

Working with Financial Experts

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There are many different types of experts family law attorneys and their clients can utilize in their cases, including accountants; business appraisers; real estate appraisers; personal property appraisers; actuaries; mortgage brokers; custody evaluators; parenting coaches; and vocational evaluators, among others. Our focus within this article is to discuss the process of working with financial experts who are CPAs with business valuation credentials (hereinafter referred to as "financial experts") and to identify and address some of the key decisions family law attorneys must make when working with financial experts.

Financial experts can provide a myriad of services to help assist family law attorneys with their cases, including, but not limited to, business valuations; property division schedules; cash flow projections; marital standard of living analysis; and non-marital tracing. In addition, financial experts can perform much of the in-depth financial work on behalf of the attorney by working directly with the client and/or other family law professionals. Moreover, financial experts can support an attorney's case inside the courtroom with convincing case exhibits and reports and through expert witness testimony.

The first critical decision an attorney must make is whether to recommend to the client that a financial expert be hired in the first place. The need for financial experts in family law cases depends on many factors ranging from the attorney's own knowledge and expertise to the financial complexities of the particular case at hand. Notwithstanding, in order to justify the additional cost of hiring a financial expert, the issues must be so essential, that the case would have a difficult time being settled or tried without the financial expert's input.

The next step is for the attorney to decide whether to agree to the use of a neutral financial expert or independently hire their own expert. While not appropriate in all cases, the attorney should know and at least consider the pros and cons to using a neutral financial expert. Some potential advantages include:

- Cost-effectiveness, as hiring one expert instead of two can theoretically save time and money, primarily by avoiding duplication of work;
- May lead to a less contentious environment throughout the marital dissolution proceeding
- Neutral opinions may have a greater chance of acceptance;
- Courts tend to favor the use of neutral financial experts; and
- Neutrals can assist in or help facilitate settlement discussions.

Some common disadvantages to the use of a neutral financial expert include:

- A neutral financial expert with a defined scope may not satisfy all of the client's concerns, especially if there may be hidden assets or inaccurate financial reporting; and

- If the neutral’s opinion is different from the client’s expectations, there may be a need to retain another expert to review or rebut the neutral financial expert opinions or recommendations (e.g. “shadow experts”).

Moreover, if agreeing to the use of a neutral financial expert, the attorneys must decide the legal role of the expert. If the neutral will be covered under Minnesota Rule 706, they are considered an appointed expert and their work product will be admissible in court. Further, in accordance with the decision of the Minnesota Supreme Court in *Peterka v. Dennis*, 764 N.W.2d 829 (Minn. 2010), Rule 706 experts are immune from suit for all acts performed pursuant to such appointment. If the neutral performs their services under Minnesota Rule 114, their work product is performed within the context of Alternative Dispute Resolution, is confidential, and will not be admissible in court, unless the parties agree otherwise.

Whether using a neutral financial expert or independently hiring their own expert, the attorney must decide which financial expert to hire. Attorneys may already have a network of trusted financial experts or they may reach out to colleagues for recommendations. While deciding on which expert to recommend or hire, attorneys should consider the financial expert’s educational background, professional licenses and certifications, years in practice, and testifying experience. Additional considerations include the financial expert’s reputation, billing rates, industry knowledge, access to appropriate financial software, ability to persuasively communicate, and demeanor under pressure or cross-examination. Finally, the attorney should make sure the financial expert is an independent party, unrelated to the various attorneys, clients, and other professionals involved with the case.

Once the overall need for a financial expert is known, the attorney should begin planning for deadlines. A typical timeline from engagement to the expert report completion can be 60 days or more. As such, attorneys should involve the financial expert at an early stage. This helps streamline the process and allows plenty of time for the financial expert to ensure a quality work product is delivered. Moreover, if the financial expert’s analysis depends on the work product of another expert (e.g. a real estate appraisal or vocational evaluation) adequate time needs to be built in for both experts to complete their assignments. Furthermore, the attorney and the financial expert should communicate often to make sure the work is proceeding appropriately, and the financial expert should notify the attorney if the workload or deadlines are unmanageable.

Attorneys should also disclose the date of valuation to the financial expert. In Minnesota, the date of the first scheduled pretrial conference is the statutory valuation date. However, the parties can agree to a different valuation date (e.g. date of separation) or the court can determine that another date of valuation is fair and equitable (e.g. many counties use the date of the Initial Case Management Conference). The financial expert needs to be aware of the valuation date to be assumed as it affects the date for which certain financial information is presented.

Attorneys and financial experts should also discuss what information is needed by the financial expert and how that information is to be obtained and shared. While overall document discovery is the attorney’s responsibility, financial experts can help the attorney gather all of the relevant financial information. In the event the financial expert is deemed responsible for obtaining documents directly from the client(s), consider requesting a mechanism for sharing such

documents so that all parties have full access and complete transparency of the information being provided. At times, business owners are reluctant to share their financial information with outside parties, even when related to court matters. In these cases it may be helpful for the financial expert to agree to sign a non-disclosure agreement; although, this would not affect the financial expert's professional standards regarding document retention.

In conclusion, the financial complexities of many divorce cases necessitate the hiring of financial experts. Consequently, every family law attorney should be familiar with the various services provided by financial experts and should understand the legal role and advantages and disadvantages of neutral financial experts. When determining which particular financial expert to hire, attorneys should consider many factors, including the financial expert's qualifications, reputation, and independence. If possible, attorneys should involve the financial expert at an early stage to allow adequate time for the financial expert to complete his or her tasks. Attorneys should be prepared to provide relevant case details to the financial expert upfront, including disclosing the date of valuation and anticipated deadlines. Moreover, attorneys and financial experts should discuss what financial information is needed and how that information will be obtained and shared. Finally, while not discussed within this article, attorneys should work with the financial expert to interpret the financial expert's work product(s) for settlement or trial purposes. In some instances, it may also be advantageous to have the financial experts available to prepare various settlement scenarios during mediation or other settlement oriented processes.



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