedly unknown value, that her "Husband gifted" to her; and (5) a brand new 2014

Honda CRV allegedly purchased for her by Connie Schmall, with no value stated. (C-1085; A-29-32).

In addition to having access to the assets and funds as set forth above, at the time of the July 2014 hearing, CHRISTINE also had access to several retirement accounts. (R-199, lines 1-3; C-1085; A-29-32). CHRISTINE's Disclosure Statement lists that she had access to the following at the time of the July 2014 hearing: (1) Fidelity Simple IRA valued at \$32,819.88 as of April 2014; (2) Palos Hospital 403(b) Retirement Plan valued at \$42,498.86 as of March 2014; (3) Palos Hospital 401(a) Pension Plan valued at \$13,292.21 as of March 2014; (4) St. George Corp. Rollover Plan valued at \$3,838.04 as of March 2014; (5) St. George Corp. 403(b) plan valued at \$27,954.71 as of March 2014; and (6) Merrill Lynch Retirement and Savings Plan valued at \$17,356.23. (R-199, lines 1-3; C-1085; A-31-32). Thus, at the time of the July 2014 hearing, CHRISTINE had access to \$137,759.45 in retirement assets from which she could pay her attorney's fees.

It was unreasonable for the Circuit Court to find CHRISTINE had an inability to pay her attorney's fees given that CHRISTINE earned \$9,500.03 gross income per month, did not have a mortgage or car payment, her monthly income exceeded her expenses even assuming all expenses were correct and being paid, and she had access to several valuable assets from which to pay her own attorney's fees. (R-197-198; C-1077-78, 1085; A-29-32). Because CHRISTINE earned nearly \$115,000.00 per year and did not have a mortgage or a car payment, it is clear that she could afford to pay her own attorney's fees without "stripping her means of support." However, even if CHRISTINE did not have the funds or access to assets to pay her attorneys in one lump sum, the Circuit Court cannot ignore that CHRISTINE could easily pay her attorneys in monthly

installments. The Fourth District has specifically stated that “[a] party who does not have the present ability to pay his own attorney fees can nevertheless be ordered to pay his own attorney, although enforcement might have to be accomplished by an installment order.” *McCoy*, 272 Ill. App. 3d at 131-32. Given that CHRISTINE’s monthly income exceeded her expenses, she at the very least has the ability to pay her own attorney’s fees pursuant to an installment order. (R-198, lines 15-16; A-37). Thus, the Circuit Court erred in finding CHRISTINE did not have the ability to pay her own attorney’s fees.

Section 501(c-1)(3) specifically states that a Court may not enter an order disgorging funds unless “the Court finds that both parties lack financial ability or access to assets” 750 ILCS 5/501(c-1)(3) (emphasis added). The evidence presented in the instant matter clearly showed that, not only did CHRISTINE have the financial ability to pay her own attorney’s fees, as her gross monthly income was \$9,500.03 at the time of the hearing, but she also had access to several valuable assets from which she could pay her own attorney’s fees, including but not limited to a brand new car. (R-197-198; C-1077-78, 1085; A-29-32). As a result, it was against the manifest weight of the evidence for the court to blankly state CHRISTINE was unable to pay her own attorney’s fees and therefore, the Court’s September 29, 2014 disgorgement order must be reversed.

2. The Circuit Court erred in finding CHRISTINE had an inability to pay for her own attorney’s fees because this finding was contrary to the Circuit Court’s finding that CHRISTINE had access to assets to pay her attorney’s fees as of August 15, 2014.

Although the Circuit Court found on September 29, 2014 that CHRISTINE lacked the ability to pay for her own attorney’s fees and costs, on December 12, 2014, the Circuit Court found the opposite. (C-1281). On August 15, 2014, CHRISTINE filed her Motion to Modify the January 18, 2013 Court Order to allow the parties’ attorneys to be

paid from sources outside of the Home Equity Line of Credit. (C-898-99). This Motion was ultimately granted on December 12, 2014. (C-1281). In granting CHRISTINE's Motion to Modify, the Circuit Court held that "[b]y agreement of the Plaintiff and Defendant, the Plaintiff's Motion filed August 15, 2014 is granted. The parties may pay their attorney's fees from funds other than the line of credit. Authorization to do so is retroactive to August 15, 2014." (C-1281).

The Circuit Court's December 12, 2014 order acknowledges that CHRISTINE had access to assets and additional income from which to pay her own attorney's fees because, if CHRISTINE did not have access to assets or income to pay her attorney's fees outside of the Home Equity Line of Credit, she would not have requested the Circuit Court to allow her to pay her attorney's fees from same. (C-898-99). By making this order retroactive to August 15, 2014, the Circuit Court essentially found that CHRISTINE had access to income and assets from which to pay her own attorney's fees as early as August 15, 2014, over one month prior to the Circuit Court's finding that CHRISTINE lacked the ability to pay her own attorney's fees on September 29, 2014. (C-1281). As a result, the Circuit Court's finding that CHRISTINE had access to income and assets from which to pay her own attorney's fees as of August 15, 2014 is in direct conflict with the Circuit Court's finding that CHRISTINE did not have the ability to pay her own attorney's fees on September 29, 2014.

In *Nash v. Alberola*, the First District held that the Circuit Court's order was ambiguous in that the interim fee award required a finding that Respondent had the ability to pay fees and the disgorgement required a finding that neither party had the ability to pay fees. 2012 IL App (1st) 113724, ¶23. As a result, the Appellate Court

reversed the disgorgement order because the Circuit Court failed to properly find that both parties were unable to pay their fees. *Id.* Similar to the findings in *Nash*, the Circuit Court's findings in the instant matter are also ambiguous. The Circuit Court essentially found in its December 12, 2014 order that CHRISTINE had the ability to pay her attorney's fees as of August 15, 2014, yet on September 29, 2014, the Circuit Court found that CHRISTINE lacked the ability to pay her attorney's fees. (C-1281, 920). The Circuit Court cannot find that CHRISTINE both had an ability to pay and an inability to pay her attorney's fees at the time in question because CHRISTINE either had the ability to pay or she did not have the ability to pay. Because the Circuit Court's findings with respect to CHRISTINE's ability to pay were ambiguous and inconsistent with one another, the Circuit Court erred in disgorging HOLWELL's fees pursuant to *Nash* and its decision must be reversed.

3. In the alternative, even if the Circuit Court properly disgorged HOLWELL's fees, the Circuit Court erred in disgorging \$40,952.61 because it failed to impute fees to CHRISTINE for free legal services rendered by GOLDSTINE and the Circuit Court's calculations provided an inequitable windfall to JAQUAYS.

The purpose of Section 501(c-1) of the Illinois Marriage and Dissolution of Marriage Act is to "level the playing field" to allow both spouses to participate in litigation. *In re Marriage of DeLarco*, 728 N.E.2d 1278, 1285 (Ill. App. 2d Dist., 2000) (citing *Kaufman, Litwin & Feinstein v. Edgar*, 301 Ill. App.3d 826, 836 (1998)). However, Section 501 does not preclude the Court from considering which party caused a significant portion of the fees incurred in making such an award. In fact, the Illinois Supreme Court has held that courts may consider which party "precipitated the need for the current legal fees" in making such an award. *See In re the Marriage of Cotton*, 103 Ill.2d 346 (1984) (holding that mother was not entitled to attorney's fees from father

despite his financial advantage because her misconduct caused the attorney's fees to be incurred).

The Fourth District made a similar finding in the *Marriage of Mantei*. In *Mantei*, the trial court denied Wife's request for Husband to pay her attorney's fees, finding that the large amount of attorney's fees resulted from the parties' inability to compromise with one another. 222 Ill. App. 3d 933, 942 (4th Dist., 1991). In affirming the trial court's decision with respect to attorney's fees, the Fourth District specifically stated "it is an unreasonable expectation to anticipate that the trial court will automatically require the other party to pay such attorney fees regardless of one's conduct during the litigation. There are times when the failure to compromise is frivolous." *Id.* Similarly, in the *Marriage of Auriemma*, Husband was ordered to pay a portion of Wife's attorney's fees due to his misconduct; however, those fees were reduced due to Wife's own litigiousness. 271 Ill. App. 3d 68, 70, 74 (1st Dist., 1994). Throughout the parties' litigation, Husband repeatedly violated the order of protection and, at one point, illegally wiretapped Wife's home, which resulted in extensive litigation. *Id.* at 71. However, the trial court found that Wife had also been extremely litigious throughout the litigation, and, as a result, Wife's requested fees of \$155,987.76 were reduced to \$63,000.00, of which, Husband was ordered to pay \$35,000.00. *Id.* at 74. This award did not impose fees that resulted from Husband illegally wiretapping Wife's home. *Id.* The Fourth District affirmed the award of fees in part, and reversed in part. In reversing the award, the Fourth District found that Husband should have also been ordered to pay an additional \$27,000.00 in fees that resulted from him illegally wiretapping Wife's home. *Id.*

In the instant matter, similarly to the Husband in *Auriemma*, CHRISTINE precipitated \$37,094.49 in fees as a result of CHRISTINE's and GOLDSTINE's improper actions in opening, viewing, copying and scanning thirty-one pieces of ANDREW's personal mail. (C-070; C-476; C-1074-75; C-1110-1149). Throughout the disqualification proceedings, through no fault of ANDREW or HOLWELL, GOLDSTINE filed five separate motions with respect to the disqualification issue and it took sixteen (16) court appearances to ultimately have GOLDSTINE disqualified. (C-1099-1100). While CHRISTINE enjoyed the benefit of free legal counsel during the disqualification process, as GOLDSTINE did not charge CHRISTINE to defend against the Motion to Disqualify, ANDREW was forced to incur thousands of dollars in fees to protect his privacy and the integrity of the instant proceedings due to CHRISTINE and GOLDSTINE's wrongdoing. (C-070; C-476; C-1074-75; C-1110-1149). Equity requires the fees that ANDREW was forced to incur as a result of GOLDSTINE's actions in opening, viewing, copying, and scanning ANDREW's personal mail be imputed to CHRISTINE for purposes of making any fee award pursuant to Section 501. As a result, the Circuit Court erred in failing to impute the \$37,094.49 in fees to CHRISTINE in disgorging HOLWELL's fees in the amount of \$40,952.61.

Furthermore, the Circuit Court erred in ordering the \$40,952.61 to be turned directly over to JAQUAYS because the Circuit Court's calculations results in a windfall to JAQUAYS. In disgorging \$40,952.61 of HOLWELL's fees, the Circuit Court calculated as follows:

To date Husband paid his attorneys \$100,022.27: \$66,382.28 to Holwell, \$10,000.00 to LeVine, and \$23,639.99 to Boback. Wife paid her attorneys \$18,117.04: \$5,000.00 to Jaquays and \$13,117.04 to Goldstine, Skrodzki, Russian, Nemec and Hoff, Ltd. Fees paid to date total \$118,139.31

(excluding fees paid to the child representative). To level the playing field, each party should have \$59,069.65 for fees. To achieve parity, Husband's attorneys should be disgorged of \$40,952.61. . . . Attorney Laura A. Holwell shall tender fees Husband paid her in the amount of \$40,952.61 to counsel for Wife, The Law Offices of Edward R. Jaquays (C-923-24).

Although the Court determined that the total of fees paid to *all three* of ANDREW's attorneys was \$100,022.27, the Court only disgorged HOLWELL's earned fees. (C-924). Likewise, although the Court determined CHRISTINE previously paid two attorneys a total amount of \$18,117.04, the Court awarded the \$40,952.61 only to JAQUAYS. (C-924).

Because the Circuit Court determined that HOLWELL was paid \$66,382.28 and that JAQUAYS had been paid \$5,000.00, the Circuit Court's ruling results in HOLWELL only receiving \$25,429.67 in fees and JAQUAYS receiving \$45,952.61. (C-923-24). This was done despite the fact that JAQUAYS had only been an attorney of record in this matter since March 2014, whereas HOLWELL had been an attorney of record since October 2013. (C-067, C-086-87, C-478). Furthermore, JAQUAYS was not an attorney of record in the highly complex and contested disqualification issue, whereas HOLWELL was the attorney of record who litigated the entire issue, with the exception of ANDERSON & BOBACK filing the initial Motion to Disqualify. (C-067, C-086-87, C-476, C-478). As a result, it is clear that the Circuit Court's calculations resulted in a windfall to JAQUAYS.

It is undisputed the purpose of Section 501(c-1) of the Illinois Marriage and Dissolution of Marriage Act is to "level the playing field." *DeLarco*, 728 N.E.2d at 1285. Yet, the Circuit Court's calculation does anything but "level the playing field." Rather, the Circuit Court's calculations placed CHRISTINE in a superior position to litigate the

proceedings by providing her with thousands of dollars in fees. (C-923-24). Because the Circuit Court failed to impute the \$37,094.49 in free legal counsel to CHRISTINE and also disgorged HOLWELL's fees, the Circuit Court essentially required ANDREW to pay both his own attorneys and CHRISTINE's attorneys for the disqualification proceedings. This was done even though CHRISTINE and her attorneys caused the disqualification proceedings and were ultimately disqualified for their wrongdoing. (C-476). Therefore, the Circuit Court's ruling essentially rewarded CHRISTINE for her attorney's own wrongdoing by ensuring that her fees would be paid from the funds ANDREW used to pay his attorneys in successfully disqualifying GOLDSTINE. As a result, the Circuit Court erred in disgorging HOLWELL's fees in the amount of \$40,952.61 because the Circuit Court's calculation undoubtedly resulted in a windfall to CHRISTINE and her attorneys.

C. The Circuit Court erred in disgorging HOLWELL's fees because HOLWELL was deprived of notice and an opportunity to be heard during the July 2014 hearings.

1. The Circuit Court deprived HOLWELL of due process by disgorging her fees pursuant to CHRISTINE's July 23, 2014 Petition for Indirect Civil Contempt as HOLWELL had no notice of the petition or the claims of disgorgement.

The Circuit Court also erred in disgorging HOLWELL's fees because it is clear that HOLWELL was deprived of due process during the July 2014 hearing as she was not given notice of CHRISTINE's requests for disgorgement and was deprived of an opportunity to be heard with respect to same. Although CHRISTINE's Petition for Adjudication of Indirect Civil Contempt filed on July 23, 2014 purports to request "Indirect Civil Contempt" against ANDREW, it is clear the Petition actually requested "Indirect Criminal Contempt" against HOLWELL. (C-849-55). Throughout the three day

hearing, CHRISTINE's attorneys repeatedly claimed HOLWELL's fees should be disgorged pursuant to alleged violations of the Court's orders, as set forth in the July 23, 2014 Petition for Rule. (R-166-190; R-211-217). At the end of the hearing, rather than request ANDREW contribute to CHRISTINE's attorney's fees, CHRISTINE's attorneys solely requested HOLWELL's attorney's fees be refunded to the marital estate pursuant to the July 23, 2014 Petition for Indirect Civil Contempt in an effort to punish HOLWELL for falsely alleged acts of misconduct. (R-188-189). Because CHRISTINE was seeking relief against HOLWELL directly, she was actually seeking a contempt finding against HOLWELL, not against ANDREW.

Pursuant to *In re the Marriage of Betts*, "[t]he primary determinant of whether contempt proceedings are civil or criminal in nature is the purpose for which contempt sanctions are imposed. If contempt sanctions are imposed for coercive purposes to compel the contemnor to perform a particular act the contempt is civil in nature. On the other hand, criminal contempt sanctions are imposed for the purpose of punishing past misconduct." 200 Ill. App. 3d 26, 43 (4th Dist., 1990). A party charged with contempt is entitled to certain constitutional procedural safeguards, depending on which type of contempt is being sought. *Id.* at 48-61. Parties charged with indirect civil contempt are entitled to notice and an opportunity to be heard pursuant to the due process clause of the Illinois and United States Constitutions. *Id.* at 53.

Although HOLWELL was not held in contempt pursuant to CHRISTINE's July 23, 2014 Petition for Adjudication of Indirect Civil Contempt, it is clear HOLWELL's fees were disgorged based upon this Petition because CHRISTINE's entire closing argument with respect to the disgorgement issue hinged on falsely alleged acts of

misconduct allegedly committed by HOLWELL. (R-166-190; R-211-217). CHRISTINE's attorneys requested this relief against HOLWELL even though HOLWELL was given no notice that CHRISTINE intended to proceed on a disgorgement hearing against her. (C-848). HOLWELL was deprived of notice of CHRISTINE's claims for disgorgement even though the Court specifically ordered on June 27, 2014 that CHRISTINE provide notice to HOLWELL of same. (C-796).

HOLWELL was unaware of CHRISTINE's intent to proceed on a disgorgement claim against her at the July 2014 hearing for several reasons. First, HOLWELL was not provided with service of the July 23, 2014 Petition for Indirect Civil Contempt and Other Relief even though this Petition requested relief against her and CHRISTINE was ordered to provide notice to HOLWELL of any requests for disgorgement in the Court's June 27, 2014 order. (C-796, 848). Rather, this Petition was only provided to ANDREW's attorney, HOWARD LEVINE, as indicated on the Notice of Motion. (C-848). Second, even if HOLWELL had been provided with notice of CHRISTINE's Petition for Indirect Civil Contempt and Other Relief filed July 23, 2014, this Petition was only set for presentment on July 29, 2014, not for hearing. (C-796). As a result of this fact, ANDREW's attorney, HOWARD LEVINE, objected multiple times to CHRISTINE's attorney, EDWARD R. JAQUAYS', insistence on arguing same during the July 2014 hearing. (R-073, lines 3-22; R-014, lines 6-19; R-196, lines 3-12). Third, HOLWELL attended the July 2014 hearings solely as a witness at ANDREW's request, and not as an interested party or intervener. (R-007, lines 16-20). Finally, HOLWELL was unaware of CHRISTINE's intent to request that HOLWELL's fees be disgorged because HOLWELL was excluded from the Courtroom as a result of CHRISTINE's motion to exclude

witnesses from the Courtroom for the parties' legal arguments. (R-007, lines 16-23; R-008, lines 21-24). As a result, HOLWELL was unaware CHRISTINE had requested relief against her until after the July 2014 hearing had already taken place, due to CHRISTINE's attorneys intentionally excluding HOLWELL from the courtroom. Therefore, HOLWELL was deprived of her basic right to notice of the allegations and claims against her.

HOLWELL was also deprived of her basic right to be heard and present evidence because, throughout much of the hearing, she was excluded from the Courtroom pursuant to CHRISTINE's request to exclude witnesses. (R-007, lines 16-23; R-008, lines 21-24). For instance, while HOLWELL was excused from the Courtroom, the parties stipulated to many exhibits, did not call any other witness besides HOLWELL, and stipulated that JAQUAYS' fees were reasonable and necessary. (C-920). Had HOLWELL been allowed to be present and defend her interests, she could have called CHRISTINE as a witness to question her regarding her expenses, she could have questioned the reasonableness of JAQUAYS' fees, and she could have objected to various lines of questioning as being irrelevant.

Furthermore, due to HOLWELL's minimal presence at the hearing as a witness, she also was not afforded the right to respond to the Petition or defend her interests. (C-920). Throughout her testimony, CHRISTINE's attorneys repeatedly badgered HOLWELL regarding her billing and other business practices despite HOLWELL's business practices being wholly irrelevant, as the parties had stipulated her fees were reasonable and necessary for purposes of the July 2014 hearing. (R-165, lines 5-12). The Circuit Court allowed the several irrelevant lines of questioning to be asked of

HOLWELL over ANDREW's objection. For instance, on July 29, 2014, CHRISTINE's attorney repeatedly asked HOLWELL whether ANDREW had signed the retainer agreement that very morning without any evidence that would have been the case. (R-54, lines 12-23; R-60, lines 3-24; R-61, lines 1-24). On July 29, 2014, CHRISTINE's attorneys also repeatedly asked HOLWELL whether ANDREW's payments were put into her IOLTA account pursuant to the Illinois Rules of Professional Conduct despite no evidence to the contrary. (R-56, lines 7-24; R-57, lines 1-4).

Unfortunately, CHRISTINE's badgering did not stop. On July 30, 2014, CHRISITNE's attorney again questioned HOLWELL regarding the circumstances surrounding ANDREW signing his retainer agreement and implies HOLWELL inappropriately discussed the case with ANDREW while still a witness. (R-094, lines 1-24; R-095, lines 1-22). On July 30, 2014, CHRISITNE's attorney also unfairly questioned HOLWELL whether she had informed the court how much she had been paid when "you were objecting to the children receiving child support." (R-106, lines 6-24). This particular line of questioning prompted HOLWELL to defend herself, indicating the question assumed improper facts, that she somehow argued the children should not receive child support. The Court allowed this line of questioning over LEVINE's objection, despite the fact it is clear these questions served no evidentiary purpose and were only asked to harass HOLWELL. (R-106, lines 6-24, R-107, lines 1-9). On July 30, 2014 CHRISINTE's attorney also inappropriately asked HOLWELL whether she "cared" where her payments were coming from, and repeatedly questioned HOLWELL regarding the sources used to pay her. (R-117, line 24, R-118, lines 1-4).

Because of this inappropriate, irrelevant, and badgering line of questioning, HOLWELL felt compelled to defend herself at several points during her testimony. In fact, at one point during her testimony, HOLWELL felt it necessary to ask, “is there a rule against me that I don’t know about?” (R-72, lines 6-24, R-73, lines 1-24). However, HOLWELL was repeatedly instructed by the Court to stop defending herself and to merely act as a witness. (R-58, line 24, R-59, lines 1-4; R-82, lines 6-9). As a result, not only was HOLWELL deprived of notice and an opportunity to be heard regarding the claims against her at the July 2014 hearing, but she was actually instructed not to defend herself on multiple occasions. Because the Circuit Court disgorged HOLWELL’s fees pursuant to the evidence presented at the July 2014 hearing, HOLWELL was deprived of her basic rights to notice, to be heard, and to be present evidence. Therefore, the Circuit Court erred in disgorging HOLWELL’s fees and its decision must be reversed.

2. The Circuit Court erred in disgorging HOLWELL’s fees without providing her notice or an opportunity to be heard because HOLWELL had a property interest in the disgorged fees.

In addition to depriving HOLWELL of due process, the Circuit Court also deprived HOLWELL of her property interest by disgorging her fees without providing HOLWELL with notice or an opportunity to be heard, as set forth above. The First District has specifically stated that “[a]lthough fees are generally awarded to the client, they “belong” to the attorney, . . .” *Lee v. Lee*, 302 Ill. App. 3d 607, 612 (1st Dist., 1998). Because an award of attorney’s fees “belongs” to the attorney, it follows that an attorney has a property interest in the fees he or she earns, and thus, is entitled to notice and an opportunity to be heard if those fees are to be disgorged. The concept of notice and an opportunity to be heard was discussed by the First District more fully in the *Marriage of*

Johnson, 2011 IL App (1st) 102826. In *Johnson*, the Wife filed a 2-1401 Petition alleging that the Husband failed to disclosure material evidence during the underlying proceedings. *Id.* at ¶1. Husband, in turn, filed a Motion for Sanctions against the Wife in having to file a response to a 2-1401 Petition, as he believed the 2-1401 Petition to be without merit. *Id.* Husband's Motion for Sanctions only requested fees against the Wife. *Id.* However, the trial court sanctioned Wife's attorneys, in addition to sanctioning Wife, despite the Motion for Sanctions only requesting fees against Wife. *Id.* The First District Appellate Court vacated the trial court's sanctions against Wife's attorneys, as it found that Wife's attorneys were provided with no notice or an opportunity to defend themselves before being sanctioned by the trial court. *Id.* at ¶36-38.

Similarly to the attorneys in *Johnson*, as set forth more fully above, HOLWELL was also deprived of her right to notice and an opportunity to defend herself before being disgorged. HOLWELL should have been provided with notice of the claims of disgorgement, an opportunity to be heard, and an opportunity to present evidence simply by virtue of having a property interest in her earned fees. It is important to note that the Circuit Court in the instant matter must have recognized HOLWELL's interest in this issue, because the Circuit Court ordered CHRISTINE to provide notice to HOLWELL of any future claims of disgorgement on June 27, 2014. (C-796). Despite this order, HOLWELL was not provided with any notice of CHRISTINE's intent to request disgorgement of HOLWELL's fees at the July 2014 hearing, as she only attended the hearing as ANDREW's witness, was not served with CHRISTINE's Petition for Indirect Civil Contempt filed July 23, 2014 requesting her fees be disgorged, and was not present in the Courtroom for a majority of the July 2014 hearing, as CHRISTINE's attorneys

requested she be excused. (C-848; R-007, lines 16-23; R-008, lines 21-24). Furthermore, even when HOLWELL felt compelled to defend herself, the Circuit Court repeatedly instructed her to stop defending herself, and simply answer the questions asked of her. (R-58, line 24, R-59, lines 1-4; R-82, lines 6-9). Therefore, the Circuit Court deprived HOLWELL of her property interest in disgorging HOLWELL's fees despite HOLWELL's lack of notice and opportunity to be heard. As a result, the Circuit Court erred in disgorging HOLWELL's fees and its decision must be reversed.

II. THE CIRCUIT COURT ERRED IN FINDING THE SEPTEMBER 29, 2014 DISGORGEMENT ORDER IS A JUDGMENT BECAUSE DISGORGEMENT ORDERS ARE TEMPORARY ORDER PURSUANT TO SECTION 501 OF THE ILLINOIS MARRIAGE AND DISSOLUTION OF MARRIAGE ACT SUBJECT TO REALLOCATION AT THE END OF THE PROCEEDINGS.

STANDARD OF REVIEW

Although the actual award of attorney's fees is reviewed under the abuse of discretion standard, if an appeal from an award of attorney's fees "hinges on issues of statutory construction and constitutionality, our standard of review is *de novo*." *Nash v Alberola*, 2012 IL App (1st) 113724, ¶15 (quoting *In re Marriage of Beyer*, 324 Ill. App. 3d 305, 309 (1st Dist., 2001) (internal quotations omitted). Determining whether the Circuit Court erred in finding the September 29, 2014 disgorgement order constitutes a final judgment is a question of law and statutory construction and thus, is reviewed *de novo*.

The Circuit Court erred in finding the September 29, 2014 disgorgement order constitutes a final judgment because disgorgements are temporary advances against the marital estate which may be reallocated at the end of the proceedings.

Interim attorney's fees may be awarded pursuant to Section 501(c-1) of the Illinois Marriage and Dissolution of Marriage Act. 750 ILCS 5/501(c-1). All relief

entered pursuant to Section 501 of the Act is temporary in nature. 750 ILCS 5/501 (“In all proceedings under this Act, *temporary relief* shall be as follows: . . .”) (emphasis added). In particular, Section 501(c-1)(3) of the Act allows for the disgorgement of fees if “the court finds that both parties lack financial ability or access to assets or income for reasonable attorney’s fees and costs, the court (or hearing officer) shall enter an order that allocates available funds for each party’s counsel, including retainers or interim payments, or both, previously paid, in a manner that achieves substantial parity between the parties.” 750 ILCS 5/501(c-1)(3). With respect to interim fees awarded pursuant to Section 501(c-1), the statute specifically states, “[a]ny assessment of an interim award (including one pursuant to an agreed order) shall be without prejudice to any final allocation and without prejudice as to any claim or right of either party or any counsel of record at the time of the award.” 750 ILCS 5/501(c-1)(2).

Because awards made under Section 501(c-1) are temporary and are awarded without prejudice, “they may be accounted for, as debts or otherwise, upon the final division of the marital estate.” *In re the Marriage of Earlywine*, 2013 IL 114779, ¶31 n. 2. In other words, any interim fee award made pursuant to Section 501(c-1), including disgorgement, is an advance from the parties’ marital estate that may be reallocated at the end of the proceedings. See 750 ILCS 5/501(c-1)(2) (“Unless otherwise ordered by the court at the final hearing between the parties . . . interim awards, *as well as the aggregate of all other payments by each party to counsel and related payments to third parties*, shall be deemed to have been advances from the parties’ marital estate.”). With respect to disgorgement orders in particular, “[b]y definition, a disgorgement order is never a final adjudication of the attorney’s right to fees—it merely controls the timing of payment, with

no effect on whether, or how much, the attorney is entitled to collect at the conclusion of his services.” *In re the Marriage of Johnson*, 351 Ill. App. 3d 88, 97 (2004). As a result, any and all relief awarded under Section 501, including a disgorgement order, is a temporary advance from the marital estate awarded without prejudice and subject to reallocation, not a final judgment.

In the instant matter, CHRISTINE’s attorneys filed a citation against HOLWELL on October 16, 2014 pursuant to the September 29, 2014 disgorgement order. (C-963-66). This citation incorrectly purported a Judgment was entered in the amount of \$40,952.61 against LAURA HOLWELL on September 29, 2014. (C-963-66). As a result, HOLWELL filed an Emergency Motion to Quash Citation on October 17, 2014 alleging in pertinent part that no judgment had been entered against her, but rather, the September 29, 2014 order was a disgorgement order for temporary relief. (C-967-71). Upon presenting the Emergency Motion to Quash Citation in The Honorable Judge Carney’s courtroom, Judge Carney ordered CHRISTINE’s attorneys and HOLWELL to go to The Honorable Judge Archambeault’s Courtroom, and ask her if she intended the disgorgement order to be a judgment. (C-978; R-243, lines 18-24, R-244, line 1). When asked by Petitioner’s Counsel and HOLWELL if the September 29, 2014 order was a judgment, Judge Archambeault indicated the order was not a judgment. (R-259, lines 21-22). As a result, the October 16, 2014 citation was quashed.

Thereafter, on October 29, 2014, HOLWELL filed her Motion to Reconsider the September 29, 2014 Order, which was ultimately heard on December 18, 2014. (R-1072-1175). During the December 18, 2014 hearing, after denying HOLWELL’s motion to reconsider, the Circuit Court determined that the September 29, 2014 order was a

judgment pursuant to Section 508 of the Illinois Marriage and Dissolution of Marriage Act, over HOLWELL's objection. (C-1350; R-349-52). On December 22, 2014, HOLWELL filed a Motion to Reconsider the Circuit Court's ruling that the disgorgement order was a final, collectible judgment. (C-1406-18). On January 16, 2015, the Circuit Court denied HOLWELL's Motion to Reconsider, holding that the September 29, 2014 disgorgement order constituted a final judgment. (C-1547-48). However, disgorgement orders are not awarded pursuant to Section 508 of the Illinois Marriage and Dissolution of Marriage Act. Rather, it is clear that disgorgement orders are entered pursuant to Section 501(c-1)(3) of the Act. As set forth very clearly in Section 501 and *Johnson*, disgorgement orders are "never a final adjudication of the attorney's right to fees," because disgorgement orders are temporary advances from the marital estate, which may be reallocated at the end of the proceedings. 351 Ill. App. 3d at 97. As a result, the Circuit Court erred in finding the September 29, 2014 order constituted a final, collectible judgment, and its decision must be reversed.

III. THE CIRCUIT COURT ERRED IN HOLDING HOLWELL IN INDIRECT CIVIL CONTEMPT BECAUSE THE COURT DEPRIVED HOLWELL OF HER RIGHT TO NOTICE AND A HEARING AND THE COURT NEVER INQUIRED WHETHER HOLWELL COULD COMPLY WITH THE COURT'S ORDER.

STANDARD OF REVIEW

An undisputed contempt finding is a question of law, which is reviewed *de novo*. *In re the Marriage of David Newton*, 2011 IL App (1st) 90683, ¶10 ("When the facts of a contempt finding are not in dispute, their legal effect may be a question of law, which we review *de novo*.") (internal citations omitted).

A. The Circuit Court deprived HOLWELL of due process by holding her in indirect civil contempt on January 16, 2015 and January 21, 2015 without notice or a hearing.

Finally, the Circuit Court erred in holding HOLWELL in indirect civil contempt on January 16, 2015 and thereafter on January 21, 2015 because the Court held HOLWELL in indirect civil contempt and sentenced HOLWELL to the Will County Adult Detention Facility for an indeterminate amount of time not to exceed 179 days without providing her with the requisite procedural safeguards. (C-1547-48). The Fourth District has stated that, “[i]ndirect civil contempt sanctions may not be imposed upon an individual unless he or she has been accorded due process of law with respect to the contempt charges.” *In re the Marriage of Betts*, 200 Ill. App. 3d 26, 52 (4th Dist., 1990) (internal citations omitted). Therefore, a party charged with indirect civil contempt is entitled to certain constitutional procedural safeguards prior to being held in contempt. *Id.* at 53. Parties charged with indirect civil contempt are entitled to notice and an opportunity to be heard pursuant to the due process clause of the Illinois and United States Constitutions. *Id.* The notice must “contain an adequate description of the facts on which the contempt charge is based and inform the alleged contemnor of the time and place of an evidentiary hearing on the charge within a reasonable time in advance of the hearing.” *Id.*

In the instant matter, HOLWELL requested that she be held in “friendly contempt” for purposes of appealing the Circuit Court’s decision to disgorge HOLWELL on December 18, 2014. (R-343, lines 20-24; 344, line 1; R-366, lines 1-20). At that time, the Circuit Court held HOLWELL in friendly contempt pursuant to that request. (C-1350). Thereafter, CHRISTINE filed a Motion to Clarify the Circuit Court’s December

18, 2014 contempt order on January 13, 2015. (C-1464-65). The Motion to Clarify requested that “this Court impose a monetary or other penalty against Ms. Holwell for the contempt finding made on December 18, 2014” (C-1465). Pursuant to that Motion, on January 16, 2015, the Circuit Court *sua sponte* vacated the previous December 18, 2014 finding of friendly contempt, held HOLWELL in indirect civil contempt, charged HOLWELL \$10 per day each day she did not pay the disgorgement, and sentenced HOLWELL to the Will County Adult Detention Facility for an indeterminate amount of time not to exceed one hundred seventy-nine (179) days. (C-1547). HOLWELL’s imprisonment was stayed for thirty (30) days to provide her time to file her appeal. (C-1548). HOLWELL was also provided until January 21, 2015 to purge the contempt by paying the full disgorged amount to CHRISTINE’s attorneys. (C-1548). Ultimately, on January 21, 2015, the Circuit Court reaffirmed its decision to hold HOLWELL in indirect civil contempt, reaffirmed its previous penalty of incarceration, to be stayed pending the filing of a notice of appeal and pending any appeal filed, and reaffirmed the imposition of a penalty of \$10.00 per day, to begin on January 21, 2015. (C-1576).

On January 16, 2015 and January 21, 2015, the Circuit Court clearly deprived HOLWELL of her constitutional right to Due Process as set forth in *Betts*, because the Circuit Court held HOLWELL in indirect civil contempt and sentenced HOLWELL to the Will County Adult Detention Facility for an indeterminate amount of time without providing HOLWELL with notice, an opportunity to be heard, or an evidentiary hearing. (C-1547-48, 1576). The record makes it clear that HOLWELL was provided with no notice and was completely unaware the Circuit Court intended to hold her in indirect civil contempt and incarcerate her on January 16, 2015 and ultimately, on January 21, 2015.

First, HOLWELL was unaware the Circuit Court intended to hold her in indirect civil contempt because, on December 18, 2014, her request to be held in “friendly contempt” for purposes of an appeal was granted. (C-1350). Second, HOLWELL was unaware the Circuit Court intended to hold her in indirect civil contempt because, although CHRISTINE filed a Motion to Clarify the Court’s December 18, 2014 order, this Motion did not request HOLWELL be held in indirect civil contempt. (C-1464-65). Rather, the Motion simply requested the Court clarify the December 18, 2014 order by imposing a monetary penalty. (C-1464). Furthermore, even if the Motion to Clarify had requested HOLWELL be held in indirect civil contempt, it was only set for presentment on January 16, 2015, and not for hearing. (C-1460).

Finally, it is clear from the record of the January 16, 2015 proceedings that HOLWELL was deprived of an evidentiary hearing. On December 18, 2014, HOLWELL, through Counsel, requested to be held in “friendly contempt” for purposes of an appeal. (R-343, lines 20-24; 344, line 1; R-366, lines 1-20). On January 16, 2015, after the Circuit Court indicated it would be sentencing her to imprisonment and holding her in indirect civil contempt, HOLWELL objected, and stated “[y]ou’ve already ruled – this is friendly contempt. I’ll object.” (R-461, lines 15-18). After the Circuit Court indicated that “it’s indirect civil contempt pursuant to the petition that was filed,” HOLWELL stated “but we didn’t proceed on hearing because we asked for friendly contempt and you gave it to us.” (R-463, lines 17-21). At that point, the Circuit Court stated “would you like a hearing? I’ll vacate what I just said and we’ll have a hearing,” to which HOLWELL responded “No. We’re not here before you on that.” (R-463, lines 23-24; 464, lines 1-2). As a result, it is clear HOLWELL was unaware that the Circuit Court

would be holding her in indirect civil contempt that day and no hearing was conducted with respect to same.

Although the Circuit Court indicated it would provide HOLWELL with an immediate hearing on January 16, 2015, this ruling was disingenuous at best. Pursuant to *Betts*, a party charged with contempt is entitled to *advance notice* of an evidentiary hearing. *Betts*, 200 Ill. App. 3d 26, 53 (4th Dist., 1990); *see also Cole v. Cole*, 85 Ill. App. 2d 105, 113 (1st Dist., 1967) (indicating a contemnor is entitled to cross-examine witnesses and present evidence in an attempt to purge herself of the contempt). Thus, even if HOLWELL had acquiesced to the Court's suggestion, she still would have been deprived of her right to advanced notice, to prepare and present evidence, and to call witnesses. Therefore, the Circuit Court erred when it held HOLWELL in indirect civil contempt on January 16, 2015 and thereafter on January 21, 2015, because it deprived HOLWELL of Due Process by ordering same.

B. The Circuit Court erred in holding HOLWELL in indirect civil contempt on January 16, 2015 and January 21, 2015 because the Circuit Court never questioned HOLWELL regarding whether she was capable of complying with the September 29, 2014 order.

1. The Circuit Court erred in holding HOLWELL in indirect civil contempt on January 16, 2015 and January 21, 2015 because the Circuit Court failed to inquire whether HOLWELL was capable of paying the disgorgement order.

In addition to depriving HOLWELL of due process as set forth above, the Circuit Court also failed to ask HOLWELL whether she was capable of paying the September 29, 2014 disgorgement order before holding her in contempt and sentencing her to an indeterminate amount of time at the Will County Detention Facility. The United States Supreme Court has held that indirect civil contempt actions may not proceed and sanctions may not be imposed if the defendant has "a present inability to comply with the

order in question.” *United States v. Rylander*, 460 US 752, 757 (1983). Furthermore, when an order for contempt involves the payment of funds, the Court’s order must contain a finding that the contemnor has the ability to pay the purge and that the failure to pay the purge is willful. *Janov v. Janov*, 60 Ill. App. 2d 11, 15 (3d Dist., 1965); *see also In re the Marriage of Hartian*, 222 Ill. App. 3d 566, 570 (1st Dist., 1991) (stating that “a party is in contempt of court when he willfully violates an order of the court.”).

In the instant matter, the Circuit Court simply failed to ask HOLWELL whether she was capable of paying the \$40,952.61 during the January 16, 2015 and January 21, 2015 court dates. On the contrary, HOLWELL made it very clear that she was *unable* to pay the \$40,952.61. At the end of the January 16, 2015 court date, the Circuit Court stated HOLWELL was held in indirect civil contempt because “[y]ou have refused to comply with my order” (R-471, lines 23-24). Upon hearing this, HOLWELL clarified, “I may be able to post a bond, I may not, I don’t know, so rather than ask if -- I’m retracting what I said that I’m not going to pay it because I’m not able to pay it, but if I’m able to get a bond, the Court would issue a stay” (R-472, lines 8-13). The Court responded by asking HOLWELL, “[s]o, okay, wait. Did you say you are taking back your statement that you’re not going to abide by the order?” (R-472, lines 14-16). HOLWELL responded by stating “I am not going to willfully disobey your order, but I don’t have \$40,000.00 to give them. I’m unable to give him \$40,000.00” (R-472, line 24, 473, lines 1-3). HOLWELL further told the Court “I’m telling the Court I’m not refusing to pay because I have \$40,000.00 and, you know, I’m hiding it . . . I don’t have it to pay so I have to get a bond.” (R-474, lines 6-8, 10-11).

HOLWELL's inability to pay the \$40,000.00 purge was reiterated on January 21, 2015 at the status on the purge. (R-505-06). At that time, HOLWELL stated to the Court "as I indicated to the Court last time, I don't have \$40,000.00. I have applied for the bond and it was declined because you can't post retirement funds for the bond. I have made arrangements to borrow the \$40,000.00 and I would like to represent to the Court that I would like to deposit it -- obviously, you gave me an appeal bond." (R-506, lines 11-16). Because HOLWELL indicated to the Circuit Court that she was incapable of paying, the Circuit Court should have never held her in indirect civil contempt pursuant to *Rylander*, *Janov*, and *Hartian*. Rather, the Circuit Court should have provided HOLWELL with adequate notice of an evidentiary hearing and reasonable time to prepare her case, so she may claim the defense of inability to pay, as set forth above in *Betts*. Because the Circuit Court failed to do this, the Circuit Court's findings of contempt on January 16, 2015 and January 21, 2015 should be reversed.

2. By failing to inquire whether HOLWELL was capable of paying the disgorgement order and imposing imprisonment as a sanction, the Circuit Court essentially held HOLWELL in criminal contempt of court, in violation of her due process.

Pursuant to *In re the Marriage of Betts*, "[t]he primary determinant of whether contempt proceedings are civil or criminal in nature is the purpose for which contempt sanctions are imposed. If contempt sanctions are imposed for coercive purposes to compel the contemnor to perform a particular act the contempt is civil in nature. On the other hand, criminal contempt sanctions are imposed for the purpose of punishing past misconduct." 200 Ill. App. 3d 26, 43 (4th Dist., 1990). A reviewing court is not necessarily bound by the trial court's determination of contempt if the actual sanctions imposed suggest a different designation of contempt is appropriate. *Helm v. Thomas*, 362

Ill. App. 3d 331, 839 N.E.2d 1142, 1144 (4th Dist., 2005). As set forth above, a party charged with indirect civil contempt is entitled to notice and an opportunity to be heard. *Betts*, 200 Ill. App. 3d at 53. In addition to notice and an opportunity to be heard, parties charged with indirect criminal contempt are entitled to know the nature of the charge against them, have it definitely and specifically set forth by citation or rule to show cause, have an opportunity to answer the citation, the privilege against self-incrimination, the presumption of innocence and the right to be proved guilty beyond a reasonable doubt. *Id.* at 58.

In the instant matter, although the Circuit Court claims it held HOLWELL in indirect civil contempt, a review of the procedures taken and the sanctions imposed by the Circuit Court indicate the Circuit Court actually held HOLWELL in criminal contempt. First, as set forth above, the Circuit Court never asked HOLWELL whether she was capable of paying the disgorgement. Rather, the Circuit Court simply held HOLWELL in contempt regardless of her ability to pay. (R-472, line 24; R-473, lines 1-3; R-474, lines 6-8, 10-11; R-506, lines 11-16).

Furthermore, the record makes it clear that the Circuit Court held HOLWELL in contempt that day because the Circuit Court perceived that HOLWELL was “disobeying” the Court’s order outright, as opposed to being unable to pay. On January 16, 2015, in holding HOLWELL in indirect civil contempt, the Circuit Court stated as follows: “It’s indirect civil contempt. I have given you a sentence. I have given you a purge. You have refused to comply with my order.” (R-471, lines 22-24). This prompted HOLWELL to defend herself, indicating that she was not willfully disobeying the order, but simply did not have the funds to pay, as set forth more fully above. (R-472, line 24; 473, lines 1-3;

474, lines 6-8, 10-11; 506, lines 11-16). Finally, the Circuit Court sanctioned HOLWELL by ordering she be imprisoned in the Will County Detention Facility for an indeterminate amount of time. (C-1547-48; C-1576). This was ordered despite the fact that no pleading had been filed requesting HOLWELL to be sanctioned in this fashion. (C-1465). Thus, it is clear that the Circuit Court intended to punish HOLWELL by holding her in contempt and sentencing her to the Will County Detention Facility because the Circuit Court did so *sua sponte* and regardless of HOLWELL's ability to pay.

Because the Circuit Court intended to punish HOLWELL, the Circuit Court actually held HOLWELL in criminal contempt. As a result, HOLWELL was not only entitled to notice and an opportunity to be heard as set forth above, but she was also entitled to know the nature of the charge against them, have it definitely and specifically set forth by citation or rule to show cause, have an opportunity to answer the citation, the privilege against self-incrimination, the presumption of innocence and the right to be proved guilty beyond a reasonable doubt. *Betts*, 200 Ill. App. 3d at 58. Because HOLWELL was deprived of these rights, the Circuit Court violated HOLWELL's due process by holding her in contempt on January 16, 2015 and reaffirming that contempt on January 21, 2015. As a result, the Circuit Court erred in holding HOLWELL in contempt and its decision must be reversed.

C. The contempt orders and sanctions entered against HOLWELL on December 18, 2014, January 16, 2015, and January 21, 2015 should be vacated because HOLWELL's refusal to comply with the Court's disgorgement order constituted a good faith effort to determine if the disgorgement was proper.

Finally, it is clear that HOLWELL requested to be held in friendly contempt on December 18, 2014 for purposes of an appeal, and that this request was done in good

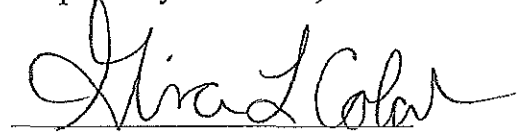
faith. On December 18, 2014, through Counsel, HOLWELL requested that the Circuit Court hold her in friendly contempt pursuant to *In re the Marriage of Nash* for purposes of appealing the disgorgement order. (R-343, lines 20-24; 344, line 1). At that time, the Circuit Court found HOLWELL in friendly contempt “pursuant to said request.” (C-1350-51; R-366, lines 1-20). The First District has stated that, “[i]t is well settled that exposing one's self to a finding of contempt is an appropriate method of testing the validity of a court order. Further, where a refusal to comply with the court's order constitutes a good-faith effort to secure an interpretation of an issue without direct precedent, it is appropriate to vacate a contempt citation on appeal.” *In re Marriage of Beyer and Parkis*, 324 Ill. App. 3d 305, 321-22 (1st Dist., 2001).

In the instant matter, HOLWELL requested to be held in friendly contempt in a good faith effort to test the validity of the Circuit Court's September 29, 2014 disgorgement order for the reasons set forth above. With respect to the Circuit Court's disgorgement order, HOLWELL brought this appeal in a good faith to request this Honorable Court to determine whether the Circuit Court of the Twelfth Judicial Circuit of Will County erred in disgorging Contemnor's fees in the amount of \$40,952.61 pursuant to Section 501(c-1)(3) of the Illinois Marriage and Dissolution of Marriage Act where the evidence presented showed the Petitioner is capable of paying her own attorney's fees and where Contemnor was denied her right to be heard and present evidence at the hearing on said disgorgement. As a result, HOLWELL requests that this Honorable Court vacate the December 18, 2014 finding of contempt.

CONCLUSION

For the foregoing reasons, the Contemnor-Appellant, Laura A. Holwell, requests that this Honorable Court reverse the decisions set forth in the September 29, 2014, December 18, 2015, January 16, 2015, and January 21, 2015 orders of the Circuit Court of the Twelfth Judicial Circuit of Will County.

Respectfully Submitted,

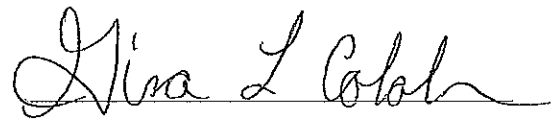
A handwritten signature in black ink, appearing to read "Gina L. Colaluca", written over a horizontal line.

Dated: July 24, 2015

Gina L. Colaluca
#6308769
115 South LaSalle Street
Suite 2600
Chicago, Illinois 60603
312-523-2103
Counsel for Contemnor-Appellant

CERTIFICATE OF COMPLIANCE

I certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the pages containing the Rule 341(d) cover, the Rule 341(h)(1) statement of points and authorities, the Rule 341(c) certificate of compliance, the certificate of service, and those matters to be appended to the brief under Rule 342(a), is 48 pages.

A handwritten signature in black ink, reading "Gina L. Colaluca". The signature is fluid and cursive, with the first name "Gina" and last name "Colaluca" clearly distinguishable.

Gina L. Colaluca
#6308769
115 South LaSalle Street
Suite 2600
Chicago, Illinois 60603
312-523-2103
Counsel for Contemnor-Appellant

IN THE APPELLATE COURT OF ILLINOIS

THIRD JUDICIAL DISTRICT

IN RE THE MARRIAGE OF:)	Appeal from Will County Circuit Court
	)	Circuit Number: 2013 D 107
CHRISTINE GOESEL,	)	Trial Judge: Hon. Judge Archambeault
Petitioner-Appellee,	)	Date of Notice of Appeal: Feb. 13, 2015
	)	Date of Judgment: September 29, 2014
v.	)	Date of Post-judgment Motion Orders:
	)	December 18, 2014, January 16, 2015,
ANDREW GOESEL,	)	January 21, 2015
Respondent-Appellee,	)	Supreme Court Rules which confer
v.	)	jurisdiction upon reviewing court:
	)	304(b)(5) and 304(a).
LAURA A. HOLWELL,)	
Contemnor-Appellant.)	

SEPARATE APPENDIX FOR
BRIEF OF THE CONTEMNOR-APPELLANT

Gina L. Colaluca
#6308769
115 South LaSalle Street
Suite 2600
Chicago, Illinois 60603
312-523-2103
Counsel for Contemnor-Appellant

SEPARATE APPENDIX

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3-15-0101

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APPEAL TO THE THIRD DISTRICT APPELLATE COURT
FROM THE CIRCUIT COURT OF THE TWELFTH JUDICIAL CIRCUIT
WILL COUNTY, ILLINOIS

FILED
2015 FEB 13 AM 10 15
CLERK, CIRCUIT CO.
WILL COUNTY, ILLINOIS

IN RE THE MARRIAGE OF:)
)
CHRISTINE GOESEL,)
Petitioner/Appellee,)
)
v.)
)
ANDREW GOESEL,)
Respondent/Appellee,)
)
v.)
)
LAURA A. HOLWELL,)
Contemnor/Appellant.)

No. 2013 D 0107

NOTICE OF APPEAL

Appellant: Laura A. Holwell
Address: 115 S. LaSalle St., Ste. 2600
City/State/Zip: Chicago, IL 60603
Telephone: 312-523-2103
ARDC #: 6199855

Appellant's Attorney: Gina L. Colaluca
Address: 115 S. LaSalle St., Ste. 2600
City/State/Zip: Chicago, IL 60603

Petitioner/Appellee: Christine Goesel

Petitioner/Appellee's Attorney: The Law Offices of Edward R. Jaquays
Address: 5 W. Jefferson, Ste. 200
City/State/Zip: Joliet, IL 60432
Telephone: 815-727-7600

Respondent/Appellee: Andrew Goesel

Respondent/Appellee's Attorney: Howard Levine
Address: 18400 Maple Road, Ste. 600
City/State/Zip: Tinley Park, IL 60477
Telephone: 708-444-4333

3-15-0101

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Address: 12820 S. Ridgeland Ave., Ste. A
City/State/Zip: Palos Heights, IL 60463
Telephone: 708-448-9400

An appeal is taken from the orders or judgments described below:
Dates of orders being appealed: December 18, 2014, January 16, 2015,
and January 21, 2015.

Name of Judge who entered the orders being appealed: Hon. Judge Dinah
Archambeault

Nature of orders appealed from: The Contemnor, LAURA A. HOLWELL,
hereby appeals to the Appellate Court, Third District, from three
(3) orders entered on December 18, 2014, January 16, 2015, and January
21, 2015 by the Hon. Judge Archambeault in the Circuit Court of the
Twelfth Judicial Circuit, Will County, Illinois.

The Circuit Court's December 18, 2014 order held Laura A. Holwell in friendly contempt on a rule issued on October 24, 2014, for the failure to comply with a September 29, 2014 court order disgorging Laura A. Holwell's fees in the amount of \$40,952.61. The Court's December 18, 2014 order was clarified pursuant to Petitioner Appellee's Motion to Clarify on January 16, 2015. On January 16, 2015, pursuant to the Motion to Clarify, the Court clarified the December 18, 2014 order and held Laura A. Holwell in indirect civil contempt, as opposed to friendly contempt. The January 16, 2015 order set the purge at \$40,950.61 to be paid on or before January 21, 2015. The January 16, 2015 order also sentenced Laura A. Holwell to an indeterminate sentence in the Will County Adult Detention Facility not to exceed 179 days. Laura A. Holwell's incarceration was stayed for thirty (30) days pending Laura A. Holwell's filing of a notice of appeal, and was also stayed pending any appeal filed by Laura A. Holwell. The Circuit Court also ordered that, while Laura A. Holwell's incarceration was stayed, she would be fined a penalty of \$10.00 per day. On January 21, 2015, the Court reaffirmed the January 16, 2015 order finding Laura A. Holwell in indirect civil contempt and reaffirmed its previous penalty of incarceration, to be stayed pending the filing of a notice of appeal and pending any appeal filed. The January 21, 2015 order reaffirmed the imposition of the penalty of \$10.00 per day, to begin on January 21, 2015. By this appeal, Laura A. Holwell shall ask the Appellate Court to vacate the findings of friendly contempt and indirect civil contempt, vacate any and all penalties imposed upon her pursuant to said contempt, and to vacate the order of disgorgement entered on September 29, 2014, upon which the contempt findings are based. The appeal of the Circuit Court's December 18, 2014, January 16, 2015, and January 21, 2015 contempt

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findings is being brought pursuant to Supreme Court Rule 304(b) (5) .

Laura A. Holwell also appeals from the Circuit Court's January 16, 2015 order in which the Circuit Court held the September 29, 2014 disgorgement order constitutes a final judgment. By this appeal, Laura A. Holwell shall ask the Appellate Court to reverse the finding that the September 29, 2014 disgorgement order constitutes a final judgment. In the January 16, 2015 order, the Circuit Court made the express finding that there is no just reason for delaying enforcement and appeal of this finding. Thus, this appeal is being brought pursuant to Supreme Court Rule 304(a).

Respectfully submitted:



Gina L. Colaluca - #6308769
115 S. LaSalle St., Ste. 2600
Chicago IL, 60603
Phone: 312-648-6155
Facsimile: 312-648-6202

3-15-0101

09/29/14 13:01:26 WCCH

IN THE CIRCUIT COURT OF THE TWELFTH JUDICIAL CIRCUIT
WILL COUNTY, ILLINOIS

IN RE THE MARRIAGE OF)

CHRISTINE GOESEL,)
Petitioner,)

and)

ANDREW GOESEL,)
Respondent)

NO 13 D 107

FILED
14 SEP 29 AM 11 56
CLERK OF COURT
JULIA M. HARRIS

DECISION AND ORDER

This cause came before the Court for hearing on July 29, 30 and 31, 2014 CHRISTINE GOESEL (Wife) was represented by Edward R Jaquays of The Law Offices of Edward R Jaquays ANDREW GOESEL (Husband) was represented by Howard Levine of Levine, Wittenberg, Shugan, & Schatz The minor children were represented by child representative Nancy Donlon of Panos & Associates

ISSUES

Wife petitioned for interim attorney fees After a hearing, Wife moved to amend her petition to conform to the proofs

Should leave to amend the amended petition for fees be granted?

Should interim fees be awarded?

FINDINGS OF FACT

Wife filed for divorce January 18, 2013 Both parties retained legal counsel Counsel for each have changed during this litigation

Wife filed an Amended Petition for Interim fees seeking contribution from Husband as she has the inability to pay her attorney fees Hearing was held, with the parties stipulating to exhibits Husband claims monthly net income of \$3,343.56, with expenses exceeding income Certain of Husband's bank records and his accounting of monies spent were exhibits entered into evidence Attorney Laura Holwell was the only witness who testified She testified as to her fees, with respect to amount paid and when monies were received Holwell's bill was admitted into evidence Certain court orders relating to fees were entered prior to the hearing on fees, which were acknowledged

Husband paid his attorneys \$100,022.27 \$66,382.28 to Holwell, \$10,000.00 to Levine and \$23,639.99 to Boback Wife paid her attorneys \$18,117.04 \$5,000.00 to Jaquays and \$13,117.04 to Goldstine, Skrodzki, Russian, Nemec and Hoff, Ltd Fees paid to date total \$118,139.31 (excluding fees paid to the child representative)

After proofs closed, Wife moved to amend her amended petition to conform to the proofs Wife requests leave to amend her petition to include

A75
AL

a claim for "true disgorgement" of fees wrongfully obtained from Attorney Laura Holwell. The motion for leave to amend was not supported by affidavit.

PRINCIPLES OF LAW

AMENDMENT: 735 ILCS 5/616(c)

Pleadings may be amended to conform to proofs upon just terms 735 ILCS 5/616(c). However, the right is not absolute. *First Robinson Savings and Loan v Ledo Construction Co, Inc*, 210 Ill App 3d 889, 892 (5th Dist 1991). A motion for leave to amend a pleading must be in writing, state the reason for the amendment, set forth the amendment that is being proposed, show the materiality and propriety of the proposed amendment, explain why the proposed additional matter was omitted from earlier pleadings, and be supported by an affidavit. *First Robinson Savings and Loan*, 210 Ill App 3d 889, 892.

INTERIM FEES: 750 ILCS 5/501(c-1)

One of the underlying principles of the IMDMA is to promote its purpose by, in part, making reasonable provisions for spouses, including provisions for timely awards of interim fees to achieve substantial parity in the parties' access to funds for litigation. 750 ILCS 5/102(5) Section

501(c-1) was enacted to level the playing field by equalizing the parties' litigation resources. *In Re Marriage of Earlywine*, 2013 IL 114779, ¶ 26. Section 501(c-1) of the IMDMA grants courts authority to award interim attorney fees in predecree dissolution of marriage cases. 750 ILCS 5/501(c-1). This provision is to be liberally construed to promote IMDMA's underlying purpose of achieving substantial parity in parties' access to funds for litigation. 750 ILCS 5/102(5), *Earlywine*, 2013 IL 114779, ¶¶ 23.

Recognizing the legislature's goal, the Illinois Supreme Court specifically held that retainer and interim payments were subject to disgorgement pursuant to section 501(c-1). *Earlywine*, 2013 IL 114779, ¶¶ 23, 26. It does not matter that the funds had become the property of the attorney upon payment and placed in a general account. *Earlywine*, 2013 IL 114779, ¶¶ 27-29.

Section 501(c-1)(3) allows a court, after consideration of the relevant factors, to order a party to pay the petitioning party's interim attorney fees in an amount necessary to enable the petitioning party to participate adequately in the litigation. 750 ILCS 5/501(c-1)(3). Prior to ordering a party to pay, the court must find that the petitioning party lacks sufficient access to assets or income to pay reasonable attorney fees, and that the other party has the ability to pay the fees of the petitioning party. 750 ILCS

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5/501(c-1)(3) If both parties lack the ability to pay reasonable attorney fees, the court shall order allocation of available funds for each party's counsel, including retainers or interim payments, or both, previously paid, in a manner that achieves substantial parity between the parties *Earlywine*, 2013 IL 114779, ¶¶ 23

ANALYSIS

AMENDMENT:

A motion to amend must be supported by Affidavit *First Robinson Savings and Loan*, 210 Ill App 3d 889, 892 Wife's motion to amend the amended petition for fees is not supported by affidavit

INTERIM FEES:

Husband claims current monthly net income of \$3,343.56, with expenses exceeding income Wife seeks contribution as she has the inability to pay her attorney fees Both parties currently lack the financial ability to pay reasonable attorney fees

To date Husband paid his attorneys \$100,022.27 \$66,382.28 to Holwell, \$10,000.00 to Levine and \$23,639.99 to Boback Wife paid her attorneys \$18,117.04 \$5,000.00 to Jaquays and \$13,117.04 to Goldstine, Skrodzki, Russian, Nemec and Hoff, Ltd The total fees paid to date is \$118,139.31 (not including fees paid to the child representative) To level

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the playing field, each party should have \$59,069 65 for fees To achieve parity, Husband's attorneys should be disgorged of \$40,952 61

CONCLUSIONS OF LAW

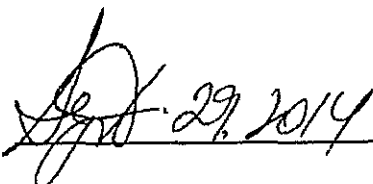
The petition to amend to conform to the proofs does not comply with 735 ILCS 5/616(c)

Neither party has the current ability to pay attorney fees To level the playing field and achieve parity, Husband's counsel must be disgorged of fees in the amount of \$40,952 61

ORDER

The petition for leave to amend to conform to the proofs is denied

The amended petition for interim fees is granted Attorney Laura A Holwell shall tender fees Husband paid her in the amount of \$40,952 61 to counsel for Wife, The Law Offices of Edward R Jaquays, within 14 days of this order Wife's counsel, The Law Offices of Edward R Jaquays, may apply the disgorged fees toward any outstanding balance owed for attorney fees and costs incurred to date and shall hold any remaining funds in escrow as a retainer for future fees and costs


Date


Judge

3-15-0101

12/19/14 13:40:27 WCH

STATE OF ILLINOIS)
)SS
 COUNTY OF WILL)

IN THE CIRCUIT COURT OF THE TWELFTH JUDICIAL CIRCUIT
 WILL COUNTY, ILLINOIS

IN RE THE DISSOLUTION OF:

14 DEC 18 PM 2:13

CLERK CIRCUIT CLERK
 WILL COUNTY ILLINOIS

CHRISTINE GOESEL

Plaintiff

vs

CASE NO. 13 D 107

ANDREW GOESEL

Defendant

ORDER

Page 1 of 2

PLAINTIFF PRESENT	<input checked="" type="checkbox"/> YES <input type="checkbox"/> NO	Judge ARHAMBEAULT	PLAINTIFF ATTORNEY JAGUAS	<input checked="" type="checkbox"/> YES <input type="checkbox"/> NO
DEFENDANT PRESENT	<input checked="" type="checkbox"/> YES <input type="checkbox"/> NO		DEFENDANT ATTORNEY LEVINE	<input checked="" type="checkbox"/> YES <input type="checkbox"/> NO

COLALUCA FOR HOWELL
 THIS MATTER COMING BEFORE THE COURT FOR HEARING ON ATTORNEY
 HOWELL'S MOTION TO RECONSIDER, PETITIONS FOR INDIRECT CONTEMPT
 FILED 10/1/2014 AND 10/24/14 AGAINST ATTORNEY HOWELL, ONGOING HEARING
 ON RULES AGAINST DEFENDANT, MOTION TO COMPEL, AND PRESENTATION
 OF ATTORNEY LEVINE'S SUPPLEMENTAL PETITION FOR PROSPECTIVE ATTORNEY'S
 FEES AND COSTS,

ATTORNEY COLALUCA PRESENTING EMERGENCY MOTION TO
 CONTINUE HEARING ON MOTION TO RECONSIDER AND COURT HEARING
 ARGUMENTS THE EMERGENCY MOTION TO CONTINUE IS DENIED;

MATTER PROCEEDS TO HEARING ON MOTION TO RECONSIDER;
 IT IS HEREBY ORDERED:

① ATTORNEY HOWELL'S MOTION TO RECONSIDER IS DENIED
 FOR REASONS SET FORTH ON THE RECORD WHICH ARE INCORPORATED
 HEREIN;

② MATTER PROCEEDS ON COUNT II OF PETITION FOR ^{OVER HOWELL'S objection,} RULE FILED ON
 OCTOBER 24, 2014 AFTER HEARING ARGUMENT, COURT DETERMINES IT
 ENTERED AND FINDS SEPTEMBER 29, 2014 ORDER DID CONSTITUTE A
 JUDGMENT AGAINST ATTORNEY HOWELL IN AMOUNT OF \$40,952.61
 IN FAVOR OF THE LAW OFFICES OF EDWARD JAGUAS. SAID FUNDS
 SHALL BE APPLIED AS SET FORTH IN SEPTEMBER 29, 2014 ORDER,

③ TO ALLOW JURISDICTION TO APPEAL,
 ATTORNEY HOWELL REQUESTS TO BE HELD
 IN FRIENDLY CONTEMPT FOR 10/24/14
 RULE AND IS HELD IN CONTEMPT PURSUANT
 TO SAID REQUEST.
 Attorneys or Party Present:

Dated DECEMBER 18, 2014

Enter

Judge

PAMELA J. MCGUIRE, CLERK OF THE CIRCUIT COURT OF WILL COUNTY

3-15-0101

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STATE OF ILLINOIS)
)SS
 COUNTY OF WILL)

IN THE CIRCUIT COURT OF THE TWELFTH JUDICIAL CIRCUIT
 WILL COUNTY, ILLINOIS

FILED

IN RE THE DISSOLUTION OF:

14 DEC 18 PM 2:13

12TH CIRCUIT COURT
 WILL COUNTY, ILLINOISCHRISTINE GOESEL

Plaintiff

VS

ANDREW GOESEL

Defendant

CASE NO. 13 D 107

ORDER

Page 2 of 2

PLAINTIFF PRESENT	<input checked="" type="checkbox"/> YES <input type="checkbox"/> NO	Judge <u>ARCHAMBEAULT</u>	PLAINTIFF ATTORNEY <u>JAQUIS</u>	<input checked="" type="checkbox"/> YES <input type="checkbox"/> NO
DEFENDANT PRESENT	<input checked="" type="checkbox"/> YES <input type="checkbox"/> NO		DEFENDANT ATTORNEY <u>LEVINE</u>	<input checked="" type="checkbox"/> YES <input type="checkbox"/> NO

COLALUCA FOR HOWELL

④ MATTER IS SET FOR HEARING ON JANUARY 8, 2015 AT 9:30 A.M. ON ATTORNEY LEVINE'S SUPPLEMENTAL PETITION FOR PROSPECTIVE FEES, MOTION TO WITHDRAW, PETITION FOR RULE FILED ON OCTOBER 1, 2014, ATTORNEY HOWELL'S MOTION TO DISMISS SAID PETITION FOR RULE (MOTION TO DISMISS TO BE FILED WITHIN 7 DAYS).

⑤ ATTORNEY LAURA HOWELL IS TO BE PRESENT IN COURT ON JANUARY 8, 2015 AT 9:30 A.M.

⑥ ~~THE ONGOING HEARING IS~~ ~~THE ONGOING HEARING IS~~ SET FOR STATUS/SETTING ON 1/8/2015.

⑦ ATTORNEY LEVINE IS GRANTED LEAVE TO SUPPLEMENT PETITION FOR PROSPECTIVE FEES WITH ENGAGEMENT CONTRACT EXECUTED BY DEFENDANT.

⑧ 1/6/15 DATE IS STRICKEN.

Dated

Enter

Judge

Attorneys or Party Present: Mark El

PAMELA J. MCGUIRE, CLERK OF THE CIRCUIT COURT OF WILL COUNTY

STATE OF ILLINOIS)
)SS
 COUNTY OF WILL)

IN THE CIRCUIT COURT OF THE TWELFTH JUDICIAL CIRCUIT
 WILL COUNTY, ILLINOIS

IN RE THE DISSOLUTION OF.

CHRISTINE GOESEL

Plaintiff

vs

ANDREW GOESEL

Defendant

CASE NO. 13D107

ORDER

PAGE 1 of 2

PLAINTIFF PRESENT	<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	Judge <u>ARCHAMBEAULT</u>	PLAINTIFF ATTORNEY <u>JAGUAS</u>	<input checked="" type="checkbox"/> YES <input type="checkbox"/> NO
DEFENDANT PRESENT	<input checked="" type="checkbox"/> YES <input type="checkbox"/> NO		DEFENDANT ATTORNEY <u>LEVINE</u>	<input checked="" type="checkbox"/> YES <input type="checkbox"/> NO

INTERVENOR HOWELL
 THIS MATTER COMING BEFORE THE COURT FOR DECISION
 ON ATTORNEY HOWELL'S MOTION TO RECONSIDER AND HEARING
 ON ISSUE OF JURISDICTION, THE COURT HAVING RENDERED ITS
 DECISION ON THE RECORD WHICH IS INCORPORATED HEREIN,
 AND THE COURT BEING FULLY ADVISED OF THE PREMISES;
 IT IS HEREBY ORDERED:

- ① THE COURT FINDS ATTORNEY HOWELL'S MOTION TO RECONSIDER
 CAN PROCEED, RECONSIDERS ITS RULING AND FINDS THE
 COURT DID NOT ERRORE AND THAT THE SEPTEMBER 29, 2014
 ORDER OF COURT IS A JUDGMENT THE DECEMBER 18, 2014
 ORDER OF COURT IS AFFIRMED. THE COURT FINDS THERE IS
 NO JUST REASON FOR DELAYING ENFORCEMENT AND
 APPEAL OF THIS ISSUE AT MR. HOWELL'S REQUEST - pursuant to 301(a)
 ② PLAINTIFF'S MOTION TO CLARIFY IS HEARD ~~AND~~ ATTORNEY HOWELL IS FOUND
 TO BE IN INDIRECT CIVIL CONTEMPT AND IS SENTENCED TO AN
 INDETERMINATE SENTENCE IN THE WILL COUNTY ADULT DETENTION FACILITY
 NOT TO EXCEED 179 DAYS. ATTORNEY HOWELL MAY PURGE SAID CONTEMPT
 BY PAYING \$40,952.61 ~~ON OR BEFORE 1-21-15 AT 9:30 A.M.~~ ~~TO THE LAW OFFICES OF~~
 EDWARD JAGUAS CONSISTENT WITH 4-29-14 ORDER OF COURT. ~~AND~~
 Dated JANUARY 16, 2015
 Enter [Signature] Judge

Attorneys or Party Present: [Signature]

PAMELA J. MCGUIRE, CLERK OF THE CIRCUIT COURT OF WILL COUNTY

3-15-01/01/15 13:31:05 WCH

K

STATE OF ILLINOIS)
)SS
 COUNTY OF WILL)

IN THE CIRCUIT COURT OF THE TWELFTH JUDICIAL CIRCUIT
 WILL COUNTY, ILLINOIS

IN RE THE DISSOLUTION OF

CHRISTINE COESER

Plaintiff

VS

ANDREW COESER

Defendant

CASE NO. 13 D 107

ORDER

PAGE 2 OF 2

PLAINTIFF PRESENT	<input checked="" type="checkbox"/> YES <input checked="" type="checkbox"/> NO	Judge <u>ARCHAMBEAULT</u>	PLAINTIFF ATTORNEY <u>JAGUAS</u>	<input checked="" type="checkbox"/> YES <input checked="" type="checkbox"/> NO
DEFENDANT PRESENT	<input checked="" type="checkbox"/> YES <input checked="" type="checkbox"/> NO		DEFENDANT ATTORNEY <u>LEVINE</u>	<input checked="" type="checkbox"/> YES <input checked="" type="checkbox"/> NO

- ③ MATTER IS SET FOR STATUS OF PURGE ON JANUARY 21, 2015 AT 9 30 AM AND HEARING ON ISSUE OF JURISDICTION AND CONTEMPT PETITION FILED ON 10-1-14. INTERVIEWER: HOWELL
- ④ THE SENTENCE ~~SHALL BE~~ OF INCARCERATION SHALL BE STAYED FOR THIRTY DAY PERIOD DURING WHICH ATTORNEY HOWELL MAY FILE APPEAL AND FOR PERIOD APPEAL IS PENDING PROVIDED NOTICE OF APPEAL IS FILED. DURING TIME PERIOD SENTENCE OF INCARCERATION IS STAYED, ATTORNEY HOWELL SHALL BE ASSESSED A PENALTY OF TEN DOLLARS PER DAY. STATUS OF
- ⑤ COURT FINDS APPEAL BOND SHALL BE IN THE AMOUNT OF FORTY-FOUR THOUSAND DOLLARS (\$44,000⁰⁰).

Dated: 12/2/15

Enter: [Signature]

Judge

Attorneys or Party Present: Mark [Signature]

PAMELA J. MCGUIRE, CLERK OF THE CIRCUIT COURT OF WILL COUNTY

STATE OF ILLINOIS)
)
 COUNTY OF WILL) SS

IN THE CIRCUIT COURT OF THE TWELFTH JUDICIAL CIRCUIT
 WILL COUNTY, ILLINOIS

IN RE THE MARRIAGE OF:)

CHRISTINE GOESEL,)

Plaintiff,)

vs)

ANDREW GOESEL,)

Defendant)

Case No 13 D 107

FILED
 15 JAN 21 PM 2:12
 11TH JUDICIAL CIRCUIT
 WILL COUNTY, ILLINOIS

ORDER

Cause coming on for status and hearing, Plaintiff present by her attorney **EDWARD R. JAQUAYS**, and the Defendant present by **HOWARD LEVINE**, and **LAURA HOLWELL**, present in person pursuant to previous order of court as to purge and question of jurisdiction Arguments and suggestions of counsel presented to the court, and the court being fully advised in the premises,

Foundland
IT IS HEREBY ORDERED

1 Court finds that Ms Holwell has failed to purge herself from the previous finding of contempt The order of contempt previously entered is now found to be final and appealable and Ms Holwell has thirty (30) days in which to file her Notice of Appeal from today's date *per S.Ct Rule 304 (b)(5) with penalty imposed as set forth in TP4 of this order.*

2 The mittimus with respect to the previous order of incarceration is stayed for said thirty (30) day period and in the event Ms Holwell files her Notice of Appeal, the mittimus with respect to her incarceration is stayed pending the Appellate Court decision

01.21.15 15:14:58 WCCH

3-15-01/01/15 15:14:58 WCCH

3 Ms Holwell indicates that she may or may not file an appeal. If she does file an appeal and seeks to post a bond *or other form of security as provided and in accordance with S.C.R. 309e* to stay enforcement of the judgment during the appeal, then said bond shall be filed with the Clerk of the Circuit Court of Will County

4 The fine of \$10 00 per day as a portion of the court's previous finding of contempt shall become effective as of today's date

5 The court finds that it does have subject matter and personal jurisdiction over Ms Holwell, but finds that the Petition for Rule to Show Cause now pending against her as filed on October 1, 2014, fails to state a cause of action

Accordingly, pursuant to Section 2-615 of the Code of Civil Procedure, said Petition for Rule to Show Cause is dismissed without prejudice. Plaintiff is granted leave to file an amended Petition for Rule should she so choose. *Counsel represents that* said amended petition, if filed, shall be filed within 28 days of today's date

6 Matter continued to February 20th at 9 00a m, for Ms. Holwell to surrender *execution of* ~~herself with respect to~~ *Ms Holwell* the mittimus issued unless ~~she~~ *she* has either purged herself from the previous finding of contempt or filed an appropriate Notice of Appeal

Date: *02/1, 2015**[Signature]*
JUDGE

THE LAW OFFICES OF EDWARD R. JAQUAYS
FREEDOM COURT BUILDING
FIVE WEST JEFFERSON STREET
JOLIET, ILLINOIS 60432
(815) 727-7600
ATTORNEY#01326627
Email info@jaquayslawoffices.com
Orderof012115 re Holwell

01/21/15 15:14:58 WCCH

06/23/14 08:40:23 WOCH

STATE OF ILLINOIS)
)
COUNTY OF WILL) SS

IN THE CIRCUIT COURT OF THE TWELFTH JUDICIAL CIRCUIT
WILL COUNTY, ILLINOIS

IN RE THE MARRIAGE OF:

CHRISTINE GOESEL

Plaintiff,

vs.

ANDREW GOESEL,

Defendant.

Case No. 13 D 107

FILED
2014 JUN 20 PM 3:32
CLERK, CIRCUIT COURT
WILL COUNTY, ILLINOIS

**AMENDED PETITION FOR INTERIM ATTORNEY FEES, COSTS
AND OTHER RELIEF**

Amended Count I- Interim Fees

Now comes the Plaintiff, **CHRISTINE GOESEL**, by and through her attorneys, **THE LAW OFFICES OF EDWARD R. JAQUAYS, EDWARD R. JAQUAYS**, of counsel, and pursuant to *Section 501(c-1)* of the *Illinois Marriage and Dissolution of Marriage Act (750 ILCS 5/501(c-1))*, and as her Amended Count I of her Amended Petition for Interim Attorney Fees, Costs and Other Relief petitions the Court for entry of an Order requiring the Defendant, **ANDREW GOESEL**, to pay interim attorney's fees and costs, and in support thereof states as follows:

1. On or about March 7, 2014, the Plaintiff, **CHRISTINE GOESEL**, contacted **THE LAW OFFICES OF EDWARD R. JAQUAYS** to represent her relative to the above-captioned cause. The Plaintiff, **CHRISTINE GOESEL**, formally retained **THE LAW OFFICES OF EDWARD R. JAQUAYS** on March 7, 2014, and agreed to pay those fees that were necessarily and reasonably incurred on behalf of the Plaintiff, **CHRISTINE GOESEL**, at

3-15-0101

06/23/14 08:40:23 WCCB

the hourly rate set forth in the following paragraphs.

2. That the Plaintiff, **CHRISTINE GOESEL**, filed a Petition for Dissolution of Marriage in this action, which remains pending and undetermined in this Court.

3. That **EDWARD R. JAQUAYS** is the principal attorney entrusted with this case, and the agreed charges for his time in this case are \$375.00 per hour for office time and \$400.00 per hour for depositions, pre-trials, settlement conferences, and Court time. These rates represent **EDWARD R. JAQUAYS'** customary charges for representation in such actions, and are fair and reasonable in light of **EDWARD R. JAQUAYS'** expertise and standards established by custom and usage in the community at large.

4. That the Defendant, **ANDREW GOESEL**, is represented by **LAURA HOLWELL**.

5. That the Defendant, **ANDREW GOESEL**, has now retained the firm of **LEVINE, WITTENBERG, SHUGAN, & SCHATZ** to represent him in addition to **LAURA HOLWELL**.

6. The Defendant, **ANDREW GOESEL**, has also caused to be filed a Petition for Appointment of a 604.5 Evaluator in this matter. The Defendant's motion alleges that custody is a contested issue in this matter.

7. **EDWARD R. JAQUAYS** reasonably expects to expend at least fifty (50) to seventy-five (75) hours in conjunction with the issues in this cause including custody of the parties' minor children; a 604.5 evaluation; support issues; and various other contested matters prior to trial.

8. These hourly expenditures of time are necessary and reasonable in light of the nature and complexity of this matter.

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9. That the Plaintiff, **CHRISTINE GOESEL**, paid an initial retainer of **FIVE THOUSAND AND 00/100 DOLLARS (\$5,000.00)**. She is without sufficient income to pay any additional fees to **ATTORNEY EDWARD R. JAQUAYS**, and currently has an outstanding balance due to **THE LAW OFFICES OF EDWARD R. JAQUAYS**, in the amount of **TWENTY-SEVEN THOUSAND ONE HUNDRED FORTY-TWO DOLLARS AND 60/100THS (\$27,142.60)**, as of June 1, 2014.

10. That the Defendant, **ANDREW GOESEL**, is gainfully employed, earning substantial sums of money, or is capable of earning substantial sums of money, and is further capable of discharging this Court's Order for Interim Attorney's Fees and Costs.

11. The Plaintiff, **CHRISTINE GOESEL**, lacks sufficient funds to pay for her reasonable attorney's fees and costs incurred in conjunction with this cause. The Defendant, **ANDREW GOESEL**, has engaged two firms to represent him in this matter, **THE LAW OFFICES OF LAURA HOLWELL** and **LEVINE WITTENBERG, SHUGAN & SCHATZ**, as his attorneys. The Plaintiff, **CHRISTINE GOESEL**, is entitled to parity in the representation she requires in this case. She is entitled to be on a level playing field with the Defendant, **ANDREW GOESEL**, in terms of legal representation. She is entitled to an interim award payable to **EDWARD R. JAQUAYS** which should be not less than the payments made or reasonably expected to be made to the attorneys for the Defendant, **ANDREW GOESEL**. These amounts are necessary to enable her to participate adequately in the litigation. If she is not afforded this ability, her rights will be prejudiced.

12. The application of the Plaintiff, **CHRISTINE GOESEL**, for interim attorney's fees and costs should be decided by the Court on a non-evidentiary basis pursuant to *Section 501(c-1)(1) of the Illinois Marriage and Dissolution of Marriage Act [750 ILCS 5/501(c-1)(1)]*.

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13. The Plaintiff, **CHRISTINE GOESEL**, attaches hereto the Affidavit of her attorney, **EDWARD R. JAQUAYS**.

14. That subsequent to the filing of the Petition for Interim Attorney's Fees, Costs, and Other Relief, the Defendant submitted to a deposition.

15. During the course of the Defendant's deposition, the Defendant testified that he had paid his attorney, **LAURA HOLWELL**, approximately **FORTY THOUSAND DOLLARS (\$40,000)** to **FIFTY THOUSAND DOLLARS (\$50,000.00)** since January 1, 2014.

16. That the Plaintiff has paid approximately **FIVE THOUSAND TWO HUNDRED DOLLARS (\$5,200.00)** to the Law Offices of Edward Jaquays and no money to her prior counsel during the year 2014. That the Plaintiff owes a substantial amount in attorney's fees to The Law Offices of Edward R. Jaquays for which there is a Petition for Interim Attorney's Fees and Costs pending.

17. That, during his deposition, the Defendant, **ANDREW GOESEL**, further testified that he had withdrawn in excess of **ONE HUNDRED TWENTY THOUSAND DOLLARS (\$120,000.00)** from the marital retirement assets which were used to pay his personal expenses including attorney's fees to Attorney, **LAURA HOLWELL**.

WHEREFORE, pursuant to *Section 501(c-1)* of the *Illinois Marriage and Dissolution of Marriage Act (750 ILCS 5/501(c-1))*, the Plaintiff, **CHRISTINE GOESEL**, requests that this Court:

A. Enter an Order requiring the Defendant, **ANDREW GOESEL**, to pay **EDWARD R. JAQUAYS** the sum **THIRTY THOUSAND DOLLARS (\$30,000.00)**, which said amount includes **TWENTY-SEVEN THOUSAND ONE HUNDRED FORTY-TWO DOLLARS AND 60/100THS (\$27,142.60)**, which is the balance due and owing **THE LAW OFFICES OF**

EDWARD R. JAQUAYS, by the Plaintiff, as of June 1, 2014, which said balance includes the retainer and payments paid by the Defendant to date; and an additional two thousand eight hundred fifty-seven and 74/100 dollars (\$2,857.74) representing interim fees and costs in connection with the future representation of the Plaintiff, **CHRISTINE GOESEL**, in this cause, and/or an amount not less than the payments made or reasonably expected to be made by the Defendant, **ANDREW GOESEL**, to his attorney;

B. Or in the alternative, in the event this Court finds that the Defendant, **ANDREW GOESEL**, lacks the ability to pay interim fees, that this Court enter an order disgorging an amount necessary from Attorney, **LAURA HOLWELL**, to ensure that the Plaintiff can be adequately represented in this matter and there is parity among the parties with regard to payment of their respective attorneys; and

C. For such other and further relief as this Court may deem just.

Count II- Funding of 503(g) Trust

Now comes the Plaintiff, **CHRISTINE GOESEL**, by and through her attorneys, **THE LAW OFFICES OF EDWARD R. JAQUAYS, EDWARD R. JAQUAYS**, of counsel, and pursuant to *Section 503(g)* of the *Illinois Marriage and Dissolution of Marriage Act (750 ILCS 5/503(g))*, and as Count II of her Petition for Interim Attorney Fees, Costs and Other Relief petitions the Court for entry of an Order requiring the Defendant, **ANDREW GOESEL**, to withdraw sufficient additional funds to be deposited in the 503(g) trust for the benefit of the children, and in support thereof states as follows:

1. That on February 20, 2014, a Court Order was entered that provides, in part, as follows:

"Respondent's T-Rowe Price account ending (omitted pursuant to Supreme Court Rule 138) shall be liquidated to

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fund a 503(g) trust for the purposes of support of the minor children; Respondent shall initiate such liquidation on 2/20/14; the check shall be delivered to Nancy Donlon and held in the IOLTA trust account Panos & Associates until further order of Court, Nancy Donlon shall issue a check to Christine Goesel in the amount of \$3,500.00 per month for child support until further order of court; if there is less than \$40,000.00 in the T-Rowe Price Account Respondent shall take the difference from the Respondent's Fidelity Account (IRA)."

2. That the Defendant failed to withdraw sufficient funds to fully fund the 503(g) Trust as required by the Court Order of February 20, 2014.

3. The Defendant, in violation of the Court Order, liquidated the Plaintiff's (rather than his own) T Rowe Price account in the amount of **THIRTY ONE THOUSAND SEVEN HUNDRED SIXTEEN AND 70/100 DOLLARS (\$31,716.70)** and said funds were subsequently deposited into the IOLTA Trust Account of Panos & Associates.

4. The Defendant never delivered to the children's representative, Nancy Donlon, the difference to ensure that the trust held funds in the amount of forty thousand dollars (\$40,000.00).

5. That, due to the Defendant's failure to comply with the February 20, 2014 Order of Court, the funds held in trust for the benefit of the children are nearly completely depleted.

6. That in order to ensure that the children receive the support necessary for their needs, additional funds must be deposited into the 503(g) Trust.

7. That, despite being employed and earning substantial income, the Defendant has not made any contribution towards the needs of the children since establishment of the 503(g) Trust.

WHEREFORE, the Plaintiff, **CHRISTINE GOESEL**, prays this Honorable Court enter an Order requiring the Defendant, **ANDREW GOESEL**, to liquidate funds from his T-Rowe

06/23/14 08:40:23 WCCH

Price Account and Fidelity IRA and deliver said funds to the children's representative to be deposited into the 503(g) Trust and utilized as set forth in the February 20, 2014 Court Order.

Count III- Accounting

Now comes the Plaintiff, **CHRISTINE GOESEL**, by and through her attorneys, **THE LAW OFFICES OF EDWARD R. JAQUAYS, EDWARD R. JAQUAYS**, of counsel, and as Count III of her Petition for Interim Attorney Fees, Costs and Other Relief petitions the Court for entry of an Order requiring the Defendant, **ANDREW GOESEL**, to account for certain funds, and in support thereof states as follows:

1. That the Court has jurisdiction of the parties and the subject matter hereto.
2. That the Defendant recently took a trip to Europe to tour with his band as a professional musician.
3. The Defendant has obtained employment as a chiropractor having purportedly closed his chiropractic practice.
4. That, upon information and belief, the Defendant has purchased a boat.
5. That, due to the Defendant's refusal to contribute any amounts towards the support of his children, this Court previously established a 503(g) trust.
6. That, upon information and belief, the Defendant has no assets other than his share of the marital property in this matter.
7. That the Defendant has not contributed any funds towards the marital expenses since March, 2014 and the mortgage has not been paid since March, 2014.
8. That there is no good reason for the Defendant to purchase a boat or any other luxury item during the pendency of these proceedings.

WHEREFORE, the Plaintiff, **CHRISTINE GOESEL**, prays this Honorable Court enter

3-15-0101

06/23/14 08:40:23 WCCH

an Order requiring the Defendant, **ANDREW GOESEL**, to provide an accounting of his income and expenses including any funds utilized for the purchase of a boat.

CHRISTINE GOESEL, Plaintiff,

By:

 **EDWARD R. JAQUAYS, Her Attorney**

**THE LAW OFFICES OF EDWARD R. JAQUAYS
FREEDOM COURT BUILDING
FIVE WEST JEFFERSON STREET, SUITE 200
JOLIET, ILLINOIS 60432
(815) 727-7600
ATTORNEY REG. #01326627
Amended Pet. Int. Atty Fees 06/20/14**

3-15-0101

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STATE OF ILLINOIS)
)
 COUNTY OF WILL) SS

IN THE CIRCUIT COURT OF THE TWELFTH JUDICIAL CIRCUIT
 WILL COUNTY, ILLINOIS

FILED
 2014 JUN 20 PM 3:32
 CLERK, CIRCUIT COURT
 WILL COUNTY, ILLINOIS

IN RE THE MARRIAGE OF:)

CHRISTINE GOESEL)

Plaintiff,)

vs.)

Case No. 13 D 107

ANDREW GOESEL,)

Defendant.)

AFFIDAVIT OF EDWARD R. JAQUAYS

1. I am an Attorney at Law licensed to practice in the State of Illinois, maintaining my offices at Five West Jefferson, Joliet, Illinois. Each of the statements contained herein are true and correct and known to me of my own personal knowledge. If called as a witness, I could and would competently testify thereto.

2. That I am an attorney licensed to practice law in the State of Illinois, and have been so licensed since 1975. That I am a sole practitioner, whose practice is involved in all areas of litigation, including a heavy concentration in the family law area.

3. I am attorney of record for **CHRISTINE GOESEL**, who is the Plaintiff in this case, having been formally engaged to represent her on March 7, 2014.

4. That this action involves property and support issues, as well as custody and/or visitation.

My law firm has received an initial retainer of **FIVE THOUSAND FIVE HUNDRED DOLLARS (\$5,000.00)**. It is difficult to estimate entirely anticipated legal fees in representing

3-15-0101


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the Plaintiff, **CHRISTINE GOESEL**, in order to prepare this matter for trial. Based upon my experience as a family law practitioner since 1975, and my involvement in a number of similar cases, I would certainly expect to expend fifty (50) to seventy-five (75) hours of time in conjunction with the discovery, pre-decree and preparation of the trial of this cause.

The Plaintiff, **CHRISTINE GOESEL**, has signed a contract of employment with my firm obligating herself to pay my legal fees at a rate of \$400.00 per hour for Court and deposition time and \$375.00 per hour for non-Court time. Based upon the attorney's fees and costs incurred to date, as well as the estimate of time to be expended in the trial preparation and trial of this cause, a contribution of **THIRTY THOUSAND DOLLARS AND 00/100THS (\$30,000.00)**, which includes the attorneys fees due and owing to date, toward Defendant's attorney's fees, or an amount equal to the amount paid by Defendant, **ANDREW GOESEL**, to his attorney, will provide reasonable assistance to the Plaintiff, **CHRISTINE GOESEL**, in her representation.

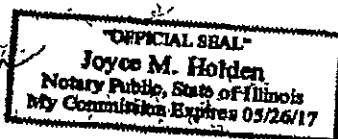
Further, Affiant sayeth not.

BY:


EDWARD R. JAQUAYS, Attorney
for Plaintiff, **CHRISTINE GOESEL**

Subscribed and sworn to before me
this 20 day of June, 2014.


NOTARY PUBLIC



THE LAW OFFICES OF EDWARD R. JAQUAYS
FREEDOM COURT BUILDING ~ FIVE WEST JEFFERSON STREET, SUITE 200
JOLIET, ILLINOIS 60432 - (815) 727-7600 ~ ATTY. #01326627
(Pet4IntAttyFees.060614)

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07/29/14 15:18:33 WCCB

STATE OF ILLINOIS)

COUNTY OF WILL)

SS

FILED

IN THE CIRCUIT COURT OF THE TWELFTH JUDICIAL CIRCUIT, 12 39
WILL COUNTY, ILLINOISFILED
APR 1 2014IN RE THE MARRIAGE OF:
CHRISTINE GOESEL,

Plaintiff,

vs

Case No 13 D 107

ANDREW GOESEL,
DefendantNOTICE OF FILINGTO Ms Laura Holwell
Attorney at Law
115 S LaSalle Street, Suite 2600
Chicago, IL 60603Ms Nancy Donlon
Panos & Assoc
12820 S Ridgeland Avenue, Suite A
Palos Heights, IL 60463Mr Howard Levine
Attorney at Law
18400 Maple Creek Drive, Suite 600
Tinley Park, IL 60477

PLEASE TAKE NOTICE that on the 27th day of June, 2014, there was filed with the Clerk of the Circuit Court of Will County, Illinois, the following Plaintiff's Updated Financial Disclosure Statement, copy of which is attached hereto

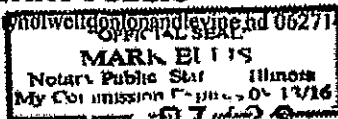
BY

Mark Ellis
MARK ELLIS, Attorney for PlaintiffPROOF OF SERVICE

The undersigned being first duly sworn upon oath deposes and the within Notice of Filing and Updated Financial Disclosure were served upon the above-named individuals - via hand delivery in open court on the 27th day of June, 2014

Edward R. JaquaysSubscribed and sworn to before me
this 27th day of June, 2014Mark Ellis

NOTARY PUBLIC

Notary Public State of Illinois
My Commission Expires 06/13/16THE LAW OFFICES OF EDWARD R. JAQUAYS
FREEDOM COURT BUILDING
FIVE WEST JEFFERSON STREET, SUITE 200
JOLIET, ILLINOIS 60432
(815) 727-7600- ATTY #6281341

07 29 14 15 18 33 WCCB

STATE OF ILLINOIS)
)
 COUNTY OF WILL) SS.

IN THE CIRCUIT COURT OF THE TWELFTH JUDICIAL CIRCUIT
 WILL COUNTY, ILLINOIS

IN RE: ☒ DISSOLUTION OF ☐ PARENTAGE
 (Please check appropriate box)

CHRISTINE GOESEL,
 Petitioner

vs.

CASE NO: 13 D 107

ANDREW GOESEL,
 Respondent

UPDATED FINANCIAL DISCLOSURE STATEMENT
 (Pursuant to Local Court Rule)

Instructions:

1. All questions require a written response. If you do not have the information requested or do not know the answer to a particular question, indicate that as your answer.
2. You must attach copies of the following:
 - Your personal federal and state income tax returns (including all W-2, 1099 and supporting schedules) for the last three (3) calendar years; and
 - Your three (3) most current pay stubs.
3. Use additional sheets if necessary.

CHRISTINE GOESEL, under oath states,
 (Petitioner)

that the following is an accurate statement as of, 6/25/14, of my net worth (assets of whatsoever kind and nature and wherever situated minus liabilities), statement of income from all sources, statement of monthly living expenses, a statement of health insurance coverage, and statement of assets transferred of whatsoever kind and nature and wherever situated to whomever. (or as dates may be indicated herein)

I. GENERAL INFORMATION

Name: Christine Goesel

Address: 21016 St. James Court, Mokena, IL 60448

Telephone: 708-717-6063

Current Age: 42

Date of Marriage 3/4/95

Date of Separation: December, 2012

Reside in same household? ☐ Yes ☒ No

Minor and/or dependent children of this ☒ marriage ☐ civil union or ☐ parentage,

Initials for minors/dependent children:

Age:

Residing with:

P.G.

17

Mother

B.G.

15

Mother

C.G.

11

Mother

Current Employer: Parkview Orthopedics (Commenced employment April 2014)

Address: 7600 W. College Dr. Palos Heights, Illinois

Self Employment: N/A

Address: _____

Other Employment: None

Address: _____

Other income other than employment:

child support being received from trust account of Nancy Donlon \$3,500.00 per month☐ Check if unemployedNumber of paychecks per year ☐ 12 ☐ 24 ☒ 26 ☐ 52 ☐ Other: _____

Number of Exemptions Claimed: _____

Gross income from all sources last year: \$110,632.04 (inc. \$34,000 from retirement disbursement)Gross income from all sources this year through 5/1/14: \$7,000.00 from Parkview Orthopedics**II. STATEMENT OF HEALTH INSURANCE COVERAGE**Currently effective health insurance coverage: ☒ Yes ☐ NoName of the insurance carrier: United HealthcareName of the policy holder: Christine GoeselPolicy or Group No. 0U5189 Type of insurance: ☒ Medical ☐ Dental ☐ OpticalHealth savings Account? ☐ Yes ☒ No Pre-Tax? ☐ Yes ☐ NoDeductible: Per Individual \$1,500.00 Per Family \$3,000.00Persons covered: ☒ Self ☐ Self/Partner ☒ DependentsType of Policy: ☐ HMO ☒ PPO ☐ Standard Indemnity (i.e. 80/20)Provided by: ☐ Employer ☐ Private Policy ☐ Other GroupMonthly cost: ☐ Paid by Employer or Union ☐ Paid by Employee:Cost to Employee: \$94.42 per month for family \$_____ for self**III. POTENTIAL AREAS OF DISAGREEMENT**

(Check all that may apply. The failure to identify an issue shall not be a bar to raising the issue at a later date.)

☒ Grounds☒ Asset values☒ Custody☒ Responsibility for debts☒ Visitation☒ Dissipation of the marital estate☒ Child Support/Daycare/Extracurricular☒ Maintenance☒ Responsibility for health insurance costs☒ Tax liabilities☐ Removal from Illinois☐ Other _____☒ College☐ _____☒ Asset Identification**IV. STATEMENT OF ASSETS ACQUIRED DURING MARRIAGE/CIVIL UNION** – The date of valuation is _____ unless otherwise specified. Attach current statements to show the current balance.**Cash or cash equivalents:**

Description of asset	Title in Name of	Date Acquired	Name of Financial Institution	Fair Market Value
1. Savings or interest bearing accounts				
None				
2. Checking accounts				
Account #4848	Christine		BMO Harris Bank	\$4,610.99 (5/10/14)

	Goesel			
3. Certificates of Deposits				
None				
4. Money Market Accounts				
None				
5. Cash				
				\$200.00 (vary on hand)
6. Other (specify)				

Real Property: Provide address, type and description, current fair market value, amounts of mortgages, loans, or liens.

Description of asset	Title in Name of	Date Acquired	Mortgage Balance	Fair Market Value
1. Residence				
21016 St. James Court, Mokena, IL	Christine & Andrew Goesel	12/2000	\$350,000.00	\$440,000.00
2. Secondary or Vacation Residence				
Michigan Home				Husband gifted
3. Investment or Business Real Estate				
227 Laurel Hollow Dr, Florida	Christine & Andrew Goesel	2004	\$115,000.00	Unknown
4. Vacant Land				
5. Other (specify)				

Motor Vehicle(s), Boats, Trailers, Etc.: Provide year, model, maker, lien, debtor, amount.

Description of asset	Title in Name of (include lien holder, if any)	Date Acquired	Lien Balance	Fair Market Value
2014 Honda CRV (Wife drives)	Connie Schmall	2014	None	Unknown
Honda Civic	Christine & Andrew Goesel			Unknown -- In Husband's possession
Acura MDX	Christine & Andrew Goesel	2009	None	Unknown
Jet Ski	Andrew Goesel	Summer 2013	Unknown	Unknown

Motorcycle				
Chrysler LeBaron	Christine & Andrew Goesel	Unknown	None	Unknown

Business Interest: Type of entity, i.e. Corporation, Partnership, Sole Proprietorships (Provide percentage interest and number of shares, names of business, type of business.)

Description of Entity	Owner & Percentage Ownership	Date Acquired	Type of Business	Parties' Fair Market Value
Goesel Chiropractic	Andrew Goesel 100%	Incorporated 6/8/00		Unknown at present
Comprehensive Physical Medicine	Andrew Goesel 100%	Incorporated 3/5/12		Unknown at present
Husband merged his practice with Dr. Bernard O'Brien in May of 2014. Value of these businesses is unknown and under investigation, but Wife has a marital interest in the income derived therefrom.				

Insurance Policies: Type of insurance, i.e. Life, Medical, Disability, Business Overhead, Property, etc. Provide name of insurer, policy number, name of insured, owner of policy, face amount, beneficiary, cash value, cash surrender value.

Name of Insurance Carrier	Title in Name of	Term or Whole?	Death Benefit	Actual Cash Value
West Coast Life Insurance	Christine Goesel	Term	\$1,500,000.00	None
West Coast Life Insurance	Andrew Goesel	Term	\$2,000,000.00	None

Retirement, Pension Plans, Defined Benefit Plans, IRA Accounts, Deferred Compensation,

Annuities, 401k, Defined Contribution Plan, Profit Sharing, etc.: Provide name, type of plan, trustee of plan, beneficiary, vested or non-vested, most current value.

Description of Asset	Title in Name of	Date Acquired	Name of Financial Institution	Fair Market Value
ROTH IRA	Christine Goesel		T. Rowe Price	Unknown
Simple IRA	Christine Goesel		Fidelity	\$32,819.88 (4/30/14)
Palos Hospital Retirement Plan(403b) Plan ID # PALO -001	Christine Goesel		Lincoln Financial Group	\$42,498.86 (3/31/14)
Palos Hospital Pension Plan (401a) Plan ID #PALO - 002	Christine Goesel		Lincoln Financial Group	\$13,292.21 (3/31/14)

St. George Corp. Rollover Plan #G73559	Christine Goesel	10/16/1995	American United Life Ins. Company	\$3,838.04 (3/31/14)
St. George Corp. - 403(b) Plan #G73559	Christine Goesel	10/16/1995	American United Life Ins. Company	\$27,954.71 (3/31/14)
Retirement & Savings Plan (Amgen, Inc.)	Christine Goesel		Merrill Lynch	\$17,356.23 (6/25/14)

Stock Options, ESOPS, Other Deferred Compensation or Employment Benefits: (Describe fully)

Description of asset	Title in Name of	Date Acquired	Number of Options	Option Price
None to Wife's knowledge Husband may have stock ownership which may be marital in nature, but Wife has no information relative to the same.				

Other Investment Accounts and Securities:

Description of asset	Title in Name of	Date Acquired	Name of Financial Institution	Fair Market Value
1. Stocks				
None to Wife's knowledge				
2. Bonds				
None to Wife's knowledge				
3. Tax Exempt Securities				
None to Wife's knowledge				
4. Secured or Unsecured Notes				
None to Wife's knowledge				
5. Collectibles: Coins, stamps, art, antiques, etc.				
None to Wife's knowledge				
6. All Other Property: Personal or Real. (not previously listed), valued in excess of \$500.00, excluding normal household furniture and furnishings.				
None to Wife's knowledge				

V. STATEMENT OF ASSETS TRANSFERRED:

(List all assets transferred in any manner during the preceding (6) months)

Description of property	To Whom Transferred and Relationship to Transferee	Date of Transfer	Value
Wife has not transferred any property within 6 months			

VI. STATEMENT OF ASSETS CLAIMED TO BE NON-MARITAL AS DEFINED BY STATUTE:

List all property and your basis for claiming it as non-marital (property owned prior to the marriage/civil union, property received as inheritance or gift during the marriage/civil union), identifying each item of property (real

property, personal property, financial accounts, etc.). As to the type of property, list the date received, the basis on which you claim it is non-marital property, its location, and the present value of the property.

Description of Asset	Fair Market Value	Basis for Non-Marital Claim (inheritance, gift or other)	When Acquired	Title Held Name of

VII. STATEMENT OF DEBT/LIABILITIES. Include all contingent debt/liabilities

Creditor's Name	Payment for	Who incurred	Balance due	Minimum monthly payment
BMO Harris Bank Signature Card	Rolling credit	Christine Goesel	\$11,743.34	
Southwest Credit Card	Rolling Credit	Christine Goesel	\$ 4,595.78	\$110.00
Promissory Note loans	Household expenses	Christine Goesel		
TOTAL LIABILITIES				

Attorney Name	Amount Paid	Amount due		
Gwendolyn Sterk	Reviewing records	\$12,817.72		
Nancy Donlon	Reviewing records	\$12,408.25		
Edward Jaquays	\$5,000.00	\$9,334.89 (5/14/14)		

Have you ever filed for bankruptcy relief ☐ Yes ☒ No If so, when? _____ Case No. _____

VIII. SPECIFIC REQUEST OF PERSONAL PROPERTY (List items requested)

To be supplemented

IX. PHYSICAL AND MENTAL STATUS

Are you in any manner incapacitated or limited in your ability to earn income at the present time? If so, define and describe such incapacity or limitation, and state when such incapacity or limitation commenced and when it is expected to end.

None.

I, Christine Goesel, under penalties of perjury, provided by law in

Please check appropriate box ☒ Petitioner ☐ Respondent

Section 1-109 of the Code of Civil Procedure certify that the information and attached corroborating documents are all the documents I have in my possession or that I can obtain upon reasonable effort as of this date. The undersigned certifies that he/she has read the above and foregoing Financial Disclosure Statement; that he/she knows the contents thereof, and that the information therein contained is true and correct.

Date

Christine Goesel

AFFIDAVIT OF INCOME AND EXPENSES**CURRENT MONTHLY INCOME AS OF:** May, 2014

Salary/wages/base pay	\$ 5,833.36
Overtime/Commission	\$
Bonus	\$
Draw	\$
Pension and retirement benefits	\$
Interest income	\$
Dividend income	\$
Trust income	\$
Social Security Payment	\$
Unemployment benefits	\$
Disability payment	\$
Worker's compensation	\$
Public Aid/Food Stamps	\$
Investment income	\$
Rental income (\$4,000 total for few months Florida property rented) • The parties split the income received	\$ 166.67
Business income, Partnership, Sub-Chapter S, or LLC Income	\$
Royalty income, Fellowships, Stipends, Annuity	\$
Other:	\$
TOTAL MONTHLY GROSS FROM ALL SOURCES	\$6,000.03
Required Monthly Deductions	
Federal Tax (based on 0 exemptions)	\$ 1,040.68
State Tax (based on 3 exemptions)	\$ 260.00
FICA (or Social Security equivalent or Self Employment Tax)	\$ 355.64
Medicare Tax	\$ 83.12
Mandatory retirement contributions required by law or as condition of Employment	\$
Union Dues (Name of Union:)	\$
Health/Hospitalization Premiums (is this a Pre Tax Plan? <input type="checkbox"/> Yes <input type="checkbox"/> No)	\$ 102.21
Prior obligation(s) of support actually paid pursuant to Court Order	\$
Other:	\$
TOTAL REQUIRED DEDUCTIONS	\$
Voluntary deductions from income	\$
401k	\$
Flexible Spending Health Savings Account Plan	\$
Other:	\$
Total Voluntary Deductions	\$1,841.65

CURRENT MONTHLY LIVING EXPENSES AS OF:

1. HOUSEHOLD EXPENSES	
a. Mortgage (2 mo's in arrears -- pymt \$3,249.00) * Can not afford to pay -- house is being listed for sale	-0-
b. Home equity loan/Second mortgage	\$ 30.00
c. Real estate taxes, assessments(\$9,730.92 year)	\$ 810.91
d. Homeowners or renters insurance	\$ 77.67
e. Natural Gas/Heat	\$ 231.00

f. Electricity	\$ 350.00
g. Telephone, long distance, cell phone(s),	\$ 400.00
h. Cable and Internet Access	\$ 170.00
i. Water/sewer & refuse removal	\$ 130.00
j. Laundry/dry cleaning	\$ 100.00
k. Maid/cleaning service	-0-
l. Furniture and appliance repair/replacement	\$ 50.00
m. Repairs and maintenance to dwelling	\$ 245.00
n. Lawn and garden/snow removal	\$ 100.00
o. Food (groceries, liquor, household supplies, etc.)	\$ 1,200.00
p. Other	-0-
SUBTOTAL HOUSEHOLD EXPENSES	\$3,849.58
RENTAL HOME -227 LAUREL RD., FLORIDA	
* It is believed that Husband pays these expenses	
a. Mortgage or rent:	\$1,811.00
b. Home equity loan/Second mortgage	-0-
c. Real estate taxes, assessments	\$ 375.00
d. Homeowners or renters insurance	\$ 349.67
e. Natural Gas/Heat	n/a
f. Electricity	n/a
g. Telephone, long distance, cell phone(s), modem lines	n/a
h. Cable and Internet Access, Satellite	n/a
i. Water/sewer & refuse removal	n/a
j. Laundry/dry cleaning	n/a
k. Maid/cleaning service	n/a
l. Furniture and appliance repair/replacement	n/a
m. Repairs and maintenance to dwelling	n/a
n. Lawn and garden/snow removal	n/a
o. Food (groceries, liquor, household supplies, etc.)	n/a
p. Other: Association Fees	\$201.67
TOTAL RENTAL HOME EXPENSES:	\$2,737.34 *
* if property is not rented out, these expenses vary	
2. TRANSPORTATION EXPENSES:	
a. Gasoline	\$ 400.00
b. Repairs, Maintenance	\$ 200.00
c. Insurance/license/city stickers	\$ 200.00
d. Payments/replacement	-0-
e. Alternative transportation	-0-
f. Parking/tolls	\$ 40.00
g. Other:	-0-
TOTAL TRANSPORTATION EXPENSES:	\$840.00
3. PERSONAL EXPENSES (excluding children's expenses)	
a. Clothing	\$ 75.00
b. Grooming	\$ 100.00
c. Medical (after insurance proceeds/reimbursement):	
(1) Doctor	\$ 235.00
(2) Dentist	\$ 25.00
(3) Optical	\$ 50.00
(4) Medication	\$ 25.00
(5) Counseling	-0-

(6) Other:	-0-
d. Insurance:	
(1) Life Insurance Premiums (\$590.00 yearly)	\$ 49.17
(2) Medical/Hospitalization Insurance Premiums (if not deducted from paycheck)	-0-
(3) Dental/Optical Insurance Premiums (if not deducted from paycheck)	-0-
(4) Other:	-0-
SUBTOTAL PERSONAL EXPENSES:	\$559.17
4. MISCELLANEOUS EXPENSES	
a. Clubs/social obligations/entertainment/dining out	\$ 100.00
b. Newspaper, magazines, books	-0-
c. Gifts	\$ 100.00
d. Donations, church or religious affiliation	\$ 40.00
e. Vacations (not including children)	\$ 100.00
f. Computer/supplies/software	\$ 25.00
g. Other: Gym membership	\$ 60.00
SUBTOTAL MISCELLANEOUS EXPENSES:	\$325.00
5. CHILD(REN)'S SEPARATE EXPENSES	
a. Clothing	\$ 200.00
b. Grooming	\$ 50.00
c. Education	
(1) Tuition	\$ 166.67
(2) Books/fees	\$ 25.00
(3) Lunches	\$ 16.67
(4) Transportation	\$ 16.67
(5) School Sponsored Activities	\$ 20.00
d. Medical (after insurance proceeds):	
(1) Doctor	\$ 50.00
(2) Dentist	\$100.00
(3) Optical	\$ 75.00
(4) Medication	\$ 30.00
(5) Counseling	\$430.00
(6) Other:	-0-
e. Allowance	\$ 25.00
f. Child care/Pre-School/Before and after school care/sitters	-0-
g. Lessons/Extracurricular activities supplies	\$ 100.00
h. Clubs/summer camps	\$ 83.34
i. Vacation (children only)	\$275.00
j. Entertainment	\$100.00
k. Gifts to others	\$ 25.00
l. Other:	-0-
SUBTOTAL CHILD(REN)'S EXPENSES:	\$1,688.35
6. BUSINESS EXPENSES (not reimbursed by employer)	
a. Membership/Trade association/other dues for fees	\$ 17.50
b. Malpractice/Professional Liability Insurance Premiums	\$ 11.67
c. Accountants/Other Professional Services Utilized	\$
d. Political contributions	\$
e. Office upkeep expenses (cleaning services, etc.)	\$
f. Postage	\$

g. Travel	\$
h. Client/Business Entertainment	\$
i. Other: CPR license	\$4.17
SUBTOTAL BUSINESS EXPENSES:	\$33.34
TOTAL MONTHLY LIVING EXPENSES:	\$7,295.44
RECAP	
NET MONTHLY INCOME	\$ 4,158.38
TOTAL MONTHLY INCOME	\$ 7,658.38
(includes \$3,500 in child support being received)	
DIFFERENCE BETWEEN NET INCOME AND EXPENSES	\$ 362.94
LESS MONTHLY DEBT SERVICE	Included with household expenses.
INCOME AVAILABLE PER MONTH **	\$ 362.94

** Note: Income available per month does not include payment of mortgage for marital residence or Florida home expenses. Presently no payment is being made towards the mortgage of the marital residence in the amount of \$3,249.00 per month. It is believed Husband is paying the Florida rental home expenses in the amount of \$2,734.00 per month. Without the court ordered support payment of \$3,500.00, Wife's expenses would be greater than her income by \$3,137.06 per month without including the costs of the marital residence mortgage or the Florida home expenses. The total of all monthly expenses is \$13,278.78. Based on Wife's present net income (not including the \$3,500.00 in support), the payment of all expenses would result in a monthly deficit of \$9,120.40. **

I, CHRISTINE GOESEL, under penalties of perjury, provide by law in

Please check appropriate box ☒ Petitioner ☐ Respondent

Section 1-109 of the Code of Civil Procedure, I certify that the information in this Affidavit of Income and Expenses are true, correct and complete.

Date

6-27-14


CHRISTINE GOESEL

THE LAW OFFICES OF EDWARD R. JAQUAYS
FREEDOM COURT BUILDING
FIVE WEST JEFFERSON STREET, SUITE 200
JOLIET, ILLINOIS 60432
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ARDC#: 01326627
Financial Disclosure stmt Wife revised 062314 eb

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C0000460 - C0000460	02/25/2014	ORDER
C0000461 - C0000461	02/25/2014	NOTICE OF FILING
C0000462 - C0000467	02/25/2014	RESPONSE TO EMERGENCY MOTION TO SIGN LISTING AGREEMENT
C0000468 - C0000471	02/27/2014	EMERGENCY MOTION TO DISQUALIFY LAURA HOLWELL AS ATTORNEY OF RECORD FOR RESPONDENT PURSUANT TO ILLINOIS SUPREME COURT RULE OF PROFESSIONAL CONDUCT 3.7
C0000472 - C0000473	02/28/2014	ORDER
C0000474 - C0000474	03/03/2014	ORDER
C0000475 - C0000475	03/04/2014	ORDER
C0000476 - C0000476	03/04/2014	ORDER
C0000477 - C0000477	03/10/2014	NOTICE OF FILING
C0000478 - C0000478	03/10/2014	APPEARANCE FILED FOR CHRISTINE GOESEL
C0000479 - C0000480	03/21/2014	NOTICE OF MOTION
C0000481 - C0000486	03/21/2014	MOTION TO CONDUCT JOB SEARCH TO SEEK APPROPRIATE EMPLOYMENT AND FOR OTHER RELIEF
C0000487 - C0000489	03/21/2014	SUPPORTING DOCUMENT(S) EXHIBIT(S)
C0000490 - C0000490	03/27/2014	ORDER
C0000491 - C0000491	03/28/2014	ORDER
C0000492 - C0000492	03/28/2014	ORDER SIGNED - RULE ISSUES
C0000493 - C0000493	04/08/2014	NOTICE OF FILING

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PAGE NUMBER	FILE DATE	DESCRIPTION
C0000494 - C0000495	04/08/2014	RESPONSE TO MOTION TO RECONSIDER
C0000496 - C0000499	04/08/2014	RESPONSE TO PETITION FOR RULE TO SHOW CAUSE
C0000500 - C0000502	04/08/2014	RESPONSE TO MOTION TO SUPPORT MINOR CHILDREN
C0000503 - C0000503	04/15/2014	NOTICE OF FILING
C0000504 - C0000504	04/15/2014	PROOF OF SERVICE
C0000505 - C0000505	04/16/2014	ORDER
C0000506 - C0000507	04/30/2014	ORDER
C0000508 - C0000508	05/01/2014	COPY OF NOTICE OF FILING
C0000509 - C0000511	05/01/2014	STATEMENT OF GAL FEES
C0000512 - C0000512	05/05/2014	ORDER
C0000513 - C0000513	05/08/2014	NOTICE OF MOTION
C0000514 - C0000516	05/08/2014	MOTION TO SET CHILD REPRESENTATIVES FEES
C0000517 - C0000519	05/08/2014	EXHIBIT(S)
C0000520 - C0000520	05/08/2014	NOTICE OF MOTION
C0000521 - C0000527	05/08/2014	PETITION FOR RULE TO SHOW CAUSE
C0000528 - C0000529	05/08/2014	SUPPORTING DOCUMENT(S) EXHIBIT(S)
C0000530 - C0000530	05/12/2014	NOTICE OF FILING
C0000531 - C0000531	05/12/2014	PROOF OF SERVICE
C0000532 - C0000532	05/12/2014	NOTICE OF FILING

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PAGE NUMBER	FILE DATE	DESCRIPTION
C0000533 - C0000537	05/12/2014	SUPPORTING DOCUMENT(S) EXHIBIT(S)
C0000538 - C0000538	05/13/2014	NOTICE OF FILING
C0000539 - C0000543	05/13/2014	RESPONSE TO EMERGENCY MOTION TO FREEZE 503(G) ACCOUNT
C0000544 - C0000544	05/14/2014	ORDER
C0000545 - C0000545	05/14/2014	ORDER RULE TO SHOW CAUSE
C0000546 - C0000546	05/14/2014	NOTICE OF ISSUANCE OF SUBPOENAS
C0000547 - C0000548	05/14/2014	NOTICE OF DEPOSITION
C0000549 - C0000550	05/16/2014	AMENDED NOTICE OF DEPOSITION
C0000551 - C0000551	05/20/2014	EMERGENCY NOTICE OF MOTION
C0000552 - C0000555	05/20/2014	MOTION TO CONTINUE
C0000556 - C0000556	05/20/2014	AFFIDAVIT
C0000557 - C0000557	05/20/2014	NOTICE OF FILING
C0000558 - C0000558	05/20/2014	PROOF OF SERVICE
C0000559 - C0000563	05/20/2014	AFFIDAVIT OF SERVICE
C0000564 - C0000569	05/20/2014	AFFIDAVIT OF SERVICE
C0000570 - C0000570	05/20/2014	NOTICE OF FILING-PROOF OF SERVICE
C0000571 - C0000571	05/20/2014	PROOF OF SERVICE
C0000572 - C0000572	05/21/2014	NOTICE OF ISSUANCE OF SUBPOENA

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PAGE NUMBER	FILE DATE	DESCRIPTION
C0000573 - C0000575	05/22/2014	NOTICE OF MOTION (COPY OF)
C0000576 - C0000580	05/22/2014	MOTION EMERGENCY MOTION FOR SANCTIONS
C0000581 - C0000583	05/22/2014	AFFIDAVIT IN SUPPORT OF EMERGENCY MOTION FOR SANCTIONS
C0000584 - C0000591	05/22/2014	EXHIBIT(S)A - E
C0000592 - C0000592	05/22/2014	ORDER
C0000593 - C0000594	05/22/2014	AMENDED NOTICE OF DEPOSITION
C0000595 - C0000595	05/22/2014	ORDER
C0000596 - C0000596	05/22/2014	ORDER
C0000597 - C0000597	05/28/2014	NOTICE OF FILING
C0000598 - C0000598	05/28/2014	PROOF OF SERVICE
C0000599 - C0000600	05/29/2014	AMENDED NOTICE OF DEPOSITION
C0000601 - C0000601	05/30/2014	NOTICE
C0000602 - C0000605	05/30/2014	PETITION FOR INDIRECT CIVIL CONTEMPT AND OTHER RELIEF
C0000606 - C0000606	05/30/2014	NOTICE OF MOTION
C0000607 - C0000608	05/30/2014	MOTION TO SET PLEADING FOR HEARING
C0000609 - C0000609	05/30/2014	NOTICE OF FILING
C0000610 - C0000611	05/30/2014	AMENDED NOTICE OF INTENT TO CLAIM DISSIPATION OF ASSETS
C0000612 - C0000612	05/30/2014	NOTICE OF FILING

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PAGE NUMBER	FILE DATE	DESCRIPTION
C0000613 - C0000617	05/30/2014	RESPONSE TO PETITION FOR RULE TO SHOW CAUSE
C0000618 - C0000618	05/30/2014	NOTICE OF MOTION
C0000619 - C0000624	05/30/2014	MOTION TO RECONSIDER ORDER
C0000625 - C0000636	05/30/2014	SUPPORTING DOCUMENT(S) EXHIBIT(S)
C0000637 - C0000637	05/30/2014	NOTICE OF MOTION
C0000638 - C0000642	05/30/2014	MOTION TO APPOINT EVALUATOR
C0000643 - C0000654	05/30/2014	SUPPORTING DOCUMENT(S) EXHIBIT(S)
C0000655 - C0000655	06/02/2014	NOTICE OF FILING
C0000656 - C0000656	06/02/2014	PROOF OF SERVICE
C0000657 - C0000657	06/05/2014	APPEARANCE FILED FOR ANDREW GOESEL
C0000658 - C0000658	06/06/2014	NOTICE OF MOTION FILED
C0000659 - C0000664	06/06/2014	MOTION FOR SANCTIONS
C0000665 - C0000681	06/06/2014	SUPPORTING DOCUMENT(S) EXHIBIT(S)
C0000682 - C0000682	06/06/2014	CITATION TO APPEAR
C0000683 - C0000684	06/06/2014	NOTICE OF MOTION EMERGENCY (ORIGINAL)
C0000685 - C0000686	06/06/2014	EMERGENCY MOTION TO RESET DEPOSITION DATES AND FOR OTHER RELIEF
C0000687 - C0000687	06/06/2014	AFFIDAVIT OF HOWARD LEVINE (ORIGINAL)

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PAGE NUMBER	FILE DATE	DESCRIPTION
C0000688 - C0000688	06/06/2014	APPEARANCE FILED FOR ANDREW GOESEL
C0000689 - C0000689	06/06/2014	NOTICE OF FILING (ORIGINAL)
C0000690 - C0000694	06/06/2014	RESPONSE TO MOTION FOR SANCTIONS
C0000695 - C0000697	06/06/2014	SUPPORTING DOCUMENT(S) EXHIBIT(S)
C0000698 - C0000699	06/06/2014	ORDER
C0000700 - C0000700	06/06/2014	ORDER
C0000701 - C0000701	06/09/2014	CITATION TO APPEAR
C0000702 - C0000702	06/12/2014	NOTICE OF MOTION
C0000703 - C0000705	06/12/2014	MOTION TO DISMISS
C0000706 - C0000707	06/12/2014	SUPPORTING DOCUMENT(S) EXHIBIT(S)
C0000708 - C0000708	06/12/2014	NOTICE OF MOTION
C0000709 - C0000715	06/12/2014	PETITION FOR INTERIM FEES
C0000716 - C0000718	06/12/2014	AFFIDAVIT
C0000719 - C0000719	06/12/2014	NOTICE OF MOTION
C0000720 - C0000723	06/12/2014	PETITION FOR INDIRECT CIVIL CONTEMPT
C0000724 - C0000724	06/12/2014	NOTICE OF MOTION.
C0000725 - C0000728	06/12/2014	MOTION TO COMPEL
C0000729 - C0000729	06/12/2014	NOTICE OF FILING
C0000730 - C0000734	06/12/2014	RESPONSE TO MOTION TO APPOINT DR ALAN CHILDES

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PAGE NUMBER	FILE DATE	DESCRIPTION
C0000735 - C0000739	06/12/2014	RESPONSE TO MOTION TO RECONSIDER
C0000740 - C0000741	06/16/2014	SUMMONS RETURNED SERVED FOR ANDREW GOESEL
C0000742 - C0000742	06/17/2014	NOTICE OF MOTION
C0000743 - C0000747	06/17/2014	PETITION EMERGENCY PETITION FOR TEMPORARY RESTRAINING ORDER AND INJUNCTIVE RELIEF
C0000748 - C0000749	06/17/2014	AFFIDAVIT (ORIGINAL)
C0000750 - C0000751	06/17/2014	ORDER
C0000752 - C0000752	06/17/2014	ORDER RULE
C0000753 - C0000753	06/18/2014	NOTICE OF FILING - PROOF OF SERVICE
C0000754 - C0000754	06/18/2014	PROOF OF SERVICE
C0000755 - C0000755	06/19/2014	NOTICE OF FILING
C0000756 - C0000757	06/19/2014	RESPONSE TO MOTION TO WITHDRAW
C0000758 - C0000760	06/19/2014	PETITION TO SET SPECIFIC VISITATION SCHEDULE
C0000761 - C0000761	06/20/2014	NOTICE OF MOTION
C0000762 - C0000763	06/20/2014	MOTION TO WITHDRAW
C0000764 - C0000764	06/20/2014	SUPPORTING DOCUMENT(S) EXHIBIT(S)
C0000765 - C0000765	06/20/2014	NOTICE OF MOTION
C0000766 - C0000773	06/20/2014	AMENDED PETITION FOR INTERIM ATTORNEY FEES

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PAGE NUMBER	FILE DATE	DESCRIPTION
C0000774 - C0000775	06/20/2014	AFFIDAVIT OF EDWARD R JAQUAYS
C0000776 - C0000777	06/24/2014	EMERGENCY NOTICE OF MOTION
C0000778 - C0000782	06/24/2014	EMERGENCY PETITION FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION
C0000783 - C0000784	06/24/2014	AFFIDAVIT
C0000785 - C0000788	06/24/2014	PETITION FOR PROSPECTIVE ATTORNEY S FEES
C0000789 - C0000790	06/24/2014	AFFIDAVIT
C0000791 - C0000791	06/24/2014	AFFIDAVIT
C0000792 - C0000795	06/24/2014	SUPPORTING DOCUMENT(S) EXHIBIT(S)
C0000796 - C0000796	06/27/2014	ORDER
C0000797 - C0000798	06/27/2014	ORDER
C0000799 - C0000799	07/01/2014	AFFIDAVIT OF SERVICE
C0000800 - C0000800	07/14/2014	NOTICE OF MOTION
C0000801 - C0000804	07/14/2014	PETITION FOR ADJUDICATION OF CIVIL CONTEMPT
C0000805 - C0000806	07/14/2014	SUPPORTING DOCUMENT(S) EXHIBIT(S)
C0000807 - C0000807	07/15/2014	AFFIDAVIT OF SERVICE
C0000808 - C0000810	07/16/2014	MOTION TO RECONSIDER
C0000811 - C0000812	07/16/2014	SUPPORTING DOCUMENT(S) EXHIBIT(S)

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PAGE NUMBER	FILE DATE	DESCRIPTION
C0000813 - C0000817	07/16/2014	RESPONSE TO AMENDED PETITION
C0000818 - C0000819	07/16/2014	NOTICE OF FILING
C0000820 - C0000820	07/17/2014	NOTICE OF FILING
C0000821 - C0000824	07/17/2014	RESPONSE TO PETITION FOR FEES AND COSTS
C0000825 - C0000827	07/17/2014	RESPONSE TO EMERGENCY PETITION FOR TEMPORARY RESTRAINING ORDER
C0000828 - C0000828	07/21/2014	NOTICE OF FILING
C0000829 - C0000834	07/21/2014	RESPONSE TO SECTION 5 2-1203(A) AND (B) MOTION TO RECONSIDER COURT ORDER ENTERED ON JUNE 24, 2014 AND FOR OTHER RELIEF
C0000835 - C0000835	07/21/2014	UPDATED FINANCIAL DISCLOSURE (IMPOUNDED)
C0000836 - C0000836	07/21/2014	FINANCIAL DISCLOSURE STATEMENT (IMPOUNDED)
C0000837 - C0000837	07/21/2014	ORDER
C0000838 - C0000838	07/21/2014	ORDER
C0000839 - C0000840	07/21/2014	SUPPORTING DOCUMENT(S) EXHIBIT(S)
C0000841 - C0000841	07/21/2014	ORDER
C0000842 - C0000842	07/22/2014	NOTICE OF MOTION
C0000843 - C0000846	07/22/2014	MOTION TO ESCROW MINOR CHILDS PERSONAL INJURY SETTLEMENT PROCEEDS
C0000847 - C0000847	07/22/2014	SUPPORTING DOCUMENT(S)

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PAGE NUMBER	FILE DATE	DESCRIPTION
C0000848 - C0000848	07/23/2014	NOTICE OF MOTION
C0000849 - C0000855	07/23/2014	PETITION FOR INDIRECT CIVIL CONTEMPT AND OTHER RELIEF
C0000856 - C0000856	07/25/2014	NOTICE OF FILING
C0000857 - C0000862	07/25/2014	RESPONSE TO SECTION 5 2- 1203(A) AND (B) MOTION TO RECONSIDER COURT ORDER ENTERED ON JUNE 24, 2014 AND FOR OTHER RELIEF
C0000863 - C0000863	07/29/2014	NOTICE OF FILING
C0000864 - C0000864	07/29/2014	UPDATED FINANCIAL DISCLOSURE (IMPOUNDED)
C0000865 - C0000865	07/29/2014	ORDER
C0000866 - C0000866	07/29/2014	NOTICE OF FILING
C0000867 - C0000869	07/29/2014	RESPONSE AND AFFIRMATIVE DEFENSE TO PE...
C0000870 - C0000870	07/30/2014	ORDER
C0000871 - C0000871	07/30/2014	ORDER
C0000872 - C0000872	07/31/2014	ORDER
C0000873 - C0000874	08/04/2014	ORDER
C0000875 - C0000875	08/04/2014	ORDER
C0000876 - C0000876	08/05/2014	NOTICE OF FILING
C0000877 - C0000878	08/05/2014	SUPPORTING DOCUMENT(S) EXHIBIT(S)
C0000879 - C0000880	08/13/2014	NOTICE OF MOTION

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PAGE NUMBER	FILE DATE	DESCRIPTION
C0000881 - C0000882	08/13/2014	MOTION TO DISMISS COUNT I OF MOTION FOR LEAVE TO AMEND PREVIOUSLY FILED AMENDED PETITION FOR INTERIM ATTORNEY FEES AND COSTS AND OTHER RELIEF TO CONFORM TO PROOFS
C0000883 - C0000885	08/13/2014	RESPONSE TO COUNT II OF MOTION FOR LEAVE TO AMEND PREVIOUSLY FILED AMENDED PETITION FOR INTERIM ATTORNEY FEES AND COSTS AND OTHER RELIEF TO CONFORM TO PROOFS
C0000886 - C0000895	08/13/2014	SUPPORTING DOCUMENTS
C0000896 - C0000896	08/13/2014	ORDER
C0000897 - C0000897	08/15/2014	NOTICE OF MOTION
C0000898 - C0000899	08/15/2014	MOTION TO MODIFY COURT ORDER
C0000900 - C0000900	08/18/2014	ORDER
C0000901 - C0000901	08/20/2014	ORDER
C0000902 - C0000902	08/22/2014	NOTICE OF MOTION
C0000903 - C0000904	08/22/2014	MOTION TO SET PENDING MATTERS FOR HEARING
C0000905 - C0000905	08/28/2014	ORDER
C0000906 - C0000906	09/03/2014	ORDER
C0000907 - C0000908	09/04/2014	NOTICE OF MOTION
C0000909 - C0000909	09/04/2014	MOTION TO WITHDRAW
C0000910 - C0000910	09/04/2014	AFFIDAVIT

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PAGE NUMBER	FILE DATE	DESCRIPTION
C0000911 - C0000912	09/10/2014	NOTICE OF FILING
C0000913 - C0000914	09/10/2014	RESPONSE TO MOTION TO MODIFY COURT ORDER
C0000915 - C0000915	09/15/2014	ORDER
C0000916 - C0000916	09/15/2014	ADDITIONAL APPEARANCE FOR LAURA HOLWELL
C0000917 - C0000917	09/22/2014	AFFIDAVIT OF SERVICE
C0000918 - C0000918	09/26/2014	REGARDING FEES OWED
C0000919 - C0000924	09/29/2014	ORDER DECISION AND ORDER
C0000925 - C0000925	09/29/2014	ORDER
C0000926 - C0000926	10/01/2014	NOTICE OF MOTION
C0000927 - C0000937	10/01/2014	PETITION FOR INDIRECT CIVIL CONTEMPT AND OTHER RELIEF AGAINST ATTORNEY LAURA HOLWELL
C0000938 - C0000938	10/02/2014	NOTICE OF MOTION
C0000939 - C0000941	10/02/2014	PETITION FOR INJUNCTIVE RELIEF
C0000942 - C0000943	10/02/2014	AFFIDAVIT
C0000944 - C0000944	10/06/2014	NOTICE OF MOTION
C0000945 - C0000947	10/06/2014	MOTION TO WITHDRAW
C0000948 - C0000948	10/06/2014	NOTICE OF WITHDRAWAL
C0000949 - C0000950	10/07/2014	ORDER AGREED
C0000951 - C0000951	10/07/2014	ORDER
C0000952 - C0000953	10/07/2014	ORDER TEMPORARY RESTRAINING ORDER

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PAGE NUMBER	FILE DATE	DESCRIPTION
C0000954 - C0000954	10/07/2014	ORDER
C0000955 - C0000955	10/10/2014	EMERGENCY NOTICE OF MOTION
C0000956 - C0000957	10/10/2014	EMERGENCY MOTION TO DETERMINE TAX EXEMPTIONS
C0000958 - C0000958	10/14/2014	ORDER
C0000959 - C0000960	10/15/2014	ORDER
C0000961 - C0000962	10/16/2014	ORDER
C0000963 - C0000964	10/16/2014	CITATION NOTICE
C0000965 - C0000966	10/16/2014	CITATION NOTICE
C0000967 - C0000967	10/17/2014	NOTICE OF EMERGENCY MOTION
C0000968 - C0000970	10/17/2014	EMERGENCY MOTION TO QUASH CITATION
C0000971 - C0000971	10/17/2014	AFFIDAVIT
C0000972 - C0000977	10/17/2014	SUPPORTING DOCUMENT(S) EXHIBIT(S)
C0000978 - C0000978	10/17/2014	ORDER
C0000979 - C0000979	10/17/2014	ORDER QUASHING CITATIONS
C0000980 - C0000980	10/21/2014	NOTICE OF FILING
C0000981 - C0000981	10/21/2014	AFFIDAVIT
C0000982 - C0000982	10/24/2014	NOTICE OF MOTION
C0000983 - C0000987	10/24/2014	PETITION FOR INDIRECT CIVIL CONTEMPT AND OTHER RELIEF AGAINST ATTORNEY LAURA HOLWELL

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PAGE NUMBER	FILE DATE	DESCRIPTION
C0000988 - C0000994	10/24/2014	SUPPORTING DOCUMENT(S) EXHIBIT(S)
C0000995 - C0000995	10/29/2014	NOTICE OF MOTION
C0000996 - C0001002	10/29/2014	PETITION
C0001003 - C0001006	10/29/2014	AFFIDAVIT
C0001007 - C0001070	10/29/2014	SUPPORTING DOCUMENT(S) EXHIBIT(S)
C0001071 - C0001071	10/29/2014	NOTICE OF MOTION
C0001072 - C0001102	10/29/2014	MOTION TO RECONSIDER
C0001103 - C0001175	10/29/2014	SUPPORTING DOCUMENT(S) EXHIBIT(S)
C0001176 - C0001176	10/29/2014	NOTICE OF FILING
C0001177 - C0001184	10/29/2014	SUPPORTING DOCUMENT(S) EXHIBIT(S)
C0001185 - C0001185	10/30/2014	ORDER
C0001186 - C0001186	10/30/2014	ORDER RULE TO SHOW CAUSE
C0001187 - C0001187	11/03/2014	NOTICE OF MOTION
C0001188 - C0001195	11/03/2014	MOTION TO DISMISS
C0001196 - C0001206	11/03/2014	SUPPORTING DOCUMENT(S) EXHIBIT(S)
C0001207 - C0001207	11/05/2014	NOTICE OF MOTION
C0001208 - C0001211	11/05/2014	MOTION TO SET MOTION TO RECONSIDER FOR HEARING AND OTHER RELIEF
C0001212 - C0001212	11/10/2014	ORDER
C0001213 - C0001213	11/10/2014	NOTICE OF MOTION AMENDED

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PAGE NUMBER	FILE DATE	DESCRIPTION
C0001214 - C0001214	11/17/2014	ORDER
C0001215 - C0001215	11/17/2014	NOTICE OF FILING
C0001216 - C0001218	11/17/2014	NOTICE OF INTENT TO CLAIM DISSIPATION OF ASSETS
C0001219 - C0001219	11/20/2014	NOTICE OF MOTION
C0001220 - C0001223	11/20/2014	MOTION FOR 137 SANCTIONS
C0001224 - C0001229	11/20/2014	SUPPORTING DOCUMENT(S) EXHIBIT(S)
C0001230 - C0001230	11/20/2014	NOTICE OF FILING
C0001231 - C0001237	11/20/2014	RESPONSE TO PETITION FOR INDIRECT CIVIL CONTEMPT AND OTHER RELIEF AGAINST ATTORNEY LAURA HOLWELL
C0001238 - C0001238	11/20/2014	NOTICE OF FILING
C0001239 - C0001269	11/20/2014	RESPONSE TO MOTION TO RECONSIDER SEPTEMBER 29, 2014 ORDER
C0001270 - C0001270	11/20/2014	ORDER
C0001271 - C0001271	12/05/2014	NOTICE OF MOTION
C0001272 - C0001273	12/09/2014	RESPONSE TO PETITION FOR INDIRECT CIVIL CONTEMPT AND OTHER RELIEF
C0001274 - C0001277	12/09/2014	RESPONSE TO PETITION FOR INDIRECT CIVIL CONTEMPT AND FOR OTHER RELIEF
C0001278 - C0001279	12/09/2014	RESPONSE TO PETITION FOR RULE TO SHOW CAUSE
C0001280 - C0001280	12/12/2014	ORDER
C0001281 - C0001281	12/12/2014	ORDER

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PAGE NUMBER	FILE DATE	DESCRIPTION
C0001282 - C0001282	12/15/2014	PROOF OF SERVICE
C0001283 - C0001284	12/17/2014	SUPPLEMENTAL PETITION FOR PROSPECTIVE ATTORNEYS FEES AND COSTS
C0001285 - C0001286	12/17/2014	AFFIDAVIT OF HOWARD LEVINE
C0001287 - C0001308	12/17/2014	SUPPORTING DOCUMENT(S) EXHIBIT(S)
C0001309 - C0001309	12/18/2014	NOTICE OF MOTION
C0001310 - C0001312	12/18/2014	MOTION TO SUPPLEMENT SIX COUNT MOTION TO RECONSIDER SEPTEMBER 29, 2014 ORDER
C0001313 - C0001345	12/18/2014	SUPPORTING DOCUMENT(S) EXHIBIT(S)
C0001346 - C0001349	12/18/2014	SUPPLEMENTAL ENGAGEMENT AGREEMENT
C0001350 - C0001351	12/18/2014	ORDER
C0001352 - C0001353	12/18/2014	CITATION NOTICE
C0001354 - C0001356	12/18/2014	CITATION NOTICE
C0001357 - C0001357	12/18/2014	NOTICE OF EMERGENCY MOTION
C0001358 - C0001363	12/18/2014	EMERGENCY MOTION TO CONTINUE HEARINGS
C0001364 - C0001367	12/18/2014	AFFIDAVIT OF COUNSEL IN SUPPORT OF EMERGENCY MOTION TO CONTINUE HEARINGS
C0001368 - C0001370	12/18/2014	SUPPORTING DOCUMENT(S) EXHIBIT(S)

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PAGE NUMBER	FILE DATE	DESCRIPTION
C0001371 - C0001371	12/18/2014	NOTICE OF FILING
C0001372 - C0001397	12/18/2014	REPLY TO PETITIONERS RESPONSE TO SIX COUNT MOTION TO RECONSIDER SEPTEMBER 29, 2014 ORDER
C0001398 - C0001398	12/18/2014	SUPPORTING DOCUMENT(S) EXHIBIT(S)
C0001399 - C0001400	12/18/2014	NOTICE OF MOTION
C0001401 - C0001401	12/19/2014	NOTICE OF FILING
C0001402 - C0001402	12/19/2014	AFFIDAVIT OF SERVICE
C0001403 - C0001403	12/19/2014	NOTICE OF FILING
C0001404 - C0001404	12/19/2014	AFFIDAVIT OF SERVICE
C0001405 - C0001405	12/22/2014	NOTICE OF MOTION
C0001406 - C0001409	12/22/2014	MOTION TO RECONSIDER
C0001410 - C0001418	12/22/2014	SUPPORTING DOCUMENT(S) EXHIBIT(S)
C0001419 - C0001419	12/23/2014	NOTICE OF MOTION
C0001420 - C0001427	12/23/2014	MOTION TO DISMISS PETITION FOR INDIRECT CIVIL CONTEMPT AND OTHER RELIEF AGAINST ATTORNEY LAURA HOLWELL FILED OCTOBER 1, 2014 AND TO CONTEST JURISDICTION
C0001428 - C0001438	12/23/2014	SUPPORTING DOCUMENT(S) EXHIBIT(S)
C0001439 - C0001439	12/30/2014	NOTICE OF MOTION
C0001440 - C0001442	12/30/2014	MOTION TO STRIKE AND OR DISMISS MOTION TO RECONSIDER

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PAGE NUMBER	FILE DATE	DESCRIPTION
C0001443 - C0001443	01/05/2015	NOTICE OF FILING
C0001444 - C0001453	01/05/2015	RESPONSE TO MOTION TO DISMISS PETITION FOR INDIRECT CIVIL CONTEMPT AND OTHER RELIEF FILED OCTOBER 1, 2014 AND TO CONTEST JURISDICTION
C0001454 - C0001454	01/07/2015	ORDER
C0001455 - C0001455	01/08/2015	ORDER
C0001456 - C0001456	01/08/2015	ORDER
C0001457 - C0001458	01/08/2015	AMENDED ORDER
C0001459 - C0001459	01/08/2015	ORDER RULE TO SHOW CAUSE
C0001460 - C0001460	01/13/2015	NOTICE OF MOTION
C0001461 - C0001463	01/13/2015	MOTION TO ISSUE RULE
C0001464 - C0001465	01/13/2015	MOTION TO CLARIFY
C0001466 - C0001466	01/13/2015	NOTICE OF MOTION
C0001467 - C0001470	01/13/2015	PETITION FOR ATTORNEYS FEES
C0001471 - C0001476	01/13/2015	SUPPORTING DOCUMENT(S) EXHIBIT(S)
C0001477 - C0001478	01/14/2015	MOTION TO UPDATE APPRAISAL
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No. 3-15-0101

FILED
OCT 30 2015
THIRD DISTRICT
APPELLATE COURT CLERK

IN THE APPELLATE COURT OF ILLINOIS

THIRD JUDICIAL DISTRICT

IN RE THE MARRIAGE OF:)	Appeal from Will County Circuit Court
	)	Circuit Number: 2013 D 107
CHRISTINE GOESEL,	)	Trial Judge: Hon. Judge Archambeault
Petitioner-Appellee,	)	Date of Notice of Appeal: Feb. 13, 2015
	)	Date of Judgment: September 29, 2014
v.	)	Date of Post-judgment Motion Orders:
	)	December 18, 2014, January 16, 2015,
ANDREW GOESEL,	)	January 21, 2015
Respondent-Appellee,	)	Supreme Court Rules which confer
v.	)	jurisdiction upon reviewing court:
	)	304(b)(5) and 304(a).
LAURA A. HOLWELL,)	
Contemnor-Appellant.)	

REPLY BRIEF OF THE CONTEMNOR-APPELLANT

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ORAL ARGUMENT REQUESTED

RECEIVED

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THIRD DISTRICT
APPELLATE COURT

CONTEMNOR-APPELLANT REPLY ARGUMENT

I. THE CIRCUIT COURT FOR THE TWELFTH JUDICIAL CIRCUIT ERRED IN DISGORGING HOLWELL'S FEES BECAUSE THE EVIDENCE PRESENTED SHOWED THAT THE PARTIES WERE ABLE TO PAY THEIR OWN ATTORNEY'S FEES AND THE DISGORGEMENT ORDER WAS IMPROPERLY ENTERED PURSUANT TO A REQUEST FOR SANCTIONS.

In stating the Circuit Court properly disgorged the Contemnor-Appellant's, LAURA A. HOLWELL's ("HOLWELL") fees, the Petitioner-Appellee, CHRISTINE GOESEL ("CHRISTINE"), makes two general claims: (1) the parties were unable to pay their attorney's fees, and thus, disgorgement was proper, and (2) HOLWELL had no "right" to retain the fees. However, neither of CHRISTINE's claims are supported by the law or the evidence presented. Section 501(c-1)(3) of the Illinois Marriage and Dissolution of Marriage Act states that, "[i]f the court finds that both parties lack financial ability or access to assets or income for reasonable attorney's fees and costs, the court (or hearing officer) shall enter an order that allocates available funds for each party's counsel, including retainers or interim payments, or both, previously paid, in a manner that achieves substantial parity between the parties." 750 ILCS 5/501(c-1)(3). The First District has held that an attorney may not be disgorged where the Court has failed to find that both the Petitioner and Respondent lacked the financial ability or access to assets or income to pay reasonable attorney's fees and costs. *Nash v. Alberola*, 2012 IL App (1st) 113724, ¶23.

A. The Circuit Court for the Twelfth Judicial Circuit erred in disgorging HOLWELL's fees because the evidence presented showed that the parties were able to pay their own attorney's fees.

1. The Circuit Court for the Twelfth Judicial Circuit erred in disgorging HOLWELL's fees because CHRISTINE failed to argue ANDREW had an inability to pay his attorney's fees and the Circuit Court found that ANDREW had the ability to pay his attorney's fees during the July 2014 hearing.

CHRISTINE first suggests that, throughout the July 2014 hearing, she argued that the Respondent-Appellee, ANDREW GOESEL ("ANDREW"), was able to pay CHRISTINE's attorney's fees, or, if ANDREW were unable to pay her fees, HOLWELL should be disgorged. *See Petitioner-Appellee's Brief*, page 5. However, CHRISTINE's Brief does not cite to any portion of the record showing she argued ANDREW's ability or inability to pay CHRISTINE's fees. *See Petitioner-Appellee's Brief*, page 5. Rather, CHRISTINE blankly argues, without citing to the record, that "[t]he Court's finding was based upon the circumstances of the parties as of the time of the hearing in July, 2014" and "[a]s reflected by the record, the Court was familiar with the parties and their circumstances" *See Petitioner-Appellee's Brief*, page 6. The reason for this lack of citation to the record is simple – CHRISTINE did not argue ANDREW had either an ability or inability to pay CHRISTINE's fees at any point during her closing argument at the July 2014 hearing. (R-166-190). Rather, CHRISTINE's attorneys only argued that HOLWELL should be disgorged due to improperly alleged "gross misdeeds by counsel of record former counsel of record, Ms. Holwell, all to the detriment of my client." (R-166, lines 18-21).

As set forth in CHRISTINE's own Brief, the Argument section of a Brief must "contain the contentions of the appellant and the reasons therefor, with citation of the authorities and the pages of the record relied on," pursuant to Illinois Supreme Court

Rule 341(h). Ill. S. Ct. Rule 341(h)(7); *See also* Ill. S. Ct. R. 341(i) (“The brief for the appellee and other parties shall conform to the foregoing requirements. . . .”). Failing to provide proper citation to the record is a violation of Supreme Court Rule 341(h) and is a waiver of the unsupported facts or argument. *Engle v. Foley and Lardner, LLP*, 393 Ill. App. 3d 838, 854, 912 N.E.2d 715, 728-29 (1st Dist., 2009). As a result, this Honorable Court must disregard any claims made by CHRISTINE in her Brief that are not supported by the record.

Furthermore, even if CHRISTINE had provided a proper citation to the record, it is clear from the record that ANDREW was able to pay his own attorney’s fees because the Circuit Court found that ANDREW had an ability to pay the Child Representative’s attorney’s fees on June 27, 2014 and July 30, 2014. (C-798, 870). On May 8, 2014, the Child Representative, NANCY DONLON (“DONLON”), filed a Motion to Set Child Representative’s Fees and Court-Appointed Therapist’s Fees. (C-514). Pursuant to this Motion, on June 27, 2014, ANDREW was ordered to pay \$15,000.00 to DONLON within fourteen (14) days of same, or by July 11, 2014. (C-798). On July 14, 2014, DONLON filed a Petition for Adjudication of Indirect Civil Contempt and for Other Relief alleging ANDREW failed to pay the \$15,000.00 per the Court’s June 27, 2014 order. (C-801-04). This Petition was also set to be heard during the July 2014 hearings; first on July 29, 2014, then subsequently on July 30, 2014. (C-837-38, 865; R-004, lines 18-24). On July 30, 2014, the Circuit Court ordered ANDREW to pay \$10,000.00 to DONLON “before the close of business today,” and an additional \$5,000.00 by August 20, 2014. (C-870). By ordering ANDREW to pay DONLON these amounts, the Circuit

Court must have found that he had the ability to pay these amounts, both on June 27, 2014 and July 30, 2014. (C-798, 870).

In *Nash v. Alberola*, the Circuit Court entered an order stating “Respondent ‘shall pay to . . . Christine Svenson [interim attorney fees of] \$5,000 . . . within 14 days’ . . . if Respondent failed to make the \$5,000.00 payment to Ms. Svenson within 14 days, then ‘Mr. Mirabelli shall disgorge [the \$5,000] to . . . Svenson within said time frame.’” 2012 IL App (1st) 113724, ¶7. The First District reversed the Circuit Court’s decision, holding that the Circuit Court’s order was improper in that the interim fee award required a finding that Respondent had the ability to pay the fees, yet the disgorgement required a finding that neither party had the ability to pay the fees. *Id.* at ¶23. Similarly to the order in *Nash*, the Circuit Court of the Twelfth Judicial Circuit’s findings with respect to ANDREW’s ability to pay are equally ambiguous. On the one hand, on June 27, 2014 and July 30, 2014, the Circuit Court found ANDREW was able to pay DONLON’s attorney’s fees. (C-870). However, on September 29, 2014, the Circuit Court of the Twelfth Judicial Circuit found that, as of the July 2014 hearing dates, ANDREW did not have the ability to pay his attorney’s fees, and thus, disgorged HOLWELL. (C-919-23). As a result, the Circuit Court of the Twelfth Judicial Circuit erred in disgorging HOLWELL after finding ANDREW had an ability to pay attorney’s fees on June 27, 2014 and July 30, 2014, and its decision must be reversed.

2. The Circuit Court for the Twelfth Judicial Circuit erred in disgorging HOLWELL’s fees because the evidence presented clearly showed CHRISTINE had financial ability and access to assets and income from which to pay her own attorney’s fees.

With respect to CHRISTINE’s inability to pay, CHRISTINE’s argument relies solely upon the difference between her income and expenses in stating she was “unable”

to pay her own attorney's fees, citing *In re the Marriage of Levinson*, 2013 IL App (1st) 121696, ¶37. See *Brief of Petitioner-Appellee*, page 6. However, it is clear that Section 501(c-1)(3) of the Illinois Marriage and Dissolution of Marriage Act requires the Court to consider the parties' "financial ability or access to assets or income" in determining whether a party is capable of paying her own attorney's fees. 750 ILCS 5/501(c-1)(3) (emphasis added). Thus, CHRISTINE's reliance on *Levinson* and the difference between her income and expenses is misplaced because the Circuit Court was required to also consider CHRISTINE's financial ability and access to assets and income.

In *Levinson*, the Wife's disclosure statement revealed that she was a homemaker throughout the marriage, her total income from all sources the previous year was a scant \$1,545.00, and her monthly living expenses were \$25,361.00. 2013 IL App (1st) 121696, ¶37. The Wife in *Levinson* also had already liquidated a nonmarital IRA in order to pay her own attorney's fees. *Id.* at ¶12. However, in the instant matter, the evidence clearly showed that CHRISTINE had the financial ability and access to assets and income from which she could pay her own attorney's fees. Unlike the Wife in *Levinson*, CHRISTINE was not a homemaker throughout the marriage, but rather, had been gainfully employed and earned \$5,416.67 per month through September 2013. (C-172-73). However, during the underlying proceedings, CHRISTINE unilaterally and arbitrarily quit her job, which prompted ANDREW to file several motions, including a Motion to Compel Petitioner to Seek Appropriate Employment (C-171-77) and a Motion to Support Minor Children (C-426-36).

Furthermore, unlike the Wife in *Levinson*, CHRISTINE had ample access to assets and income from which to pay her own attorney's fees. Pursuant to CHRISTINE's

own Disclosure Statement and Affidavit of Income and Expenses, her gross income from all sources for 2013 was \$110,632.04. (C-863-64; C-1077; A-29; See CHRISTINE's Disclosure Statement in stipulated exhibits filed as supplemental record on October 13, 2015 per October 6, 2015 order). Further, her gross monthly income from her salary and rental income was \$6,000.03 per month. (C-863-64; C-1084; A-34; See CHRISTINE's Disclosure Statement in stipulated exhibits). Additionally, at the time of the hearing, CHRISTINE received \$3,500.00 per month in child support. (C-292, 1084). As a result, her total monthly income at the time of the hearing was \$9,500.03, or \$114,000.46 per year. (C-863-64; C-1084). Finally, although CHRISTINE claims that the difference between her income and expenses showed she was unable to pay her own attorney's fees, at the time of the July 2014 hearing, CHRISTINE's monthly income exceeded her expenses. (R-198, lines 15-16; A-37; See CHRISTINE's Disclosure Statement in stipulated exhibits). Because CHRISTINE's income exceeded her expenses, CHRISTINE could have easily made installment payments to her attorneys for her fees. *See In re the Marriage of McCoy*, 272 Ill. App. 3d 125, 131-32 (4th Dist. 1995) ("A party who does not have the present ability to pay his own attorney fees can nevertheless be ordered to pay his own attorney, although enforcement might have to be accomplished by an installment order."). As a result, the Circuit Court erred in finding CHRISTINE was unable to pay her own attorney's fees and the disgorgement order must be reversed.

In addition to the above, at the time of the July 2014 hearings, CHRISTINE had access to thousands of dollars in assets and retirement accounts. CHRISTINE's Disclosure Statement listed several assets of value from which she could pay her own attorney's fees, including but not limited to: (1) a checking account with a value of

\$4,610.99 as of May 2014; (2) \$200.00 cash on hand; (3) \$90,000.00 of equity in the marital home; (4) a Michigan Residence, with a supposedly unknown value, that her "Husband gifted" to her; (5) an Investment Residence located in Florida, with a supposedly unknown value; (6) a brand new 2014 Honda CRV allegedly purchased for her by Connie Schmall, with a supposedly unknown value; (7) a 2009 Acura MDX, with a supposedly unknown value; and (8) a Chrysler LeBaron, with a supposedly unknown value. (R-199, lines 1-3; C-1085; A-29-31; See CHRISTINE's Disclosure Statement in stipulated exhibits).

CHRISTINE's Disclosure Statement lists that she had access to the following retirement accounts at the time of the July 2014 hearing: (1) Fidelity Simple IRA valued at \$32,819.88 as of April 2014; (2) Palos Hospital 403(b) Retirement Plan valued at \$42,498.86 as of March 2014; (3) Palos Hospital 401(a) Pension Plan valued at \$13,292.21 as of March 2014; (4) St. George Corp. Rollover Plan valued at \$3,838.04 as of March 2014; (5) St. George Corp. 403(b) plan valued at \$27,954.71 as of March 2014; (6) Merrill Lynch Retirement and Savings Plan valued at \$17,356.23; and (7) a T. Rowe Price Roth IRA, with a supposedly unknown value. (R-199, lines 1-3; C-1085; A-31-32; See CHRISTINE's Disclosure Statement in stipulated exhibits). Thus, at the time of the July 2014 hearing, CHRISTINE had access to at least \$94,810.99 in assets and \$137,759.45 in retirement accounts from which she could pay her attorney's fees. It is worth noting that, similarly to the Wife in *Levinson* who accessed her nonmarital IRA to pay attorney's fees, CHRISTINE had also previously withdrawn \$22,000.00 from her T-Rowe Price account. (R-778).

Finally, CHRISTINE attempts to argue that her Motion to Modify the January 18, 2013 Court Order filed on August 15, 2014 and the resulting December 12, 2014 order where same was granted are of no significance because the December 12, 2014 order “makes no finding that either party had the ability to pay attorney’s fees as of July, 2014.” *See Petitioner-Appellee’s Brief*, page 7. However, the Circuit Court’s December 12, 2014 order is significant to these proceedings because, in granting CHRISTINE’s Motion to Modify, the Circuit Court held that “[b]y agreement of the Plaintiff and Defendant, the Plaintiff’s Motion filed August 15, 2014 is granted. The parties may pay their attorney’s fees from funds other than the line of credit. Authorization to do so is retroactive to August 15, 2014.” (C-1281). This order implies that the parties had access to assets from which to pay their own attorney’s fees because, if they did not have access to assets to pay their own attorney’s fees, CHRISTINE’s Motion and the Circuit Court’s resulting order would not have been necessary or warranted. Thus, it is clear the parties had access to assets, which were in existence at the time of the July 2014 hearing, from which their attorney’s fees could have been paid. (A-29-31; See CHRISTINE’s Disclosure Statement in stipulated exhibits). As a result of the foregoing, it is clear that CHRISTINE had ample access to assets from which to pay her own attorney’s fees and it was error for the Court to disgorge HOLWELL’s fees.

B. The Circuit Court erred in disgorging HOLWELL’s fees pursuant to CHRISTINE’s requests for sanctions because HOLWELL was not provided with any of the requisite procedural safeguards.

CHRISTINE’s argument that HOLWELL was not deprived of substantive or procedural due process in having her fees disgorged because these issues have been rejected by *In re the Marriage of Beyer*, 324 Ill. App. 3d 305 (1st Dist. 2001) and

Kaufman, Litwin, and Feinstein v. Edgar, 301 Ill. App. 3d 826 (1st Dist. 1998) is misleading. See *Petitioner-Appellee's Brief*, pages 7-8. CHRISTINE's argument implies that HOLWELL argued that the act of disgorging her alone violated her substantive and procedural due process. However, HOLWELL made no such claim, nor could she pursuant to *Kaufman*. Rather, HOLWELL very clearly claimed that the Circuit Court's actions in disgorging her fees pursuant to CHRISTINE's Petition for Adjudication of Indirect Civil Contempt, as applied to her, violated her due process. See *Contemnor-Appellant's Brief*, pages 28-35. In *Kaufman*, the Plaintiff argued that Section 501(c-1)(3) of the Illinois Marriage and Dissolution of Marriage Act *facially* violates a lawyer's substantive due process because it "deprive[s] lawyers of their right to keep fees they have earned." 301 Ill. App. 3d 826, 836 (1st Dist. 1998). The First District held that the statute was not *facially* unconstitutional. *Id.* However, in so holding, the First District stated "[o]ur conclusion that the interim fee provision is *facially* constitutional does not preclude a finding that, under particular circumstances, the provision has been *unconstitutionally applied*." *Id.* (emphasis added).

In the instant matter, it is clear HOLWELL's fees were disgorged pursuant to CHRISTINE's request for sanctions, as opposed to Section 501(c-1)(3) of the Illinois Marriage and Dissolution of Marriage Act. On July 23, 2014, CHRISTINE filed a Petition for Indirect Civil Contempt and Other Relief purportedly against ANDREW, but requested relief against HOLWELL. (C-849-55). The Petition alleges in pertinent part that the June 17, 2014 Temporary Restraining Order was violated, and requested that HOLWELL be compelled to return funds paid to her to the marital estate. (C-854). Although the Motion requested HOLWELL to return certain earned fees already paid to

her, HOLWELL was not provided with service of the Petition for Indirect Civil Contempt and Other Relief, despite the Court's June 27, 2014 order requiring that she receive notice of any claims for disgorgement. (C-796, 848).

Throughout the July 2014 three day hearing, CHRISTINE's attorneys repeatedly claimed HOLWELL personally violated the Circuit Court's orders in accepting certain sums paid to her and improperly "failed to disclose" the fact she had been paid these sums. (R-166-190; R-211-217; R-073, lines 3-14). *See also Petitioner-Appellee's Brief*, page 5. In fact, in her closing argument, CHRISTINE's attorneys overtly stated it was not necessary for the Circuit Court to consider Section 501(c-1)(3) in disgorging HOLWELL's fees. (R-169 lines 13-24). Rather, her attorneys argued as follows: "One of the issues that has been repeatedly raised by Mr. Levine is the question of disgorgement where he would like to say the court should be limited to the question of first finding do the parties have the funds available to pay? Do we need to make a finding that neither side has it to then order the disgorgement? I'd like to address that kind of like in the beginning because this is more than a case of disgorgement." (R-169 lines 13-24). CHRISTINE's attorneys then went on to disparage HOLWELL and allege she violated various court orders, all while HOLWELL was excluded from the Courtroom pursuant to an oral motion to exclude witnesses. (R-166-190; R-007, lines 16-23; R-008, lines 21-24). Her attorneys then ultimately suggested "the first step that I think this court should take is make the finding that Ms. Holwell is in wrongful possession of the funds that she has received, order them refunded back to Dr. Goesel, who is under the injunctive order. Dr. Goesel then has funds available to him, so we're really not into a disgorgement situation." (R-188, lines 1-7). Thus, it is clear that the request to disgorge HOLWELL's

fees was not made to “level the playing field” pursuant to Section 501(c-1)(3), but rather, to speciously punish HOLWELL for alleged wrongdoing.

Although the Circuit Court’s September 29, 2014 order states it disgorged HOLWELL “[t]o level the playing field,” the record is clear that both parties had the ability to pay their own attorney’s fees. (C-923). First, the Circuit Court found during the July 2014 hearing that ANDREW had the ability to pay attorney’s fees to the Child’s Representative in the amount of \$15,000.00 on June 27, 2014 and July 30, 2014. (C-798, 870). Furthermore, although the Circuit Court details the reasons why it found ANDREW was unable to pay his own attorney’s fees in the September 29, 2014 order, with respect to CHRISTINE’s ability to pay, the Circuit Court merely found “Wife seeks contribution as she has the inability to pay her attorney fees.” (C-923). Furthermore, the Circuit Court allowed CHRISTINE to proceed on a request for sanctions against HOLWELL, despite no Petition for Adjudication of Indirect Civil Contempt being set for hearing and over ANDREW’s Counsel’s objections. (R-073, lines 3-14). Finally, it is telling that the Circuit Court’s order details why ANDREW had an inability to pay his own fees, yet does not detail why CHRISTINE had an inability to pay her own fees, because, as set forth more fully above, CHRISTINE had ample access to income and assets from which to pay her own fees. (R-199, lines 1-3; C-1085; A-29-32; See CHRISTINE’s Disclosure Statement in stipulated exhibits).

Parties charged with indirect civil contempt are entitled to notice and an opportunity to be heard pursuant to the due process clause of the Illinois and United States Constitutions. *In re the Marriage of Betts*, 200 Ill. App. 3d 26, 53 (4th Dist., 1990). Because CHRISTINE sought to punish HOLWELL pursuant to her Petition for

Adjudication of Indirect Civil Contempt and request for sanctions, HOLWELL was entitled to all of the procedural safeguards as set forth in *In re the Marriage of Betts*. As made clear from the record, HOLWELL was deprived of these procedural safeguards. First, HOLWELL was deprived of notice of the Petition for Adjudication of Indirect Civil Contempt, because CHRISTINE failed to serve HOLWELL with same. (C-848). Second, HOLWELL was deprived of the opportunity to be heard because (1) she was excluded from the courtroom pursuant to CHRISTINE's motion to exclude witnesses (R-007, lines 16-23; R-008, lines 21-24), and (2) although HOLWELL attempted to defend herself several times during her testimony, she was instructed to cease defending herself and simply answer the questions asked of her. (R-58, line 24; R-59, lines 1-4; R-82, lines 6-9). As a result, it is clear that HOLWELL's due process was violated pursuant to *Betts* and the Circuit Court's disgorgement order must be reversed.

II. HOLWELL PRESENTED EVIDENCE WITH RESPECT TO THE AMOUNT INCURRED AS A RESULT OF THE DISQUALIFICATION PROCEEDINGS AND CITED TO LEGAL AUTHORITY IN REQUESTING THE FEES BE IMPUTED TO CHRISTINE.

Rather than respond to HOLWELL's argument that attorney's fees should be imputed to CHRISTINE for the disqualification proceedings, CHRISTINE claims that HOLWELL has waived her argument that certain fees should be imputed to CHRISTINE as and for the fees incurred by ANDREW during the disqualification proceedings because HOLWELL allegedly (1) failed to provide evidence to the trial court of the amount of fees incurred by ANDREW throughout the disgorgement process and (2) failed to cite to any legal authority which would allow the court to impute said fees to CHRISTINE. *See Petitioner-Appellee's Brief*, pages 9-10. Despite CHRISTINE's claims

to the contrary, HOLWELL's Brief clearly cites to both the record and to legal authority in making this argument.

With respect to the evidence of the amount incurred by ANDREW during the disqualification proceedings, as set forth in HOLWELL's Brief, all of ANDREW's invoices were introduced into evidence during the July 2014 hearing. (C-1030-1070; R-40, lines 4-11; R-166, lines 4-14; See Respondent's Exhibit 3). In fact, the parties had even stipulated for purposes of this hearing that HOLWELL's attorney's fees, as set forth in her detailed billing statements, were reasonable and necessary. (R-165, lines 5-12). Furthermore, this very argument was made before the Circuit Court on HOLWELL's Motion to Reconsider the disgorgement order. (C-1074-75; C-1096-1101). As a result, in stating CHRISTINE precipitated \$37,094.49 in legal fees as a result of her former attorney's improper actions in opening, viewing, copying, and scanning thirty-one pieces of ANDREW's mail, HOLWELL's Brief cites to several places in the record which show same was argued before the Circuit Court. (C-070; C-476; C-1074-75; C-1110-1149).

Furthermore, HOLWELL clearly cited to several cases which suggest a court may impute fees to a party due to improper actions. In so arguing, HOLWELL cited to *In re the Marriage of Cotton*, 103 Ill.2d 346 (1984), *In re the Marriage of Mantei*, 222 Ill. App. 3d 933 (4th Dist., 1991), and *In re Marriage of Auriemma*, 271 Ill. App. 3d 68 (1st Dist., 1994). Thus, CHRISTINE's assertion that HOLWELL has provided no authority with respect to same is simply unfounded. As a result, this Honorable Court must disregard Section III of CHRISTINE's Brief in rendering its decision.

III. THE CONTEMPT FINDINGS AND SANCTIONS ENTERED AGAINST HOLWELL SHOULD BE VACATED BECAUSE HER INITIAL REQUEST FOR FRIENDLY CONTEMPT WAS REQUESTED IN A GOOD FAITH EFFORT TO SECURE LEGAL INTERPRETATION OF AN ISSUE WITHOUT DIRECT PRECEDENT.

CHRISTINE next erroneously contends that HOLWELL's request for "friendly contempt" to initiate the instant appeal was not made in good faith and thus, the contempt findings and sanctions issued on December 18, 2014, January 16, 2015, and January 21, 2015 should not be vacated. In so stating, CHRISTINE improperly alleges that "HOLWELL's refusal to comply with the court order was merely a method of making an interlocutory order appealable." See *Petitioner-Appellee's Brief*, page 11. However, it is clear that HOLWELL requested to be held in friendly contempt on December 18, 2014 for purposes of an appeal, and that this request was done in good faith. (R-343, lines 20-24; 344, line 1; R-366, lines 1-20). The First District has stated that "[i]t is well settled that exposing one's self to a finding of contempt is an appropriate method of testing the validity of a court order. Further, where a refusal to comply with the court's order constitutes a good-faith effort to secure an interpretation of an issue without direct precedent, it is appropriate to vacate a contempt citation on appeal." *In re Marriage of Beyer and Parkis*, 324 Ill. App. 3d 305, 321-22 (1st Dist., 2001).

On December 18, 2014, the Circuit Court denied HOLWELL's Motion to Reconsider the disgorgement order entered on September 29, 2014. (C-1350). HOLWELL thereafter requested to be held in friendly contempt in a good faith effort to secure an interpretation of a novel issue. (R-343, lines 20-24; 344, line 1; R-366, lines 1-20). At that time, the Circuit Court held HOLWELL in friendly contempt pursuant to that request. (C-1350). Thereafter, the Circuit Court vacated its December 18, 2014 finding of

friendly contempt, simply held HOLWELL in indirect civil contempt, charged HOLWELL \$10 per day each day she did not pay the disgorgement, and sentenced HOLWELL to the Will County Adult Detention Facility for an indeterminate amount of time not to exceed one hundred seventy-nine (179) days, all without notice to HOLWELL, without a hearing, and over HOLWELL's objection. (C-1547; R-461, lines 15-18).

Although CHRISTINE indicates that the Circuit Court's findings of contempt should not be vacated because "the issues of disgorgement and enforcement of payment of interim fees are not novel or without direct precedent," CHRISTINE ignores the crux of HOLWELL's argument. HOLWELL's entire argument centers around the fact that the Circuit Court disgorged HOLWELL pursuant to CHRISTINE's allegations that HOLWELL had violated certain court orders and pursuant to CHRISTINE's request for sanctions, as opposed to Section 501(c-1)(3) of the Illinois Marriage and Dissolution of Marriage Act. *See Contemnor-Appellant's Brief*. Whether a party may be disgorged pursuant to a request for sanctions without notice or a hearing is an issue of first impression in Illinois. As a result, HOLWELL's findings of contempt should be vacated as her initial request to be held in friendly contempt was made in a good faith effort to secure interpretation of a novel issue.

CHRISTINE's argument also ignores that the Circuit Court's findings of contempt against HOLWELL on January 16, 2015 and January 21, 2015 were wholly improper. The Fourth District has stated that, "[i]ndirect civil contempt sanctions may not be imposed upon an individual unless he or she has been accorded due process of law with respect to the contempt charges." *In re the Marriage of Betts*, 200 Ill. App. 3d 26, 52

(4th Dist., 1990) (internal citations omitted). Parties charged with indirect civil contempt are entitled to notice and an opportunity to be heard pursuant to the due process clause of the Illinois and United States Constitutions. *Id.* at 53. The notice must “contain an adequate description of the facts on which the contempt charge is based and inform the alleged contemnor of the time and place of an *evidentiary hearing* on the charge within a reasonable time in advance of the hearing.” *Id.* (emphasis added). In the instant matter, the Circuit Court held HOLWELL in indirect civil contempt of court, sentenced her to jail time, and fined her, all without providing notice, an opportunity to be heard, or an evidentiary hearing, as set forth more fully in HOLWELL’s Brief. (C-1547; R-461, lines 15-18; R-463, lines 17-22). In vacating the friendly contempt and holding HOLWELL in indirect civil contempt, the Circuit Court also failed to ask HOLWELL whether she was capable of paying the \$40,952.61 during the January 16, 2015 or January 21, 2015 court date. On the contrary, HOLWELL made it very clear that she was *unable* to pay the \$40,952.61. (R-471, lines 22-24; R-472, lines 1-24; R-473, lines 1-9). This finding of contempt was reaffirmed on January 21, 2015. (C-1576). Despite HOLWELL’s inability to pay the disgorged amount, as a sign of good faith, HOLWELL posted an appellate bond for \$44,000.00. (C-1658; R-472, line 24; R-473, lines 1-5).

CHRISTINE’s assertion that HOLWELL cannot claim a violation of due process because “the Court indicated to her several times that it would vacate the initial finding of contempt of December 18, 2014 and proceed to a hearing on the contempt issue” and that HOLWELL somehow “waived” her right to a hearing is misguided. Pursuant to *Betts*, a party charged with contempt is entitled to *advance notice* of an evidentiary hearing. *Betts*, 200 Ill. App. 3d 26, 53 (4th Dist., 1990); *see also Cole v. Cole*, 85 Ill. App. 2d 105, 113

(1st Dist., 1967) (indicating a contemnor is entitled to cross-examine witnesses and present evidence in an attempt to purge herself of the contempt). Thus, even if HOLWELL had acquiesced to the Circuit Court's suggestion, she still would have been deprived of her right to advanced notice, to prepare and present evidence, and to call witnesses. Therefore, the Circuit Court erred when it held HOLWELL in indirect civil contempt on January 16, 2015 and thereafter on January 21, 2015, because it deprived HOLWELL of due process by ordering same. As a result of the foregoing, the findings of contempt and sanctions entered against HOLWELL on December 18, 2014, January 16, 2015, and January 21, 2015 should be vacated.

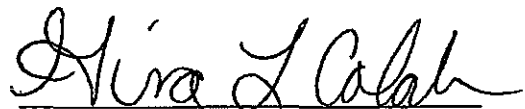
IV. THE CIRCUIT COURT ERRED IN FINDING THE SEPTEMBER 29, 2014 DISGORGEMENT ORDER CONSTITUTED A JUDGMENT BECAUSE DISGORGEMENT ORDERS ARE TEMPORARY, NOT FINAL, ORDERS.

CHRISTINE argues that the September 29, 2014 disgorgement order was enforceable as a judgment against HOLWELL pursuant to Section 508(a) of the Illinois Marriage and Dissolution of Marriage Act. *See Petitioner-Appellee's Brief*, page 12. However, CHRISTINE's reliance on Section 508(a) of the Illinois Marriage and Dissolution of Marriage Act to suggest a court may enforce temporary orders via a judgment is misplaced. Section 508(a) merely outlines the circumstances under which attorney's fees may be awarded, and refers to the specific sections of the statute under which those fees may be awarded. 750 ILCS 5/508(a). In particular, with respect to interim fees, Section 508(a) clearly states "interim attorney's fees and costs may be awarded from the opposing party, in a prejudgment dissolution proceeding in accordance with subsection (c-1) of Section 501" 750 ILCS 5/508(a). Although Section 508(a) states that, with respect to attorney's fees, "[j]udgment may be entered and enforcement

had accordingly,” any enforcement must be proper pursuant to the applicable section of the Illinois Marriage and Dissolution Act. Thus, if an award is entered “in accordance with subsection (c-1) of Section 501,” the enforcement of that order must be “in accordance with subsection (c-1) of Section 501.” 750 ILCS 5/508(a).

With respect to interim attorney’s fees awarded pursuant to Section 501(c-1), the statute specifically states, “[a]ny assessment of an interim award (including one pursuant to an agreed order) shall be without prejudice to any final allocation and without prejudice as to any claim or right of either party or any counsel of record at the time of the award.” 750 ILCS 5/501(c-1)(2). With respect to disgorgement orders in particular, “[b]y definition, a disgorgement order is never a final adjudication of the attorney’s right to fees-it merely controls the timing of payment, with no effect on whether, or how much, the attorney is entitled to collect at the conclusion of his services.” *In re the Marriage of Johnson*, 351 Ill. App. 3d 88, 97 (2004). Thus, awards entered pursuant to Section 501(c-1)(3) are temporary and never final. As a result, disgorgement orders are not final judgments, and it was error for the Circuit Court to hold same.

Respectfully submitted,



Dated 10/30/15

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CERTIFICATE OF COMPLIANCE

I certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the pages containing the Rule 341(d) cover, the Rule 341(h)(1) statement of points and authorities, the Rule 341(c) certificate of compliance, the certificate of service, and those matters to be appended to the brief under Rule 342(a), is 18 pages.



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No. 3-15-0101

FILED

AUG 31 2016

THIRD DISTRICT
APPELLATE COURT CLERK

IN THE APPELLATE COURT OF ILLINOIS

THIRD JUDICIAL DISTRICT

IN RE THE MARRIAGE OF:	)	Appeal from Will County Circuit Court
	)	Circuit Number: 2013 D 107
CHRISTINE GOESEL,	)	Trial Judge: Hon. Judge Archambeault
Petitioner-Appellee,	)	Date of Notice of Appeal: Feb. 13, 2015
	)	Date of Judgment: September 29, 2014
v.	)	Date of Post-judgment Motion Orders:
	)	December 18, 2014, January 16, 2015,
ANDREW GOESEL,	)	January 21, 2015
Respondent-Appellee,	)	Supreme Court Rules which confer
v.	)	jurisdiction upon reviewing court:
	)	304(b)(5) and 304(a).
LAURA A. HOLWELL,)	
Contemnor-Appellant.)	

SUPPLEMENTAL BRIEF OF THE CONTEMNOR-APPELLANT

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THIRD DISTRICT
APPELLATE COURT

POINTS AND AUTHORITIES

I. THE CIRCUIT COURT ERRED IN DISGORGING HOLWELL'S FEES BECAUSE, PURSUANT TO NEW AUTHORITY, SUMS PAID TO AN ATTORNEY FOR SERVICES ALREADY RENDERED ARE NOT "AVAILABLE" TO BE ALLOCATED FOR DISGORGEMENT AND DISGORGING FEES NOT AVAILABLE TO HOLWELL INEQUITABLY PLACED HER IN SERIOUS FINANCIAL HARDSHIP, UNDER THREAT OF CONTEMPT.....	1
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CONTEMNOR-APPELLANT SUPPLEMENTAL ARGUMENT
CITING ADDITIONAL AUTHORITY

- I. THE CIRCUIT COURT ERRED IN DISGORGING HOLWELL'S FEES BECAUSE, PURSUANT TO NEW AUTHORITY, SUMS PAID TO AN ATTORNEY FOR SERVICES ALREADY RENDERED ARE NOT "AVAILABLE" TO BE ALLOCATED FOR DISGORGEMENT PURSUANT TO SECTION 501(C-1)(3) AND DISGORGING FEES NOT AVAILABLE TO HOLWELL INEQUITABLY PLACED HER IN SERIOUS FINANCIAL HARDSHIP, UNDER THREAT OF CONTEMPT.**

STANDARD OF REVIEW

An award of interim attorney's fees is generally reviewed for an abuse of discretion. *Nash v Alberola*, 2012 IL App (1st) 113724, ¶15. A reviewing court must reverse a trial court's decision under the abuse of discretion standard if "no reasonable person would take the view adopted by the circuit court." *In re the Marriage of Davis*, 215 Ill. App. 3d 763, 774 (1st Dist., 1991). Although the actual award of attorney's fees is reviewed for an abuse of discretion, if an appeal from an award of attorney's fees "hinges on issues of statutory construction and constitutionality, our standard of review is *de novo*." *Nash v Alberola*, 2012 IL App (1st) 113724, ¶15 (quoting *In re Marriage of Beyer*, 324 Ill. App. 3d 305, 309 (1st Dist., 2001) (internal quotations omitted)).

- A. The Circuit Court erred in disgorging HOLWELL's fees because, pursuant to new authority, the fees paid to HOLWELL were for services already rendered, and thus, were not "available" for disgorgement pursuant to Section 501(c-1) of the Illinois Marriage and Dissolution of Marriage Act.**

The Illinois Marriage and Dissolution of Marriage Act provides for the disgorgement of attorney's fees in situations where neither party has the ability to pay their attorney's fees under Section 501(c-1)(3) of the Act. Section 501(c-1)(3) of the Act specifically states that, "[i]f the court finds that both parties lack financial ability or access to assets or income for reasonable attorney's fees and costs, the court (or hearing

officer) shall enter an order that allocates *available funds* for each party's counsel, including retainers or interim payments, or both, previously paid, in a manner that achieves substantial parity between the parties." 750 ILCS 5/501(c-1)(3) (emphasis added). In a case recently published on July 27, 2016, the First District clarified whether funds are "available" for disgorgement by holding that, "funds earned by and paid to a party's lawyer in the normal course of representation for *past services rendered* are not 'available funds' within the meaning of section 501(c-1)(3). . . ." *In re the Marriage of Altman and Block*, 2016 IL App (1st) 143076, ¶36 (emphasis added).

In *Altman*, the Wife delayed filing a Petition for Interim Attorney's Fees until nine (9) months after initially filing an Order of Protection against her Husband, after extensive attorney's fees had already been incurred by both parties for various motions and hearings. *Id.* at ¶8. In her initial Petition for Interim Attorney's Fees, Wife requested \$36,864.30 in fees already incurred by her and \$25,000.00 in prospective attorney's fees expected to be incurred. *Id.* Three (3) months thereafter, Wife filed an Amended Petition for Interim Attorney's Fees, this time requesting \$54,098.68 in fees already incurred. *Id.* In her Amended Petition, Wife alleged she had incurred \$63,598.68 in fees, and only paid \$9,500.00. *Id.* She requested that Husband be ordered to pay the outstanding balance, or, in the alternative, that Husband's attorney be disgorged sums that had been previously paid to him. *Id.* At that time, Husband represented that he had paid his current attorney, Gerage, \$41,500.00 for services already rendered, and that he owed Gerage \$17,112.50. *Id.* at ¶9. Husband further represented that he paid his former attorney, Tzinberg, \$25,000.00 and that he owed Tzinberg \$18,542.00. *Id.*

After hearing, on July 16, 2014, the trial court found that both parties lacked sufficient access to assets or income to pay their reasonable attorney's fees and costs. *Id.* at ¶10. The trial court further found that Husband had paid a total of \$66,500.00 to his attorneys, whereas Wife had only paid \$9,500.00 to her attorneys. *Id.* At the time of the hearing, Wife's attorney was holding \$35,000.00 of Husband's retirement assets in his trust account. *Id.* As a result, the trial court allocated \$50,500.00 to each party's attorney as follows: (1) the trial court allocated \$33,284.00 of the \$35,000.00 held in trust to Wife's attorney; and (2) the trial court disgorged \$16,000.00 in fees paid to Gerage for services already rendered by him, and ordered the \$16,000.00 be paid to Wife's attorney within seven (7) days. *Id.* When Gerage failed to pay the \$16,000.00 within seven (7) days, Wife's attorney filed a Petition for Rule to Show Cause. *Id.* at ¶11. Gerage was ultimately held in contempt of court, and appealed the contempt finding. *Id.*

The First District Appellate Court reversed the disgorgement order and the finding of contempt against Gerage, holding that the funds earned by and paid to Gerage for services already rendered were not "available" for disgorgement under Section 501(c-1)(3). *Id.* at ¶36. In so holding, the First District reasoned that the legislature's use of the phrase "available funds" in Section 501(c-1)(3) indicates that only funds which are available to the attorney being disgorged, "whether in the form of a retainer or interim payments," can be subject to disgorgement. *Id.* at ¶33. The First District further reasoned "it seems to us a tortured reading of the statute to say that even though the firm has earned the fees, paid itself (as it was entitled to do), and used that income to pay salaries, overhead and litigation expenses for items such as experts and court reporters, it can nonetheless be required to refund those fees, not to its client, but to a third party." *Id.*

Similarly to the attorney's fees in *Altman*, the attorney's fees disgorged by the Circuit Court of the Twelfth Judicial Circuit in the instant matter had already been earned by and paid to the Contemnor, LAURA A. HOLWELL ("HOLWELL"), for services previously rendered. (See *Brief of the Contemnor-Appellant*, Statement of Facts, pages 6-15). HOLWELL was retained by the Respondent, ANDREW GOESEL ("ANDREW"), on or about October 8, 2013. (C-1103-06). On June 12, 2014, the Petitioner, CHRISTINE GOESEL ("CHRISTINE"), filed her Petition for Interim Attorney's Fees, nearly one (1) year, five (5) months after initiating her case. (C-003; 709-18). CHRISTINE later amended her Petition for Interim Attorney's Fees on June 20, 2014 in order to request that any funds already paid by ANDREW to HOLWELL be disgorged. (C-770; 766-75). That same day, HOLWELL filed a Motion to Withdraw as attorney for ANDREW. (C-762). It must be noted that HOLWELL filed her Motion to Withdraw prior to CHRISTINE filing her Amended Petition for Interim Attorney's Fees, which requested relief against HOLWELL. (C-762; 766). HOLWELL's Motion to Withdraw was granted on June 27, 2014. (C-796).

A hearing was held on CHRISTINE's Amended Petition for Interim Fees, Costs, and Expenses (as well as other motions as set forth more fully in HOLWELL's Brief of the Contemnor-Appellant), on July 29, 2014, July 30, 2014, and July 31, 2014. (C-841; 865; 871; See *Brief of the Contemnor-Appellant*, pages 8-9). With respect to CHRISTINE's Amended Petition for Interim Fees, Costs, and Expenses, the evidence showed that, at the time of the hearing, HOLWELL had been paid \$51,382.28 in fees that she had earned throughout the proceedings and that approximately \$13,000.00 was currently in dispute as to whether this amount would be paid to HOLWELL or

ANDREW's former attorneys, ANDERSON & BOBACK. (C-1077; R-017, lines 7-8; R-052, line 71; R-062, lines 22-24; R-099-101). The evidence further showed that the \$51,382.28 was paid to HOLWELL as follows: (a) \$5,000.00 retainer received on October 9, 2013 and applied to ANDREW's invoice on October 31, 2013; (b) \$10,000.00 received and applied to ANDREW's invoice on January 31, 2014; (c) \$5,000.00 received and applied to ANDREW's invoice on March 31, 2014; (d) \$10,000.00 received and applied to ANDREW's invoice on April 28, 2014; (e) \$10,000.00 received and applied to ANDREW's invoice on April 29, 2014; (f) \$1,382.28 received and applied to ANDREW's invoice on April 30, 2014; and (g) \$10,000.00 received and applied to ANDREW's invoice on June 13, 2014. (C-1030-31; 1064). Therefore, similarly to the Husband's attorney in *Altman*, HOLWELL was paid and had earned the \$51,382.28 over the course of nine (9) months, during her representation of ANDREW, prior to the funds being disgorged on September 29, 2014. (C-924).

On September 29, 2014, after HOLWELL had already withdrawn from the case, the Circuit Court of the Twelfth Judicial Circuit disgorged HOLWELL's fees in the amount of \$40,952.61 and ordered that these funds be directly turned over to CHRISTINE's attorneys within fourteen (14) days. (C-924; 796). However, pursuant to *Altman*, "funds earned by and paid to a party's lawyer in the normal course of representation for past services rendered are not 'available funds' within the meaning of section 501(c-1)(3). . . ." *In re the Marriage of Altman and Block*, 2016 IL App (1st) 143076, ¶36. Because HOLWELL had been paid these fees over the course of her representation of ANDREW for services already rendered, the funds paid to and earned by HOLWELL were no longer "available" for disgorgement under Section 501(c-1)(3) of

the Illinois Marriage and Dissolution of Marriage Act. (C-1030-31; 1064). As a result, the Twelfth Judicial Circuit Court erred in disgorging HOLWELL's funds earned by and paid to her over the course of her representation of ANDREW, and the September 29, 2014 Order must be reversed.

B. The Circuit Court erred in disgorging HOLWELL's fees because, pursuant to new authority, it is inequitable to subsequently disgorge fees gradually earned by and paid to an attorney, as it places the attorney in serious financial hardship, but threatens contempt if the attorney is unable to pay the disgorged amount.

In addition to the reasoning set forth above, the First District in *Altman* was also persuaded by the inequities that result from disgorging fees already earned by and paid to an attorney for services already rendered, especially where the party requesting attorney's fees delays filing her fee petition. In considering the fact that Wife waited to file her Petition for Fees after nine (9) months had passed and extensive fees had already been incurred by both parties, the First District noted, "[i]t is not speculation to predict that some lawyers, particularly solo practitioners and those in small law firms, may be unable to comply with orders to disgorge funds that they have earned over several months and that have been transferred into (and out of) their operating accounts, at least not without serious financial hardship." *In re the Marriage of Altman and Block*, 2016 IL App (1st) 143076, ¶34. The First District further noted that, the longer a party waits to request fees, the higher the financial burden can be on the attorney being disgorged. *Id.* ("Where . . . the petitioning law firm delays filing an interim fee petition, the financial risk disgorgement poses for the respondent's attorney increases correspondingly."). However, despite the serious financial burden disgorging fees already earned by and paid to an attorney for past services can pose, if an attorney is unable to pay the disgorged

amounts because of this financial burden, that attorney risks being held in contempt. *Id.* at ¶36. The First District simply found this to be inequitable, stating, “[w]e simply do not believe the legislature intended through section 501(c-1)(3) that the financial burden of leveling the playing field should be borne, in substantial part, by lawyers who must refund, under pain of contempt, fees they have earned.” *Id.*

In the instant matter, similarly to the Wife in *Altman*, CHRISTINE delayed filing her Petition for Interim Attorney’s Fees until June 12, 2014, nearly one (1) year five (5) months after filing her initial Petition for Dissolution of Marriage on January 18, 2013. (C-003; 709-18). During that time, HOLWELL earned and was paid \$51,382.28. (C-1030-31; 1077; R-017, lines 7-8; R-052, line 7; R-062, lines 22-24; R-098-101). Of the \$51,382.28 in attorney’s fees paid to and earned by HOLWELL for services already rendered, \$40,952.61 (nearly 80%) was disgorged and ordered payable to CHRISTINE’s attorneys on September 29, 2014. (C-919-24). Similarly to the fees wrongfully disgorged in *Altman*, the \$40,952.61 in fees disgorged from HOLWELL had already been earned by and gradually paid to HOLWELL over the course of nine (9) months, as set forth more fully above. (C-1030-31; 1064). In fact, the Twelfth Judicial Circuit Court’s September 29, 2014 order for disgorgement was not even entered until three (3) months after HOLWELL had already withdrawn as attorney for ANDREW on June 27, 2014. (C-796). As a result, it is not unreasonable for this Honorable Court to take judicial notice of the fact that HOLWELL likely used these funds to pay “salaries, overhead and litigation expenses,” and that disgorging the funds already earned by and paid to her for services already rendered would result in “serious financial hardship.” *See Altman*, 2016 IL App (1st) 143076, ¶33-34.

However, this Honorable Court need not speculate whether disgorging HOLWELL's fees already earned by and paid to her would cause her financial hardship, as she informed the Twelfth Judicial Circuit Court that disgorging her fees caused her financial hardship on January 16, 2015. (R-472, line 24; 473, lines 1-3). As set forth more fully in her Brief of the Contemnor-Appellant, after the Circuit Court of the Twelfth Judicial Circuit had disgorged HOLWELL's attorney's fees already earned by and paid to her, HOLWELL made it very clear that she was unable to pay the \$40,952.61 per the Court's order. (R-472, line 24, 473, lines 1-3; *See Brief of the Contemnor-Appellant*, pages 42-44). Similarly to the Husband's attorney in *Altman*, who was unable to pay the disgorged amount and subsequently held in contempt as result, on January 16, 2015, HOLWELL was likewise held in indirect civil contempt for her inability to pay the funds set forth in the September 29, 2014 disgorgement order. (C-1547-48).

At the January 16, 2015 court date, the Circuit Court stated HOLWELL was held in indirect civil contempt because "[y]ou have refused to comply with my order" (R-471, lines 23-24). Upon hearing this, HOLWELL clarified, "I may be able to post a bond, I may not, I don't know, so rather than ask if -- I'm retracting what I said that I'm not going to pay it because I'm not able to pay it, but if I'm able to get a bond, the Court would issue a stay" (R-472, lines 8-13). The Court responded by asking HOLWELL, "[s]o, okay, wait. Did you say you are taking back your statement that you're not going to abide by the order?" (R-472, lines 14-16). HOLWELL responded by stating "I am not going to willfully disobey your order, but I don't have \$40,000.00 to give them. I'm unable to give him \$40,000.00" (R-472, line 24; 473, lines 1-3). HOLWELL further told the Court "I'm telling the Court I'm not refusing to pay because

I have \$40,000.00 and, you know, I'm hiding it . . . I don't have it to pay so I have to get a bond." (R-474, lines 6-8, 10-11; *See Brief of the Contemnor-Appellant*, pages 42-43). As a result, it is clear that disgorging fees gradually earned by and already paid to HOLWELL over the course of nine (9) months of representation placed her in financial peril, and thus, the Twelfth Judicial Circuit's September 29, 2014 disgorgement order should be reversed pursuant to the principles set forth in *In re the Marriage of Altman and Block*, 2016 IL App (1st) 143076.

II. THE CIRCUIT COURT ERRED IN DISGORGING HOLWELL'S FEES AS CHRISTINE HAD VOLUNTARILY WITHDRAWN FUNDS FROM HER RETIREMENT ACCOUNT, AND THUS, COULD BE ORDERED TO WITHDRAW FURTHER FUNDS TO PAY HER OWN ATTORNEY'S FEES.

STANDARD OF REVIEW

An award of interim attorney's fees is generally reviewed for an abuse of discretion. *Nash v Alberola*, 2012 IL App (1st) 113724, ¶15. A reviewing Court must reverse a trial court's decision under the abuse of discretion standard if "no reasonable person would take the view adopted by the circuit court." *In re the Marriage of Davis*, 215 Ill. App. 3d 763, 774 (1st Dist., 1991).

The Circuit Court erred in disgorging HOLWELL's fees where CHRISTINE had unilaterally withdrawn funds from her retirement because, pursuant to new authority, CHRISTINE's retirement was an available asset from which the Court could order attorney's fees to be paid.

Generally, a party is obligated to pay any attorney's fees and costs incurred by that party. *In re the Marriage of Mantei*, 222 Ill. App. 3d 933, 941 (4th Dist., 1991). However, Section 501(c-1) allows a party to request interim attorney's fees from the opposing party if "the party from whom attorney's fees and costs are sought has the financial ability to pay reasonable amounts and that the party seeking attorney's fees and

costs lacks sufficient access to assets or income to pay reasonable amounts.” 750 ILCS 5/501(c-1)(3). If neither party has the sufficient financial ability or access to assets or income for reasonable attorney’s fees, the court may disgorge any available funds from either party’s counsel. 750 ILCS 5/501(c-1)(3). The purpose of Section 501(c-1) of the Illinois Marriage and Dissolution of Marriage Act is to “level the playing field” to allow both spouses to participate in litigation. *In re Marriage of DeLarco*, 728 N.E.2d 1278, 1285 (Ill. App. 2d Dist., 2000) (citing *Kaufman, Litwin & Feinstein v. Edgar*, 301 Ill. App. 3d 826, 836 (1998)).

In determining whether a party has “access to assets” pursuant to Section 501(c-1) of the Illinois Marriage and Dissolution of Marriage Act, a court generally cannot order a party to liquidate funds from a non-marital retirement account to fund their litigation. *See In re the Marriage of Altman and Block*, 2016 IL App (1st) 143076, ¶22 (“[W]e have previously determined that one spouse cannot be ordered to liquidate and distribute the proceeds of an individual retirement account to satisfy an interim attorney fee award.” (citing *In re Marriage of Radzik*, 2011 IL App (2d) 100374, ¶62)). However, where a party voluntarily chooses to use a retirement asset, a Court may exercise control over the remainder of the party’s retirement and order sums be made payable from same. *Id.* at ¶26. The First District discusses this distinction in *Altman*. In the *Altman* matter, the Husband unilaterally liquidated a marital retirement account and used the funds to both fund his portion of the litigation and pay other expenses. *Id.* at ¶5. Based upon this Act, the trial court ordered Husband to further liquidate the account, that the liquidated funds be held in escrow, and ultimately, that Wife’s attorney receive a portion of those escrowed funds as and for interim attorney’s fees. *Id.* at ¶5, 10. In addition, Husband’s

attorney was disgorged of funds, which were ordered to be paid to Wife's attorney. *Id.* at ¶10.

On appeal, Husband's attorney argued that Wife's retirement should have been considered an asset that was available to her for payment of her own attorney's fees, precluding any interim award or disgorgement. *Id.* at ¶22. In support of this position, Husband's attorney noted that the trial court had the authority to order Husband to liquidate his retirement account and order a portion of those funds payable to Wife's attorney. *Id.* at ¶26. However, the First District differentiated between the two concepts, finding that Wife could not be ordered to liquidate her retirement account because: (1) it was nonmarital and (2) there was no indication that she had previously withdrawn funds from this asset to fund her litigation or that she intended to do so in the future. *Id.* at ¶25. On the contrary, the First District found the Court could exercise control over Husband's marital retirement account and order sums payable to the Wife's attorney from same because Husband had previously "elected to access this asset" to pay his own attorney's fees, as well as other expenses. *Id.* at ¶26 (citing *In re Marriage of Radzik*, 2011 IL App (2d) 100374, ¶64). Thus, it is clear that a court may order fees to be paid from a marital retirement asset if the party in control of said asset voluntarily elects to access the asset.

Similarly to the Husband in *Altman*, CHRISTINE also voluntarily and unilaterally liquidated one of her retirement accounts. On June 17, 2014, during her deposition, CHRISTINE revealed she had withdrawn \$22,000.00 from her T-Rowe Price Account. (C-778). This prompted ANDREW to file an Emergency Petition for Temporary Restraining Order on June 24, 2014. (C-778-84). As a result, for the reasons set forth in *Altman*, the Circuit Court of the Twelfth Judicial Circuit could order sums payable to

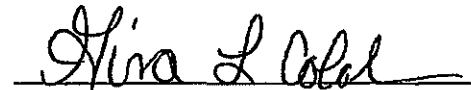
CHRISTINE's attorneys from her own retirement accounts, and could consider these accounts to be "available" for interim awards. At the time of the July 2014 hearing, CHRISTINE had access to the following retirement accounts: (1) Fidelity Simple IRA valued at \$32,819.88 as of April 2014; (2) Palos Hospital 403(b) Retirement Plan valued at \$42,498.86 as of March 2014; (3) Palos Hospital 401(a) Pension Plan valued at \$13,292.21 as of March 2014; (4) St. George Corp. Rollover Plan valued at \$3,838.04 as of March 2014; (5) St. George Corp. 403(b) plan valued at \$27,954.71 as of March 2014; (6) Merrill Lynch Retirement and Savings Plan valued at \$17,356.23; and (7) a T. Rowe Price Roth IRA, with a supposedly unknown value. (R-199, lines 1-3; C-1085; A-31-32; See CHRISTINE's Disclosure Statement in stipulated exhibits). Thus, at the time of the July 2014 hearing, CHRISTINE had access to at least \$137,759.45 in retirement accounts from which she could pay her attorney's fees. Because CHRISTINE had access to these assets and had previously withdrawn from her retirement, it was error for the Twelfth Judicial Circuit to disgorge HOLWELL's fees, and the September 24, 2014 Order must be reversed.

CONCLUSION

For the foregoing reasons, the Contemnor-Appellant, Laura A. Holwell, requests that this Honorable Court reverse the decisions set forth in the September 29, 2014, December 18, 2015, January 16, 2015, and January 21, 2015 orders of the Circuit Court of the Twelfth Judicial Circuit of Will County.

Respectfully submitted,

Dated August 31, 2016



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CERTIFICATE OF COMPLIANCE

I certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the pages or words contained in the Rule 341(d) cover, the Rule 341(h)(1) statement of points and authorities, the Rule 341(c) certificate of compliance, the certificate of service, and those matters to be appended to the brief under Rule 342(a), is 13 pages or words.



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No. 3-15-0101

IN THE APPELLATE COURT OF ILLINOIS
THIRD JUDICIAL DISTRICT

IN RE THE MARRIAGE OF:)	Appeal from Will County Circuit Court
	)	Circuit Number: 2013 D 107
CHRISTINE GOESEL,	)	Trial Judge: Hon. Judge Archambeault
Petitioner-Appellee,	)	Date of Notice of Appeal: Feb. 13, 2015
	)	Date of Judgment: September 29, 2014
v.	)	Date of Post-judgment Motion Orders:
	)	December 18, 2014, January 16, 2015,
ANDREW GOESEL,	)	January 21, 2015
Respondent-Appellee,	)	Supreme Court Rules which confer
v.	)	jurisdiction upon reviewing court:
	)	304(b)(5) and 304(a).
LAURA A. HOLWELL,)	
Contemnor-Appellant.)	

SUPPLEMENTAL REPLY BRIEF OF THE CONTEMNOR-APPELLANT

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CONTEMNOR-APPELLANT SUPPLEMENTAL REPLY ARGUMENT

I. THE CIRCUIT COURT FOR THE TWELFTH JUDICIAL CIRCUIT ERRED IN DISGORGING HOLWELL'S FEES BECAUSE THE AMOUNTS PAID TO HOLWELL WERE NEITHER AVAILABLE NOR SUBJECT TO DISGORGEMENT PURSUANT TO *ALTMAN*.

In her Response to the Supplemental Brief, the Petitioner-Appellee, CHRISTINE GOESEL ("CHRISTINE"), attempts to distance the instant matter from *In re the Marriage of Altman and Block*, 2016 IL App (1st) 143076, as much as possible by (1) claiming the First District erred in its reasoning and application of the law set forth in *Altman* and thus, this case should not be followed by this Honorable Court; (2) in the alternative, claiming the instant matter is distinguishable from *Altman*, and (3) asserting that this Honorable Court should apply the reasoning set forth in *In re the Marriage of Squire*, 2015 IL App (2d) 150271, instead. However, it is clear CHRISTINE's attempts only stem from the fact that the *Altman* matter clearly indicates that the funds paid to and received by the Contemnor-Appellant, LAURA A. HOLWELL ("HOLWELL") for services previously rendered are not "available" pursuant to Section 501(c-1) of the Illinois Marriage and Dissolution of Marriage Act and therefore, cannot be disgorged.

A. This Honorable Court should follow the reasoning set forth in the *Altman* matter because the *Altman* matter comports with Section 501(c-1) of the Illinois Marriage and Dissolution of Marriage Act and achieves a just result.

1. Applying the law set forth in *Altman* achieves a just result in the instant matter as ANDREW was the disadvantaged spouse due to CHRISTINE's wrongdoing and CHRISTINE was capable of paying her own attorney's fees.

CHRISTINE first attempts to argue that the *Altman* matter should not be considered by this Honorable Court because the First District's reasoning is somehow contrary to the 1997 Amendments to the Illinois Marriage and Dissolution of Marriage Act, which look to protect the "disadvantaged spouse" in dissolution matters. In so

arguing, CHRISTINE broadly claims that “[i]f funds earned by an attorney and paid to that attorney do not fall under the Section 501(c-1) statutory definition of ‘available,’” as reasoned in *Altman*, then “those funds are not available under any circumstances.” See *Response to Supplemental Brief of the Contemnor-Appellant*, page 4. Thus, CHRISTINE appears to interpret the First District’s reasoning in *Altman* to state that a court can *never* disgorge funds previously paid to an attorney under any circumstances, which frustrates the purpose of “leveling the playing field.” However, CHRISTINE then contradicts herself by later claiming in her Response that the First District “hedges” its definition of “available” by stating in a footnote “were the question here purely a matter of equity, we would be tempted to uphold the disgorgement order given Gerage’s (as well as Tzinberg’s) conduct in aiding Block’s ‘scorched earth’ approach to litigating this case.” *Marriage of Altman and Block*, 2016 IL App (1st) 143076, note 4. See *Response to Supplemental Brief of the Contemnor-Appellant* page 5.

CHRISTINE simply misinterprets the law set forth by the First District in *Altman*. First, the First District does not state that *all funds* previously paid to an attorney are “unavailable,” rather, it simply states that “funds earned by and paid to a party’s lawyer *in the normal course of representation for past services rendered* are not ‘available funds’ within the meaning of section 501(c-1)(3). . . .” *In re the Marriage of Altman and Block*, 2016 IL App (1st) 143076, ¶36 (emphasis added). Thus, the First District only holds that funds paid to and earned by an attorney for *past services* are “unavailable” and not subject to disgorgement. *Id.* This holding still allows for funds previously paid to an attorney to secure future services or which have not otherwise been earned by the attorney to be disgorged pursuant to Section 501(c-1) of the Illinois Marriage and

Dissolution of Marriage Act and *Earlywine*, 2013 IL 1:14779, ¶30. *Id.* Furthermore, the First District does not find that, under certain circumstances, funds earned and placed into an attorney's general account could be available and subject to disgorgement, as CHRISTINE suggests. Rather, the First District merely comments in footnote 4 that, if this question were purely of equity and not also of law, they may have reached a different outcome. *In re the Marriage of Altman and Block*, 2016 IL App (1st) 143076, footnote 4. However, as stated by the First District, because "the summary proceeding envisioned in connection with an interim fee award is not designed to address or resolve such issues," the First District did not uphold the disgorgement order. *Id.* at footnote 4. Rather, the First District applied the law set forth in Section 501(c-1), and concluded that funds paid to and earned by an attorney for *past services* are "unavailable" and not subject to disgorgement, despite any perceived "scorched earth" campaign utilized by the parties in that particular case. *Id.* at ¶36.

CHRISTINE next attempts to argue that applying the law as set forth in *Altman* results in an unjust result in this matter because she claims she was the "disadvantaged spouse" that Section 501(c-1) intends to protect. In so arguing, CHRISTINE falsely alleges that the record reflects the Respondent-Appellee, ANDREW GOESEL ("ANDREW"), attempted to deplete the marital estate through a "scorched earth campaign" in an effort to block CHRISTINE's access to assets. However, CHRISTINE ignores the fact that the record shows that (1) any alleged depletion of the marital estate by ANDREW was a result of CHRISTINE's own wrongdoing and (2) despite any alleged depletion of the marital estate, CHRISTINE still had an abundant access to assets and income at the time HOLWELL was disgorged.

With respect to any alleged depletion of the marital estate by ANDREW, CHRISTINE acknowledges that ANDREW alleged in his Motion to Sign Listing Agreement filed February 20, 2014 that the parties were in financial straits at that time. (C-375-80). *See Response to Supplemental Brief of the Contemnor-Appellant*, page 3. However, CHRISTINE neglects to inform this Honorable Court that the parties were in financial straits at that time, in large part, due to the fact that CHRISTINE had arbitrarily and unilaterally quit her job. (C-376). Throughout the marriage, CHRISTINE was gainfully employed and contributed to the parties' expenses. (C-427). Due to the fact that both parties had contributed to their marital expenses throughout their marriage, on January 18, 2013, the Circuit Court entered an order which required both parties to deposit their incomes into a joint account to pay the marital bills while the divorce was pending. (C-16; 427). Despite the January 18, 2013 order and CHRISTINE's ongoing legal obligation to also provide support for her children, on or about September 30, 2013, CHRISTINE simply quit her job. (C-427-28).

In response to CHRISTINE quitting her job, ANDREW filed a Motion to Compel Petitioner to Seek Appropriate Employment and to Maintain a Job Diary. (C-172). On October 31, 2013, the Circuit Court ordered CHRISTINE to maintain a job diary and send it to ANDREW's Counsel. (C-184-86). Although CHRISTINE tendered a job diary, it is clear CHRISTINE had made little effort to seek employment, because the job diary was highly deficient and missing pertinent information. (C-428). As a result, the Court entered a second order on January 17, 2014, indicating that "CHRISTINE GOESEL shall conform her job diary to mirror the Court form, excluding the employer's signature, to the extent possible. Compliance shall be within fourteen (14) days." (C-333)

CHRISTINE never conformed her job diary to the Court's form despite the Circuit Court's January 17, 2014 order, forcing ANDREW to file a motion against her. (C-428)

In addition, around the time CHRISTINE quit her job, ANDREW's business was not prospering. (C-376). Because CHRISTINE had quit her job and ANDREW's business was struggling, at that time, the parties had little to no income to pay their mortgage or other expenses. (C-376). The parties' financial problems prompted ANDREW to file an Emergency Motion to Sign Listing Agreement in order to sell the house pursuant to the parties' previous agreement (which CHRISTINE was backing out of at that time) (C-375), a Petition for Adjudication of Indirect Civil Contempt for CHRISTINE's failure to place income into the parties' joint account pursuant to the January 18, 2013 Order (C-415), and a Motion to Support Minor Children to require CHRISTINE to place certain funds aside to support her minor children (C-427). The parties' financial problems also required ANDREW to seek other means of supporting himself and his family. (C-376). As shown by Plaintiff's Exhibit 4, much of the funds withdrawn from ANDREW's retirement accounts were used towards the parties' mortgages, home equity loan, utility bills, credit cards, and ANDREW's own expenses, such as his rent and groceries, after CHRISTINE quit her job in or about September 2013. (See Plaintiff's Exhibit 4 in stipulated exhibits). Thus, CHRISTINE's actions in quitting her job while ANDREW's business was struggling forced ANDREW to utilize his retirement to make ends meet. As a result, it is clear that ANDREW did not deplete the marital assets by engaging in a "scorched earth campaign," but rather, was forced to look to other sources of support due, in part, to CHRISTINE's own wrongdoing.

CHRISTINE further alleges that ANDREW engaged in a “scorched earth campaign” by incurring extensive attorney’s fees and using retirement funds to pay for said attorney’s fees, which blocked her access to certain assets. However, CHRISTINE again neglects to inform this Honorable Court that she was the cause of ANDREW’s extensive attorney’s fees. As set forth more fully in HOLWELL’s Brief of the Contemnor-Appellant, CHRISTINE precipitated \$37,094.49 in fees as a result of CHRISTINE’s and her former attorney’s (“GOLDSTINE”) improper actions in opening, viewing, copying and scanning thirty-one pieces of ANDREW’s personal mail, and the Motion to Disqualify which followed. (C-070; C-476; C-1074-75; C-1110-1149; R-146-153). Throughout the disqualification proceedings, through no fault of ANDREW or HOLWELL, GOLDSTINE filed five separate motions with respect to the disqualification issue and it took sixteen (16) court appearances to ultimately have GOLDSTINE disqualified. (C-1099-1100). While CHRISTINE enjoyed the benefit of free legal counsel during the disqualification process, as GOLDSTINE did not charge CHRISTINE to defend against the Motion to Disqualify, ANDREW was forced to incur tens of thousands of dollars in fees to protect his privacy and the integrity of the underlying proceedings due to CHRISTINE and GOLDSTINE’s wrongdoing. (C-070; C-476; C-1074-75; C-1110-1149; R-146-153). Thus, of the \$51,328.00 ANDREW paid to HOLWELL (C-1077; R-120, lines 7-10), \$37,094.49 was incurred to successfully disqualify GOLDSTINE for CHRISTINE’s wrongdoing. As a result, it is disingenuous for CHRISTINE to allege that ANDREW incurred extensive attorney’s fees with HOLWELL’s office in a “scorched earth campaign” when CHRISTINE precipitated the majority of those fees incurred by ANDREW.

Finally, despite ANDREW's withdrawals as set forth in Plaintiff's Exhibit 4, CHRISTINE still had access to ample income and assets at the time of the disgorgement hearing. Subsequent to ANDREW's filing of the Emergency Motion to Sign Listing Agreement (C-375), Petition for Adjudication of Indirect Civil Contempt (C-415), and Motion to Support Minor Children (C-427), CHRISTINE obtained employment at Parkview Orthopedics in or about April 2014. (A-28; See Plaintiff's Exhibit 4 and CHRISTINE's Disclosure Statement in stipulated Exhibits). As of June 25, 2014, CHRISTINE's own Disclosure Statement and Affidavit of Income and Expenses reflected her gross monthly income from her salary and rental income was \$6,000.03 per month. (C-863-64; C-1084; A-34; See CHRISTINE's Disclosure Statement in stipulated Exhibits). CHRISTINE also received \$3,500.00 per month in child support from ANDREW's marital retirement asset. (C-292; 1084). As a result, her total monthly income at the time of the hearing was \$9,500.03, or \$114,000.46 per year. (C-863-64; C-1084). Furthermore, CHRISTINE had access to several assets of value, including but not limited to: (1) a checking account with a value of \$4,610.99 as of May 2014; (2) \$200.00 cash on hand; (3) \$90,000.00 of equity in the marital home; (4) a Michigan Residence, with a supposedly unknown value, that her "Husband gifted" to her; and (5) a brand new 2014 Honda CRV allegedly purchased for her by Connie Schmall, with no value stated. (C-1085; A-29-32; See CHRISTINE's Disclosure Statement in stipulated Exhibits). Finally, CHRISTINE had access to several retirement accounts, valued at \$137,759.45 total. (R-199, lines 1-3; C-1085; A-31-32; See CHRISTINE's Disclosure Statement in stipulated Exhibits). As a result, despite CHRISTINE's claims she was the "disadvantaged spouse" and ANDREW "blocked her access to assets," the evidence

unequivocally shows that CHRISTINE had ample access to income and assets such that she was capable of paying her own attorney's fees. Rather, ANDREW was the disadvantaged spouse, as he was placed in the precarious financial position, in part, due to CHRISTINE's wrongdoing, which required him to search for other means of support. For these reasons, this Honorable Court should follow the reasoning set forth in *Altman*.

2. The First District had authority to consider the delay in filing the Petition for Interim Attorney's Fees pursuant to *Cotton* and *Mantei* and failing to consider this factor achieves an unjust result.

CHRISTINE next attempts to distance this matter from the *Altman* case by alleging the First District erred in considering the delay in time it took the Petitioner to file the Petition for Interim Attorney's Fees pursuant to Section 501(c-1). CHRISTINE's Response fails to cite to any authority which suggests this was in error, other than to blankly state "Section 501(c-1) does not require that a petition seeking interim fees be filed within a certain amount of time" See *Response to Supplemental Brief of Contemnor-Appellant*, page 5. However, it is clear the First District had the authority to consider the Petitioner's delay in filing the Petition for Interim Attorney's fees in holding that fees previously paid to and earned by an attorney for past services rendered cannot be disgorged pursuant to *Cotton* and *Mantei*.

In *Cotton*, the Illinois Supreme Court held that courts may consider which party "precipitated the need for the current legal fees" in making an award of interim attorney's fees. See *In re the Marriage of Cotton*, 103 Ill.2d 346 (1984) (holding that mother was not entitled to attorney's fees from father despite his financial advantage because her misconduct caused the attorney's fees to be incurred). The Fourth District similarly refused to award attorney's fees to a party and held that "it is an unreasonable expectation

to anticipate that the trial court will automatically require the other party to pay such attorney fees regardless of one's conduct during the litigation. There are times when the failure to compromise is frivolous.” *In re the Marriage of Mantei*, 222 Ill. App. 3d 933, 942 (4th Dist., 1991).

In considering the Wife’s nine (9) month delay in filing a Petition for Interim Attorney’s Fees after extensive fees had already been incurred, the First District in *Altman* was merely upholding the equitable principles set forth in *Cotton* and *Mantei*. In considering the Wife’s delay in filing, the First District noted that, the longer a party waits to request fees, the higher the financial burden can be on the attorney being disgorged. *In re the Marriage of Altman and Block*, 2016 IL App (1st) 143076, ¶34. (“Where . . . the petitioning law firm delays filing an interim fee petition, the financial risk disgorgement poses for the respondent’s attorney increases correspondingly.”). Furthermore, failing to consider this factor results in an unjust outcome. Despite the serious financial burden disgorging fees already earned by and paid to an attorney for past services can pose, if an attorney is unable to pay the disgorged amounts because of this financial burden, that attorney risks being held in contempt. *Id.* at ¶36. As a result, it was proper for the First District to consider the delay in filing in determining that funds previously paid to and earned by an attorney for past services rendered are not “available” for disgorgement pursuant to Section 501(c-1)(3).

In the instant matter, similarly to the Wife in *Altman*, CHRISTINE delayed filing her Petition for Interim Attorney’s Fees until June 12, 2014, nearly one (1) year five (5) months after filing her initial Petition for Dissolution of Marriage on January 18, 2013 after extensive attorney’s fees had already been incurred. (C-003; 709-18). During that

time, HOLWELL earned and was paid \$51,382.28 from ANDREW. (C-1030-31; 1077; R-017, lines 7-8; R-052, line 7; R-062, lines 22-24; R-098-101). Of the \$51,382.28 in attorney's fees paid to and earned by HOLWELL from ANDREW for services already rendered, \$40,952.61 (nearly 80%) was disgorged and ordered payable to CHRISTINE's attorneys on September 29, 2014. (C-919-24). Similarly to the Husband's attorney in *Altman*, who was unable to pay the disgorged amount and subsequently held in contempt as result, on January 16, 2015 HOLWELL was likewise held in indirect civil contempt for her inability to pay the funds set forth in the September 29, 2014 disgorgement order. (C-1547-48). This was done despite the fact that HOLWELL openly told the Circuit Court that disgorging the fees already paid to and earned by her would cause her serious financial hardship because she no longer possessed those funds. (R-472; 473, lines 1-3). It is simply inequitable to hold HOLWELL in contempt of court for her inability to pay the disgorged funds when those funds were no longer in her possession. As a result, this Honorable Court should follow the reasoning set forth in *Altman* and reverse the Circuit Court's disgorgement order.

3. The application of *Altman* in the instant matter prevents HOLWELL from having to bear the burden of the litigation and prevents a windfall to CHRISTINE's attorneys.

In her Response, CHRISTINE very briefly argues that the First District's decision in *Altman* results is an "all or nothing scenario" where the counsel for the party seeking disgorgement may end up bearing the burden of the litigation in full if the other party's attorney is not disgorged. See *Response to Supplemental Brief of the Contemnor-Appellant*, pages 5-6. However, applying the reasoning in *Altman* to the instant matter, which would require that HOLWELL's fees already paid to and earned by her for past

services rendered not be disgorged, actually *prevents* this very concern from happening. In the instant matter, the disgorgement order entered by the Circuit Court resulted in an inequitable windfall to CHRISTINE's attorney, THE LAW OFFICES OF EDWARD R. JAQUAYS ("JAQUAYS") and resulted in HOLWELL bearing the brunt of the cost of the litigation.

In disgorging \$40,952.61 of HOLWELL's fees, the Circuit Court calculated as follows:

To date Husband paid his attorneys \$100,022.27: \$66,382.28 to Holwell, \$10,000.00 to LeVine, and \$23,639.99 to Boback. Wife paid her attorneys \$18,117.04: \$5,000.00 to Jaquays and \$13,117.04 to Goldstine, Skrodzki, Russian, Nemec and Hoff, Ltd. Fees paid to date total \$118,139.31 (excluding fees paid to the child representative). To level the playing field, each party should have \$59,069.65 for fees. To achieve parity, Husband's attorneys should be disgorged of \$40,952.61. . . . Attorney Laura A. Holwell shall tender fees Husband paid her in the amount of \$40,952.61 to counsel for Wife, The Law Offices of Edward R. Jaquays (C-923-24).

Although the Circuit Court determined that the total of fees paid to *all three* of ANDREW's attorneys was \$100,022.27, the Circuit Court only disgorged HOLWELL's earned fees. (C-924). Likewise, although the Circuit Court determined CHRISTINE previously paid two attorneys a total amount of \$18,117.04, the Court awarded the \$40,952.61 only to JAQUAYS. (C-924). Because the Circuit Court determined that HOLWELL was paid \$66,382.28 and that JAQUAYS had been paid \$5,000.00, the Circuit Court's ruling results in HOLWELL only receiving \$25,429.67 in fees and JAQUAYS receiving \$45,952.61. (C-923-24). Therefore, pursuant to the Circuit Court's disgorgement order, JAQUAYS was paid in excess of \$20,000.00 more than HOLWELL, even though that JAQUAYS had only been an attorney of record in this matter since March 2014, whereas HOLWELL had been an attorney of record since October 2013 (C-

067, C-086-87, C-478) and ANDREW had incurred \$37,094.49 to disqualify CHRISTINE's former counsel for their wrongdoing, as set forth above. (C-070; C-476; C-1074-75; C-1110-1149; R-146-153). As a result, it is clear that any alleged "concern" that one party's attorney would bear the burden of the litigation is actually alleviated by applying the reasoning set forth in *Altman* to the instant matter. Therefore, this Honorable Court should apply *Altman* to the instant matter and reverse the Circuit Court's disgorgement orders and contempt findings.

4. The First District properly held that funds paid to and earned by an attorney for past services rendered is not "available" for disgorgement because the legislature intended earned fees to be "unavailable" for disgorgement.

CHRISTINE alleges the First District erred in holding that all funds previously paid to and earned by an attorney for services previously rendered is not "available" because Section 501(c-1) provides that "retainers or interim payments, or both, previously paid" may be disgorged. *See Response to Supplemental Brief of the Contemnor-Appellant*, page 6. However, CHRISTINE's argument again ignores that the First District's holding in *Altman* is limited to funds "earned by and paid to a party's lawyer in the normal course of representation for past services rendered. . . ." *Altman*, 2016 IL App (1st) 143076, ¶36 (emphasis added). CHRISTINE's argument further ignores that interim payments may be made to secure future services, not for past services rendered. *See Id.* at ¶28. ("Amicus points to the statute's language that defines 'available funds' to include 'retainers or interim payments, or both, previously paid' and argues that the legislature contemplated that funds held by a lawyer to secure future services are subject to disgorgement, while funds deducted from a retainer or interim payments for services already rendered are not."). Under the reasoning set forth in *Altman*, any

retainers or interim payments that have been paid, but not yet earned, would be subject to disgorgement. *Id.* at ¶33.

Finally, if this Honorable Court were to accept CHRISTINE's reading of the statute that *all* retainers and *all* interim payments, even interim payments made for past services rendered, are subject to disgorgement, then *all* payments made to an attorney, regardless of type, would be subject to disgorgement. However, the statute very plainly indicates that only "available" funds are subject to disgorgement. 750 ILCS 5/501(c-1)(3). This characterization indicates that some funds are "unavailable" for disgorgement. As set forth by the First District, "the legislature chose the word 'available' to define those funds, whether in the form of a retainer or interim payments, that could be subject to disgorgement. If the legislature meant that all funds 'paid' to one spouse's lawyer were subject to disgorgement when neither spouse was able to pay attorney fees, it could have easily said so." *In re the Marriage of Altman and Block*, 2016 IL App (1st) 143076, ¶33. As a result, the First District correctly defined "available" funds to exclude funds already paid to and earned by an attorney for past services rendered. Because all of the fees disgorged by HOLWELL had already been paid to her and earned by her prior to the Circuit Court's order of disgorgement (C-1030-31; 1077; R-017, lines 7-8; R-052, line 7; R-062, lines 22-24; R-098-101), this Honorable Court must reverse the Circuit Court's disgorgement and contempt orders.

B. This Honorable Court should follow the reasoning set forth in the *Altman* matter because the facts of the *Altman* case are nearly identical to the facts of the instant matter.

CHRISTINE ultimately argues that, even if this Honorable Court were to find the First District did not err in *Altman*, this Honorable Court should refuse to apply same

because the instant matter is distinguishable from *Altman*. In so arguing, CHRISTINE erroneously claims (1) the payments made to HOLWELL were not gradually made over a period of time and (2) HOLWELL somehow “knew” she would be disgorged. See *Response to Supplement Brief of Contemnor-Appellant*, pages 4-5.

With respect to CHRISTINE’s claim that the payments made to HOLWELL were not gradually made over time, this argument is misleading at best. First, in making this claim, CHRISTINE leaves out certain payments made to HOLWELL and falsely asserts that HOLWELL was paid in lump sums over a “three month period.” However, the evidence clearly indicates that HOLWELL was gradually paid several sums over a period of nine months. The evidence showed that ANDREW paid HOLWELL \$51,382.28 as follows: (a) \$5,000.00 retainer received on October 9, 2013 and applied to ANDREW’s invoice on October 31, 2013; (b) \$10,000.00 received and applied to ANDREW’s invoice on January 31, 2014; (c) \$5,000.00 received and applied to ANDREW’s invoice on March 31, 2014; (d) \$10,000.00 received and applied to ANDREW’s invoice on April 28, 2014; (e) \$10,000.00 received and applied to ANDREW’s invoice on April 29, 2014; (f) \$1,382.28 received and applied to ANDREW’s invoice on April 30, 2014; and (g) \$10,000.00 received and applied to ANDREW’s invoice on June 13, 2014. (C-1030-31; 1064). Therefore, similarly to the Husband’s attorney in *Altman*, HOLWELL was paid and had earned the \$51,382.28 over the course of nine (9) months, during her representation of ANDREW, prior to the funds being disgorged on September 29, 2014. (C-924). Any assertion to the contrary is disingenuous.

With respect to the claim that HOLWELL “knew” that she could have been disgorged, nothing could be further from the truth. First, as set forth above and more fully

in HOLWELL's Brief of the Contemnor-Appellant, CHRISTINE had ample access to income and assets such that she was capable of paying her own attorney's fees. (C-292; C-863-64; C-1084-85; A-29-32, 34; R-199, lines 1-3). Because CHRISTINE is capable of paying her own fees, HOLWELL should never have been disgorged pursuant to Section 501(c-1) in the first place, and therefore she could not have foreseen the Circuit Court would err in disgorging her fees already paid to and earned by her. Second, although CHRISTINE alleges HOLWELL should have known she could be disgorged due to the parties' alleged "financial straits" in or about February 2014, the parties were only in financial straits at that time, in part, because CHRISTINE had quit her job, as set forth above. (C-376). However, CHRISTINE had obtained gainful employment at Parkview Orthopedics prior to the disgorgement hearing, in or about April 2014. (A-28). Thus, the parties' "financial straits" had been alleviated by CHRISTINE's employment.

Finally, the facts set forth in *Altman* are nearly identical to the facts in the instant matter. In *Altman*, the Wife delayed filing a Petition for Interim Attorney's Fees until nine (9) months after initially filing an Order of Protection against her Husband, after extensive attorney's fees had already been incurred by both parties for various motions and hearings. *Altman*, 2016 IL App (1st) 143076, ¶8. After hearing, on July 16, 2014, the trial court found that both parties lacked sufficient access to assets or income to pay their reasonable attorney's fees and costs. *Id.* at ¶10. The trial court further found that Husband had paid a total of \$66,500.00 to his attorneys, whereas Wife had only paid \$9,500.00 to her attorneys. *Id.* As a result, the trial disgorged \$16,000.00 in fees paid to Gerage for services already rendered by him, and ordered the \$16,000.00 be paid to Wife's attorney within seven (7) days. *Id.* When Gerage failed to pay the \$16,000.00 within seven (7)

days, Wife's attorney filed a Petition for Rule to Show Cause. *Id.* at ¶11. Gerage was ultimately held in contempt of court, and appealed the contempt finding. *Id.* The First District ultimately reversed the disgorgement order and the finding of contempt against Gerage, holding that the funds earned by and paid to Garage for services already rendered were not "available" for disgorgement under Section 501(c-1)(3). *Id.* at ¶36.

Similarly to *Altman*, in the instant matter, CHRISTINE delayed filing her Petition for Interim Attorney's Fees nearly one (1) year, five (5) months after initiating her case. (C-003; 709-18). At the time of the hearing, HOLWELL had already been paid \$51,382.28 in fees that she had earned for past services rendered throughout the proceedings and that approximately \$13,000.00 was currently in dispute as to whether this amount would be paid to HOLWELL or ANDREW's former attorneys, ANDERSON & BOBACK. (C-1077; R-017, lines 7-8; R-052, line 71; R-062, lines 22-24; R-099-101). On September 29, 2014, after HOLWELL had already withdrawn from the case, the Circuit Court of the Twelfth Judicial Circuit disgorged HOLWELL's fees in the amount of \$40,952.61 and ordered that these funds be directly turned over to CHRISTINE's attorneys within fourteen (14) days. (C-924; 796). On October 24, 2014, CHRISTINE filed a Petition for Adjudication of Indirect Civil Contempt against HOLWELL for her alleged failure to pay the monies pursuant to the Circuit Court's September 29, 2014 disgorgement order. (C-982-987). HOLWELL was ultimately wrongfully held in contempt on January 16, 2015 despite her inability to pay, for the reasons set forth in her Brief of the Contemnor-Appellant. (C-1547-48). As a result, the facts in the *Altman* case are nearly identical to the facts in the instant matter, and it is only logical that his Honorable Court apply the law and reasoning set forth in *Altman* to the instant matter.

C. This Honorable Court should follow the reasoning set forth in the *Altman* matter because *Squire* is distinguishable from the instant matter.

CHRISTINE ultimately posits that this Honorable Court should apply the law and reasoning set forth in *In re the Marriage of Squire*, 2015 IL App (2d) 150271, rather than in *Altman*. See *Response to Supplemental Brief of the Contemnor-Appellant*, page 7. However, as set forth above, the facts in the instant matter are nearly identical to *Altman*, whereas the *Squire* case is distinguishable from the instant matter. As set forth by the First District in *Altman*, *Squire* is distinguishable from the instant matter because it does not address the risk and burden placed upon a disgorged attorney when the other party neglects to timely file their Petition for Interim Fees. *Altman*, 2015 IL App (1st) 143076, ¶34. As set forth above, the First District was persuaded by the inequities that result from disgorging fees already earned by and paid to an attorney for services already rendered, especially where the party requesting attorney's fees delays filing her fee petition. *Id.* ("Where . . . the petitioning law firm delays filing an interim fee petition, the financial risk disgorgement poses for the respondent's attorney increases correspondingly."). These inequities were neither discussed nor considered by the Second District in the *Squire* matter. Because CHRISTINE waited nearly one (1) year five (5) months after filing her initial Petition for Dissolution of Marriage on January 18, 2013 to file her Petition for Interim Attorney's fees, after extensive attorney's fees had been incurred, and this delay in filing severely burdened HOLWELL as set forth above, the Second District's reasoning in *Squire* is incompatible with the instant matter as it fails to address this concern. (C-003; 709-18). As a result, this Honorable Court should disregard *Squire*'s reasoning as distinguishable and apply *Altman*'s reasoning.

II. CHRISTINE'S RETIREMENT FUNDS WERE SUBJECT TO AN INTERIM FEE ORDER BECAUSE CHRISTINE HAD VOLUNTARILY WITHDRAWN FUNDS FROM HER RETIREMENT ACCOUNT, AND THUS, COULD BE ORDERED TO WITHDRAW FURTHER FUNDS TO PAY HER OWN ATTORNEY'S FEES UNDER *ALTMAN*.

CHRISTINE ultimately argues that her retirement accounts cannot be deemed an available asset to pay her attorney's fees. *See Response to Supplemental Brief of the Contemnor-Appellant*, page 8. Rather than cite to authority to support this contention, CHRISTINE merely chastises ANDREW for withdrawing from his own retirement accounts, then glibly informs the Court that ANDREW had to pay his support obligation through a 503(g) trust, even though this fact is irrelevant. CHRISTINE mistakenly implies that HOLWELL is misguided in arguing CHRISTINE's retirement accounts should be made available for attorney's fees.

However, the record in the instant matter makes it clear that CHRISTINE is the one who is misguided. As set forth above, CHRISTINE placed ANDREW and her children in a precarious financial position by selfishly quitting her job in or about September 2013 (C-376) and forcing ANDREW to incur extensive attorney's fees in disqualifying her former attorney, GOLDSTINE. (C-070; C-476; C-1074-75; C-1110-1149; R-146-153). Again, CHRISTINE neglects to inform the court that the reason a 503(g) trust account had been established to support the minor children is because she had quit her job and ANDREW's business was struggling at that time, so there was little to no income to support the children. (C-292; 376; 438). The Order requiring ANDREW to establish a 503(g) account for support to which CHRISTINE refers was entered on February 20, 2014. (C-438). ANDREW filed his Emergency Motion to Sign Listing Agreement (C-375), Petition for Adjudication of Indirect Civil Contempt (C-415), and

Motion to Support Minor Children (C-427) alleging the parties' financial issues on the exact same date (February 20, 2014), because at that point, the parties were struggling financially, in part, due to CHRISTINE quitting her job. (C-375-76). This forced ANDREW to seek other means of support for himself and his children. (C-292; 376; 438). As a result, ANDREW was forced to withdraw funds from his retirement accounts to make ends meet and set up a 503(g) trust account for the children's support. (C-292; 427; See Petitioner's Exhibit 4 in stipulated exhibits).

Finally, CHRISTINE neglects to cite to any authority (other than to cite the *Altman* matter), in asserting that her retirement accounts are not subject to an interim fee order because, pursuant to *Altman*, the law is clear that her retirement funds can be subject to disgorgement if she previously withdraws from same. *In re the Marriage of Altman and Block*, 2016 IL App (1st) 143076, ¶22. In determining whether a party has "access to assets" pursuant to Section 501(c-1) of the Illinois Marriage and Dissolution of Marriage Act, a court generally cannot order a party to liquidate funds from a non-marital retirement account to fund their litigation. *Id.* ("[W]e have previously determined that one spouse cannot be ordered to liquidate and distribute the proceeds of an individual retirement account to satisfy an interim attorney fee award." (citing *In re Marriage of Radzik*, 2011 IL App (2d) 100374, ¶62)). However, where a party voluntarily chooses to access and utilize a retirement asset (whether the retirement asset is marital or nonmarital), a Court may exercise control over the remainder of the party's retirement and order sums be made payable from same. *Id.* at ¶26. In the instant matter, CHRISTINE voluntarily accessed her marital T-Rowe Price Account and withdrew \$22,000.00. (C-429; 778). Because CHRISTINE had voluntarily withdrawn sums from her own marital

retirement account, the Circuit Court may consider the remainder of her retirement accounts to be "available" to her to pay her own attorney's fees. As a result, CHRISTINE was capable of paying her own attorney's fees, and the Circuit Court erred in finding otherwise.

Respectfully submitted,

Dated

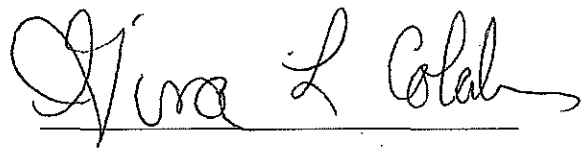
10/27/16

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CERTIFICATE OF COMPLIANCE

I certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the pages or words contained in the Rule 341(d) cover, the Rule 341(h)(1) statement of points and authorities, the Rule 341(c) certificate of compliance, the certificate of service, and those matters to be appended to the brief under Rule 342(a), is 20 pages or 5,794 words.

A handwritten signature in black ink, reading "Gina L. Colaluca", written over a horizontal line.

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 IN THE SUPREME COURT OF ILLINOIS

IN RE THE MARRIAGE OF:)	On Appeal from the Appellate Court
	)	of Illinois, Third Judicial District
CHRISTINE GOESEL,	)	2017 IL App (3d) 150101
Petitioner-Appellant,)	
)	
	)	On Appeal from the Twelfth Judicial
v.	)	Circuit Court of Will County, Illinois
	)	Circuit No. 2013 D 107
)	
ANDREW GOESEL,)	
Respondent,	)	Honorable Dinah Archambeault
	)	Judge Presiding
(Laura A. Holwell, Contemnor-Appellee).)	

NOTICE OF FILING AND PROOF OF SERVICE

To: Edward R. Jaquays, Esq.	Andrew Goesel
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PLEASE TAKE NOTICE that on August 21, 2017, I have caused to be electronically filed with Odyssey EFile for the Supreme Court of Illinois, the attached documents which are herewith served upon you: **Brief of the Contemnor-Appellee.**

By: 

PROOF OF SERVICE

Under penalties as provided by law pursuant to Section 1-109 of the Illinois Code of Civil Procedure the undersigned certifies that a copy of this **Notice** and the **Brief of the Contemnor-Appellee** were served upon Edward R. Jaquays and Mark Ellis via electronical mail transmittal to the email address listed above and a copy was sent by U.S. Mail, proper postage prepaid to Andrew Goesel at the address listed above from 115 S. LaSalle St. Street, Chicago, Illinois on **August 21, 2017**.

Signed and Certified by: 

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E-FILED
8/22/2017 9:26 AM
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SUPREME COURT CLERK