

### **Sample “Short Answer” Question No. 1 (Approximately 45 Minutes):**

Bill and Sue were married in **2005**. They had one child, Mary, who was born in **2010**. During the marriage, Bill was employed as a mechanic and is currently earning \$90,000 per year. Sue gave up her job as a teacher after the birth of Mary and stayed home full-time to care for Mary and the family's home.

Bill and Sue's relationship began to deteriorate about the time Mary turned six and started first grade. Bill felt that Sue should have gone back to work at that time. Since then, on several occasions, Bill has become violent. Last month, Bill caused Sue to break her hand and to receive ten stitches to her head. Bill was subsequently convicted of domestic violence and is subject to a permanent civil protection order protecting Sue. Bill comes to you, the LLP, seeking a divorce. Bill does not think he should have to pay maintenance to Sue, and he wants to have Mary live with him ½ of the time, so that he won't have to pay any child support.

#### **QUESTION 1.A:**

Discuss Bill's responsibilities concerning maintenance to Sue. Also discuss what effect Bill's domestic violence charges might have, if any, on the proceedings.

#### **QUESTION 1.B:**

Discuss Bill's responsibilities concerning child support for Mary. Also discuss what effect Bill's domestic violence charges might have, if any, on the proceedings.

### **DISCUSSION FOR SHORT ANSWER QUESTION NO. 1**

1. The court may grant maintenance for either party pursuant to the Colorado maintenance advisory guidelines (C.R.S. 14-10-114) if it finds that the spouse seeking maintenance lacks sufficient property for his or her reasonable needs, is unable to support him or herself through appropriate employment, and/or is the custodian of a child under the age of 24 months. Given Mary's age, Sue would probably have to return to her employment, but is likely to get temporary maintenance or permanent maintenance until she can find employment. The Court will consider whether Sue's ability to be re-employed based on the current job market for teachers, Sue's current skills, the status of Sue's teaching license, and whether the injury to Sue's hand and head will impact her ability to become re-employed. The Court may also consider the standard of living established during the marriage, Bill's ability to pay, and all the other factors set forth in the maintenance statute. Bill's DV charges might impact his ability to remain employed, and could therefore impact Bill's ability to pay maintenance.
2. Bill's plan to be a 50/50 parent may decrease his child support, but he is the only earning parent at this time, and Bill is therefore likely to have to pay child support to Sue. If Bill is convicted of domestic violence, it is unlikely that he would be granted 50/50 parenting time. Child support is calculated typically pursuant to the child support guidelines. Both parties' income is considered when calculating child support and income may or may not be imputed to a non-employed parent. The Court would have to make significant findings to impute income to Sue immediately, since she has been out of work for many years. Bill's DV charges might impact his ability to remain employed, and could therefore impact Bill's ability to pay child support.

## Sample Family Law Multiple Choice Questions

(90 Questions To Be Answered Over Three Hours)

### QUESTION 1

Betty and Sam married when both were 16, one month before Betty's 17<sup>th</sup> birthday. Betty was three months pregnant with their child at the time of the marriage. Baby Joe was born five months later. After the wedding, Betty and Sam moved into an apartment in Denver.

Before their marriage, Sam told Betty that he had inherited a large sum of money and was independently wealthy. Based on this representation, Betty agreed to marry Sam. Betty subsequently purchased \$10,000 worth of baby clothes and furniture for baby Joe on credit. When baby Joe was born, Betty asked Sam for money to pay the bill, he said he was broke. During the celebration of baby Joe's first birthday, Sam confirmed that there was never any inheritance. Although they are still living together, Sam's lie has had a profound disturbing effect on Betty. She has come to you, an LLP, seeking advice on having the marriage declared invalid. You advise Betty that:

- a. The marriage can be declared invalid because Sam lied to Betty about his inheritance, and Betty would not have married Sam if he was not wealthy.
- b. The marriage can be declared invalid because Sam lied to Betty about his inheritance, and Betty relied on Sam's having plenty of money to support her and the baby.
- c. The marriage cannot be declared invalid because Sam told Betty he was broke a year before Betty came to you.
- d. The marriage cannot be declared invalid because Sam and Betty are still living together with baby Joe.

Correct Answer: C.

Whether or not Sam's lie was a fraudulent act that went to the essence of the marriage, Betty failure to act to seek and invalidity of marriage for a year after she learned of the lie makes her ineligible for a declaration of invalidity (C.R.S. 14-10-111(1)(d) and (2)(a)). Whether Betty and Sam are still living together is irrelevant.

## QUESTION 2

Wife and Husband have been married for five years and have lived in Colorado at all relevant times. They have one child, born two years ago. Recently, Wife discovered that Husband was having an affair. When she confronted him, he said that he intended to continue the affair. Wife then told Husband to leave the house, which he immediately did.

Although Husband has not been violent, nor has he made any threats, Wife is concerned that if she files for divorce, Husband may come back to the house and be upset with her. She does not think he will harm her physically, but she thinks he might yell at her, insult her, or otherwise verbally harass her. Wife comes to you, the LLP, seeking protection from Husband, pending the divorce. You counsel Wife that:

- A. Husband's infidelity will entitle Wife to a Temporary Protection Order to keep Husband out of the house during the dissolution proceedings.
- B. Wife does not need to seek a Temporary Protection Order because once Husband is served, there will be an automatic temporary injunction that will prohibit Husband from disturbing Wife's peace during the dissolution proceedings.
- C. Husband's infidelity will entitle Wife to a Temporary Protection Order to keep Husband out of the house during the dissolution proceedings if Husband tries to bring his girlfriend into the house.
- D. Wife cannot keep Husband from entering the house and verbally harassing her during the dissolution proceedings, because the house is marital property.

Correct Answer: B

C.R.S. 14-10-107 provides for an automatic temporary injunction (or "protection order") in every dissolution action. Once Husband is served with divorce papers, the temporary injunction prohibits, among other things, Husband and Wife from molesting or disturbing each other's peace. Husband having a girlfriend is irrelevant. The status of the house as marital property would not matter if Husband is harassing Wife.

### QUESTION 3

Ten years ago, Paul Petitioner married Rachel Respondent in Blissville, Colorado. Neither party came into the marriage with any substantial assets. Rachel is now a real estate agent earning \$200,000 per year. Paul is (and always has been) an artist. His income has ranged from \$8,000 - \$12,000 per year. During their relationship, Paul and Rachel have enjoyed an upscale lifestyle which has included a beautiful, rented apartment, fine dining, and many exotic and expensive vacations. However, during the last ten years, the two saved very little money and have very few assets. Paul's health insurance is paid through Rachel's employer; he and Rachel have always filed joint tax returns as a married couple; and, they have a joint checking account. Paul is 55 years old, and Rachel is 65 years old.

Recently Paul and Rachel's relationship has fallen on hard times. Paul is convinced that Rachel is having an affair with a co-worker, therefore Paul comes to you for help filing a petition for dissolution of the marriage and seeking maintenance from Rachel. You, the LLP, advise Paul:

- a. Maintenance for Paul will possibly be awarded based on the factors set forth in C.R.S. 14-10-114, the advisory maintenance guidelines.
- b. Maintenance for Paul will be only be awarded by the Court if Paul is able to prove that Rachel is having an affair with a co-worker.
- c. Maintenance for Paul will not be awarded by the Court because Rachel is 65 and entitled to retire.
- d. Maintenance for Paul will only be awarded by the Court if Paul applies for his share of Rachel's social security, and said benefit, plus Paul's income from employment, is insufficient to support Paul.

Correct Answer: A

In order to be entitled to an award of maintenance, Paul must first meet the two threshold requirements for such an award. These requirements are: (1) that Paul lacks sufficient property including his share of marital property, to meet his reasonable needs; and (2) that Paul is unable to support himself through appropriate employment. C.R.S. §14-10-114(3)(d). The court would consider a variety of factors including but not limited to Paul's resources and ability to meet his needs independently, the standard of living during the marriage, the duration of the marriage, Paul's age and physical condition, and Rachel's ability to meet her needs and those of Paul. C.R.S. §14-10-114(3)(c). These requirements appear to be satisfied given Paul's age, the length of the marriage, his small annual income, the fact that the parties have few assets, etc.

Rachel's alleged affair would not be considered. Courts do not consider marital misconduct in deciding whether threshold requirements for maintenance are satisfied and are specifically precluded from considering such misconduct in setting the amount and duration of a maintenance award. C.R.S. §14-10-114(2); *In re Marriage of Van Inwegen*, 757 P.2d 1118 (Colo. App. 1988). Thus, Rachel's alleged extramarital affair will have no impact on the issue of maintenance.

Rachel has the right to retire, but if Rachel is still working, the Court must consider the circumstances at the time of dissolution. *In re the Marriage of Swing*, 194 P.3d 498 (Colo. App. 2008), and *In re the Marriage of Marshall*, 781 P.2d 177 (Colo. App. 1989); C.R.S. §14-10-114(4). This is also true regarding social security payments that Paul has not sought, and the Court cannot impute to Paul.