

PREPARATION OF PENDENTE LITE APPLICATIONS - Part One

by Curtis J. Romanowski, Esq.

The *pendente lite* phase of the case and the results of a *pendente lite* application are critical for setting the tone for the balance of the case, and often affect whatever final decisions or agreements are reached. If an inequitable result occurs early on, it could seriously compromise one party's case. Typically, *pendente lite* motions provide judges with an introduction to the parties, including the details of the marriage, separation, children and other relevant factors surrounding the case. As a rule, first impressions are usually important, and the *pendente lite* application is no exception.

Depending on the results, *pendente lite* applications have the potential to create leverage for the balance of the case, spur client management and relations problems, and to escalate litigation costs attributable to the entrenchment of the "winner" and the commitment of the "loser" to retake lost ground.

It is therefore essential to provide judges with sound, hard evidence at the *pendente lite* phase, that will enable them to deal fairly with both sides pending the submission of final proofs. An unfairly skewed *pendente lite* award can thwart fair outcomes and is simply one of the worst things that can happen to both parties.

What about voluntary arrangements? Money being paid or received voluntarily might quickly become the *status quo*. Consequently, if the arrangement is unacceptable to either party, a *pendente lite* support application should be filed to establish a more appropriate support amount.

If too much support is being paid voluntarily, payor spouses should know that this should be modified, in order to avoid the risk of an adverse inference being drawn that there was an ability to pay that particular sum. The ultimate risk is that the payment might likely continue to be ordered in the future. If insufficient support is being received, on the other hand, the recipient spouse should be made aware that the continuation of that practice will likely create the inference that the money paid is sufficient to satisfy the needs of the payee spouse.

For any number of reasons, many clients adopt skewed arrangements they have reached between themselves. If the disadvantaged spouse is ours, we must explain the likely legal consequences of the risky interim decision.

What about the proofs? Evidence on a *pendente lite* motion is not as clear as what will be presented at the conclusion of the case, following the completion of discovery. For example, when people have lived a life style beyond that which is reflected on their tax returns, it will be difficult to prove it at the *pendente lite* phase of the case. We need to present our client's data by way of documentation. If documentation is nonexistent, then photographs can be employed to illustrate life style.

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