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The Ins and Outs of Representing High-Net-Worth Clients

The added pressures and unique challenges of high-net-worth cases can be significantly different depending on which spouse you are representing.

By John B. Chason, Family Lawyer

Many divorce cases pose significant challenges to family law practitioners, including emotionally-charged issues and difficult opposing parties or counsel – on top of our fundamental task of helping our clients navigate through a time of transition and uncertainty. In a divorce case involving a large community estate, there can be added pressures and unique challenges not experienced in a more typical case. These challenges can also prove to be significantly different depending on whether you are representing the "in-spouse" or the "out-spouse" in a high-net-worth case.

In general terms, the "in-spouse" refers to the one who has access to the documents and knowledge about the parties' finances. If the large community estate is the result of the ownership of a business, for example, the in-spouse is the one who works at or maintains contact with the managers of the business.

The "out-spouse" refers to the one with less knowledge about the finances and less access to information and documents. Their experience with the parties' finances might be as limited as being given an allowance each week or a credit card with a monthly spending limit. Obviously, there are varying degrees of being the in or out spouse, but for the sake of discussion, let's assume a relatively extreme disparity in terms of access to information.

Representing the Out-Spouse

Perhaps the largest challenge the family law practitioner faces in representing the out-spouse is the need for financial information. We rely on our clients to tell us how much money their spouse earns, how much money is in various types of accounts, what retirement plans and insurances exist, the cost of the children's school and activities, and so on. No problem, you say to yourself and your client; you will serve discovery requests, including some broad Request for Production of Documents.

However, once you receive discovery responses, your client may have no idea if the responses are truthful and complete. You contemplate sending a Meet and Confer Letter, but realize that you don't know what might be missing. And no, you cannot send a letter that says "As to your client's response regarding bank account statements, are those really, truly all of the accounts she has?"

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When representing the out-spouse, a big part of the discovery plan should involve hiring a forensic accountant at the outset of the case. A reputable forensic accountant will have input into the discovery requests you serve and help inventory the documents that come back as a result. Their analysis of the parties' finances can help you and your client determine if the other side's financial story checks out.

In most high-net-worth cases – just as in most divorces in general – one or both parties will experience a change in lifestyle during and after the divorce. Two households cost more than one, and although these parties might have significantly more money than your typical client, most do not have access to sufficient funds to support two households identical to the lifestyle they enjoyed during marriage.

When representing the out-spouse, the biggest and most delicate challenges include the management of expectations as to the amount of support likely to be received, and realistically assessing how much they can afford to spend on housing and lifestyle during and after divorce. It is important to have this conversation early so that your client doesn't move out of the marital residence and sign a one-year lease for a $10,000 per month rental home they can't afford.

The court often criticizes the out-spouse for the way they have chosen to spend money during the post-separation period, when all they have been doing is simply maintaining their marital lifestyle. To avoid this, advise your out-spouse client early about expenses and money management, or direct them to other resources or a professional for this advice.

However, simply advising the out-spouse to live frugally doesn't solve the issue. If they continue living the marital lifestyle post-separation, the court might find them to be unrealistic and greedy – but if they slash their expenses, the court might order lower spousal support based upon their reduced needs. Therefore, when advising your client to be realistic about their new, post-divorce lifestyle, you must carefully weigh how your client's post-separation expenditures will be viewed by the court.

Lastly, family law practitioners must advise their clients who receive spousal support that they must save some of the money they receive to pay taxes on this support. Clients are often overwhelmed by the dissolution process and are not thinking about the fact that the order for support addresses taxability and deductibility.

Representing the In-Spouse

Numerous challenges also exist when representing the in-spouse. Often the biggest challenge for the wealthy in-spouse is surrendering control over certain aspects of the other party's life – particularly how they spend money. The in-spouse will insist they want to be free of their mate – only to turn around and bombard you with calls and emails about how the other side is making terrible financial decisions. They will tell you that the out-spouse is out of touch with reality if they think they can afford to buy them out of the summer house or keep the kids in private school.

You must help your client accept their new reality: they can no longer dictate how their spouse spends their money. They cannot prevent the out-spouse from asking the court to buy the summer house from the community even if the in-spouse knows that they will never qualify for a mortgage, and so on. You need to help your in-spouse client let go of their desire to control their ex-spouse's finances or they will be paying attorney fees to both sides to have pointless battles over the poor choices that they believe their ex-spouse is making.

From the beginning of your representation of the in-spouse, it is essential to inform him or her of the duty to maintain records and data, and to disclose financial information. In addition to

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preparing timely and complete financial disclosures and discovery responses, make sure that your client understands that he or she has a duty to augment and update this information as things change or opportunities develop.

Of course, we must advise all of our clients about the disclosure obligations. However, this can be a special concern when representing the wealthy in-spouse for a couple of reasons. First, they are more likely to have significant changes to their financial picture and to receive financial opportunities. Second, the courts appear more inclined to financially punish those individuals who can afford to pay sanctions and who, because of their actual or assumed financial savvy, are expected to "know better."

When you begin your representation of a wealthy in-spouse, much of the communication might come from individuals other than the client. You may get calls and emails from business managers, attorneys, employees, and other trusted representatives of the client. Since this type of communication could create issues with regard to the attorney-client privilege, speak with the client directly regarding the issues in their case, and limit your communications with these third parties. The communications you send to any third party are most likely the subject of discovery from the other side, so regularly remind your client to limit the information they share with third parties in order for their confidential and privileged information to stay protected.

More Potential Complications

This is just an overview of some of the difficulties often encountered in representing clients in high-net-worth cases. Of course, all clients and cases are unique, requiring your utmost care and professionalism. High-net-worth cases often involve more moving parts than typical cases, and so the family law practitioner taking on these cases must be more alert to potential complications and difficulties from the commencement of the case. ■

John B. Chason is a Certified Family Law Specialist at Feinberg Mindel Brandt & Klein. During his 20 years of practice, Mr. Chason has handled a wide variety of cases, including parties with complex custody and financial issues. Mr. Chason was named a Super Lawyer® in 2015. www.fmbklaw.com

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