**TWENTY(ISH) QUESTIONS ABOUT DOMESTIC RELATIONS**

**WADE: Today we’re going to try a 20 questions format to discuss some common issues that arise in domestic relations cases**

**TAIN: I was on a panel of judges recently and several of the questions asked on that panel discussion seemed to be good topics for discussion on this podcast.**

**WADE: These issues frequently arise and each judge may handle them a little differently, so Tain and I thought we would share some of our thoughts with you.**

**TAIN: That’s right, Wade, so let’s get started!**

1. **EVIDENCE**
2. **Introduction**

1. What are you biggest pet peeves regarding evidence?

2. What are common mistakes you see family lawyers make?

3. What do you wish more family lawyers knew about using evidence in hearings?

**B. Virtual Proceedings**

4. What are some unique issues/mistakes you’ve seen during virtual proceedings?

5. Once it is safe to return to in-person hearings, do you have any plans to continue using virtual proceedings, and if so, in what capacity?

**C. Types of Evidence**

6. How do you feel about the use of text messages and emails to show evidence of agreements between parties? How should those be presented?

7. How do you like to see financial affidavits used in evidence?

8. How valuable are witness affidavits in a temporary?

9. How many is too many?

10. When do you typically like to see witness affidavits, before the hearing or during?

11. If one party submits witness affidavits, and the opposing party doesn’t submit any witness affidavits, does that tend to reflect negatively on them for you?

**II. FINANCIAL ISSUES**

1. **Alimony**

12. What are the most important factors you look at when determining alimony amount and duration? What about temporary alimony?

**O.C.G.A. §19-6-1**

**(a)** Alimony is an allowance out of one party's estate, made for the support of the other party when living separately. It is either temporary or permanent.

**(b)** A party shall not be entitled to alimony if it is established by a preponderance of the evidence that the separation between the parties was caused by that party's adultery or desertion. In all cases in which alimony is sought, the court shall receive evidence of the factual cause of the separation even though one or both of the parties may also seek a divorce, regardless of the grounds upon which a divorce is sought or granted by the court.

**(c)** In all other cases in which alimony is sought, alimony is authorized, but is not required, to be awarded to either party in accordance with the needs of the party and the ability of the other party to pay. In determining whether or not to grant alimony, the court shall consider evidence of the conduct of each party toward the other.

**O.C.G.A. §19-6-5**

**(a)** The finder of fact may grant permanent alimony to either party, either from the corpus of the estate or otherwise. The following shall be considered in determining the amount of alimony, if any, to be awarded:

**(1)** The standard of living established during the marriage;

**(2)** The duration of the marriage;

**(3)** The age and the physical and emotional condition of both parties;

**(4)** The financial resources of each party;

**(5)** Where applicable, the time necessary for either party to acquire sufficient education or training to enable him to find appropriate employment;

**(6)** The contribution of each party to the marriage, including, but not limited to, services rendered in homemaking, child care, education, and career building of the other party;

**(7)** The condition of the parties, including the separate estate, earning capacity, and fixed liabilities of the parties; and

**(8)** Such other relevant factors as the court deems equitable and proper.

**O.C.G.A. §19-6-3**

**(a)** Whenever an action for divorce or for permanent alimony is pending, either party may apply at any time to the presiding judge of the court in which the same is pending, by petition, for an order granting the party temporary alimony pending the issuance of a final judgment in the case. After hearing both parties and the evidence as to all the circumstances of the parties and as to the fact of marriage, the court shall grant an order allowing such temporary alimony, including expenses of litigation, as the condition of the parties and the facts of the case may justify.

**(b)** In arriving at a decision, the judge shall consider the peculiar necessities created for each party by the pending litigation and any evidence of a separate estate owned by either party. If the separate estate of the party seeking alimony is ample as compared with that of the other party, temporary alimony may be refused.

13. Imagine one party has an affair. If the evidence supports barring a party from receiving alimony, how does that impact what you award in equitable division? Does the conduct tend to lead you to award more than 50% to the other party?

14. If a party gets temporary alimony and everything is going objectively well by the time of the final trial, do you typically stick with the same amount of alimony in a final order? Does it make a difference to you if the temporary alimony amount was by agreement, rather than ordered as the result of a temporary hearing?

15. Have you ever granted a modification/termination of alimony due to the recipient being found to be living in a meretricious relationship?

16. What factors do you typically look at to help you decide whether modifying alimony is warranted?

**O.C.G.A. §19-6-20**

In the trial on a petition authorized in subsection (a) of [Code Section 19-6-19](https://advance.lexis.com/document/?pdmfid=1000516&crid=8c17c43b-82ef-4a2a-bd47-7a4b8f443361&pddocfullpath=%2Fshared%2Fdocument%2Fstatutes-legislation%2Furn%3AcontentItem%3A61XD-TBP1-FD4T-B23X-00000-00&pdtocnodeidentifier=AATAAHAACAAV&ecomp=zy65kkk&prid=e90cd131-412a-4198-9ec9-5eb138eed5a5), the merits of whether a party is entitled to alimony are not an issue. *The only issue is whether there has been such a substantial change in the income and financial status of either former spouse, in cases of permanent alimony for the support of a former spouse, as to warrant either a downward or upward revision or modification of the permanent alimony judgment*.

17. Do you ever use unallocated support on a temporary basis?

18. When do you use income deduction orders?

1. **Equitable division**

19. Do you divide people’s pots and pans?

20. What types of circumstances have you seen that have warranted dividing the marital assets/debts very unequally? 60/40 or more?

**III. CUSTODY ISSUES**

20(a). Do you interview children in a custody case? If so, how do you do it?

20(b). How do you view elections of 14-year-olds in custody cases? What about younger children’s elections?

20(c). How do you view issues like drug/alcohol addiction, infidelity and spousal abuse in determining custody?

**O.C.G.A. §19-9-7**

**(a)** A judge may award visitation or parenting time to a parent who committed one or more acts involving family violence only if the judge finds that adequate provision for the safety of the child and the parent who is a victim of family violence can be made. In a visitation or parenting time order, a judge may:

**(1)** Order an exchange of a child to occur in a protected setting;

**(2)** Order visitation or parenting time supervised by another person or agency;

**(3)** Order the perpetrator of family violence to attend and complete, to the satisfaction of the judge, a certified family violence intervention program for perpetrators as defined in Article 1A of Chapter 13 of this title as a condition of the visitation or parenting time;

**(4)** Order the perpetrator of family violence to abstain from possession or consumption of alcohol, marijuana, or any Schedule I controlled substance listed in [Code Section 16-13-25](https://advance.lexis.com/document/?pdmfid=1000516&crid=8702c14b-673c-4f1a-8eae-5e9e2d9c718e&pddocfullpath=%2Fshared%2Fdocument%2Fstatutes-legislation%2Furn%3AcontentItem%3A61XD-TBT1-F2MB-S0GP-00000-00&pdtocnodeidentifier=AATAAKAACAAK&ecomp=zy65kkk&prid=e90cd131-412a-4198-9ec9-5eb138eed5a5) during the visitation or parenting time and for 24 hours preceding the visitation or parenting time;

**(5)** Order the perpetrator of family violence to pay a fee to defray the costs of supervised visitation or parenting time;

**(6)** Prohibit overnight visitation or parenting time;

**(7)** Require a bond from the perpetrator of family violence for the return and safety of the child; and

**(8)** Impose any other condition that is deemed necessary to provide for the safety of the child, the victim of family violence, or another family or household member.

**(b)** Whether or not visitation or parenting time is allowed, the judge may order the address of the child and the victim of family violence to be kept confidential.

**(c)** The judge shall not order an adult who is a victim of family violence to attend joint counseling with the perpetrator of family violence as a condition of receiving custody of a child or as a condition of visitation or parenting time.

**(d)** If a judge allows a family or household member to supervise visitation or parenting time, the judge shall establish conditions to be followed during visitation or parenting time.

Well folks, those are just a few questions that arise in the domestic relations arena and our thoughts on how they could be handled.

Remember, these are only our thoughts and opinions and do not represent the opinions of ICJE, or anyone else in authority.

**SIGN OFF**