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JUNE 2013



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Divorce Cases: Best Practices to Untangle Commingled Assets

It's obvious that a comprehensive knowledge of case law is needed to overcome obstacles of separate property vs. community property claims.

But it's just as important to obtain the right financial documents at the beginning of the discovery process, and then perform the proper accounting calculations, in order to deliver the best result for your client.

Accounting and Assets

Whether the goal is to carve out the community interest in a separate property asset, or seek a separate property reimbursement from a community asset, an accounting related to the asset in question is almost always required.

While simply looking at clients' financial account balances may work in a few cases, often a complete tracing is needed to give a step-by-step financial picture that will clearly and accurately identify and quantify any claims in question.

Discovery: Request All the Documents at the Start

The first step is to have the client provide a "history lesson" about the contested issue. Involving a CPA at this stage provides expert advice as to all the documents necessary to obtain from the client, the opposing side or via subpoena. The CPA may be aware of accounting reasons to request certain doc-

uments that may not typically be considered at this point. This can save time, money and frustration for both sides later on.

Case law, Statutes and Accounting

Numerous cases address the fact that there is a commingling issue (*Inboden v Inboden*, *Valento v Valento*, *Flower v Flower*, *Barnett v Jedynek*, *Drahos v Rens*, *Kingsbery v Kingsbery*, *Honnas v Honnas*).

However, there is very little guidance in the case law on how to perform the actual accounting required to compute the separate and community components of the asset in question. An accountant familiar with case law will function as a valuable partner in preparing the accounting to prove the claim.

The Attorney and the CPA can work together to formulate an approach to the issue, based on case law and state statutes, as well as discussing other theories so that

there is no confusion as to the approach being taken by the CPA preparing the accounting report.

Burden of Accounting Proof

In *Porter v Porter*, The Court said that commingling alone does not automatically transmute separate to community; the burden rests on the party claiming a separate property interest to prove it.

This is where the teamwork of the client, attorney and CPA comes in. If the client can provide sufficient records to support their claim, the CPA can prepare a report that reflects a history of the funds in question that will complement the client's claim of separate property.

When a commingling issue exists, the best practice approach includes a concerted effort between the attorney and a forensic CPA who has a comprehensive knowledge of case law in order to best serve the client.



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DAVID CANTOR, CPA/ABV

Mr. Cantor has extensive experience in family law accounting and knowledge of relevant case law in Arizona and California. He has provided forensic accounting services on several hundred family law matters and testified in family law courts over 100 times. Please call or email him with your questions. 480.620.8486, dcantor@eppsforensics.com

When your divorce case involves complex financial issues, you need answers.

Fact is, financial assets have a history, and we know how to decipher the transactions that tell the story. Our experience in hundreds of family law cases means we know how to analyze complex financial situations in a divorce. We determine where the money came from and who it belongs to now. We obtain the right financial documents and perform the proper accounting to find answers to questions like: What is the value of the family business? What part is community? What are the investments, and where did they come from? What stories do the financial transactions tell about community vs. separate assets?

Untangling the marital ties

Separating the financial assets of a family requires more than bank statements and balance sheets. The inter-relationships are intricate. Money moves among accounts, assets and debt; money mixes business with personal. Our experience in family law accounting unwinds the numbers. Our knowledge of case law, statutes and judicial rules guides the process.

Plain and powerful expert delivery

We deliver our expert opinion in plain English, persuasively and powerfully. We understand how vital it is to connect with the judge and the jury, quickly establish our credibility, and communicate clearly.

Unwavering defense

Not only do we develop an expert opinion and deliver it persuasively, we defend it unflinchingly. We know a case can swing on a single expert witness. And we know how to take the heat from opposing counsel without breaking a sweat.

The final answer

Take the first step toward decoding the financial DNA your case may depend upon. Call us for a free consultation. What you don't know about the data could be your opponent's advantage.

Litigation Support

Expert Testimony

Economic Damages

Fraud Investigation

Computer Forensics

Insurance Losses

Breach of Contract

Personal Injury

Family Law Accounting



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DECODING FINANCIAL DNA



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