

Forensic Accounting: Forensic Accountant Critical to Divorce Litigation

Connecticut is an equitable distribution property state. When a marriage is dissolved the court can grant to the husband or wife all or any part of the estate of the other after considering all the required statutory criteria. This "all-property" equitable distribution scheme means that presenting admissible evidence establishing the value of assets and the amount of income flow can be critical to the court's decision and a party's financial future postdivorce.

The broad mandate to consider "all property" requires the court to value assets. To do so the court needs adequate and convincing admissible evidence presented. When the asset is significant and not easily valued, a forensic expert and a forensic accounting may be critical to valuing it. The state Supreme Court noted in *Bornemann v. Bornemann*, 245 Conn. 508, that "when neither party in a dissolution proceeding chooses to introduce detailed information as to the value of a given asset, neither party may later complain that it is not satisfied with the court's valuation of that asset."

Forensic accounting is important to asset and liability division as well as determining a fair alimony award. A well-done admissible analysis can determine true income flow and available income for distribution, as well as true asset value.

When selecting a forensic accountant, it is critical that credentials be sufficient to satisfy the court that they qualify as an expert. The accountant should have credentials specific to the profession as well as appropriate academic degrees. At a minimum they should be certified public accountants (CPAs).

Additional desirable credentials include being accredited in business valuation (ABV) and certified in financial forensics (CFF) by the American Institute of CPAs. More specific certifications as well as practical experience in the industry and teaching in their field are also helpful. It is also critical that the attorney ensures that the forensic expert has an adequate opportunity to examine material documents.

In *Weinstein v. Weinstein*, 18 Conn. App. 622 (1989), the court found a certified public accountant unqualified to testify as an expert regarding valuation because he had not examined documents sufficiently enough to allow him to value the business. Trial courts have broad discretion in ruling on the admissibility of expert testimony. It is important that a forensic analyst has adequate access to, and thoroughly examines, all documents and records necessary to give an admissible opinion.

Industry Experience

Forensic accounting can be particularly valuable in analyzing the asset value of closely held businesses and corporations, professional practices, trusts and intangibles, including intellectual property and real estate interests. A qualified forensic investigator should have analytical skills and industry experience necessary to investigate all types of financial documentation related to the asset being investigated, as well as the classic skills of a CPA coupled with financial investigation tools.

It is critical that they have the proven ability to testify as an expert witness. A careful litigator will investigate and research the credentials and experience of any potential forensic accounting expert being considered.

Once selected, a forensic accountant can make important contributions to the discovery process as well as perform

the analysis and serve as an expert witness. They can help an attorney understand and credibly justify the need for the documents necessary for a useful analysis.