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Divorce litigation: Why such high forensic accounting fees?

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Let's explore the reasons giving rise to excessive forensic accounting fees in matrimonial litigation. Typically, in a divorce where either substantial assets exist, or either spouse has a high income, one or both of the attorneys involved will advise their client to hire a certified public accountant to address certain financial matters.

The CPA's task may be to prepare a marital balance sheet summarizing the assets of the parties, an income analysis, a business valuation if either spouse operates a business, a search for hidden income or a lifestyle analysis to determine the amounts spent by the parties during the marriage. These tasks are generally beyond the scope of the attorney's expertise, but provide assistance to the Court in determining equitable distribution and alimony.

For the past several years, many couples going through a divorce and/or their attorneys have been dissatisfied with the fees expended by the parties for accounting services. On occasion, accounting fees will even exceed the legal fees, which is seemingly incongruous as accounting services are intended to simply supplement work performed by a matrimonial attorney.

We have identified four principal reasons giving rise to these excessive forensic accounting fees.

First, there often is a lack of understanding about the accounting services to be performed among the matrimonial attorney, the CPA and the client. This is caused by multiple factors. Often, the attorney will not properly communicate to the CPA exactly the type of work needed.

In conjunction with this factor, there is often a failure by the CPA to properly inform the attorney and the client as to the limitations of their services. For instance, if the attorney advises the client to hire an accountant to address financial issues without delineating exactly what is needed, many CPAs will perform a wide variety of services. So, the first key requisite to keeping accounting fees reasonable in matrimonial matters is for there to be a full and proper communication between all involved as to what services will be performed, the goal to be achieved in performance of such services, the estimated cost involved, the limitations of the work, and an understanding of how the work will assist the parties in determining equitable distribution or alimony.

On occasion, accounting fees will even exceed the legal fees, which is seemingly incongruous as accounting services are intended to simply supplement work performed by a matrimonial attorney. Here are four principal reasons for the sticker shock.

The second factor giving rise to excessive forensic accounting fees is failure of either the client to hire, or failure of the attorney to recommend, a CPA who is highly experienced in matrimonial matters. This often occurs when the one of the parties in the divorce decides to use a CPA who has assisted them in the past with other standard and less-specialized accounting matters. In this case, the client in large part ends up paying for the CPA to learn the field. While it is standard for forensic accounting services to be performed in divorces by CPAs, not all CPAs typically deal with these types of cases. Ultimately, the charges to the client are based on time spent. Thus, to keep the time spent to a minimum, the client needs a CPA who can get to the heart of the matter as quickly as possible. It is essentially the same type of premise as a client being better off hiring an attorney who regularly deals with matrimonial matters, as opposed to one who only does an occasional case or two in the subject area.

The third factor is simply hiring a CPA firm with hourly rates are too high. In most states, there is a relatively small niche of CPA firms who perform a great deal of work in the matrimonial area. The principals of some of these firms are normally in high demand since they possess a great deal of experience in the matrimonial area. As a result, there has developed a tendency for some of these firms to charge rather exorbitant fees. The fee dilemma is further exacerbated by the fact that the client often does not even receive highly personalized service from the principal they are hiring. Rather, the key facets of the work are pushed down to a lower professional level in the firm. The principal who the client believes they are hiring may simply perform a review of the final work product without knowing much about the details. Then, if necessary, they make an appearance in court.

The fourth factor is the failure of the client and the attorney to remain well informed during the course of the work being performed. Typically, the engagement letter prepared by the CPA and signed by the client will delineate the anticipated services to be performed. As the work progresses, matters may come to the attention of the CPA indicating that the work can not be completed within the estimated budget or the retainer paid. It is the duty of the CPA to promptly inform the client and their attorney if for any reason, the fees are going to exceed previous estimations.

Sometime this does not occur, particularly if the work has been pushed down to a lower professional level in the firm and the principal CPA hired has not closely kept track of the time spent or the problems encountered by lower-level staff members.

So, how to resolve this? The chief focus should always be on communication. When communication breaks down between the CPA, the attorney and/or the client, there exists a higher probability for the forensic accounting fees to become excessive. Effective communication is critical both prior to beginning the engagement, as well as throughout the engagement. If everyone is in the loop throughout the entire course of the litigation, complex cases can run more smoothly and clients are happier when they are fully informed.

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