**DOMESTIC RELATIONS FINANCIAL AFFIDAVITS - EPISODE NOTES**

Hello everyone and welcome back to the Good Judge-Ment Podcast. I am Wade Padgett

*And I am still Tain Kell.*

Tain, when we began this podcast, all those many years ago, we thought about how we might discuss different aspects of what we encountered in our courtrooms each day

*True. We have really tried to mix up our episodes a great deal, mixing in various topics from different areas of the law along the way.*

Then we come to domestic relations. It can be difficult to discuss domestic relations cases because the underlying fact patterns can be so varied and fact dependent that attempting to address specifics can be difficult.

*That’s very true. But there is one aspect of domestic relations that we can discuss pretty freely – that is some of the procedural aspects of these cases. We have spent some time discussing child support worksheets, Guardian ad Litems, TPO cases, and attorney fees.*

But today, we want to discuss an even more practical aspect of domestic relations cases, the Domestic Relations Financial Affidavit

*Our old friend, the DRFA. Have you ever thought about how lame that acronym is to pronounce? “DRFA….” Kind of a silly sounding thing - It sounds like \_\_\_\_\_\_\_\_\_\_\_\_ (go wild here)*

OK then… let’s talk some DRFA’s

I want to begin by saying something from the aspect of a lawyer practicing in this area as I formerly did in a prior life

DRFA’s are important for a number of reasons we will discuss in more detail in a moment

As a lawyer, I had a difficult time justifying the time it takes to go through a DRFA with the client, line by line. Going though old bank statements, etc. trying to determine how much money the parties spent on different aspects of their lives seemed difficult (and costly for the clients)

But you did not want your client to go through and write a bunch on nonsense on the form to give the other side ammunition for cross-examination (and potentially hurt the client’s credibility in the eyes of the judge)

I also did not want to be a party to any shenanigans – or mistakes that inaccurately reflected my client’s financial situation

Then the domestic bar produced a document that I used throughout my practice but which I cannot find again. An accountant worked with a lawyer and produced a multi-page “handout” that explained the DRFA and how the client should make the calculations and complete the form accurately

If anyone has that form, I would really appreciate you sharing it with us here on the podcast so I have give the appropriate shout out to the authors. I have contacted the Bar and cannot find a copy…

Regardless, I would give my clients a blank DRFA, the handout explanations, and then review the document that the client completed before typing it up and having them sign it. It saved lots of time and headache for all involved.

Ok, that’s my story and I am thinking about attempting to recreate the document for current lawyers to use with their clients

I have been provided a document that is similar to the one I remember – I believe it came from a set of pro se forms that is available from Clarke County - shout out to whomever created this form because it is pretty good. I understand it may be available on the clerk’s website

The DRFA comes from U.S.C.R. 24.2

24.2 specifically provides that a DRFA must be served on the opposing party at least 5 days prior to any temporary or final hearing (or mediation)

The same is true for any amendments to the DRFA

Failure to timely file a DRFA can subject the offending party to contempt sanctions

Much of what we will discuss today addresses DRFA’s from the perspective of the judge – you might even view this episode as a bit of a Public Service Announcement from judges across Georgia

**WHY DRFA’S ARE IMPORTANT – RELIANCE BY JUDGES AND PARTIES**

In all candor, judges do not spend a great deal of time dealing with utility payments as they appear on the DRFA

 But we DO pay attention to the debts and assets listed on the form

 Particularly if we take the case under advisement

Having a DRFA signed and filed with the clerk also provides both lawyers – the affiant’s lawyer and the opposing lawyer – with “cover” should it ever be claimed that the lawyer did not adequately represent a client…

**WHY DRFA’S ARE IMPORTANT –FUTURE MODIFICATIONS**

Before we go into the weeds of the form, let’s discuss some of the reasons we think that DRFA’s are so important

 Obviously, necessary to set child support, divide debts, etc.

But there is another compelling reason for DRFA’s that might be as readily apparent.

When you set financial obligations, you must do so based upon evidence (seems self-explanatory)

The DRFA must be sworn to by the client with a notary seal affixed – so it is sworn testimony

Now assume a few years pass and one party or the other seeks to modify child support (or alimony)

One of the things that must be proven is a material change in circumstances – a change in the financial condition of the parties or needs of the child[[1]](#endnote-1)

If there was no DRFA filed during the divorce proceeding, difficult for the court to determine whether there has been a substantial change in the financial condition of the parents

Having a DRFA filed helps protects everyone involved – including the lawyers – from claims that income was suppressed, hidden, etc.

And it makes the task of proving a substantial change in financial condition much more readily apparent in the modification action

We have both had countless cases where the argument was made in a modification action that it should be denied because the payor’s income had actually increased – or at least had not decreased – since the time of the divorce

Interestingly, U.S.C.R. 24.2 provides “In cases filed with complete ***separation agreements or consent orders*** resolving all issues but the issue of divorce, the parties are not required to serve financial affidavits, unless otherwise ordered by the Court.”

It is pretty common for the cases that come back for modification began as an uncontested divorce – then we have to go round and round about whether there has been a substantial change in financial circumstances without the benefit of having a DRFA filed in the divorce case

**THE PREAMBLE TO THE INSTRUCTIONS FROM CLARKE COUNTY**

We thought it might be a good idea to go over the preamble to the instructions that appear on the Clarke County form – it explains the form pretty well

“The DRFA is like a snapshot of your financial life in the form of a breakdown of all income, assets, expenses, and debts for one month. This form can be very time consuming, but it is an important tool for the Court to decide issues like child support payments, division of property, alimony, and attorney’s fees. You must be as accurate as possible and try not to guess. **Read these instructions carefully, and gather helpful documents before you begin.** Good sources of information are: bank and credit card statements, receipts, bills, tax returns, and wage statements.”

That’s a pretty good explanation of the DRFA form from a 1,000 foot level. But the form goes on from there.

“The DRFA must be signed in front of a notary public. By signing in front of a notary, you are swearing under oath that the information contained in the Affidavit is true, correct, and complete to the best of your knowledge. Failure to provide accurate information, or providing false or misleading information, could subject you to penalties from the Court and delay the final hearing in your case. You are not asked to produce bills or receipts for every item you enter, but you should be able to back up every amount to the Court. You can and must submit an updated DRFA if you have changes to your financial situation, such as getting or losing a job.”

I have to say, I really like the phrasing and tone of this preamble. But there is still more…

“Do not leave any blank spaces in the form. If an item does not apply to you, use ‘$0.00’ or ‘n/a.’ Do not round amounts.”

Finally, the preamble to these instructions address an issue that occurs so often, I cannot even fathom a guess as to how often we have seen this issue arise.

“NOTE: Some items on the list may not occur every month (such as payments for your child’s summer camp) or may occur more frequently (such as bi-weekly paychecks), but you must still include them. To account for these amounts, you will need to make some calculations called **annualization.**”

Then the Clarke County form gives a number of examples of how an affiant can convert a payment that is not monthly into a monthly obligation. It does the same with bi-weekly paychecks.

I honestly cannot begin to guess how many times someone has filed a DRFA and has listed their annual income in the monthly income box – or provided the net income instead of the gross.

Some clients really struggle to figure out what to list in the box for car tags or other expenses that do not recur on a monthly basis

While some parties may gloss over when they hear the term “annualization,” the concept is pretty easy to follow, once explained

**SECTION BY SECTION EXPLANATION OF THE DRFA**

The Clarke County form then goes section-by-section of the DRFA and explains what is to be included and excluded from each section – it really does a fine job in explaining the form.

**Section 1** provides for the identifying information of the parties and children

**Section 2** asks for a summary of what follows in the remaining 3 Sections of the form (a little confusing)

**Section 3** deals with the income of the affiant

PLEASE spend some time helping the parties identify “gross” income vs. “net” income – it is a really difficult task to undo it when you reach the issue of child support (net income appears in Section 3(b) of the form)

Remember that if the party is military, they list their entire income in Section 3 of the DRFA but there is a very different set of numbers used to calculate child support – only the base pay, BAS and BAH w/o dependents. That can be very different that the military party’s entire gross income

**SECTION 4 - ASSETS – MARITAL VS. NON-MARITAL**

The client will need the lawyer’s input on Section 4 dealing with assets. If you have ever seen a DRFA form, Section 4 has a number of boxes where an asset is described. Next to that box is a box for value. Then there are boxes where the affiant is expected to list whether the asset in marital and, if non-marital, to list the reason why that asset is non-marital.

While the Clarke County form attempts to explain that concept of non-marital property but I am unsure how any form could adequately explain such a nuanced concept.

And the lawyer does not really want to be bound by the uninformed claims of the client

**SECTION 5 - DEBTS**

Again, it happens quite often that the parties will argue about debts that do not appear on either party’s DRFA.

On behalf of judges everywhere, when the parties have multiple “MasterCard” or “Visa” accounts, it really helps when they are identified or differentiated on the DRFA form.

Do not include enough information from some hacker to get information but include the last 4 digits or the name of the issuer of the card – particularly where there are multiple, similar accounts.

Where you have a case with several unsecured credit accounts, it is pretty common for the judge to apportion the debt with reference to the last page of the DRFA. Having accurate information on that document will prove rather important to the judge – particularly if he/she takes the matter under advisement

Same is true if the parties have 2 Ford vehicles, etc. Help the judge differentiate directly from the DRFA

As we said in the beginning of this episode, having a DRFA filed in the case helps everyone involved – but particularly the judges

When I have pro se parties in divorce cases, I will not accept their verbal testimony as to their respective income and debts – I demand that a DRFA be filed in the case to ensure that I have at least a sworn statement from the parties

We would submit that filing a DRFA – even in a case that is settled and a settlement agreement is to be incorporated into the final decree – helps everyone involved – even after the decree has been issued

To the lawyers who may be listening, think about how you have DRFA’s completed in your practice – and if you might want to change how you do that going forward

No shenanigan involvement – no countless hours spent going through utility bills and bank statements -

So that’s all for today’s discussion of the Domestic Relations Financial Affidavit

*We have summarized the discussion already – but know that if you want this outline, it is available on goodjudgepod.com.*

As always, we want to discuss topics that are relevant to you, our listener(s). Shoot us your thoughts at our e-mail address, goodjudgepod@gmail.com

We come now to the often requested but rarely duplicated section of our show – the “Tain talks music” section of the show. Tain, take it away.

 *Today’s music trivia excursion focuses on one of Wade’s favorite artists of all time, Justin Timberlake. Surprised? You shouldn’t be. Our musical tastes vary a great deal….*

 *Anyway, Justin’s life has been well documented and we are not going to dwell on his time as a Musketeer or as a member of N’Sync. Instead, we are going for really useless and arcane facts – really more our style here on the goodjudge-ment podcast.*

 *Justin has the honor of introducing a band during the 2003 VMA awards and he introduced this band as “The Greatest Band in the World.” Wanna’ guess which band Justin was referencing? Honestly, I would never have put this band in my top 20 but these are Justin’s words, not mine. Give up? Coldplay. Really? Best band in the world?*

 *Justin is married to Jessica Biel. But he did not invite any of the members of his band, N’Sync, to the wedding. Just for giggles, can you name two or more of the other members of N’Sync that missed out on Justin’s nuptials? I will name them all for you – JC Chasez, Lance Bass, Chris Kirkpatrick and Joey Fatone.*

 *Most people know that Justin was born and raised in Tennessee. Tell me if you know the town where he was raised and what his father did for a living? I know these seem very specific but it may all come full circle a bit… Ready for the answer? He was raised in Millington Tennessee (very short ride down Highway 51 to Memphis) and his father’s employment? He was the choir director at a local Baptist church. It really is amazing how many talented singers grew up with church singing roots.*

 *One last question – how old is Justin Timberlake? You have to remember that he appeared in Star Search as a little boy, sang in the Grand Ol’ Opry at the age of 10 and was a Musketeer with Britany Spears at a really young age. He is the same approximate age as Carrie Underwood, Miranda Lambert, Cole Swindell, and he’s a little younger than Macaulay Culkin. So guess his age today. Give up? On Jan. 31, he turned 43 years old.*

*Have a great day everyone and thanks for listening.*

1. O.C.G.A. § 19-6-15(k)(1) “Except as provided in paragraph (2) of this subsection, a parent shall not have the right to petition for modification of the child support award regardless of the length of time since the establishment of the child support award unless there is a substantial change in either parent's income and financial status or the needs of the child.” [↑](#endnote-ref-1)