



# Forensic Accounting Today

Newsletter of Ron J. Anfuso, CPA/ABV, An Accountancy Corp.

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Issue 45  
Serving all of California

## Ron's Corner

In May of this year, we conducted a survey at the LA County Bar Association's Annual Family Law Symposium. One of the questions we asked was "*In choosing a forensic accountant, what do you believe is the most important factor to consider?*" A prevalent response was "*Level of knowledge.*"

Certainly, completing the requirements for CPA licensure in itself demonstrates a professional degree of comprehension. Beyond this qualification, however, it is obviously advantageous for the accountant to have completed additional training in subjects frequently arising in forensic accounting, such as business valuation and financial forensics. And, certainly, attorneys should heavily weigh experience in making a choice.

What surprised me, however, was that not one attorney surveyed mentioned keeping up to date with changes in family law. Isn't this essential, too? Clearly, of course, it is. However, it just was not a *top of mind awareness factor* among those we interviewed. Perhaps, this was only due to it being such an obvious given.

To me, it unquestionably makes sense for local forensic accountants to maintain an *associate membership* within the **LA County Bar Association** and subscribe to *Daily eBriefs*. Your forensic accountant should peruse *eBriefs* each day, search for family law cases that involve forensic accounting, and probe case publication sections that are relevant to the work we do. As you well know, sometimes case decisions establish new precedents. Thus, *eBriefs* are

## Forensic Accounting and In re the Marriage of Launa and David Morton

By Ron J. Anfuso, CPA, ABV, CFF, CDFA, FABFA

On September 26, 2018, the LA County Bar Association's *Daily eBrief* included the case of Launa Morton, Appellant vs. David Morton, Respondent. This was a significant case for forensic accountants because it gave case authority to include 401(k) contributions when calculating spousal and child support.

The following excerpts are taken from the opinion filed by the **Court of Appeal Fifth Appellate District** that are significant from a forensic accounting perspective.

### Background

Launa Morton appealed from a judgment entered in their marriage dissolution contending that David Morton's gross monthly income was improperly reduced by his nontaxable, voluntary contributions to a 401(k) plan. Launa interpreted the trial court's written decision as stating David's contributions to the 401(k) were income available for support and contended that the court acted contrary to its statement when it failed to include the contributions in calculating David's net monthly after-tax income. The court noted that the determination of income available for support also included the 401(k) deduction, which was made from David's check each month. Launa interpreted this statement as an expression of the court's intention to include David's contributions to the 401(k). In addition, Launa contended that the court's DissoMaster calculations failed to implement this intent because it factually did not include the contribution as part of David's income available for support.

### Appeals Court Conclusions

The Appeals Court panel concluded that, as a general rule, VOLUNTARY contributions to a 401(k) plan are properly included in NET disposable income for purposes of calculating spousal and child support. These contributions, when they are voluntary, represent funds available to the contributing parent to spend as he or she desires. The Appeals Court further stated that when a trial court excludes voluntary contributions to a 401(k) plan from the calculation of a parent's net disposable income, a rationale for deviating from the general rule should be set forth in the record.

According to the Appeals Court's opinion, it was sufficient for their analysis that the record showed David's contributions to the 401(k) plan were not included in the calculations of his net disposable income available for child support and the trial court did not explain the exclusion of the

not only useful but sometimes essential to how we, as forensic accountants, strategize our work to help gain better case outcomes.

If I was a family law attorney, I would not only ask if the forensic accountant I'm considering is an Associate of the Bar and receives *Daily eBriefs*, but would pose whether he or she reads them. Then I would ask what cases the accountant recently reviewed and how they were informative and helpful.

What I have provided in this newsletter issue is a case I reviewed from a recent *Daily eBrief* and presented sections that matter from a forensic accounting standpoint.

I welcome your comments or questions and hope you find this newsletter beneficial.

Ron

## Family Law Symposium Survey Findings

In issue 44 of *Forensic Accounting Today*, we mentioned we would share with you the frustrations attorneys revealed to us in working with forensic accountants in *Issue 45*. There were three major frustrations expressed by the family law attorneys who answered the survey: *Cost and billing, poor communication, and not meeting deadlines*. These responses comprised nearly 75 percent of the respondents' frustrations. About 15 percent stated they have never experienced discontentment with forensic accountants.

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contributions. Accordingly on remand, the trial court is to include the 401(k) plan contributions in calculating David's income available for child support, or alternatively provide findings that justify the exclusion of all or part of those contributions. The Appeals Court noted that those contributions do not qualify for the mandatory deduction set forth in subdivision (c) of section 4059, which relates to retirement contributions that are required as a condition of employment. The record contained no evidence that David's employment was conditioned on his participation in the 401(k) plan.

Additionally, it was the opinion of the Appeals Court that the contributions to the 401(k) plan were relevant to the standard of living of David and Launa during their marriage and their respective standards of living after their dissolution. Contributions to a 401(k) plan are considered a specific type of savings and, as such, are part of the parties' standard of living during the marriage.

The Appeals Court also stated that in remand, the trial court's determination of David's income available for spousal support is to include David's voluntary contributions to the 401(k) plan. Furthermore, the trial court's evaluation of the parties' standard of living would need to consider whether the permanent spousal support ordered provided an amount sufficient to enable Launa to continue saving at the level attained during their marriage.

Finally, like voluntary contributions to a 401(k) plan, voluntary contributions to a medical savings account, such as an HSA, should be considered in determining a party's ability to pay spousal support. Therefore, on remand, the trial court's redetermination of David's income available for spousal support would also include David's voluntary contributions to his HSA.

My firm has always taken into account the 401(k) and can now rely on these findings in future forensic accounting matters that relate to the Appeal Court's opinion on this case.



\* For an explanation of the titles listed in the masthead, please visit our website newsletter archive or request a copy of Issue 3 of *Forensic Accounting Today*.