



Forensic Accounting Today

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

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Issue 14

Factors the Courts Take into Account when Determining Spousal Support

- The marketable skills of the supported party.
- The extent to which the supported party's present or future earning capacity is impaired by periods of unemployment.
- The extent to which the supported party contributed to education, a career position, etc.
- The ability of the supporting party to pay spousal support.
- The needs of each party based on the standard of living established during the marriage.
- The obligations and assets, including the separate property, of each party.
- The duration of the marriage.
- The ability of the supported party to engage in gainful employment without unduly interfering with the interests of the dependent children in the custody of the party.
- The age and health of the parties.
- Documented evidence of domestic violence.
- Tax consequences of each party.
- The balance of the hardships to each party.

Epstein Credits: An Overview

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

In 1979, the landmark California Supreme Court case, "In Re Marriage of Epstein," established guidelines for reimbursements of separate property payments (normally from post-separation earnings) on community property debt.

As a customary rule, courts may reimburse a spouse if that spouse used post-separation earnings or other separate funds subsequent to separation to pay for pre-existing community debt obligations. The Courts are not bound to order repayment, however, if the payments were in lieu of support or if temporary support was adjusted because of court-ordered payment of obligations. In addition, should the payment be made by a spouse for an asset the paying spouse had or is currently using and the amount was not substantially beyond the value of that use, the Court may decline reimbursement.

Based on the factors outlined above, reimbursement for payment of community property obligations is more of a support, than property issue. Therefore, the time to decide what reimbursement will be allowed should be at the temporary support stage, rather than during final settlement or trial.

California courts require Epstein claims to be presented via declaration. All facts that support the community nature of the obligation must be contained in the declaration, including:

- the balance of the obligation at the date of separation
- dates and amounts of the post-separation payments made
- the source of the payment, which must be separate property, and
- copies of all documents that support the claim

It is essential to make sure all supporting documents are attached to the declaration, as only those that are attached are permitted as evidence. For cases that go to trial, Epstein declarations are considered evidence in lieu of the claimant's testimony and are subject to cross-examination. The declarations and substantiative documents must be served on the opposing party at least five days prior to the settlement conference or at least five days before trial, if they were not presented at a prior settlement conference.

A Few Tips to Consider

Resolve Epstein issues prior to the date when temporary support is set. If

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

Continued on page 2

Just 1 hour



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Determining Support— Continued from page 1

- The goal that the supported party shall be self-supporting within a reasonable time frame.
- The criminal conviction of an abusive spouse.
- Any other factors the court determines are just and equitable.

If you have questions concerning any of these points, feel free to call me or post your question on our blog (blog.anfusocpa.com). We will be covering some of these points in detail in future issues of *Forensic Accounting Today*.

Epstein Credits: An Overview— Continued from page 1

you do not and the case goes to trial, you will be exposing your client to an unpredictable trial decision and an increase in litigation fees due to the complex issue of Epstein credit issues.

Include a statement in the temporary support order that articulates whether a party will receive credit in the property division for separate payments on the list of community debts.

Remember that the party contending Epstein credits has the burden of proof concerning the community nature of the obligation, balance on separation, post-support payment and the source of the separate property payment.

Be aware that if the case's condition on which the support order is based is quiet concerning Epstein obligations, the Court will assume payments on such obligations are not in lieu of support.

As a reminder, issues concerning property division of assets, assignment of debts and claims for reimbursement are complicated matters that require strategy and an aggressive stance. Consulting with a Forensic Accountant may help you achieve the outcome your client desires.

In future issues, I will present case studies concerning Epstein credits and Watts claims.



“That ‘tough’ opposing counsel laughed when I sat down at the witness stand— until she heard my testimony”

There are several reasons why Ron J. Anfuso is so effective in court. One that sets him apart from other forensic accountants is how much he welcomes being challenged by the most difficult circumstances. It's all about his confidence, preparation, credibility and experience.



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