

## Discovery – Starting Out On The Right Foot

One of the first tasks performed in a new family law case is the discovery request. While this seems like a simple first step, it is very easy to trip yourself up and set the stage for a harder than necessary process that can lead not only to added expenses for your client, but also create a hostile environment for the life of the case.

David Cantor, CPA/ABV has been working almost exclusively in Family Law Accounting since 1990 in both Arizona and California.

He has worked on over 1,000 Family Law cases and has experience in all aspects of Family Law Accounting including Business Valuations, Separate Property Tracings, Calculation of Income For Purposes of Determining Maintenance and Support as well as many other financial issues.

Mr. Cantor has testified in Court over 100 times as an expert witness.

Before you even create an actual list, you first need to identify all of the potential financial issues in the case. Besides some of the obvious issues that a case presents (determination of income, business valuation, and separate property claims), there can also be some subtle, yet important ancillary issues such as tax issues, community waste, hidden assets or a marital standard of living. Not identifying all of the financial issues early in a case will probably result in an incomplete financial picture for your client.

Once the issues have been identified, then you will need to craft a detailed, but not overly burdensome request (remember the old saying: “Be careful what you ask for, you may get it”). This step will lay the foundation for the accounting aspect of your case.

You will need to walk the fine line of not being too detailed on your request, yet being detailed enough so that the opposing side can’t reply “Those documents don’t exist” because you used the wrong terminology. For example; a company may produce a report entitled “Monthly Inventory Accounting Reconciliations”. If you were to ask for “Inventory Summaries” the opposing side can respond that the requested records do not exist (because you gave a specific name to the documents that you think exist). However, if you request “All records that reflect the company’s inventory on a monthly basis”, the opposing side will have a hard time not providing the requested documents. I realize that this may sound like splitting hairs, but I don’t think that I need to tell you how often litigants like to split hairs.

Even if you don’t have much information on financial records that are involved, you should have enough information to be able to create a discovery request that is detailed, but does not look like a fishing expedition either. Realistically, there are no two financial situations that are the same or have the same specific documents. A corporate law firm may bill by the hour and have accounts receivable, yet a personal injury law firm has no

accounts receivable but has work in process. Two law firms with completely different types of accounting records. If you aren't aware of this difference when creating your discovery request, you may fail to request the proper and necessary records to prepare your case.

This can apply to personal records as well as business records. Spending time with your client and your accounting expert identifying all of the financial issues in the early stages of the case will ensure a more efficient and complete accounting presentation. Also, don't be afraid to have your accounting expert assist in the preparation of the initial discovery request. Experienced family law forensic accountants are knowledgeable in the types of financial records that should exist for businesses as well as personal financial issues. We are also well schooled in the nomenclature used for these documents. By fashioning a discovery request that is tailor made to a specific case will show the opposing side that you are aware of what specific documents should exist and have knowledge on whatever financial issue(s) you are dealing with.

The next step is to physically create your discovery request. My personal preference is to create an actual list specifying the documents being requested, as opposed to putting your request in a narrative or paragraph format. An actual list will help you in tracking the documents received as well as providing the opposing side with a simple to read, yet detailed request which will cause less confusion on their part.....and less of a reason to be non-compliant due to confusion. In my opinion, when I see a request in narrative or paragraph form, my first reaction is that a template was used and the only things changed were names and dates, without much thought going into the request.

I'll leave you with two quick war stories; I once had a case in the garment industry in which my client's attorney wanted copies of all "inventory records" for five years. Opposing side said sure, bring a copy service to the factory. We arrived to find over 500 bankers boxes of inventory documents that really had no bearing on what needed to be done.....but we got what we (actually the attorney) asked for. In another case, I was brought into a case after discovery was cut off. It took me five minutes to realize that my client had a significant separate property interest in the residence. When I discussed this with counsel, I was told that we couldn't address that issue because it was too late in the process and no new documents could be produced or issues raised. Our client was not too happy with her attorney.

## FREE CLE CLASSES IN YOUR OFFICE

Cantor Forensic Accounting offers free 2 hour CLE\* classes at your office. Working with you, I can customize a class on any Family Law accounting issue to meet your office needs and fulfill a minimum of two hours of CLE. Topics can include:

- ◆ Business valuation issues related to marital dissolutions
- ◆ Calculation of income
- ◆ Separate property tracing
- ◆ Document requests
- ◆ Marital Standard of Living
- ◆ Income tax issues related to marital dissolutions
- ◆ Reimbursement claims
- ◆ Stock option allocations

Please call David to receive more information on these classes.

\*The State Bar of Arizona does not approve or accredit CLE activities for the Mandatory Continuing Education requirements of Specialists. This activity may qualify for up to two hours toward your annual CLE requirement for the State of Arizona, including two hours of advanced level training in the area of Family Law. A minimum of 5 attorneys are required to attend.

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