

Marital Dissolution: Is it Time to Hire a Financial Expert?

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Overview

Marital dissolution is a complex and unique area of practice. When considering the parties' financial dealings, past and present, additional complexity may arise. In order to understand, evaluate and in many cases unravel these dealings, an attorney may wish to consult with a financial expert. This article addresses the different scenarios a financial expert may provide assistance and add value for your client.

Business Valuation

If one party to the divorce has an ownership interest in a privately held company, a determination of the value of the company may be necessary for the equitable division of the assets. Often times, one party to the divorce may have little involvement in the business operations and no knowledge with respect to the value of the business. In these cases, the attorneys may choose to jointly or independently engage a financial expert who specializes in business valuation.

The professional should have the appropriate combination of education, credentials and experience in order to assist with the case. A few of the most commonly recognized credentials and their respective organizations are Accredited Senior Appraiser (ASA) by the American Society of Appraisers, Accredited in Business Valuation (ABV) by the American Institute of Certified Public Accountants (AICPA) and Certified Valuation Analyst (CVA) by the National Association of Valuation Analysts.

It is also important for the client and attorney to understand not all valuations are created equal. There are different levels of scope and reporting requirements even within the same standard setting body. For example, the AICPA offers the following reports: Calculation, Summary and Detailed Report.

A calculation report provides a calculated value based on a method or methods agreed upon by the client and the appraiser. Be aware of the following disclaimer, as stated in a calculation report: "...had a Valuation Engagement been performed, the results might have been different." Therefore, in some cases it may be advantageous to obtain a summary or detailed valuation report, which are typically more thorough. It is important to discuss the purpose of the engagement (e.g. mediation purposes) with the business appraiser so you can obtain the most appropriate type of report.

Tax Matters

All marital dissolutions have the potential for complicated tax issues, which should be understood and evaluated. The following will identify and briefly review several common tax issues to illustrate their potential impact on the proceedings. Many of the items are negotiable and can have a large bearing on what is received by or ultimately awarded to either party. For further reading on the subject, refer to IRS Publication 504: Divorced or Separated Individuals.

One of the first decisions in the preparation

of any tax return (pre or post-divorce) is selecting the filing status of the party or parties. Filing status is determined as of the last day of the year and impacts such items as the tax rate and the applicability of certain deductions and credits. While seemingly innocuous, this decision can have significant impact on the financial future of each party. Since the taxpayer and the spouse are jointly and severally liable for tax and interest on a joint tax return, any prior year tax liabilities or amended returns filed before or after the divorce should be considered as part of the settlement agreement.

There are, however, certain circumstances under which the spouse can be relieved of liability. These scenarios include innocent spouse relief, equitable relief and separation of liability. The spouse requesting tax relief using separation of liability can only do so under certain limited situations such as joint filers who have not lived together for the 12 months ending on the date the spouse filed the election for relief.

More complex tax issues involve the treatment of passive activity loss carryovers, basis in capital assets, and alimony recapture, to name a few. Engaging a professional with knowledge and experience in tax, specifically as it relates to divorces, can be useful in the property settlement phase and also the compliance and post-divorce tax return preparation phases.

Forensic Accounting

Forensic accounting is a broad term and can be utilized within several areas of marital dissolution proceedings. The AICPA offers the following definition of the services:

"Forensic accounting services generally involve the application of specialized knowledge and investigative skills possessed by CPA practitioners ("practitioners" or "forensic accountants") to collect, analyze, evaluate and interpret certain evidential matter."

These services are communicated in a written report or orally in a court of law. One scenario in which these services could be used is if one of the parties is suspected of hiding assets. A forensic accountant can analyze historical records such as tax returns, credit card statements and bank statements to assist in locating or determining whether hidden assets exist.

A forensic accountant can also assist in analyzing historical information with respect to assets owned by either party prior to marriage. A tracing of the marital and non-marital assets may assist the attorneys in the division of the assets. In addition, a forensic analysis of historical and prospective income may assist the attorney, mediator or the judge with maintenance determination.

Selecting the Financial Expert

Once you have determined a need for the services of a financial expert, the next step is to select the person most suited for the service. Care should be taken to ensure the expert is not excluded from the case under

a Daubert challenge. The Daubert (or state equivalent) Standard is a standard of care which was adopted by the federal courts and certain states as the result of a landmark case from 1993. In court, a financial expert's testimony can be subject to a Daubert challenge and the court could potentially disallow the expert's report, opinions and testimony. This result could be detrimental to the case and embarrassing for the expert and attorney.

Financial experts will often take an initial meeting to discuss the case free of charge. Talk with the financial expert over the phone or in person to gain an understanding of their qualifications in addition to requesting a copy of their curriculum vitae. Some initial questions you may want to ask when interviewing the financial expert include:

- Are you willing to testify in court?
- What is your court testimony history?
- Do you have experience with this specific issue?
- How much of your time do you spend practicing in this area?
- What is your hourly rate?

The expert should be confident in his or her experience and knowledge, but also be willing and able to listen in order to provide

the best type of service for your needs. The financial expert may be able to provide assistance in the area of tax, business valuation or forensic accounting, or all three. The right financial expert can be a valuable addition to your team.

Helen Cohen is a director in Blue & Co.'s Louisville Office where she primarily practices in the areas of business valuation, litigation support, forensic accounting, small business tax issues, and estate planning. She has been appointed by Jefferson Family and Circuit Courts and is qualified as an expert in Fayette, Warren, Oldham, Bullitt, McCracken and Pulaski counties and has qualified as an expert in federal bankruptcy court.

Rob Kester is a senior manager in Blue & Co.'s Business Valuation & Litigation Support Services Group. He has 12 plus years' experience in public accounting and the valuation field including the areas of estate and gift, marital dissolution, forensic accounting and support to attorneys in virtually all areas of litigation, including expert testimony and case consultation. ■



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