



Practical Uses of Litigation Consultants and Forensic Accountants in Divorce Matters

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Marital dissolution disputes involve two of the most personal and emotional issues in life: family and money. The dissolution of a marriage usually involves child custody issues that become extraordinarily emotion and difficult. Those issues spill over into the matters of money. The financial issues in a dissolution boil down to two issues: determining the equitable division of assets and debts of the marital union and ongoing financial support of the family after the divorce is final – based on the income of both former partners.

The asset and debt issues involve identifying all assets, determining the ownership of those assets (separate vs. community property) and the value of the assets. The valuation of the assets becomes a complex, and expensive, issue if a business is involved.

The income issue only becomes difficult if one side in the dispute decides to either hide compensation or make outright false representations regarding their income and expenses. The suspicion that this has occurred is the most common reason forensic accountants and litigation consultants are retained to assist in a family court matter.

Issues Leading to Use of Litigation Consultants and Forensic Accountants

Family court is one of the few places where personal income tax returns can be obtained in the course of litigation. Additionally, both parties are required to submit asset/debt and income/expense disclosures to the court. It is common to find that the information on the court disclosures do not match the information on the individual income tax returns. There are a number of reasons this could be true but such a disparity usually indicates it is time to bring in an accounting expert to interpret the information.

An experienced forensic accountant will know pretty quickly what documents can be, and should be, obtained to resolve the matter. The scope and scale of the document request list will be driven by the complexity of the marital estate. If there is a closely-held business generating most of the income, the requested documents will be fairly substantial.

Litigation consultants, typically in conjunction with forensic accountants, work with litigators to provide objective and independent evaluation of the economic and financial issues involved in marital dissolution matters. This can include the evaluation of opposing party's claims, assistance in preparation of deposition and cross-examination questions, document request lists, other discovery assistance, and expert witness testimony. Since asset valuation and income verification can be key issues in divorce cases, the use of these experts is often crucial to the success of the case.

Digging Beneath the Surface

The most common set of requested documents are bank statements for all checking and other cash-equivalent accounts. The purpose of obtaining bank statements is to determine the cash flow available to the marital estate. This means that transfers between accounts must be



eliminated. Once the true cash flow has been determined, a reconciliation can be attempted between the income reported to the court (I&E Disclosure), the banking records, and the tax returns. This type of triangulation often either exposes errors or misstatements or identifies that additional information is needed.

In some cases, the marital financial structure is complex and may even be partially hidden from view. In a family court matter there are significant levels of emotion and personal angst. These factors often motivate a higher level of outright misrepresentation than is found in other litigation contexts. When the forensic accountant is involved in a case like this the cost of forensic work must be balanced with the expected benefit of the additional investigation.

If additional independent data is needed because nothing is adding up, there is one more step that is very effective. A question that should be investigated is whether the couple, or one of the spouses, has recently applied for a loan. If the answer to this question is affirmative the path to a faster resolution may have been exposed. When a borrower applies for a loan, the motivation is to show as much income as possible. When that borrower prepares their tax return, the motivation is to show as little income (less tax) as possible. When the borrower/taxpayer files for divorce and are in the position to pay alimony and/or child support, their motivation is often to show as little income (less support required) as possible.

Obtaining loan applications (usually via subpoena) prepared by the same person who signed the income tax returns submitted to the court and signed the financial disclosures submitted to the court has been a very effective and efficient method to resolve the financial matters in many family court cases. If they all line up, there is great confidence that the numbers are accurate. If, however, the loan applications show much more income than the other court disclosures it puts the "other side" in a position to explain which set of numbers are the right numbers. It can be difficult to explain in open court that either the litigant committed loan fraud (false or misleading application), tax fraud (filing false tax returns) or perjury (filing false statements with the court).

The question of income requires creative and efficient approaches to discovery. An experienced team of litigation consultants and forensic accountants can assist the parties to get to information that provides both sides in the dispute with a reliable and reasonable estimate of true income.

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