



ETHICAL RESPONSIBILITIES FOR FAMILY LAW ATTORNEYS AND BUSINESS VALUATION EXPERTS

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At an American Academy of Matrimonial Lawyers (AAML) and Business Valuation Resources (BVR) conference earlier this year in Las Vegas (where else?), the respective ethical responsibilities of family law attorneys and business valuation (BV) experts were discussed.

It was stated that an attorney's charge is to apply legal theory to a case and to diligently advocate on the client's behalf. Doing so with diligence means being committed to the client's best interests and being a zealous advocate for the client.

However, it was then noted that a BV expert's charge is to assist the trier of fact. This is done by educating the court by providing an analysis based on observable data and facts performed with unbiased objectivity.

So, the attorney is a zealous client advocate and the expert is the issuer of an unbiased opinion of value.

Obviously, these are potentially conflicting roles.

The example used at the Conference was similar to the following:



Facts

- Attorney, representing H, engages Expert to value H's business.
- Expert uses an earnings multiple of 4 arriving at a preliminary value of \$400,000.
- After reviewing the preliminary value, Attorney strongly suggests reasons for using a multiple of 3, resulting in a value of \$300,000. He exerts pressure on Expert to revise the preliminary value accordingly.

Query 1

What are Expert's ethical responsibilities under these circumstances?

One of the five Fundamental Principles of the Code of Ethical Principles for Professional Valuers is as follows:

- **“Objectivity** - not to allow conflict of interest or undue influence or bias to override professional or business judgement.”

Two of the “Threats” listed in the Code of Ethical Principles for Professional Valuers are as follows:

- **“Advocacy threat** – the threat that a professional valuer will promote a client's or employer's position to the point that his/her objectivity is compromised.”
- **“Intimidation threat** – the threat that a professional valuer will be deterred from acting objectively because of actual or perceived pressures, including attempts to exercise undue influence over the valuation opinion.”

So, the Expert should carefully consider Attorney's reasons for a lower multiple and then use the multiple that the Expert, in his/her professional judgment, believes is appropriate.

Query 2

What are Attorney's ethical responsibilities under these circumstances?

Attorney should persuasively present his reasons for a different multiple to the Expert.

Having done so, Attorney should respect Expert's obligation to independently use his/her professional judgment in determining the appropriate multiple and resulting value.

Observations

- Because business values are often subject to compromise in divorce settlements, it is natural for the attorney for the business owner to want to start low and the attorney for the non-owner to start high.
- But, the BV expert cannot ethically slant a value one way or another to suit the interests of a party.
- It is important that both experts have access to the same data. Often, the expert for the business owner has access to more data. Sharing all data reduces the chances that the two experts will arrive at substantially different values.

- It is noteworthy that business valuation is art, not science. It is quite possible that two BV experts looking at the same data and subject to the same professional standards arrive at different values due to differences in judgment.
- But, differences should not be attributable to intentional skewing a value one way or the other.

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.

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