From an outsider’s perspective, the issues that revolve around family law are incredibly complex. A good attorney understands and can balance the roles of an advocate, therapist, and advisor and must also have a thorough understanding of the various financial aspects that may play an integral part in the case, for example, wealth management, forensic accounting, income taxes and business valuation just to name a few. These are not usually in their repertoire; therefore, many family law attorneys seek to find financial experts that are willing to educate them. Nonetheless, attorneys should make sure they obtain a minimum understanding of the following information to determine if and when an expert should be engaged.

Is a valuation necessary?

When first learning about a case, the family law attorney will probably only have a minimal understanding of the business that needs to be appraised. Depending on which party you represent, the client may claim that the business is priceless or worthless. When this occurs, it is important for the attorney to know the potential cost of a valuation and whether a valuation will be worthwhile. Having little experience with business valuations, it will be beneficial to gain a basic understanding of the different types of valuation reports and the benefits and cost of each. This can be accomplished by simply calling a few local financial experts. It is not uncommon for clients to be hesitant to expend the money especially if there isn’t enough value to justify the cost. Having knowledge of valuation methods will allow you to determine if a valuation will result in enough value. This can be done with an initial examination of the company’s financial statements. Afterwards, the attorney should have a discussion with the valuation expert before the engagement is undertaken. This is an appropriate time to discuss the potential worth of the business, the timeline for when the report will be produced, and also expectations for the availability of information.

How to choose an expert

If you have not worked with a valuation expert previously, it is important to understand how to find one that is qualified and experienced. Typically, valuation professionals have some combination of formal education, professional education, and experience. Formal education generally relates to an accounting, finance or economics degree. Additionally, professional organizations provide training and award credentials such as the Certified Valuation Analyst (CVA), Accredited in Business Valuation (ABV) or Accredited Senior Appraiser (ASA). Furthermore, it is important to know if the valuation expert has is experienced enough and if they have experience with the litigation process. The most crucial element to choosing an expert is to find a valuation professional that can articulate their analysis and the reasonableness of their findings. Explaining an expert report in a clear and concise manner will not only help develop a stronger case, but will also help the trier of fact understand the report and the conclusion of value should the case go to trial.

Document Requests

Although attorneys have experience requesting documents through the discovery process, many times a valuation analyst will need documents that are different than those typically requested. As a result, it is useful to consult a valuation professional early on to discuss their needs. Simply disclosing an expert and not consulting with them can result in a valuation analyst performing work without the necessary information. If you are contemplating expert analyses beyond business valuations, consider the documents necessary for a forensic investigation or to prove income and expenditure amounts. Gathering this documentation early is cost effective for the engagement and also expedites the preparation of the expert report and allows the analyst to be more efficient.

Type of Reports

As discussed earlier, the cost of a valuation is a common obstacle when convincing a client to have one performed. In order to manage costs, it is important to understand the deliverable options a valuation expert can provide. In many cases, the most expensive option can be more than double the cost of the cheapest option. Additionally, certain types of valuations can be more persuasive in a litigation setting. Generally, you will see
report deliverables such as schedules, summary reports, detailed reports, or a litigation report. When considering what report to use, you should consider the possible outcome of the case. If both parties are amicable and attempting to settle, preparing a letter report and schedules can save the client money. However, if the case is predicted to go to trial, a more in-depth report will hold more weight when testifying. Furthermore, make sure to understand the difference between reports showing a calculation or conclusion of value. A calculation of value typically costs less than a conclusion of value, but parties decide on what valuation methods will be used beforehand and the reporting requirements are much less stringent. A conclusion of value is far more comprehensive in disclosure than a calculation of value and examines all relevant methods of valuation when determining a value. Calculation of value engagements are generally considered in divorce cases for settlement purposes.

**Valuation Approaches**

When a valuation is performed, there are many methods within an approach that can be utilized. Each of these methods relies on different information and has different assumptions. As a result, there is a time and a place for each method. It is important to understand the basics of each approach, and having this knowledge will allow you to know if a valuation is necessary as well as how to attack an opposing valuation. Generally, these approaches fall into one of three categories: asset, income and market categories.

The asset approach generally considers the company’s assets and liabilities when determining the value of the business. The income approach, however, considers the company’s earnings from both cash flows and the net income of the business. The third category, market approaches, rely on similar business sales in the real market place to determine the value of the business. Depending on the company’s business, a valuator will choose the appropriate approach and method. For example, asset approaches are typically useful in real estate holding companies or very asset-intensive businesses, while income approaches are generally used for companies who derive most of their revenues from the services they provide.

**Hidden Manipulations**

When evaluating a business prior to engaging an expert, it is important to consider any hidden manipulations. Some of these manipulations may be easy to spot through glaring irregularities, such as a business struggling within a few months of the nonmonied spouse filing for divorce. However, the underlying reason may be difficult to identify. For example, the company may have started paying rent to a friend of the spouse or the new girlfriend/boyfriend was recently placed on the payroll with full benefits. Having an understanding of how these manipulations occur will make it easier for you to determine if the business is truly struggling or whether you should engage a valuation/forensic expert to analyze the existence and the extent of these manipulations. Typically, a valuation analyst examines the trend of the business when valuing a company. These procedures can be done through a management interview or forensic accounting procedures if deemed necessary.

**Depositions and Trial**

If opposing counsel has engaged a financial expert, it may be worthwhile to consult a valuation professional of your own. They can review the opposing expert’s opinion and assist you in preparing deposition and/or cross examination questions. Furthermore, you should discuss the strengths and weaknesses of both valuation opinions. Even if an opposing expert is not engaged, discussions with a valuation expert can assist you when dealing with the business owner. It is not always necessary to have a valuation professional perform a valuation in order to add value to your case.

Overall, as you encounter more business appraisals, the importance and relevance of the valuation process becomes quickly apparent. However, until the familiarity reaches a certain level, find a valuation professional you are comfortable working with and one that is willing to educate so you understand what they do and why they do it. The more general knowledge you obtain about business valuations, the easier it will be to determine if they add value to your case.