

Valuing and Dividing Businesses in Divorce Cases: *How to Communicate the Results of a Forensic Analysis*

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HOW TO COMMUNICATE THE RESULTS OF A FORENSIC ANALYSIS

In the context of a financial investigation, the accountant can help the parties in numerous ways, such as deciding how to gather all the pertinent information; understanding the scope of the property to be divided; discussing the available choices for dividing the assets and the consequences of such choices; ultimately helping the parties draft an agreement to present to their attorneys for review; and can provide a neutral third party point of view.

One of the methods often used by attorneys to help parties resolve an impasse is to find an impartial way to generate a solution. On important issues such as valuation, taxes, tracing questions, characterization issues or related problems, an impartial solution may mean finding a professional whom or a method that both parties will trust or at least consider. In litigation, parties resolve (and sometimes create) such differences by using various kinds of experts. If the parties can agree on a single expert or a single method or approach to addressing the issue, they can lessen the controversy and also lessen the cost of finding the necessary information.

When one party in divorce believes that the other party is not providing full disclosure of information or is in some way distorting the information provided, it may be prudent for that party to retain a forensic accountant. Businesses often manipulate revenues, expenses, assets and liabilities on financial statements to conform to a specific purpose. Often, the reason(s) a business has for distorting income are legitimate and legal. Some of the common reasons why a business owner might understate a company's assets and revenues are the owner intends to get divorced; to pay less federal and state taxes; to pay less rent when rent is based on revenue

earned; to make future earnings look better when management is newly appointed; and/or to negotiate legal settlements.

Some common reasons why a business owner might overstate a company's financial strength and performance are: to obtain additional credit from lenders; to make the company more attractive to investors; to earn greater management bonuses and sales commissions; to establish a stronger track record of earnings; to lower costs of loans; to avoid filing bankruptcy; to induce prospective buyers; and/or to list the company on a stock exchange.

Ordinarily, business decisions relating to the operation of a business and reporting of income are decided long before a divorce is contemplated or without regard to a pending divorce. Judges can consider the reasons why a party's income and assets as reported by a business should not be the same as the party's income and assets within the context of the divorce proceeding. Often such reasons provide a strong argument when attempting to eventually persuade a court to equitably divide assets and set a spouse's income level in a manner compatible with the accountant's theory of the case rather than as indicated by the records of the business.

In the event that financial issues are litigated, the courtroom presentation of evidence can be a deciding factor in a judge's decision. As such, it is imperative to remember the Boy Scout Motto – “Be Prepared”. The attorney should spend adequate time preparing you for your testimony. It is important to sequence your testimony so it is easy for the judge to follow. This will also help lay the proper foundation for your testimony and paint a picture for the court. At all times you must remember that Judges are normally not financially sophisticated. Therefore, explain as much as possible in layman's terms and use demonstrative evidence to highlight the facts you relied on to develop your opinion.

There are several courtroom mannerisms that can affect the Judge's assessment of your credibility. First, be prepared, second, be confident, third, be professional, fourth, do not lose your composure, fifth, do not evade the examiners questions and finally, and most importantly, never lie. The attorney you work for will advise you to LISTEN to the questions asked of you, THINK about the answer to the question prior to answering it, and Answer ONLY the question asked of you and then STOP TALKING. In addition, if you do not know the answer to the question or do not understand the question asked of you, do not guess at the answer. Ask your examiner to repeat the question, to rephrase the question, or simply respond with the truth, "I do not know and I do not want to venture a guess."

In closing, parties can effectively deal with the most simple and the most complex issues in divorce, by utilizing experts in the underlying fields associated with the mediation topics. In divorces requiring the use of accountants, the accountant should determine the possible reasons why income from a business may be distorted. The accountant can then request the documents that may expose those distortions. Upon receipt of the documents, the accountant should identify specific deviations from the business income as presented by the opposing party's actual income. If the deviations are then presented in the divorce proceeding in an organized and understandable manner, you will often be able to persuade your opponent to adopt your client's theory.

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