Forensic Accounting Today

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

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Serving all of California

Ron's Corner

In California, marital standard of living is usually determined by the actual income and expenditures of both parties during marriage. However, in some cases, calculations may turn out exceptionally high because both parties lived beyond their means. When it is clear that the couple lived above its means, the court will likely establish the spousal award on the income of the parties, as opposed to basing the amount on spending.

The court may also consider if the parties lived modestly, perhaps focusing on investing and saving. In such instances, the court may choose a standard that takes these facts into account.

To determine standard of living, items courts commonly review include:

- Stocks, bonds and investments
- Special needs of parents and children
- Value of personal property
- Debts and outstanding loans
- Vehicles owned
- Private school costs
- Profit-sharing, pensions and retirement accounts
- Social memberships
- Types of vacations taken
- Ownership of vacation homes
- Donations and contributions
- Sources of unearned income
- Valuable items and collectibles
- Inheritances

If you have questions concerning determining marital standard of living, regardless of how complex, call me.

Ron

Determining Marital Standard of Living:

Income Only versus the Subtraction (Cheriton) Method

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

Historically, families' living expenses have been used to determine a spouse's marital standard of living (MSOL). Although this is typically the chosen method, it can be time consuming and expensive.

One issue a judge must determine is the most appropriate time period to utilize in calculating MSOL. In practice, we have found three years is typically the most reasonable period to use. However, in some instances, two, four or five years may be more sensible depending on the unique circumstances of a case.

Some Words of Caution

Be mindful of experts who may attempt to inflate the MSOL by reaching back to earlier years to capture larger incomes, or include non-recurring events. The courts have broad discretion to award spousal support that exceeds, meets, or is lower than the MSOL. Additionally, the longer the period that has passed since the date of the parties' separation, the less relevant the MSOL becomes.

The Cases of Cheriton and Ackerman

To help determine when to use the Income Only or Subtraction method, we will consider the cases of In re the Marriage of David R. and Iris M. Frasier Cheriton, and In re the Marriage of Boris M. and Ann E. Ackerman. It was after these cases were decided that forensic accountants began looking at both income and expenses.

The marriage of Cheriton used both income and expenses to determine MSOL. This led to what is commonly referred to as the *Subtraction Method* of calculation. In contrast to Cheriton, the court used the average net income earned per month by the Ackerman family to determine the marital standard of living without consideration of expenses. It is of interest to point out that during their marriage, the Cheritons lived well beneath their means. On the other hand, the Ackermans (especially Ann) lived extravagantly, routinely spending their entire net income each month. (At the time of judgment, their average net monthly income was $36,000).

* *For an explanation of these titles, please visit our website or request a copy of Issue 3 of Forensic Accounting Today.*

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Methods of Determining MSOL : Continued from page 1

Cheriton and the Subtraction Method: The subtraction method uses the income less the children's direct expenses and housing expenses (allocated back later in calculations), divided by the number of persons in the household to determine the allocable expenses to the spouse receiving support. The question of what period of time to use is subjective and should be based on the specific facts and circumstances of the case. For example, if within the last five years of the marital relationship, four years are relatively consistent and there is one year that appears to be an anomaly (i.e., an extraordinarily high or low income), it may make sense to only consider the periods that were consistent, as this more accurately establishes the normalized living expenses of the parties.

Iris and David Cheriton separated in 1994 and David petitioned for the dissolution of marriage. The parties specified that David would pay temporary child support of $689. In 1997, a few months prior to the parties stipulating to a dissolution judgment, David netted several million dollars from the sale of Cisco stock, which he and his partner received from the sale of their business to Cisco. This transaction was considered an anomaly and was not taken into account in calculating spousal support.

In the trial court's statement of decision, the court detailed each party's income and assets, reviewed Iris's income and expense declarations, and analyzed the marital standard of living. On the issue of spousal support, the court reviewed and applied various Family Code §4320 statutory factors in light of the evidence presented. However, the court did not mention David's ability to pay, nor did any of the court's earlier findings suggest that it recognized David's wealth as a mandatory factor in setting spousal support.

The court properly considered both income and expenses in determining their marital standard of living. With respect to expenses, the court noted evidence from David's accountant that put the family's expenses at $4,800 per month, as well as David's estimate of expenses of $6,000 per month. The court reviewed David's tax returns for the year of separation and the three years prior in calculating the average family income, which equated to nearly $11,000 per month. As expressed earlier, the court did not include the sale of Cisco stock options in its calculations. Based on the evidence, the court set the marital standard of living at approximately $7,400 per month. Adjusting for David's absence from the household, the court subtracted $1,400 per month. Thus, the marital standard of living was set at $6,000 per month.

In the next issue of **Forensic Accounting Today**, *we will discuss In re the Marriage of Boris M. and Ann E. Ackerman and the Actual Expense Method.*