



Using a Joint Appraiser To Advantage in Divorce

Parties are increasingly seeking ways to reduce the cost and conflict of divorce. Many attempt to streamline the process by retaining a joint expert/valuator to appraise the marital business and/or business interests. Indeed, there are numerous benefits. Consider, for instance, that without a joint appraisal, many non-business owning spouses or those without direct access to marital funds would not be able to afford any expert in the case.

Moreover, a joint expert is also likely to get better access to documents and other evidence than an expert who has been retained by one party or another. Finally, a joint expert can often take on the role of creative problem solver, coming up with financially efficient, resourceful solutions. The parties and their attorneys frequently view the joint appraiser as more independent and objective, and can use the joint expert to expedite mediation and settlement.

The joint appraiser is particularly suited to smaller cases that concern sole proprietorships or family-owned businesses, when two experts would most likely reach similar conclusions of value. Parties in the smaller cases will not often have the funds to hire specialists or consultants—and conversely, where the parties do have such funds, a joint expert may not work to their advantage.

Up-front framework. Once the parties have decided to take this route, it is important to work toward creating a framework for the engagement by taking steps to:

- Define the scope of the engagement and determine whether the expert will provide ancillary services, such as forensic investigation, income determination, and accounting for separate property.
- Establish a protocol for communications between the expert and counsel and the expert and the parties.
- Establish a protocol for communications between the expert and the court.
- Establish a protocol for communications between the expert and any consultant, specialist, or rebuttal expert that the parties may hire.
- Establish a timeline and procedure for the document production process, especially who will provide the documents and what they will provide.
- Provide a methodology to enforce the cooperation of the parties and a means of recourse for the expert if requested information is not forthcoming.
- Discuss and define the applicable standard of value.

- Institute a procedure for providing draft reports and receiving comments from attorneys and the parties.
- Determine the format of the final work product and whether the expert will provide a summary or detailed report
- Establish a procedure to compensate the expert, including the amount of a retainer, and his/her recourse for delinquent payments.

There are, of course, common problems in divorce cases. Just because the parties have retained a joint expert does not immune the process, or the appraiser, from the same challenges that can frustrate any divorce proceeding. Investing the effort to establish a framework for the engagement can reduce these frustrations. In addition, if the attorneys and both spouses support the retention of a joint appraiser, they will have more confidence in the process.

Attorneys avoid any pitfalls by clearly explaining to their clients the differences between retaining a sole expert and a joint expert. This will help clients from feeling “betrayed” later on in the case—when, for example, the appraiser may spend more time with the business-owning spouse to obtain information and financial records; or when the appraiser’s opinions conflict with the owner’s perception of the business’ value.

Key is to not only become acquainted not only with appraisers who have experience as joint experts, but also those who also have some mediation or alternative dispute resolution training, as they may prove to be the most efficient joint experts. The emerging field of collaborative law in many jurisdictions also utilizes the joint expert process. Many mediators/arbitrators are taking advantage of the joint appraisers as well, to reduce the conflict and cost of divorce cases.

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