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MAGAZINE

DIVORCE & FINANCE

Valuing an Early-Stage Company

All Company Values Are Not Created Equal

Non-Cash Compensation

Red Flags in Valuation

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- Sunday 04/01/2018 @ 9:12 pm (A compliant test was received.)



FINANCIAL MATTERS

- 10 All Company Values Are Not Created Equal
- 16 6 Ways to Prepare for Clients with Non-Cash Compensation
- 18 Red Flags in Valuation Reports
- 26 Valuing an Early-Stage Company in Marital Dissolution



MARKETING

- 6 Technical SEO & New Google Ranking Factors
- 42 Social Media Advertising: The New Frontier



LEGAL ISSUES

- 12 International Child Custody and the Hague Convention
- 28 Family Law Mediation: A Response to the Rising Pro Se Tide



INTERVIEWS

- 17 Can an Online Payment Technology Change Your Law Practice?
- 21 Thought Leaders and Changing Technologies in Valuation
- 23 Business Valuation and Forensic Accounting in Family Law



PRACTICE MANAGEMENT/CLIENT RELATIONS

- 24 3 Effective Ways to Boost Your Collection Rate
- 32 The Art of Advocacy
- 44 5 Strategies to Help Divorcing Clients



TECHNOLOGY

- 30 Cyberstalking, Hacking, and Spyware



HEALTH & WELL-BEING

- 36 Toxic Stress and High-Conflict Cases
- 38 Insomnia and the Family Lawyer



PROFESSIONALS AND SERVICES DIRECTORY

- 46 Listing of Family Lawyers and Related Professionals & Services

MESSAGE FROM THE PUBLISHER

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Dan Couvrette is the CEO of Divorce Marketing Group and Publisher of Family Lawyer Magazine and Divorce Magazine

The financial issues of divorce can be a family lawyer's Achilles' Heel.

You may be a brilliant trial lawyer, know everything there is to know about how to obtain custody for your clients, or have building great relationships with your clients down to a science – but if you don't know or won't admit that you're out of your depth when a client's financial situation is extremely complicated, both you and your client could end up paying a steep price.

This issue highlights some particularly complex financial issues you may encounter in your family law practice.

For example, valuing a company during divorce is a common task, and you have probably worked with one or more trusted business valuers in the past. However, most valuers are familiar

with appraising mature, established companies in "stage six." These companies have extensive historical financial information, which helps inform the appraiser's valuation.

But what if you are faced with valuing a company at stage one or two? Does your appraiser have the knowledge and technical skill-set to value an early-stage startup in the divorce context? Unless you answered that last question with a confident "Yes," you should read "Valuing an Early-Stage Company in Marital Dissolution" (page 26).

Family lawyers often have the daunting task of reviewing valuation reports, which are often both complex and voluminous. Unless you are an appraiser as well as a lawyer, how do you decide whether a valuation report is sound or seriously flawed? "Red Flags in Valuation Reports" (page 18) offers several simple tools to help you spot warning signs and to assess the overall quality and reasonableness of a report.

Business valuation is far from the only complex financial issue that might land on your desk. Highly-compensated senior executives at public companies may have a number of deferred compensation awards that could be convertible into common stock in the near – or far distant – future. When you combine a stressful divorce process with volatile markets and concentrated positions, you create an extremely fertile environment for mistakes to be made. "6 Ways to Prepare for Clients with Non-Cash Compensation" (page 16) could help you avoid some of the most egregious errors when dealing with high-income individuals or their spouses in divorce.

Of course, financial issues are not the only challenging part of a family law practice, so this issue also offers useful articles on legal issues, practice management, technology, and well-being to help you keep a balanced life. Check out:

- "Technical SEO and New Google Ranking Factors" (page 6)
- "International Child Custody and the Hague Convention" (page 12)
- "Cyberstalking, Hacking, and Spyware" (page 30)
- "Toxic Stress and High-Conflict Cases" (page 36).

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Technical SEO & New Google Ranking Factors

If you have looked into marketing your law firm’s website, then you have probably heard about the importance of Search Engine Optimization (SEO). Not all website designers are skilled at SEO, especially technical SEO.

By Atif Nadeem, Digital Marketing Specialist

Every family law firm wants their website to be found on the first page of Google and other search engines. Many lawyers are now aware of the term Search Engine Optimization (SEO). Many understand it as a way of optimizing a website to gain more organic traffic, rank higher in Search Engine Result Pages (SERPs), and ultimately generate more business – but few understand the complexity of SEO, the skills required to perform it, and the value of paying for this expertise on either a one-time or ongoing basis.

SEO Best Practices Are Constantly Changing and Evolving

The technical complexity of search engines grows as new ways of searching (such as voice search and geolocated-mobile search) gain ground. Search engines have become more sophisticated. They are using increasingly complex algorithms to index website pages, and a wide range of different factors to rank those pages. SEO has also evolved; it has become part-art and part-science, and it requires advanced skills, in-depth knowledge of current search engine preferences, and a thorough understanding of modern website technology.

Not all Website Designers Understand Technical SEO

Many law firms assume that their website designer knows how to perform

all aspects of SEO. If you are getting a quote to design or redesign your website, ask about their SEO services, and whether those services include the four types of SEO described below – and then be prepared to pay for it. If you are redesigning your website, take the opportunity to overhaul your website’s SEO – and be aware that your website traffic can tank if your website designer does not know how to preserve the traffic your existing website has built up.

The Four Main Types of SEO

Each aspect of SEO focuses on optimizing different elements of a website, including on-page, off-page, local, and technical SEO. All of these factors are crucial for websites that want to rank higher in search engines; however, new guidelines issued by Google in terms of site speed, user experience, page load time, and website security leave no question that technical SEO deserves much more attention that it typically receives.

This article focuses only on technical SEO, but I have summarized the other three types of SEO in the sidebar to provide some context.

Technical SEO

Technical SEO is the process of optimizing a website for search engine crawlability and indexability without any technical roadblocks. This is a vital – but often overlooked – step in the whole SEO process. Technical SEO is

more relevant to search engines than to humans. If there are serious issues with your website’s technical SEO, then you will not achieve your desired results – no matter how much work you put into your on-page, off-page, and local SEO efforts.

Technical SEO has become increasingly important over the years as users started to surf the Internet on a host of devices with a myriad of operating systems and browsers. Although you must optimize the content to attract the right visitors, you must also attend to all the technical issues that can affect a website’s visibility in search engines – and usability on various devices from a five-year-old laptop to a cutting-edge smartphone.

Technical SEO Factors

Some of the critical factors in technical SEO include crawlability, HTTPS encryption, site speed, and mobile usability.

1. Crawlability



Crawlability reflects how easily search engine crawlers can access a website and index its pages. Generally, a search engine like Google consists of a crawler, index, and an algorithm. The crawlers crawl through web pages by following links, and then index those pages in the search engine database.

A webmaster must ensure that the crawlers can easily crawl and index all web pages without any issues. You can find issues by logging in to Google Search Console, which can also be used to submit a sitemap for the website. Your webmaster should configure the “robots.txt” file following best practices – including suggesting which pages to crawl and index and which pages to block from being indexed in search engines. Your webmaster must ensure that there are no issues before submitting your sitemap.

There are several factors that can have a devastating impact on a website’s crawlability, including:

- link structure,
- website speed,
- internal link structure,
- redirects,
- server errors,
- crawlers’ access,
- sitemap,
- robots.txt,
- unsupported scripts, and
- web technology.

2. Secured Website/HTTPS Encryption

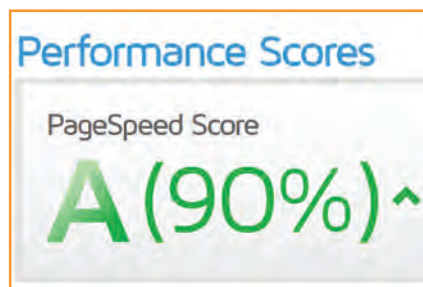


Google has been encouraging website owners to secure their websites by installing an SSL certificate, giving ranking preference to secured

websites. In July 2018, Google’s Chrome browser started marking non-HTTPS websites as “Not Secure.”

HTTPS (Hypertext Transfer Protocol Secure) is a communication protocol that ensures the protection, integrity, and confidentiality of data between the user’s computer and the website. Encryption makes the Internet communication fully secure between the user and the website, ensuring no one listens to the conversation, tracks multiple page activities, or steals the user’s information. Data integrity remains intact during transfer over the Internet as HTTPS rules out the possibility of any data modification or corruption.

3. Site Speed



Website speed plays a crucial role in driving more organic traffic, helping search engine crawlers crawl website pages faster and easier, reducing bounce rate, improving user experience, and generating more leads. Technical SEO demands advanced skills to reduce page load time.

Google recently introduced “Speed Update,” and it has made site speed a significant ranking factor for mobile searches. Modern web apps require highly dynamic and powerful resources to operate properly; if not optimized correctly, these resources can render-block and slow down the site. (In this context, “render” means “load”. A render-blocking resource keeps a page from loading as quickly as it should – sometimes leaving the user staring at a blank page for several critical seconds.)

Google PageSpeed Insights Tool provides recommendations to

Cont. on page 22

Other Types of SEO

ON-PAGE SEO

On-Page SEO plays a critical role in optimizing a website to generate more organic traffic. It can be achieved by tweaking website content, using relevant keywords, providing a better user experience, and making the content more relevant for visitors. On-page SEO includes many elements such as meta keywords, titles, and descriptions; URL structures; image optimization and alt-text; text formatting; headings and header tags; word-count; page speed; mobile responsiveness; internal links and the content value; authority; and freshness.

OFF-PAGE SEO

Off-page SEO helps establish website authority with search engines. A website with more backlinks, social media mentions, and bookmarks yields more power in terms of search engine rankings. Off-page SEO can give your website a sharp increase in search engine rankings and exposure because a website with a higher position in SERPs will get you more backlinks, visits, social mentions, and bookmarks. There are many ways to get backlinks – including listings on directories (lawyer, article, and local directories); publishing blog posts and articles on websites other than yours; social media posts and comments; and link exchanges.

LOCAL SEO

With a precise focus on a local marketing approach, local SEO is becoming a popular way to market a business online to local clients in real time when they actually need these services. Local SEO involves a wide variety of online marketing strategies such as listings in business directories like Yelp, Google My Business listing; Bing Places for Business page; content optimization by using local keywords; and local online reviews.

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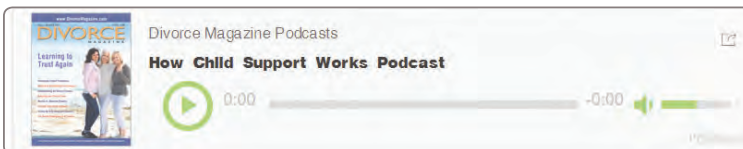
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All Company Values Are Not Created Equal

A company’s “equity value” can be vastly different from its “enterprise value,” which may differ from its “invested capital value.” You must establish which type of value is being determined when discussing company value.

By Sean Saari, Business Valuator

It is not uncommon for litigation to stem from disagreements over the value of privately-held companies and ownership interests in those entities. In those situations, the parties often discuss many different values as they attempt to reach a resolution. It is important to make sure that the parties are speaking the same language as far as the type of value being considered: equity value, enterprise value, or invested capital value. While these three types of value are related there are significant differences between them, and understanding those differences is important in reaching a fair resolution. With this in mind, we will walk through the differences in equity, enterprise, and invested capital value to give attorneys additional tools to effectively navigate valuation-related disputes and negotiations.

Setting the Stage: Disputed Value

Let us assume we have a dispute in which Party A believes that a company’s value is \$7 million while Party B believes it is \$4 million. Are the parties really \$3 million apart? We cannot tell based on the numbers alone because they do not tell the entire story – the type of value needs to be defined to give the numbers context. Before comparing the different values, we must understand the different types of values that can be determined for a company’s capital structure.

Levels of Capital Structure Value

The three types of capital structure value that are most commonly referenced are equity value, enterprise value, and invested capital value, each of which are discussed in greater detail in the next column.

1. Equity Value. The value of a company allocable to its equity investors. Equity value is the most commonly-determined value as it represents the value of an investor’s ownership interest in a company.

2. Enterprise Value. $Enterprise\ Value = Equity\ Value + Debt - Cash$. Enterprise value represents the value of a company’s total capital structure (its debt and equity) on a cash-free basis, regardless of the relative percentages of debt and equity. It is also sometimes called a company’s “cash-free, debt-free” value. A company’s enterprise value can easily be converted into an equity value by taking the enterprise value and subtracting its debt then adding its cash.

Investment bankers often speak in terms of enterprise value because they typically focus on the overall value of the company’s operations (not necessarily its equity value). From their perspective, it is up to potential buyers to determine how much of the purchase price will be funded with debt vs. equity.

Enterprise value is also typically used when determining EBITDA (Earnings Before Interest, Taxes, Depreciation, and Amortization) and revenue-based multiples because it removes the impact of how much cash and debt a company is carrying (which are simply financing decisions) in determining the value of the company’s operations.

3. Invested Capital Value. $Invested\ Capital\ Value = Equity\ Value + Debt$. Invested capital value represents the combined value of a company’s interest-bearing debt and equity. It is similar to enterprise value in that interest-bearing debt is added to the company’s equity value, but the company’s cash balance is included in calculating its invested capital

value. Therefore, a company's invested capital value reflects the full value of both its equity and debt.

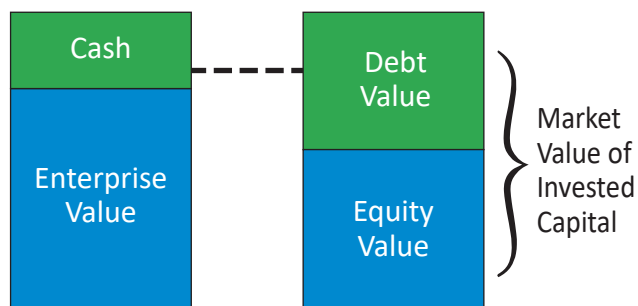
Reconciling Values

It is critical to understand that while these values measure different components of a company's capital structure, they are interrelated. This is particularly important if a value is determined at one level and needs to be reconciled or adjusted to another level.

Misunderstandings result because people often talk about values in terms of multiples: "A company in my industry sold for 5x EBITDA." However, when a revenue or EBITDA multiple is applied to determine a company's value, it typically produces an enterprise value (because EBITDA and revenue are *before* interest expense, so they do not take into account the impact of debt service). Therefore, it is necessary to adjust the enterprise value for the interest-bearing debt and cash balances of the company being valued to arrive at its equity value. Confusing enterprise value with equity value may result in an investor significantly overestimating the value of his or her ownership interest (particularly for companies with meaningful debt balances).

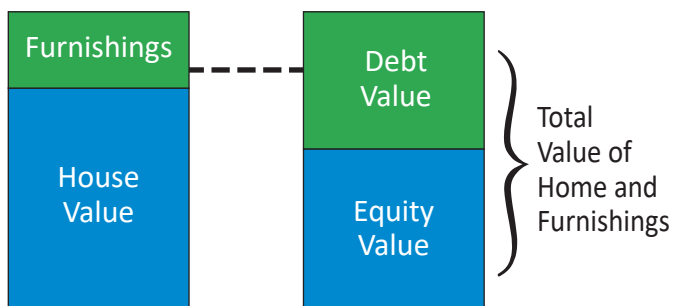
The illustration below shows the relationship between equity value, enterprise value, and invested capital value.

Reconciling Equity Value to Enterprise Value



The relationship between a company's various types of value is similar to the financing for your home. For example, a company's enterprise value is just like the value of your home, which is likely financed through some combination of debt and equity, as shown below.

Your Home's Value Is Like an Enterprise Value



To continue the analogy, if you were to sell your home, you would not receive the full sale price; instead, you would receive the net amount remaining after the debt balance was satisfied, which represents your equity in the home (just like the equity value of a company).

The value of your home furnishings is just like the company's cash balance – which you would typically take with you rather than selling them with the home. Those furnishings still have value, but that value is not reflected in the selling price of the home itself. The new owner would supply their own home furnishings (just like a company's cash balance). This makes a company's invested capital value similar to the value of your home plus all of the furnishings.

Is There Really A Difference in Value?

Let's go back to our dispute scenario (or "Setting the Stage") and consider some additional facts:

1. Party A's \$7 million value is an **enterprise value** based on previous discussions with an investment banker.
2. Party B's \$4 million value is an **equity value** based on an appraisal prepared by a valuation expert.
3. The company has \$3 million in debt and \$1 million in cash.

Based on these additional (and critical) facts, Party A is really indicating that it believes the company's equity value is \$5 million (only \$1 million higher than Party B's position). Alternatively, Party B is indicating that it believes the company's enterprise value is \$6 million (again, only a \$1 million difference from Party A). This reconciliation is shown below:

Reconciliation of Values		
	Party A	Party B
Enterprise Value	\$ 7,000,000	\$ 7,000,000
Less: Debt	(3,000,000)	(3,000,000)
Plus: Cash	1,000,000	1,000,000
Equity Value	\$ 5,000,000	\$ 4,000,000

With the additional context around the values being discussed, the parties only have a \$1 million difference in their perceived value of the company and its equity, not \$3 million. What may have at first appeared to be an unbridgeable gap in value is actually much closer than the numbers would have suggested without a deeper understanding of just what those numbers meant.

Applicability in M&A Contexts

As discussed earlier, investment bankers often speak in terms of enterprise value rather than equity value. In addition, valuation multiples often provide an indication of a company's enterprise value, not its equity value. As a result, it is extremely

Cont. on page 22

International Child Custody & the Hague Convention

What remedies are available to left-behind parents when one parent unilaterally removes a child from the child’s place of habitual residence to another country?

By Molshree A. Sharma, Family Lawyer



The world is becoming a smaller place. With globalization, employment opportunities, interdependent economies, and developing markets, it has become common for people to move or be transferred to a foreign country. While living abroad, they may marry and have children – which can result in complex issues around competing jurisdictions should there ever be a custody issue. The outcomes vary depending on how the term “custody” itself is defined and interpreted in various countries.

There has been an increase in the number of cases where a parent unilaterally removes a child from the child’s place of residence to another country in an attempt to become the child’s sole custodian. This article looks at the remedies available to left-behind parents – especially in light of recent case law in the Seventh Circuit of the United States Appellate Court regarding custodial rights of unmarried fathers.

The Hague Convention

The Hague Convention on the Civil Aspects of Child Abduction (“Convention”), a multilateral treaty ratified by 98 countries as of May 2018, provides an expeditious protocol for the return of a child unilaterally removed by a parent from one member country to another.¹

Article 3 of the Convention requires signatory countries to promptly return children to the country of their habitual residence when they are wrongfully removed or retained in another country in breach of the custody rights of the left-behind parent. The law of the state or country from which the child was removed determines custody rights; this adds some fluidity as in some countries an unmarried father may have rights upon the birth of the child, while other

countries require a declaratory order to bestow custody rights. Even when the court of habitual residence has placed a non-removal clause on the custodial parent, whether this bestows custody rights per the Convention or is simply an assurance of a continuous right to access is subject to debate.

A Child's Habitual Residence is Crucial

Mary Redmond left her home in Orland Park, Illinois when she was 19 years old to study in Ireland.² She and Derek Redmond (the parties' having the same last name is a coincidence) never married but cohabited in Ireland where they decided to reside and raise a child. The parents further agreed that Mary would give birth in Illinois, where Derek was named as father on the birth certificate and signed a Voluntary Acknowledgement of Paternity ("VAP") before they returned to Ireland. The relationship deteriorated and Mary went back to Illinois with their son against Derek's wishes.

Despite being named on the birth certificate and VAP, Derek had no custody rights: when a child is born out of wedlock, a father has no custody rights under Irish law until he petitions the Irish Court for custody or guardianship.³ Since the child's habitual residence was Ireland, where Derek had no custody rights, the Convention did not apply. Based on these facts, the Seventh Circuit did not return the child to Ireland.

Custody rights are typically determined by the law of the country from which the child was removed. In *Redmond v. Redmond*, even though Derek petitioned the Irish Court and finally received custody rights, three years had passed. Mary and the child had resided in Illinois for those three years, only returning intermittently to Ireland for Court appearances. When Derek received custody, Mary represented to the Irish Court that she would return to Illinois to pack up belongings and then return to Ireland on a specified date. She later admitted to the 7th Circuit Court that she gave this undertaking with no intention of ever returning to Ireland.⁴

Since the child had resided lawfully in Illinois for three years, Illinois was now the child's habitual residence. In deciding whether Ireland or Illinois was the child's habitual residence, the Court held that while it was clear the parents' last mutual intention was to reside in Ireland, the trial court had given that factor too much weight as that intention had last been shared several years ago. When Mary first removed the child from Ireland, she had the right to do so, and since then, the child had become fully rooted in his life the United States. He had spent three of his four years in Orland Park; he attended daycare and preschool there, and was enrolled in a local school for kindergarten.⁵

International Custody and Unmarried Parents

This is not an isolated case. In *Garcia v. Pinelo*, Raul Salazar-Garcia (Salazar) and Emely Galvan-Pinelo (Galvan) never married but they had a son (D.S.) together.⁶ When Galvan married, she and her husband decided to move to Illinois, and Salazar agreed that the child could go with her for one year only. After a year, when Galvan refused to return their son to Mexico, Salazar filed his petition under the Convention to return D.S. The Seventh Circuit Court found that Salazar had custody pursuant to the Mexican law convention of *patria potestad* (parental authority), and held the child must be returned to Mexico.

However, the reverse outcome happened in *Martinez v. Cahue*.⁷ The parties were never married, but had a private arrangement for custody and visitation of their son, A.M., in Illinois. After seven years, Jaded Martinez, a Mexican citizen, moved to Mexico with her child. The father, Peter Cahue, persuaded Martinez to send A.M. for a summer break visit in Illinois, then refused to return the child to Mexico. In reversing the Northern District, the Seventh Circuit found that before Martinez moved to Mexico, she had sole custody of A.M.; unless there is a court order, Illinois law presumes a mother has sole custody of a child born to unmarried parents. Therefore, Cahue did not have any

custody rights and A.M. was returned to Mexico.

Unmarried parents (especially fathers) must be extremely careful when it comes to international child custody. While some countries may provide custodial rights to unwed fathers, many countries do not. Review the definition of custody in the country in question. If fathers do not have custodial rights, practitioners must advise clients not to go there. If they must go for employment, advise them to petition for guardianship and custody rights immediately even when, as in *Redmond*⁸, they are on the United States birth certificate. ■



Molshree (Molly) Sharma is a partner at Boyle Feinberg Sharma, P.C. in Chicago. She has expertise in international family law issues, and she has also given lectures in Washington D.C. for other lawyers, parents, and professionals on international custody matters. www.bfsfamlaw.com

¹ Convention on the Civil Aspects of International Abduction, 1343 U.N.T.S. 89 (Oct 25 1980), T.I.A.S. No. 11,670 (entered into force December 1, 1983, enacted into federal law through the International Child Abduction Remedies Act (ICARA), 22 U.S.C. § 9001 et seq.

² *Redmond v. Redmond*, 724 F.3d 729 (7th Cir. 2013).

³ *Id.* at 19-21.

⁴ *Id.* at 6.

⁵ *Id.* at 7.

⁶ *Garcia v. Pinelo*, 125 F.Supp.3d 794 (7th Cir. 2015).

⁷ *Martinez v. Cahue*, 826 F.3d 983 (7th Cir. 2016).

⁸ *Supra*, n. 2.

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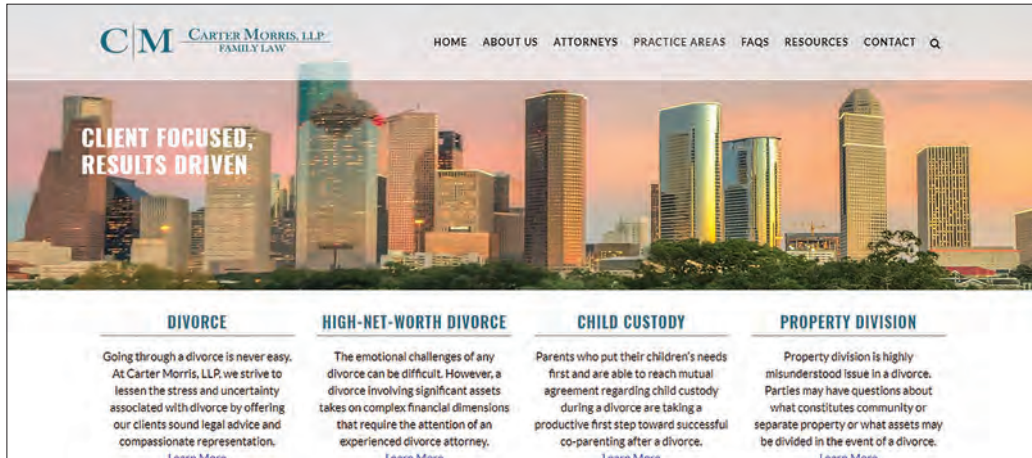
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6 Ways to Prepare for Clients with Non-Cash Compensation

Don't be caught off-guard in the new world of post-*O'Brien v. O'Brien* jurisprudence! Use these tips to prepare yourself to advise clients with substantial non-cash compensation.

By Vincent J. Fiorentino & Alexandra I. Mililli, Financial Advisors

O'*Brien v. O'Brien* (SC 19635) sent shudders through the halls of family law offices in 2017, adding uncertainty to the ability of one party in divorce to preserve capital assets in the face of severe and sudden market volatility.

During the pendency of the divorce action, Michael J. O'Brien (Plaintiff) executed three stock transactions without Kathleen E. O'Brien's (Defendant) consent or a court order. Michael executed these transactions in light of his concerns about the volatility of the stock market and the need to preserve the current value of the stocks. At the remand trial, Kathleen presented expert testimony showing that the value of the stocks and options had increased by approximately \$3.5 million since the time of the transactions. Since this represented a significant loss to the marital estate, the court awarded approximately two-thirds of the marital property to Kathleen in compensation.

The court's decision seems to allow one spouse to second-guess otherwise prudent investment decisions with the benefit of hindsight. Using *O'Brien v. O'Brien* as a backdrop, here are six ways divorce attorneys can better prepare themselves when advising clients with substantial non-cash compensation after court-issued mandatory orders have been entered.

1 Understand Non-Cash Compensation

Highly-compensated individuals may have a laundry-list of deferred compensation awards that could be convertible into common stock going out over many years. This type of compensation could result in transactions that may not be legally allowed during the divorce process. As evidenced in *O'Brien v. O'Brien*, this scenario provides a fertile environment for mistakes to be made.

Successful executives at public companies often accumulate some or all of the following types of performance-based income: Incentive or Employee Stock Options (ISO/ESOs), Employee Stock Purchase Plans (ESPPs), and Restricted Stock

Options (RSOs). Understanding your client's award compensation in a divorce proceeding is critical; if you are not confident that you understand the nuances of non-cash compensation, bring in an experienced financial expert who deals with these issues every day. Deferred compensation is sometimes daunting to keep track of, so it may require careful management by you and your staff.

2 Establish a Tickler Schedule

Stock option exercise patterns for eligible employees may vary, but more typically fall into an annual, semi-annual, or quarterly schedule. What might be the consequences of a client executing the sale of stock from newly acquired stock options without your counsel? Divorces often take months or even years to run their course. In the case of *O'Brien v. O'Brien*, the court ultimately ruled that selling marital assets without permission might come with a heavy penalty. Anticipating future dates when awards become vested is a starting point for discussion with your client.

3 Alert Your Client to Upcoming Vesting Dates

It might be prudent to proactively contact and advise your client as to pending vesting schedule items. At the very least you will have performed due diligence, and in the process provided timely and critical counsel to otherwise uninformed clients. Your client may need direction about what *not* to do to avoid a negative directive from the court.

4 Create a Strategy for Turbulent Markets

In the case where your client has accumulated a substantial amount of a single stock – and be subject to greater risk – what will this person's behavior be if sudden and unexpected market volatility comes into play?

Cont. on page 45





Can an Online Payment Technology Change Your Law Practice?

Family lawyer Claude Ducloux is Director of Education, Ethics, and Compliance for LawPay, an online payment system specifically designed for lawyers; he also serves as a liaison to the legal community. Diana Shepherd, *Family Lawyer Magazine's* Editorial Director, interviewed Claude about how LawPay's technology helps law firm.

What niche does LawPay fill for family lawyers?

Most lawyers hate learning new technologies – but we like getting paid. LawPay's CEO, Amy Porter, developed a technology that suits the legal profession to a T. Lawyers like it because it's easy to use and it's a safe way to get paid; they can send bills instantly, track payments into a trust account, and check their status on the go.

LawPay integrates seamlessly with more than 30 of the most popular practice management technologies – including Leap, Clio, Cosmolex, and TimeSolv – so you can attach a secure payment link to your email, website, or invoices, and clients can pay you 24/7 from their computer or smartphone.

Offering clients this service turbocharges collections. Family lawyers represent people rather than corporations, and their clients are used to paying with credit cards. I've been a lawyer for 41 years; I tried LawPay about 10 years ago, and it changed my whole practice. When my bills go out at nine in the morning, I'll have thousands of dollars deposited that day.

How do the State Bar Associations feel about LawPay? Is LawPay part of the ABA Advantage Program?

LawPay is officially a member benefit of 48 State Bar Associations. Technically, we're recommended by every State Bar Association possible, because Georgia and California don't allow the endorsement of member benefits. We work hard to earn that trust every day, and we don't take the positive reviews we get from lawyers for granted. LawPay is the only payment solution for the ABA Advantage program. That means that LawPay has been vetted and proven to be worthy of being part of the program. We take this honor very seriously.

How many law firms currently use LawPay?

There are about 35,000 law firms and 50,000 individual lawyers using LawPay. And it's growing: more than 1,000 lawyers sign up every month.

You're dealing with very sensitive information and, potentially, large sums of money. What do you have in place to protect the lawyers you work with?

At LawPay, we're trained to be Payment Card Industry (PCI) Level 1 Compliant, which is the highest possible level of compliance in the industry. Our clients don't worry about LawPay having their sensitive information; in fact, some are happy the payment information is not

stored in their office. LawPay will train our clients to be PCI Level 1 Compliant and issue a certificate stating they've learned the latest PCI Compliance Techniques. That can make both the lawyer and their clients feel more secure than simply paying with a credit card.

How does online payment technology like yours affect a lawyer's business?

Nothing has affected my collections as positively as adding a hyperlink so clients can pay me instantly when I email their bills to them. The link takes them right to my payment page; they put in their credit card information, the money goes into my account. I get an email saying, "Bob just paid you \$4,100" and Bob gets an email saying, "You just paid Claude \$4,100." Everybody's happy, and I have the peace of mind of knowing I have been paid for my work. ■



Claude Ducloux practices family law in Austin, TX. In 2018, the Supreme Court of Texas appointed him to a three-year term on the Supreme Court on Disciplinary Rules and Referenda. He is the Director of Education, Ethics, and Compliance for LawPay. www.lawpay.com

RED FLAGS IN VALUATION REPORTS



Valuation reports are often voluminous and highly complex. Here are some simple qualitative tools to spot red flags and to assess the overall reasonableness of a valuation report.

By Alina Niculita, Business Valuator

The task of reviewing a valuation report can be a daunting one, especially to someone without valuation training. Family law attorneys are often presented with valuation reports for their clients or for the opposing side and are faced with the question of whether the valuation is “good.” Short of becoming an appraiser overnight, what is a busy attorney to do to decide whether a valuation report passes a basic “smell test”?

This article offers several relatively simple tools for attorneys to gauge the reasonableness of a valuation report. If the valuation report raises red flags based on these tips, the attorney can decide to hire another appraiser to perform a professional appraisal review.

Professional Standards and Credentials

A good place to start evaluating a valuation report is to see if the author has any

credentials in business valuation and if the report complies with valuation standards. Currently there are three professional associations in the U.S. that issue valuation standards and offer professional designations in business valuation:

- American Society of Appraisers (ASA),
- American Society of Certified Public Accountants (AICPA),
- National Society of Certified Valuation Analysts (NACVA).

In addition to the above, the Appraisal Foundation issues the Uniform Standards of Professional Appraisal Practice (USPAP) that include standards for all appraisal disciplines. While having a business valuation credential and following business valuation standards is not a guarantee of reasonable valuation work, it does establish minimum requirements for work quality. In addition, to maintain their designation, appraisers must comply with continuing education requirements.

Clear Assignment Definition

The valuation report should be clear on what its assignment is, meaning that the valuation report includes the following information: the property to be valued, the ownership characteristics of the property to be valued, the valuation date, the purpose of valuation, and the standard of value. An example of a valuation assignment is: “The fair market value of 100 shares of common stock in ABC, Inc. as of June 30, 2018, on a minority non-marketable basis for purposes of marital dissolution.”

It would be very irregular if the valuation report did not include such information, as the valuation methodology and the value are driven by these parameters. If the report does include the assignment definition, the attorney can ask the following questions:

- Was the correct property valued?

Cont. on page 20



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Red Flags / Cont. from page 18

- Was the correct valuation date used?
- Was the correct standard of value used?
- Were the discounts applied appropriate?

The Report is Comprehensive

An appraisal report commonly includes several sections that culminate with an opinion of value. It is relatively easy to judge whether something included in the report is reasonable – but valuation reports can also contain errors of omission that are more difficult to detect. An example of an omission is to exclude a certain valuation procedure or method because of a “lack of data.” Attorneys should be alert to valuation reports that state that a certain valuation procedure was not performed, or a valuation method was not applied, and investigate the underlying reason for the omission. The “Valuation Quick Checklist” in the sidebar shows the typical sections of a valuation report.

Converging Indications of Value

There are three valuation approaches – the income, market, and asset approaches – and each comprises two or more methods. As a result, a typical valuation report includes two or more indications of value. While the indications of value are typically different amounts, they are also typically not significantly different from each other. Obtaining indications of value for the same property that are far apart from each other may indicate errors in the valuation. Errors may include assumptions errors, methodology errors, or math errors. If a report includes two or more indications of value that are significantly different from each other and they are averaged to get to the conclusion of value without any further explanation or support, that may be a red flag.

Reasonable Financial Projections

A central concept in business valuation is that value today equals future expected cash flows discounted back to present. In practice, the “future expected cash

Valuation Quick Checklist

1. Identification of the property
2. Effective valuation date
3. Definition of value
4. Purpose of appraisal
5. Actual or assumed ownership characteristics
 - a. Marketability
 - b. Degree of control
6. Basic company information
7. Economic and industry outlook
8. Sources of information
9. Financial statement analysis
10. Valuation methodology
 - a. Income approach
 - b. Market approach
 - c. Asset approach
11. Valuation synthesis and conclusion
12. Appraiser’s qualifications
13. Contingent and limiting conditions

flows” come in the form of financial projections. When using financial projections, appraisers are faced with the question of whether they are reasonable for valuation purposes.

Some characteristics of reasonable projections include:

- They present the most likely picture of the business in the future based on all available information as of the valuation date,
- They appear credible in the light of the historical performance of the business, its industry, and the overall economy,
- They are not too optimistic or too pessimistic,
- They do not include upward or downward bias based on the wishes or needs of a party.

If the projections used in the valuation report appear unreasonable compared to the company’s past performance, the performance of its industry, or appear biased, this issue may need further investigation.

Sources of Information

The valuation of a business is based

on information that is known or knowable as of the effective valuation date. Appraisers sometimes use professional judgement to decide whether to use older information than they would prefer or information after the valuation date. Although in some situations that may be appropriate, the use of old and potentially outdated information or information that would not be known or knowable as of the valuation date is a source of inquiry.

Report Bias

Credible valuation reports contain objective analysis grounded in reasonable methodology and credible data sources. Sometimes valuation reports contain unsupported inputs that tend to favor extreme valuations – for instance, unsupported high (low) valuation multiples and low (high) discount rates that result in high (low) valuations. When all or most of the key inputs and adjustments in a valuation report are such that they result in an extreme low or high valuation, that may be a red flag that needs a closer look. ■



This article has been adapted from Valuing a Business: The Analysis and Appraisal of Closely Held Companies (McGraw-Hill Education, 5th Edition), by Shannon Pratt with Alina Niculita. The Director of Valuation at Morones Analytics, Alina is an industry expert who has co-authored several books, chapters, and articles on business valuation theory and methods. www.moronesanalytics.com

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10 Valuation Tips for Family Lawyers

Advice from six valuers on dealing with divorce-related business valuation issues.

www.familylawyer magazine.com/articles/10-valuation-tips-for-family-lawyers

Thought Leaders and Changing Technologies in the Valuation Profession



Family Lawyer Magazine's Editorial Director Diana Shepherd recently spoke with Arik K. Van Zandt, ASA, about his reputation as a thought leader in the valuation industry, and how the changing technology impacts divorce.

Arik Van Zandt is a Managing Director with Alvarez & Marsal Valuation Services in Seattle. He specializes in the valuation of closely-held businesses for the purposes of litigation support, buy-sell agreements, ESOPs, taxation, and incentive stock options. www.alvarezandmarsal.com

What are your team's core values?

Integrity, quality, objectivity, and fun. Our team has worked together for a long time, and that says a lot in today's work environment. They come to work with excitement, desire, and drive to do good work for their family-law clients.

What makes you and your team thought leaders in your industry?

Our professionals sit on task-forces that are establishing guidelines for the valuation industry, and we bring that thought-leadership mentality to our work. Our mission is to have top-end quality professionals producing the best work possible. Our professionals all have very strong educational backgrounds, including a Masters in Finance and accreditations such as ASA, CFA, and CPA. Professional diversity and experience are essential to the way we conduct our business.

How do you keep on top of rapidly changing technologies?

A valuation firm needs to have the ability and resources to work with big data, which includes better research tools and faster processing. Technology is clearly at the forefront of our practice. If you're not staying ahead of new technology, it's going to get ahead of you.

What do you do when Bitcoin forms part of the marital estate?

We are doing quite a bit of work with cryptocurrencies and blockchain. The technology and the value propositions are hard to grasp, so we need to be forward-thinking. When you have the high volatility that we see in cryptocurrencies, you want to make sure you're pinning down the appropriate value when you separate these assets. Based on the anonymous nature of the

transactions, the lack of intermediary third parties, and the lack of regulation, attempting to hide cryptocurrency is certainly possible in divorce. Forensic experts can make sure that the dollars are accounted for and that the assets are properly captured in their cryptocurrency space.

How frequently do you testify in court in family law cases?

In the divorce space, family lawyers hire me as an expert witness to provide a valuation opinion. My partner and I testify two to three times a month.

What is your team's commitment to your family lawyer clients?

We're not simply order takers who provide a report to the family lawyer and walk away; we're part of the lawyer's team when it comes to reaching resolution. We get involved as early as possible to help with discovery issues, identifying assets that must be valued, or issues to consider. We are problem-solvers for family lawyers. We are committed to providing a better level of professional service than our clients have ever experienced before. We bring experienced professionals to every job. We're not going to have a rookie do the bulk of the work and only provide a little bit of guidance at the end.

What do you enjoy the most about this work?

I really enjoy the variety of the industries and clients I get to work with every day – it never gets stale. My learning curve will always have a slope to it, which allows me to challenge myself to stay ahead of the curve. I enjoy being a thought leader as well as ensuring that my team stays ahead of what's to come. ■

Technical SEO / Cont. from page 7

optimize your web pages for speed. The recommendations can include the optimization of various website resources, including:

- images,
- JavaScript, HTML, and CSS files,
- content visibility, and
- browser caching.

You can improve site speed by fixing website structure and architecture; cleaning up old content, posts, and pages; redirecting old URLs; and choosing a robust hosting platform for your website.

4. Mobile Usability



Today, more people are surfing the Internet on their mobile devices than on their desktop computers. A mobile-friendly website has become a necessity for all kinds of businesses. Google has rolled out its mobile-first indexing features, which uses only mobile content for all search rankings. This means that mobile pages will determine how the website will be ranked on both desktop and mobile.

If your website is not mobile-friendly, it can affect your content page rankings in search engines. Google's Mobile-Friendly Test Tool (<https://search.google.com/test/mobile-friendly>) tells you if your website has any mobile-specific issues, including what resources (e.g., images, CSS, script files) cannot be loaded properly on the mobile version of your website.

The most common reasons why resources fail to load are the speed of the website, missing resources, and blockage of resources in the robots.txt file. There are many different

mobile-usability errors, but the most critical errors include flash usage, viewport misconfiguration, and small font size. ■



Atif Nadeem is Digital Marketing Lead at Divorce Marketing Group. He oversees off-page and technical SEO for websites the company builds for its clients, and he is a Google

Analytics & Pay-Per-Click Certified Specialist.

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Company Values / Cont. from page 11

important that both the buyer and seller in a potential business sale understand the transaction prices being discussed. This is particularly important for sellers – it is easy for them to get caught up in the larger enterprise values being discussed and fail to consider the impact of debt in determining the company's implied equity value (which represents their share of the total transaction proceeds).

Using the figures in the example on page 11, let's assume that Party A's investment banker told him that his company is worth \$7 million. If Party A doesn't understand that this is an enterprise value, he may be expecting to personally receive \$7 million from the sale, not the \$5 million that would be netted if the company were to sell at a \$7 million enterprise value. Party A may then begin evaluating the potential deal based on an amount of expected proceeds (\$7 million) that is much higher than what he would actually receive (\$5 million). This misunderstanding can create a significant expectation gap for Party A that may be difficult to correct later in the sale process once a particular number is already in his head.

Conclusion

All values are not created equal: as shown above, a company's "equity value" can be vastly different from its "enterprise

value," which may differ from its "invested capital value." Whenever reviewing or discussing a company's value, it is important to establish what type of value is being determined. This will greatly reduce the likelihood of miscommunication, making it far more likely that 1) disputes will be resolved as effectively as possible; and 2) the parties involved in M&A transactions will have appropriately managed expectations regarding value and net proceeds from the outset. ■



Sean Saari is a partner at Skoda Minotti and manages the firm's Valuation & Litigation Advisory Services group. In addition to being a CPA, Sean is Accredited in Business Valuation (ABV) and is a Certified Valuation Analyst (CVA). www.skodaminotti.com

Related Article

Business Valuation and the Double Dip Problem

Gain a deeper understanding of the underlying issues of "double dipping" through a business valuator's point of view. www.familylawyermagazine.com/articles/double-dip-problem

Business Valuation & Forensic Accounting in Family Law

Family Lawyer Magazine's Publisher Dan Couvrette asked Certified Public Accountants Rod and Heather Moe what family lawyers should know about business valuation and forensic accounting; here is a summary of that interview.



What can forensic accountants do for family lawyers?

Heather: Forensic accounting is the use of accounting skills to investigate fraud or embezzlement and to analyze financial information used in court proceedings.

Rod: Lawyers are not necessarily trained in financial aspects, taxation, or business valuations. We can assist them in doing a proper job and limit their liability by supplementing their skills in areas where they are not proficient.

Do you act for one attorney, or can you act for both sides in divorce case?

Rod: Generally, we work with one attorney; however, in collaborative divorce, you have one neutral forensic accountant working for both sides.

When would a family lawyer work with a forensic accountant?

Heather: If you have a case where either party has premarital assets – such as an investment account, a retirement account, or 401K – we can assist in determining the marital account balances for equitable distribution purposes. If a party had property prior to entering the marriage and there is a pay-down on principal, we can assist in the calculation of the marital value.

Rod: In divorce, you cannot determine how big a slice your client should get until you know the size of the marital

pie. For business owners, self-employed spouses, and high-net-worth individuals, we can trace and calculate a party's true income and assets, the tax liabilities that may follow those assets, and suggest a plan for equitable distribution. If the other side fails to produce documents, we can impute income for alimony and child support calculations. We prepare requests for production of financial statements and documents, and also prepare responses to opposing counsel's requests for productions.

What are some of the ways that spouses could hide assets?

Heather: I have seen business owners make advance payments for goods when in fact they have no intention of purchasing those goods. I have also seen them inflate their estimated taxes and then intentionally overpay their taxes, knowing that they'll receive a refund later.

Rod: I had a case where the business owner had an American Express card they used for business expenses. One of the monthly line items was "privileged assets," which was an annuity account where they made regular monthly investments via charges to the credit card. This business owner was claiming this as an expense and failed to disclose the annuity.

How can you help attorneys with the new tax legislation?

Heather: If the divorce is not finalized before January 1, 2019, clients will have to renegotiate support and settlements that no longer work under the new law. Since alimony will no longer be taxable to the recipient or deductible by the payor, we've had an uptick in divorce cases of those who will be paying or receiving alimony. We can help ease the attorneys' burden during this crunch time. The personal exemption has been eliminated; the standard deduction has been increased; the child tax credit has increased in value and is now refundable; and there is a new tax credit for non-child dependents. In cases of joint custody, you should consider who will benefit most from the credits during negotiations. ■



Rod Moe (CPA, CVA, ABV, Cr. FA, CFF) and Heather Moe (CPA, CFF) are Certified in Financial Forensics in Florida, and their accounting firm specializes in forensic accounting and economics. With over 50 years of combined experience in tax and accounting, they support family lawyers in litigation and non-

litigation matters with expert testimony and consultation.

www.rodmoecpa.com



3 Effective Ways to Boost Your Collection Rate

Doing good work gets you clients; sending good bills gets you paid.

By Michelle Lowe, Finance and Technology Expert

Every lawyer strives to achieve a high collection rate, and family lawyers are no different. Historically, lawyers have tried to increase their bottom lines by requiring a large payment upfront or asking for a large retainer. Today, however, a more personable approach can go a much longer way in keeping both clients and lawyers as satisfied as possible with the outcome of their cases.

By implementing the following techniques and strategies, you can foster a solid foundation with each client you take on and increase their potential satisfaction with your work – as well as their likelihood to pay your bills.

1

Be Upfront and Clear Regarding Costs

The best lawyer-client relationships have open and clear lines of communication. You can start demonstrating your trustworthiness by being as upfront and transparent as possible from the get-go.

When you first meet with your client, make sure that your rate is clear and explain your expectations of the case right away. It is difficult to predict what your client’s spouse (or their lawyer) will be aiming for in a divorce, so make sure your client understands that the total cost may be equally difficult to predict. Regardless, assure your client that you will do everything in your power to effectively represent their interests while also keeping the process as affordable as possible.

In doing so, you will leave much less room for headaches down the road, when your client may feel they did not get precisely what they wanted. Instead, you are cultivating a more realistic idea of what complex issues may arise during the case,



which will lead to a higher sense of their confidence in you – and a higher likelihood of your client paying you for your services.

2

Be Predictable with Your Invoices

When it comes to paying bills, nobody likes unpleasant surprises. Be sure to set reasonable expectations on cost and do your best to deliver within a reasonable range. If you are tracking above your estimate, take the time to communicate to your client before they receive your invoice, explaining what changed in their case that resulted in higher fees.

You should also aim to send your bill as soon as your services have been rendered. You may have heard of renowned lawyer Jay Foonberg’s “Client’s Curve of Gratitude,” which shows that your client’s feeling of satisfaction with your work will start to diminish almost as soon as a

Cont. on page 50

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Valuing an Early-Stage Company in Marital Dissolution

By David Witherspoon, Business Valuator

Valuing an early-stage company poses unique challenges for you, your expert, and your client. The task requires knowledge and a technical skill-set unfamiliar to many appraisers.

When a child is born into this world, who knows what she might become: a doctor, a lawyer, a teacher, or maybe a President. Even if she shows an early predisposition towards one field of study or another, we simply cannot know with certainty how her life will unfold. The same is true of an early-stage company.

In 2013, the AICPA released a guide (the *AICPA Guide*) detailing, among other things, a framework for assessing the typical stages of a business' lifecycle. In summary, the guide breaks it down into the following six stages:

1. The enterprise has no product revenue, limited expense history, an incomplete management team with an idea, and possibly some initial product development.
2. The enterprise has no product revenue but substantial expense history related to product development, and

business challenges are thought to be understood.

3. The enterprise has made significant progress in product development, key milestones have been met, and product development is near completion.
4. Initial sales have been made, but the enterprise is still operating at a loss.
5. Product sales have grown and initial financial success has been attained, such as positive operating profits or cash flows.
6. The enterprise has an established financial history of profitable operations.

When most people think of business appraisals, they think in terms of valuing a mature company in stage six: an established company that has been around for some time. Indeed, most of the core valuation courses, which lead to the traditional valuation credentials, focus primarily on valuing mature companies. A

stage six company has extensive historical financial information for the appraiser to review, and this helps inform the valuation. But what if you are valuing a company at stage one or two?

Hypothetical Scenario: Valuing an Early-Stage Software Company

Your client has founded a new software company. Three patents are pending, but the product is not fully developed, the company has no clients, and has earned no revenue. Management recently began pitching venture capital firms in an attempt to raise \$5 million for a 33% interest, but has found only tepid responses with no commitments. The financial forecasts presented to those potential investors show substantial growth (and cash flow) beginning three years from today after \$8 million in operating losses. Opposing counsel has indicated they believe the business is worth \$15 million based upon the sought – after capital raise (\$5million/33%). You and opposing counsel are miles apart from a settlement and you are fairly certain this case is going to go the distance.

What Does This Mean for the Family Lawyer?

First, you need an expert witness who can properly value the business and testify to that valuation. Valuing a mature software company is not the same as valuing a startup. Indeed, many business appraisers have never valued an early-stage company. Even fewer have studied any published literature on the topic, understand the market of investors, or are even aware of some of the applicable valuation methods. Valuation literature is constantly being added to and updated, and your expert should be familiar with available peer-reviewed resources.

You should ask your prospective expert witness if they have any experience valuing early-stage companies, and if they are familiar with the methods promulgated in peer-reviewed publications such as the *AICPA Guide*.

Expert Knowledge Beyond the Valuation Basics

Valuing an early-stage company will likely require technical skills and perspectives

not taught in the basic coursework required to attain a valuation credential. For example, it is common to offer stock options to key employees and preferred stock to investors in an early stage software company. Stock options provide their owner with the right to acquire shares at a future date at a set price. Preferred stock may have various rights and conversion factors. Both of these equity securities can act to dilute the ownership of the current common stockholders.

Traditional valuation courses focus on valuing the entire enterprise. However, if your client owns common stock – which is subordinate to the rights and privileges of preferred stock and would be diluted by the exercise of a pool of options – then you need to understand how to allocate value across a complex capital structure in order to value the client's common shares. That is a technical skill-set unfamiliar to many appraisers.

The *AICPA Guide* provides a framework for considering the lifecycle stage of a company, discussing why and how some valuation methods may be more

appropriate than others depending on the industry and lifecycle stage.

Your expert should be familiar with relevant peer-reviewed literature, know it, apply it, and be able to explain it to the trier of fact.

Your Client Needs to Understand What Is at Stake

Your appraiser's job is to determine the value according to your state's standards for divorce litigation. But they will be basing their appraisal on information provided by your client and observed in the marketplace – and so will the opposing expert. Without a financial history on which to base the analysis, the appraiser will seek other indicia of value. Some of these may include:

- The company's business plan,
- Correspondence with current or potential investors,
- Financial forecasts,
- Management's history of successfully developing and commercializing

Cont. on page 50

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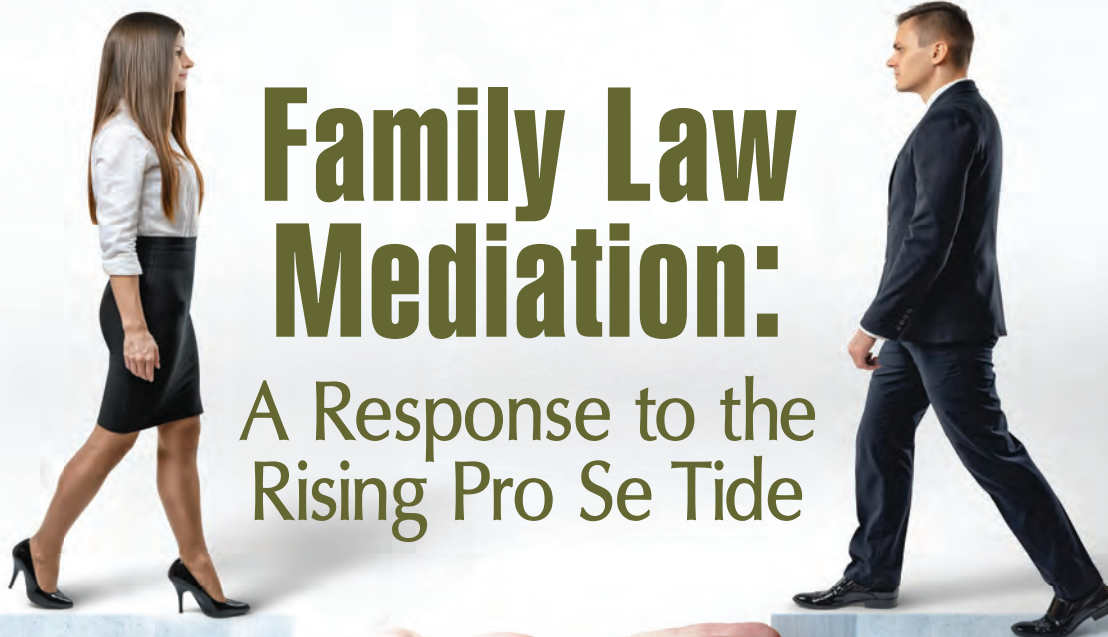
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Family Law Mediation:

A Response to the Rising Pro Se Tide

Lawyer-provided mediation bridges the gap between each party hiring a lawyer and no legal guidance at all.

By Susan Hansen and Paul Stenzel, Family Lawyers

A sea change has taken place in family law over the last quarter-century. Twenty-five years ago, 90+% of divorcing parties each hired a lawyer and reached resolution through a mix of negotiation and litigation. That has changed dramatically in many states across the country; in Wisconsin, for example, an estimated 70% of parties in divorce actions are self-represented.

This change is being fueled by a number of factors, including concerns about the high cost of legal representation for middle and lower-income couples, the perception that lawyers increase rather than resolve conflict, a growing recognition that the adversarial system is not well-suited for family issues, and a rise in the do-it-yourself mindset supported by the internet.

Lawyers React to the Rise of Pro Se/ Self-Represented Litigants

Some lawyers blame inexpensive *pro se* forms and online legal services for reducing respect for their services. Other acknowledge that they have lost market share and ask, “What can we do to provide value to clients?”

The legal profession has been slow to adapt, but an increasing number of lawyers are expanding their services to include collaborative divorce, limited scope representation, and lawyer-provided mediation for self-represented couples.

In some states, courts are starting to embrace the move towards mediation for self-represented litigants. In 2017, the Wisconsin Supreme Court modified its professional responsibility rules to explicitly authorize lawyer-mediators to

draft and file all necessary legal documents on behalf of both parties in family law cases. This allows lawyers to utilize their expertise and provide value to self-represented couples as a neutral educator, drafter, and legal-system navigator.

As a reflection of the changing culture of family law, many private-practice lawyers are now seeking mediation training. “I have seen my practice shift over the past year from 80% individual client representation and 20% mediation to 80% mediation and only 20% individuals,” says Susan Hansen. “My partner and I created the Family Mediation Center in Milwaukee as a business entity solely dedicated to providing lawyer mediation services to assist self-represented couples throughout the divorce process.”

“I divide my time between being a Family Court Commissioner and private

lawyer and mediator,” notes Paul Stenzel. “I see mediation as an essential aspect of the future of family law that can benefit families, lawyers, and the courts.”

An Efficient and Cost-Effective Process

In mediation, couples can get legal education, creative negotiation assistance, and legal drafting to help them avoid the pitfalls of a do-it-yourself divorce. Mediation can also involve child specialists to assist with parenting plans, and financial experts to address valuations, tax calculations, or other financial complexities. This interdisciplinary approach gives couples maximum value from each profession in an efficient and cost-effective process.

Mediation addresses many of the concerns that have made parties avoid lawyers – including cost, conflict, and loss of control – and it helps parties see divorce as family restructuring rather than a potential court battle. It supports informed decision-making and provides expert guidance to clients navigating the legal system, and helps lawyers embrace the role of positive problem-solver. ■



Susan A. Hansen is a Partner at Hansen & Hildebrand, S.C. and co-founder of Family Mediation Center. Paul W. Stenzel is a Deputy Family Court Commissioner, and Of Counsel at Hansen & Hildebrand, S.C. www.h-hlaw.com



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CYBERSTALKING, HACKING, AND SPYWARE

HACKED

The realm of digital evidence in family law is going beyond custody and financial issues.

By Brook Schaub, Computer Forensics Professional

In a previous article for *Family Lawyer Magazine* (“Digital Divorce: How Computer Forensics Can Influence Your Client’s Case”, August 2015), I discussed the topic of computer forensics and eDiscovery in family law litigation, using examples of its value in helping with custody issues and locating financial assets. While those types of cases are still happening, there has been a rise in cases where spyware, hacking, and the electronic stalking of a spouse have been alleged and asked to be investigated by family law attorneys.

Electronic Devices, Apps, and Even Vehicles Can Be Monitored

These cases can involve electronic devices, websites, apps, and even vehicle tracking. Hardware and software programs – both professional high-tech and lower-tech applications – are readily available. A tracking device can be attached to a vehicle in seconds, and it only takes a few minutes of access to a spouse’s cell phone or computer to install a program or app. These apps can trace the spouse’s movements through GPS and send copies of emails and text messages to the opposing spouse. Some programs can even monitor phone calls and activate device cameras.

When consulting with a client on these issues, a lawyer’s decision on whether to pursue a forensic investigation or to provide

mitigation advice only falls into two areas:

1. Will the investigation provide litigation value to the client’s case?
2. Will the mitigation consultation help eliminate the client’s fear associated with spyware and/or keylogging programs?

Do not underestimate the mental and physical toll on a client who believes that all their actions are being monitored by their ex-spouse.

Spy Pens and Shared Passwords

Some recent examples of cyberstalking include a non-custodial parent placing a “spy pen” in their child’s backpack. The pen recorded audio and video interactions between the child and the custodial parent, and the non-custodial parent retrieved the pen and downloaded the interactions on the child’s next visit. While technically against the Electronic Communications Privacy Act (ECPA) and most state statutes, the likelihood of criminal prosecution in these types of family law cases is minimal. The same would hold true where devices have been placed in the home or on the home computer – especially if the computer is used by multiple family members.

Many cases involve a spouse using a known password or answers to security questions to access their ex-spouse’s email accounts. This is especially true in cases where there has been

no mitigation related to electronic accounts at the start of divorce proceedings, so attorneys should discuss the urgent necessity of changing all passwords on all accounts as soon as a new client retains them.

Most security questions are simplistic and an ex-spouse would probably know the answers (e.g., “What street did you live on as a child?”). The computer only cares that the answers match, so setting intentionally incorrect answers to the security questions is one simple way for your client to prevent unauthorized access to their accounts. Your client should do this whether or not they suspect their ex of hacking their accounts. If your client has reason to believe their computer has been infected with spyware, explore other mitigation methods; changing passwords has little value if the device used to change security answers and passwords is sending updates to the spouse via spyware.

Suspicion vs. Certainty

Family lawyers frequently receive inquiries from clients who suspect their partner has installed spyware on their cell phone or tablet. While there are ways to locate this software forensically, a good forensic examiner will ask a series of questions first to determine if this is a possibility. Such questions include:

- Has the battery been discharging more quickly than usual?
- Does the phone turn on and off by itself?
- Is there static or echo on calls?
- Is the client still on the same calling plan and account as their spouse?
- Has the client performed other mitigation methods relating to cloud accounts, syncing with computers, etc.?

In these type of forensic cases, details on why the client suspects spyware is an important part of the initial interview. Recently, a client was concerned that her activities and movements were being monitored via spyware on her cell phone. During the interview, she told us that her soon-to-be-ex-husband had purchased a newer-model Audi for her – and the vehicle’s Audi Connect service allows an owner to trace the vehicle using the associated application on a cell phone. If cyberstalking is important to the case, attorneys should be aware that real-time spyware or tracking applications frequently require a paid subscription – which leaves a paper trail that can be obtained by subpoena.

Vehicular Forensics

Vehicle forensics is an emerging area in eDiscovery. Each time a door is opened or closed, the lights turned on and off, or the vehicle placed in gear, these actions are documented by a time/date and odometer reading. There are around 70 computers in newer vehicles, all recording vehicle activity while your cell phone syncs data with it (phone book, call logs, text messaging, music played, WiFi locations, GPS locations, etc.).

If the vehicle has a navigation system, then waypoints, favorites, and crumb trails to locations driven can also be recovered forensically. As the infotainment and telematics systems of vehicles get more sophisticated, this type of data will likely become accessible using associated cell phone apps.

Hacked Email in Family Law Cases

Not all hacking cases involve the need for computer forensics. In one case, the client believed his spouse had hacked his Gmail account to gain financial information and privileged communications with his attorney. Consulting with the attorney on Internet provider subpoenas, we could trace the hack to his spouse’s iPad while she was in another state. She ended up “pleading the Fifth” on a subsequent interrogatory.

During a visitation dispute, a custodial parent hacked into her ex’s Gmail account, then created fictitious emails that seemed to demonstrate the father’s poor character. She then sent the emails to the Guardian ad Litem as evidence the visitation agreement should be changed. Working with the client’s attorney, we traced the hack to the ex-wife’s computer at a time when the father was proven to be at work in another state.

In a questioned document case, one party faxed emails to the court as PDF documents rather than sending the original email. The PDF documents failed to possess the correct font, macros, and coding as an original email; these issues, combined with other electronic evidence, made the exhibits’ authenticity suspect.

Are Electronic Investigations Worth the Cost?

When dealing with suspected cyberstalking, hacking, or spyware, a lawyer must first decide if the case warrants the expense of forensic examinations. In custody and financial disputes, it may be money well spent. Family lawyers need to consider the cost/benefit of obtaining electronic evidence for other types of cases. For example, does discovery of the activity help them to prove a domestic abuse situation or to develop orders for protection and other stipulations? If the goal is to give the client peace of mind, then explaining how and why to protect their electronic devices and Internet-related accounts may be the best solution.

In either case, seriously consider consulting with a professional to ensure that you have covered all the bases if your client suspects cyberstalking or hacking. ■



Brook Schaub is the Manager of Computer Forensics and eDiscovery for Eide Bailly LLP in Minneapolis. A retired Police Sergeant, he has been performing computer forensics since 1995. He also is a consultant to the Team Adam program of the National Center for Missing & Exploited Children. www.eidebailly.com

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The Art of Advocacy

Family Law Litigator Stephen Kolodny is a preeminent trial lawyer with a long list of accomplishments. He is a recipient of Boston University School of Law’s Silver Shingle Award for Distinguished Service to the Profession, and one of the Founding Members of the American College of Family Trial Lawyers and the National Family Law Trial Institute in Houston. *Family Lawyer Magazine’s* Editorial Director, Diana Shepherd, recently spoke with him about his commitment to passing on litigation skills and giving back to the community.



What is the one fundamental reason why you chose to practice family law?

I chose family law because it is the only area of law that gives you the opportunity to make a positive difference in the future lives of people. I think that makes it a unique area of law.

Please describe the core beliefs that guide you and your practice.

Since law school, I have believed that it is my responsibility and obligation

to be a strong advocate for my clients; to protect and assert their interests. This belief has resulted in me being an aggressive and forceful litigator. I do whatever is required, with integrity, to achieve my client’s goals.

I also believe in loyalty. If you’re not loyal, you’re not somebody I want anywhere around me.

Can you name some achievements that make you proud?

On a personal level, I’m proud of my children’s success – which I hope is attributable in part to my influence and values – and my wife’s successes in her business ventures.

On a professional level, I’m both proud and privileged to have earned a reputation amongst bench officers – not only in Los Angeles but in other parts of the state and country – for high personal integrity, commitment to the representation of clients, and being a skilled litigator. The success of my practice, the development of my skills and reputation, and the recognition that my stature has given me throughout the country makes me proud.

I am also proud of the National Family Law Trial Institute in Houston (www.familylawtrialinstitute.org), where I have been instrumental in changing the program and maintaining a unique, highly specialized faculty. I have been doing this for 29 years: training lawyers to be better lawyers and, hopefully, to be successful trial lawyers. This has always been a source of pride for me.

Tell us more about the National Family Law Trial Institute.

We have faculty members who have been teaching this program for over 20 years. We teach advocacy! The sole purpose and the sole reason we spend a week in Houston at the end of May every year is to try and raise the caliber of family law practitioners. We teach them how to be effective, more persuasive litigators and how to better represent their clients and get better results for them. Some firms that regularly send two to three lawyers every year have said that those lawyers return with the equivalent of somewhere between five and seven years of actual courtroom experience. We believe this is such crucial education that we volunteer our time teaching there.

Why is it important for you and members of your firm to be involved in providing CLE through local, state, or national family law associations?

I write and maintain the *Family Law Contempts Benchbook for California* in memory of an old friend of mine, Superior Court Commissioner Herbert S. Ross, who died a long time ago. That book is probably on the bench of almost every family law judge or judicial officer in the State of California – and a lot of places outside California.

I do CLE on evidence and trial practice fairly regularly. I have been an active participant both in planning and the structuring of the Sorrell Trope Trial Institute program, which is also designed to raise the level of litigation

skills of family law lawyers. It's pretty embarrassing to sit in a courtroom and see how unskilled so many family law lawyers are because they don't get the opportunity to try a lot of cases. They don't have the experience, so somebody needs to be able to teach them – and I guess it's left to us old-timers who used to try cases literally every day. Litigation skills are acquired skills that we need to pass on so that the art of advocacy doesn't die.

What is the primary type of clients you serve? Do you ever take on pro bono cases?

A lot of our clients have high net worth. We also represent the Los Angeles middle class, who typically have money or assets, but aren't mega rich. Last year, I represented a fire captain for free because I thought he had a grossly incompetent lawyer – and because of that lawyer, the judge had made a terrible mistake. I was able to correct it, but it took 14 trial days and a 100-page closing power point presentation to do so. We do pro bono work for firms that provide services to indigent or low-income people; three or four of our lawyers work there regularly and serve that population.

What makes you or your law firm the right choice for a family law client?

Our commitment to, representation of, and the way we seek to protect our clients is what marks the success of our law firm. Clients really come first at my firm; even senior partners set aside personal commitments in order to service clients. That commitment makes us a good choice for clients that fit within our mold – which is primarily a law firm that pushes fairly aggressively to assert and achieve the rights of clients, usually via litigation.

It sounds like the desire for justice and giving back to the community are both important to you.

A fantasy goal of mine is to see the judicial system hand out real justice to people in family law cases – I try to see that it happens as often as possible. It's part of the reason I spend so much time on the *Family Law Contempts Bench Book*: it's an area that's not very well known and judicial officers, unless they have been on the bench for awhile, do not have much experience with it.

I have probably spent over 1,000 unpaid hours planning the annual National Family Law Trial Institute program, including recruiting a top-notch faculty to pass on the art of advocacy to the next generation of family law litigators. We estimate that the Institute faculty gives over \$1,000,000 of billable time each year to the program.

I have been very fortunate in my



A teaching session at the National Family Law Trial Institute.

career, which gives me an obligation to give back to the community and the legal profession. I have a law firm that allows me to do these things, and that offers lower-income people the opportunity to achieve real justice. And then, every once in a while, I see a pro bono case I personally just can't turn down.

Is there anything you wish you could change in the family law legal system?

The whole court system needs to be changed to give family law judges the time to be able to properly hear, analyze, and decide these cases. Family law has always been considered the "stepchild" of the judicial system. If you

get rear-ended on the freeway, the court has no problem giving you a jury and a courtroom for as long as you want; rarely do those cases result in awards over \$100,000.

We often deal with cases that involve \$100 million or more in assets, but we must fight to get time to properly litigate these cases. More importantly, we deal with the lives of children – their health and welfare. For some people, the difference of \$100 a month in a support order determines whether the children get to eat three meals a day.

It is wrong for courts not to allocate sufficient resources to our cases. In Los Angeles, our new Supervising Judge, Thomas Trent Lewis, has made major changes giving us a much better opportunity to try our cases, but that has not happened statewide. I hope to be instrumental in participating in discussions that lead to more changes.

What's the best advice you could give a family lawyer who's just starting out?

Do not take the easy way out at the expense of your client, and remember that the decisions you make affect their everyday living and the lives of their children. Family law is very important work that affects the lives of children in many different ways. We sometimes lose sight of that.

For the average American, the difference in a support order of \$100 or \$200 a month is the difference between eating well and going hungry. A change in custody can have a critical impact on a parent-child relationship and the life experience and opportunities of a child as well as the outlook on life of that child. ■

Stephen Kolodny is the Managing Partner at the Kolodny Law Group in Beverly Hills, California. He has been practicing law for more than 50 years and was the Founding Diplomat and Executive Vice President of the American College of Family Law Trial Lawyers. www.kolodnylawgroup.com

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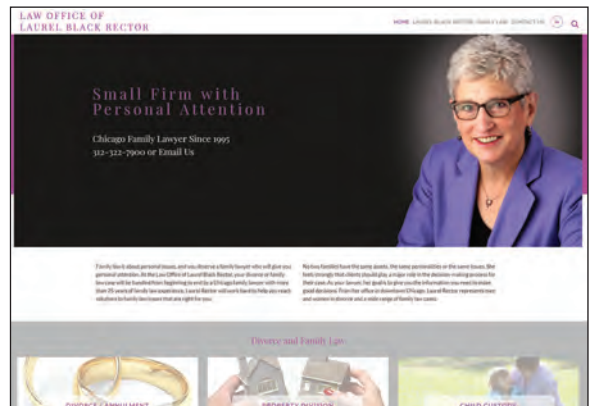
~ Nissa M. Ricafort and Melanie K. Reichert, Attorneys
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“Thank you for sending me the link to your Firm’s website. It is very reassuring to read about your accomplishments and affiliations... in reading through the Family Law page, I really appreciated the Firm’s policy on actually focusing on reducing emotional stress and financial burden. I am terrified, to be honest, because divorce is a major change. But I now have a great deal more confidence in my selection of representation.”

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TOXIC STRESS AND HIGH-CONFLICT CASES

Protect yourself and your clients from the damaging effects of stress by using software, apps, and videos based on neuroscience.

By Dr. Donald Gordon, Clinical Child Psychologist

High-conflict divorces pose significant threats for lawyers who have to work with toxic clients (or their spouses) – and the stress can spill over on to your family and impact other relationships without your awareness. Cognitive neuroscience shows how and why toxic stress can affect you, and what you can do to minimize its impact.

Freeze, Fight, or Flight

When your brain senses danger, it becomes dominated by the amygdala and you experience the fight-freeze-or-flight reaction that helps keep you alive. This response is automatic: your brain is wired to respond this way. Unfortunately, when you are in this state of amygdala activation, you cannot access the prefrontal orbital cortex – which is where judgment, wisdom, empathy, and compassion reside.

This is why the high-conflict parents we work with do and say things that an otherwise sensitive, loving parent would not normally do or say. This phenomenon also applies to divorce professionals: you can shut down colleagues and family members when you are stressed. You must reduce the amygdala's control over the brain before you can access your higher abilities.

Reducing Amygdala Activation

Neuroscience has shown psychologists how to help people access their better nature during stressful times. You can learn to use mindfulness methods to stop, step back, and observe how your brain is reacting to a stimulus. How and what you think can powerfully affect your feelings and behaviors; Cognitive Behavioral Therapy is another technique that helps you to transform negative and anxious thoughts, allowing you to feel, think, and function better.

According to functional MRI studies, people can reduce amygdala activation by simply labeling the unpleasant feelings they have due to, for example, conflict with a co-parent or colleague. Suppressing or ignoring



those feelings does not reduce stress. Consultation with trained professionals can teach you about the impact of cortisol release in the body from protracted conflict, the damaging effects of this on your physical and mental health, and the damage it does to your primary relationships – with your children and/or your partner.

Unfortunately, research has shown that this information has little staying power when it is delivered verbally or in written form. For divorcing parents, teaching these concepts through videos showing family conflict, along with engaging animation and graphics, makes the material personal, useful, and memorable.

On Parental Alienation

Cases involving parental alienation, which is common in high-conflict cases, can be particularly vexing. Child psychologists can prevent alienation from progressing: through compelling videos depicting family conflict, parents can learn about the long-term damage to their children's emotional and physical health – and their own – when they discourage loyalty and love and encourage alienation from their co-parent.

Family lawyers have neither the time nor the expertise to teach their high-conflict clients how to manage stress, make better decisions, and minimize harm to the children, try as they may. Lawyers can feel frustrated when a client damages their own case by dramatically lashing out at their co-parent in anger – and that toxic outburst or action can hurt the children more than it hurts the co-parent.

You can try to help stressed clients by providing referral to therapists or parent coordinators. Many clients won't take the time or be willing to spend the funds to see a mental-health professional (assuming there are competent professionals in the community), or they will deflect by saying that their co-parent is the one who needs the help.

High-Conflict Classes or Online Programs

One option is referral to a high-conflict

class, although these classes are available in only a few communities. They are often 10 to 25 hours long and run over the course of a month or two. These classes often require a court order because the time and cost commitments dissuade parents from going on their own. Another option is an online program for high-conflict parents. With an instructional design that encourages retention of the information and teaches communication and emotional regulation skills, an online program can provide as much or more help to parents than a trained professional.

An example of an online program that can teach these concepts and skills is the High Conflict Solutions program, which was developed this year after input from presiding judges in Cook Co., IL (Chicago), Maricopa Co., AZ (Phoenix), and Clark Co., NV (Las Vegas); from mediators and trainers of mediators; parent coordinator trainers; therapists; and a psychiatrist.

The instructional design fosters retention of information – unlike most parent education programs, which are primarily auditory information dumps that parents do not retain. The online program places heavy emphasis on visuals showing personally relevant and emotionally impactful scenes of parental conflict, along with eye-catching graphics and animation that hold the viewer's attention. Parents learn about brain science and how their judgment is impaired when they are in fight-or-flight mode, and what they can do to engage their higher cortical center.

Change Is Hard – but Worth It

Behavior modification is not usually accomplished by one brief program. The online course supports parents to keep practicing the new behaviors until they become habits by sending them text messages twice weekly for six months. Each message prompts the parent to practice and use one of ten skills taught in the program; a video clip demonstrating the skill is attached to the text. After receiving several texts featuring different skills, parents can select which skills they would like to receive ongoing text prompts for. More than 99% of parents

receiving these prompts opt to continue them and rate them highly useful.

Stress Relief Technology

The Spire Stone is a technological innovation that helps both parents and professionals reduce their stress. You wear it on your belt, waistband, or undergarments, and it measures your breathing via the expansion and contraction of your torso. The Spire app analyzes and categorizes your breathing as calm, tense, or focussed, and it sends you a notification prompting you to take several deep breaths when you are tense. It allows you to become conscious of when your stress levels are rising, and then guides you to immediately reduce the stress. After using Spire, parents report their conversations with their co-parent are more calm and productive.

Both professionals and parents experiencing protracted periods of conflict and stress accumulate a toxic cortisol residue that can impair functioning as well as reduce quality of life. Self-care that includes learning about how to manage the brain's reaction to conflict can and should be part of a survival plan for ongoing conflict. ■



Dr. Don Gordon has a Ph.D. in clinical child psychology. He is an Emeritus Professor of Psychology at Ohio University, Executive Director of the nonprofit Center for Divorce Education, and CEO of Family Works Inc. He focuses on developing and evaluating family and parenting programs. www.online.divorce-education.com

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Secondary Traumatic Stress and Family Lawyers

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Insomnia and the Family Lawyer



Are you suffering from insomnia? Sleepless and stressed-out? Here are the likely culprits as well as 16 tips to help you get a good night's sleep.

By Dr. Mel Borins

You may not have realized how important a good night's sleep was until you could no longer get one. Many with chronic or continued insomnia report decreased feelings of well-being during the day – including decreased attention, energy, and concentration – and an increase in fatigue and malaise. This causes considerable impairment in social, occupational, and other areas of functioning. Chronic insomniacs also have 2.5 times more fatigue-related automobile accidents than good sleepers.

What Causes Insomnia?

Insomnia is usually caused by multiple factors. Problems with sleep onset, mid-cycle awakening, and early morning awakenings are commonly associated with depression; persistently disturbed sleep may be in itself a risk factor for the development of depression, and early treatment of sleep disturbance may prevent the onset of major depression. Insomnia can also be related to an anxiety disorder, obsessive-compulsive personality disorder, schizophrenia, or another mental illness.

Conditions like thyroid disorders, heart failure, Parkinson's disease, dementia, and sleep apnea are associated with insomnia. Sometimes viral and bacterial infections, coughing related to lung diseases, and pain from

a musculoskeletal disease like fibromyalgia, arthritis, or even fractures can cause the beginning of disturbed sleep. Sometimes the sleep problem can continue even after the medical condition is resolved.

Alcohol, coffee, tea, chocolates, and soft drinks containing caffeine can aggravate insomnia. Some medications can also disturb sleep. Substance-induced insomnia can occur during intoxication as well as during withdrawal from alcohol, amphetamines, cocaine, opioids, caffeine, sedatives, sleeping pills, and anti-anxiety medications.

Primary or psychophysiological insomnia is not related to another mental disorder, a physical disease, or substance abuse. People suffering from primary insomnia often have poor sleep hygiene (see "Help for Your Insomnia," below), and negatively reinforced conditioning. The more the individual tries to sleep, the more distressed and frustrated they become and the less able they are to fall asleep. Lying in bed feeling frustrated causes increased arousal and agitation.

Psychotherapy or Counseling

Sometimes insomnia is associated with known traumatic life events. The loss of a loved one, loss of a job, marital and family breakups, losses related to accidents and operations, or a frightening medical diagnosis can cause grief and anxiety – and if those feelings are persistent and unresolved, they can lead to insomnia and clinical depression.

Counseling or psychotherapy can help to advance the recovery phase and stimulate new psychological strength and personal growth. Psychotherapy can focus on the feelings of resentment and anger that have been suppressed or turned back on the self as well as help resolve the guilty feelings, which are usually self-destructive.

Help for Your Insomnia

Once your doctor has ruled out medical conditions as a cause of your insomnia,

what can you do to stop those never-ending sleepless nights? These Sleep Hygiene rules could reduce or even eliminate chronic insomnia.

- 1. Keep a sleep diary.** If you have difficulty getting to sleep because you review past unresolved problems or are preoccupied with future planning, then write your thoughts and feelings in the diary. Having the thoughts expressed on paper prevents them from being perpetuated endlessly in your mind.
- 2. No heavy meals at bedtime.** Limit fluids after six o'clock.
- 3. Avoid stimulus before retiring.** No fighting in the evening.
- 4. Eliminate alcohol, caffeine, and recreational drugs completely.**
- 5. Increase the daily amount of exercise but finish exercising** at least four hours before going to bed.
- 6. Use your bed for sleep and sex only,** not for watching TV, doing work, or reading. Don't sleep elsewhere in the house.
- 7. Go to bed at the same time each night.** If it takes longer than 20 minutes to get to sleep, or if you wake up, get out of bed and do some quiet activity – like reading – in dim light until you feel drowsy, then return to bed.
- 8. Wake up at the same time every morning.** No matter how poorly you slept, have an alarm wake you up at the same time each day. Apps like the Sleep Cycle alarm clock can help by tracking your sleep patterns and waking you during light sleep – which feels like awakening naturally without an alarm clock.
- 9. Keep your clock turned away from you** so you don't watch the minutes and hours tick by.
- 10. Download a guided audio or relaxation app** – such as Relaxation Exercise, or Calm – to help you learn to quiet your active mind and relax your physical body.
- 11. No naps during the day.** Go out for a walk instead.

12. Develop bedtime rituals. For example: Lock the doors; brush your teeth; wash your hands and face; get into pyjamas; set your alarm; turn off the lights; perform relaxation exercise or listen to relaxation app; etc.

13. Eliminate noise by soundproofing or by wearing earplugs, and make sure your bed and pillow are comfortable.

14. Set the ideal temperature for you. For optimal sleep, the suggested bedroom temperature is between 60° and 67° F.

15. No one died from lack of sleep, but many people make themselves sick by worrying about lack of sleep.

16. No screen time at least an hour before bed. No TV, cell phone, tablet, computer, or video game exposure. Unless you're using a sleep app, leave your cell phones and tablets in another room when you go to bed. Modems and other electrical devices should be placed outside the bedroom as well. ■



Dr. Mel Borins is a public speaker, travel writer, and family physician. He is the author of the books [Go Away Just for the Health of It](#), [An Apple a Day: A Holistic Health Primer](#), and [A Doctor's Guide to Alternative Medicine: What Works, What Doesn't and Why](#). www.melborinscreative.com

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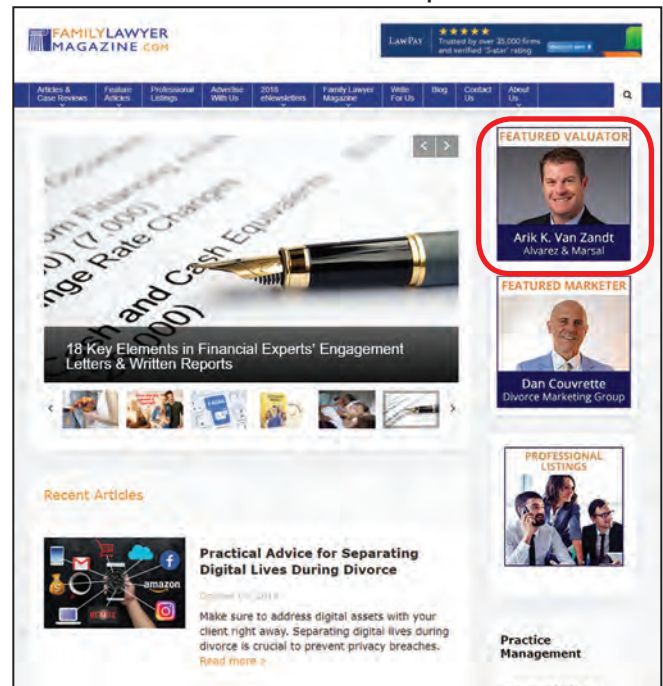
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The screenshot shows the homepage of FamilyLawyerMagazine.com. The header includes the site name and a 'LAW FIRM' badge with a star rating. A navigation menu is visible. The main content area features a large article titled '18 Key Elements in Financial Experts' Engagement Letters & Written Reports' with a pen and paper image. To the right, there are two featured expert boxes: 'FEATURED VALUATOR' for Arik K. Van Zandt, Alvarez & Marsal, and 'FEATURED MARKETER' for Dan Couvrette, Divorce Marketing Group. Below these are 'Recent Articles' and 'Practice Management' sections.

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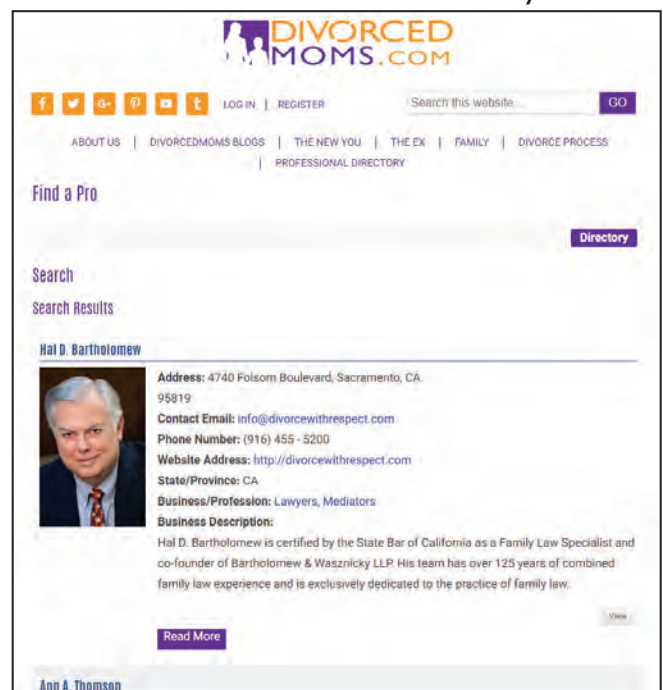
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The screenshot shows a firm profile on DivorceMag.com for Summit New Jersey Family Lawyers Ceconi & Cheifetz. The profile includes a photo of Lizanne J. Ceconi and Cary B. Cheifetz with the text 'A Principled Approach'. Below the photo is a paragraph of text describing the firm's operating principles and mission statement. The text reads: 'There's something unique about a law firm, or any company for that matter, where one of the initial tasks of the founding partners was to set down their operating principles and a mission statement. There's also something particularly telling about a firm that begins its list of principles by stating, "We distinguish ourselves by satisfying our clients with great caring service and developing strong client relationships. Therefore, we try our best to respond to client inquiries the same day when possible."'

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The screenshot shows a professional directory profile on DivorcedMoms.com for Hal D. Bartholomew. The profile includes a photo of Hal D. Bartholomew and contact information: Address: 4740 Folsom Boulevard, Sacramento, CA 95819; Contact Email: info@divorcewithrespect.com; Phone Number: (916) 455-5200; Website Address: http://divorcewithrespect.com; State/Province: CA; Business/Profession: Lawyers, Mediators; Business Description: Hal D. Bartholomew is certified by the State Bar of California as a Family Law Specialist and co-founder of Bartholomew & Wasznicky LLP. His team has over 125 years of combined family law experience and is exclusively dedicated to the practice of family law.



SOCIAL MEDIA Advertising: The New Frontier

By Kirk Stange, Family Lawyer

Paid social media is the new frontier in law firm advertising. Those who get on board early will reap the benefits while other firms will be left behind.

A Brief History of Law Firm Advertising

Once advertising became acceptable in the legal industry, lawyers and law firms that wanted to grow their practice advertised on traditional platforms: from the phone book, to magazines, to billboards, to radio and television.

In the mid to early 2000s, a big shift began with lawyer and law firm advertising. Instead of advertising through traditional platforms, a few shrewd and bold law firms took their advertising efforts online. The firms that took a chance and tried something new by going online were often able to grow their practices more quickly while spending less than the firms that were advertising by traditional means.

Pay-Per-Click Advertising

When online advertising began — and even today — law firms grew their practice online predominately through the development of a website. In addition to creating an excellent website, many firms began investing in pay-per-click (PPC) advertising: paying major search engines like Google and Yahoo/Bing each time someone clicks an ad linking

visitors to their website.

Many law firms that were doing traditional advertising could not understand why other firms went with only online advertising. However, the cost of PPC advertising used to be relatively inexpensive when compared to traditional platforms, making it a good choice for start-up and budget-crunched firms.

Today, PPC advertising is no longer cutting-edge; in fact, lots of law firms are doing it. In some cases, the cost of PPC advertising has risen to a point where it is just as expensive as traditional advertising. PPC advertising is now cost-prohibitive for many firms: a law firm could spend approximately \$50 for a single click in a competitive area of the law.

As more and more law firms follow the crowd and get into PPC advertising, the cost will continue to escalate — perhaps to a point where it becomes extremely difficult for start-up and budget-crunched firms to compete. Even if a firm purchases clicks for a limited period of time or for limited times throughout the day, most simply do not have the funds to regularly and consistently run their PPC advertisements in

competitive localities.

Today, almost every law firm has a website of some kind — good, bad, or ugly. Shrewd firms no longer see their website as an online brochure; they know that a successful website must now be a rich resource of legal content for potential clients. However, getting a website to show up organically on page one of search engines is neither simple nor easy; it can be a difficult and lengthy process for many firms — and some may never get to that first page on important terms.

Even if a website reaches page one, search engine algorithm updates often cause rankings to re-shuffle, which creates a lack of security for law firms that rely solely on organic rankings for leads. If a firm does not have the budget to compete with PPC advertising, and it cannot reach or remain on the first page of an organic search, then it may struggle to generate any leads online.

So what is the new frontier for law firm advertising in 2018 and beyond? Is there a cost-effective way to generate new client leads online? Is there a way for a start-up firm to grow their practice quickly while spending a reasonable

Although many lawyers are still skeptical about social media, the new wave of successful advertising is through paid social media ads.

amount of money on marketing – as many did in the early to mid-2000s?

Paid Social Media Advertising

Although many lawyers are still skeptical about social media, the new wave of successful advertising is through paid social media ads.

Today, the cost of paid advertising on Facebook and Twitter is significantly less than the cost of paid advertising on Google or Yahoo/Bing. On Facebook and Twitter, law firms can syndicate their own blogs, videos, podcasts, legal information, and other relevant content which can drive individuals to the firm's website if they click the social media advertisements. If an individual clicks through to a law firm's website, and the website is content-rich and appealing, they will often contact the firm about their case.

Reaching Your Target Market

Facebook and Twitter ads can also target specific regions and individuals that fit certain demographics that might make them likely to be promising clients. For example, Facebook offers "Lead Ads," in which individuals seeking a lawyer in

your area can fill out a form with their name, contact information, and some general information regarding their case.

Both Facebook and Twitter offer "Remarketing Ads." These ads are powerful: a cookie on your website allows your ads to be re-run to individuals that have previously visited your website for a fixed period of time. Individuals often do not reach out during their first visit to your website – but after seeing your ads a second or third time, they are more likely to call or email about their situation.

If you routinely post on your firm's social media pages, you might wonder why you should consider paid social media ads when you can post or tweet for free. The reality is that most law firms have few followers or social media contacts. While free posts and tweets have some value, those posts are not going to reach very many people unless they are promoted through paid ads. Even if you utilize a creative hashtag, it is still tough to create enough organic traffic to generate meaningful new client leads.

Early Adopters Will Reap the Benefits

While many are still leery of taking the plunge into paid social media advertising, the lawyers and law firms that

are delving into Facebook and Twitter ads are taking advantage of an opportunity that their competition is not – plus these ads are inexpensive when compared to other advertising methods.

Additionally, the number of individuals who are spending vast amounts of time on social media has been increasing rapidly. Unlike radio and television – where there are many different stations – there is only one Facebook and one Twitter. This means that people are more likely to see your ads online through social media than if they are watching television or listening to the radio.

As time goes on, other social media platforms may rise to prominence as well, and they will likely offer paid advertisements as a viable option. Snapchat, for example, now offers paid ads.

So, if you are looking for the new frontier in law firm advertising, you ought to think long and hard about paid social media advertising. Those who get on board early will reap the benefits while other law firms will be left behind. ■



Kirk Stange is a Founding Partner of Stange Law Firm, PC. He is licensed in Missouri, Illinois, Kansas, and the United States District Court for the Eastern District of Missouri. Kirk received his Juris Doctorate from the University of Missouri-Columbia. www.stangelawfirm.com

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5 STRATEGIES TO HELP DIVORCING CLIENTS

Use these strategies to help your clients through the divorce process without making their emotional trauma worse.

By James Gray Robinson, Family Lawyer

According to “Marital Biography and Health at Midlife” (a national study of 8,652 people published in the *Journal of Health and Social Behavior*), those who had experienced divorce or the death of a spouse reported about 20% more chronic health problems than those who had been continuously married. Other studies confirm the thesis that divorce can literally make you sick.

Divorce can be so traumatic to the mind, body, and immune system that it can lead to depression, anxiety, and psychological illness. Other studies suggest that divorced men are more likely to die earlier, have higher rates of substance abuse, have higher suicide rates, have more strokes, high blood pressure, heart attacks, cancer and related illnesses than married men.

Divorce lawyers often unwittingly play a role in these negative effects of divorce. When clients are psychologically and emotionally traumatized by the breakup of their marriage, they may want to teach their ex-spouse a lesson. When clients become unreasonable in order to inflict pain, some lawyers become “junkyard dogs” to fulfill their client’s wishes.

Every divorce lawyer has had a client whose goal was to make their spouse’s life miserable. However, you should be

aware that being the “meanest son of a bitch in the valley” has an effect not only on the opposition but on your own client as well; it also helps reinforce the public perception that divorce lawyers are unreasonable solely to maximize their fees without considering their clients’ needs.

However, there are steps you can take to help shepherd your clients through what will probably be one of the worst experiences of their lives. To avoid unnecessary trauma and damage to your clients and their children, consider using these five strategies.

1 Encourage Your Clients to Settle.

One of the most damaging dynamics of divorce is that people are not inclined to settle when they are hurt or angry. The emotional cloud that hangs over the divorce process makes it extremely difficult for clients to dissolve the marriage rationally. Recommend compromise whenever possible, and explain why compromise and settlement is better for the client in the long run.

2 Encourage Your Clients to Get Counseling and Support.

Many people don’t realize how

traumatic the divorce process is and so don’t make the effort to find emotional and mental-health support. You should be able to refer your clients to organizations or mental-health professionals that can support your clients to weather the emotional storms of divorce. You should also be aware of local divorce support groups where your clients can share and heal with their peers.

3 Encourage Your Clients to Get a Life.

Clients need to have something to think about other than the divorce: hobbies, sports, or other enjoyable activities remind them that life isn’t all bad. There is scientific proof that going for a walk in nature has mental as well as physical health benefits – and it could help people clear their minds and become more reasonable. Sitting at home obsessing about their divorce will only cause more depression and anxiety.

4 Remind Clients that Children Love and Need Both Parents.

Your client may feel like their spouse is their biggest enemy and become obsessed with protecting their children from that enemy. That is not how the children feel about it; unless there has

been abuse, children love both parents and become conflicted when one parent tries to demonize the other. You need to find a way to train parents to work cooperatively to reduce their children's distress and expedite the healing process. In a high-conflict divorce, children may need emotional and mental-health support more than the parents, so recommend counseling for the children.

5 Lawyers Need to “Parent” Their Clients.

In nasty divorces, you have to take control to prevent your clients from acting like children and torpedoing the process. You can guide your clients through the process with as little conflict as possible, or you can get down into the mud with them and sling fault and blame. Except for children, there

are no innocent victims in a divorce. A client who blames their ex for everything that went wrong in their marriage may want to litigate every single issue. You need to explain why this is not in their best interest or be prepared to face a bitter client who blames you for depleting the family's resources in court.

I challenge you to find other ways to help your clients through the process without making their emotional trauma worse. Remember that clients come to us for advice and guidance, and we have control of the process. We need to be more farsighted in our approach to minimize the effects of divorce on families, and be mindful that clients will remember us as professionals who made the experience much better – or much worse – than it could have been. Guess which one will lead to more referrals? ■



James Gray Robinson, Esq. was a 3rd generation trial attorney, specializing in family law, for 27 years in his native North Carolina up until 2004, when he became a business consultant.

At the age of 64, he passed the Oregon bar exam and is again a licensed attorney. www.JamesGrayRobinson.com

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Non-Cash Compensation / Cont. from page 16

Is your client the type who might “shoot first and ask questions later,” perhaps establishing an irreversible transaction that may later be judged as ill-advised? Do you have a playbook by which these situations might be anticipated or avoided?

5 Consider Seeking an Early Motion to Liquidate

Since it can take many months to get a court-approved modification for the purpose of liquidating concentrated positions, would it make sense to file early in anticipation of delay? A well-scrutinized schedule of option exercises can provide adequate lead-time to map out a strategy for the best possible result.

6 Get Spousal Approval if Possible

In lieu of a time-consuming and costly court motion, would direct spousal approval (in writing, of course) be a viable option in this case? Both parties could benefit in the end. Available research reports and advice from a financial advisor may go a long way toward building a case of action.

Conclusion

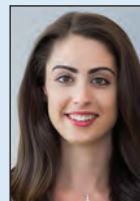
O'Brien v. O'Brien was more than a “shot-across-the-bow” in cases of highly-compensated individuals who may be left feeling powerless when capital markets enter periods of significant instability and shrinking deferred compensation values.

The nexus of volatile markets, highly concentrated positions,

and the stressful process of divorce could create ripe opportunities for otherwise well-intentioned individuals to make mistakes. Don't be caught flat-footed in the new world of post-*O'Brien v. O'Brien* jurisprudence. ■



Vincent J. Fiorentino and Alexandra I. Mililli are financial advisors with The Fiorentino Group at UBS Financial Services in Stamford, CT. Vincent is also the founding member of the Greenwich Chapter of the National Association of Divorce Professionals, whose mission is to provide high-level support to individuals going through a divorce.



Alex focuses on helping women in transition, specializing in financial issues involving divorce, widowhood, empty-nesting, career transition, and caregiving. www.financialservicesinc.ubs.com/team/fiorentino

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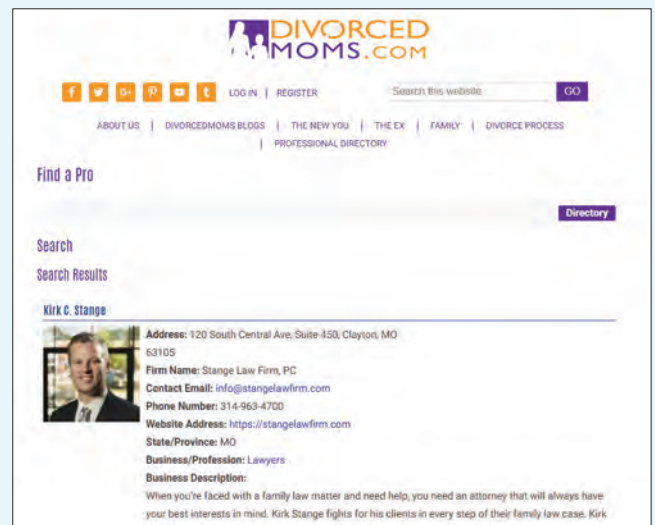
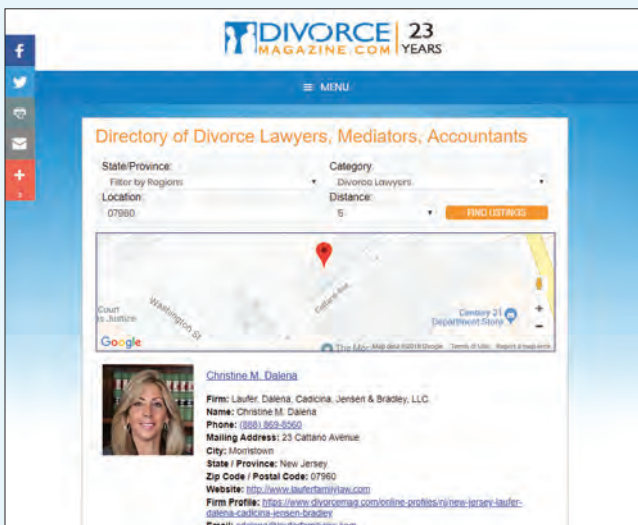
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• settlement has been reached
• – even if you achieved a successful
• outcome. As such, the longer you wait
• to send your bill, the less likely your client is
• to pay it. If a client receives your bill a month
• or two after their case is officially finished, they
• may have forgotten about all the hard work you put
• in and wonder why they owe you money at all. However, if you send
• your bill as soon as your work is done (and still fresh in your client’s
• mind), they will likely feel that your bill is justified and will send their
• payment right away.

• Delaying your bills sends the message: “I don’t really need your
• money.” However, if you are consistent with your billing schedule,
• your client can expect when your bill will arrive and can plan around it.

• Staying on top of a consistent monthly billing cycle is far easier
• when using an online payment solution. You can send your client a
• payment request via email as soon as their case is over, and they can
• pay your bill easily with a few mouse clicks. The convenience of paying
• you online can lead to a higher rate of satisfaction with their decision
• to choose you as their lawyer.

- similar products,
- Market studies and surveys,
- Interviews to understand the product idea and how it solves a commercial problem,
- The expected pricing model,
- The unknowns.

• That last point is critical to an appraiser who is assessing risk. Early-stage companies have numerous unknowns: will the product be capable of doing what we want, will the market accept it, will the market accept our pricing, will our invention spur unforeseen competition, etc. In business, unknowns increase perceived risk, and risk affects value. Your client should understand that and answer questions candidly. “I have no idea,” is perfectly acceptable (assuming it’s true, of course).

• This article is meant to provide a brief introduction to the issues involved with valuing an early-stage startup in the divorce context. Nothing in this article should be taken as definitive for any given case as each case depends on its own facts and circumstances. ■



David Witherspoon (MBA, CVA, CEPA) is the director of business valuation and the litigation support division at KatzAbosch. He has provided consulting services to middle-market

businesses for more than 15 years and specializes in business strategy, value creation, exit planning, modeling, statistical analysis, and data analytics. www.katzabosch.com

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• Have you ever received a utility bill and furrowed your brow when reading the details of your charges? Imagine how your client might feel if they do not understand what they are being charged for. That is why it is vital to write your bills in plain, jargon-free language.

• A good, descriptive bill can help prevent complaints from your clients. If they have a clear understanding of the work you did, then your clients will likely feel your bill is reasonable and justified – which leads to payment. Avoid descriptions that are meaningless to your client (such as “reviewed file .5”), try to avoid legal terms, and be precise.

• Be mindful of what you are billing for. Do not charge your clients for minor things or common office supplies. Instead, consider listing services in your bill that you have provided free of charge: such as fielding a quick phone call or answering an email related to the case. Such good deeds will not go unnoticed. They will increase your collection rate and gain you more business.

• Never forget: doing good work gets you clients. Sending good bills gets you paid. ■



Michelle Lowe is the Sr. Brand Manager for LawPay, an online payment solution for the legal industry. Michelle has over 15 years of experience in finance and technology. LawPay is an approved Member Benefit of 48 state bars, trusted by more than 50,000 lawyers, and is the only payment solution offered through the ABA Advantage program. www.lawpay.com

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