



EXPEDITING THE BUSINESS/PROFESSIONAL PRACTICE VALUATION PROCESS

BY JOSEPH W. CUNNINGHAM, JD, CPA

When a business or professional practice is involved in a divorce, there is often considerable difficulty and expense in determining a settlement value acceptable to both parties. This frequently is a major impediment to reaching settlement.

The fees to value a business or professional practice – and time required – can be significant, especially if two – or three – valuation experts are involved.

The following presents two methods to facilitate resolution of the valuation issue on a cost-effective, expeditious basis.

Abbreviated valuation analysis for mediation and/or settlement negotiations is often effective at providing a reliable value without “going the whole 9 yards” on the valuation process.

Essentially the business valuation expert performs a sufficient level of analysis to enable him/her to provide a reliable estimate of value—or range of values—for settlement purposes. The expert will provide well-footnoted valuation schedules and a summary report if requested.

The expert will generally be available for mediation to explain the valuation analysis.

The expert could be a “neutral” working on behalf of both parties; or, each party may hire an expert to perform an abbreviated valuation analysis. If the case is not resolved at mediation, the expert(s) can perform a more comprehensive analysis and report later for trial or arbitration – generally with no duplication of effort.

Not all businesses are suitable for this approach. Some have too much uncertainty about the future such that an in depth analysis is required. However, based on the author’s experience, the abbreviated valuation approach applies to the vast majority of companies and professional practices.

If effective, this approach saves time and fees. The cost is generally about half the fee for a comprehensive valuation analysis and report.

Use of a neutral appraiser working on behalf of both parties is often an effective method for resolving the valuation issue on an expeditious, cost-effective manner.

It is common for each party to retain a business valuation expert. But, it is not uncommon that the values calculated by such experts are meaningfully different. If they cannot resolve the disparity in values, often a third expert is engaged to opine on value—causing considerable delay and additional fees.

However, if the parties can agree on one business appraiser at the outset, they can avoid the possible “battle of experts”. They can also save time, fees and emotion. Experienced family law practitioners know and can usually agree on a business appraiser

with a reputation for competence and integrity.

When using a neutral, it is often advisable to reserve the right to have his/her valuation analysis reviewed for reasonableness by another expert. This offers some protection against a valuation analysis performed erroneously by the neutral. But, to preserve the benefits of using a neutral, the review should be limited to a “reasonableness check,” not a full-blown valuation analysis.

Example

- The fee quote to value a mid-sized business for the divorce is a range of \$8,500 - \$10,000.
- If each party hires an expert, it could be twice that. There will be even more fees if a third expert is needed to resolve a sizable difference between the two values.
- The parties are somewhat “cash-strapped.” The business has encountered challenges and has not paid a bonus in the last couple years.
- On the recommendation of counsel, an experienced business valuation expert with a “straight shooter” reputation is engaged to perform an abbreviated valuation analysis on behalf of both parties to calculate a value the expert can recommend they can rely on.
- Both counsel reserve the right to have the neutral appraiser’s conclusion reviewed for reasonableness by another expert.
- The case is settled at mediation using the neutral expert’s business valuation.
- The neutral expert’s fee is \$5,000, including attendance at mediation.

Use of a neutral expert is not be suitable for all cases. For instance, if there is strong suspicion that the business owner has been “cooking the books,” forensic accounting services may be necessary. This may take the case out of the realm of a neutral business valuation expert.

Of course, in some cases, the parties cannot agree on anything. Each wants “my expert.”

About the Author

Joe Cunningham has over 25 years of experience specializing in financial and tax aspects of divorce, including business valuation, valuing and dividing retirement benefits, and developing settlement proposals. He has lectured extensively for ICLE, the Family Law Section, and the MACPA. Joe is also the author of numerous journal articles and chapters in family law treatises. His office is in Troy, though his practice is statewide.