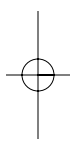
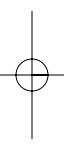


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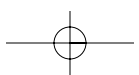


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CHAPTER 1

GETTING STARTED

Doctors and lawyers must go to school for years and years, often with little sleep and with great sacrifice to their first wives.

—Roy G. Blount, Jr.

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1.1 WHO HAS ENGAGED YOU? The accountant doing divorce work has three ways of being engaged—on behalf of one of the parties, stipulated to by both parties, or court-appointed. Most common is an engagement on behalf of one of the parties to the divorce. Generally, you must take pains to avoid being considered biased and overly subjective. Your value is in being independent and objective, and in maintaining maximum credibility. That credibility can be challenged, and possibly lost, when engaged by one of the two parties in a divorce case. Obviously, if you are representing the nonbusiness spouse, and your job is to investigate the financial affairs of the business spouse, including determining the income and value of the business, one of the challenges to your work and your conclusions will be whether or not you were sufficiently independent, unbiased, and objective. For the accountant, working for one side generally means getting very involved with building up the attack or defense for that one side, and also hearing only, or mostly, one side of the story.

On the other hand, you might have the occasion to be stipulated to by both parties. Generally, for this to happen, you must be somewhat experienced, with a favorable reputation so that both of the attorneys involved have either heard of you, or know of you through others, and are comfortable enough to entrust you with the assignment. Alternatively, it may not be so much a reflection of confidence in you, but rather an economical way to approach a case. By using just one expert, neither side is truly bound by any conclusions of that expert, and if the job is reasonably done, it will probably save the marital unit thousands of dollars.

In many respects, a court appointment is similar to a stipulation. A court appointment, however, extends beyond merely having the parties (through their attorneys) agree to use you; it is the court (the judge) who has selected you and

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who has empowered you to do this work. Thus, your position is somewhat stronger in that you have the authority of the court behind you. On the other hand, you are very much dependent upon the degree of support that the judge gives you.

Whether stipulated or court-appointed, you are representing not one side, but rather both sides. As a result, you also have no friends; neither side will have any particular loyalty to you. Of course, in theory, since neither side is responsible for hiring you, you are less subject to client pressures toward one particular direction or approach with which you are uncomfortable. That is not to say that you will not receive pressure. You will probably experience pressure from both sides. However, you will also have the opportunity to work closely with two attorneys and to perform with a true sense of independence and objectivity.

Working in this type of environment also requires that you maintain as much dual contact as possible; anything in writing must be conveyed to both attorneys. Depending on the particular case, your reputation, and the attorneys' comfort level with you and with each other, you may even be compelled to avoid communicating with one attorney unless you simultaneously communicate with the other. This perceived need to have both attorneys always in contact will, of course, slow you down, create some obstacles, and make your work a little more difficult and unpleasant. Nevertheless, you may have little alternative.

For those who have not had the experience of being stipulated to or court-appointed, quickly dispel from your mind the idea that working for both parties will give ready access to necessary records. You may think you are working for both parties, but the likelihood is that neither of them thinks that way, and in fact each of them probably thinks you are working for the other. Furthermore, in terms of obtaining access to documentation and getting the truth, there is little difference between working for the nonbusiness spouse and working for both parties, and probably little difference even if you were working for the business-owner spouse. If there is something to hide, and if the business-owner spouse would rather tough it out, it is irrelevant whom you represent; you are not going to get cooperation. Similarly, if the nonbusiness spouse is of the mind to lie, distort the situation, exaggerate the standard of living, and the like, it will not matter whether you are representing that spouse, both spouses, or the other spouse because the information you receive will be suspect. Therefore, while being court-appointed or stipulated to may carry the aura of being above it all, you may not get the cooperation of both parties in order to do the classic independent and objective assignment. The reality is that neither party will view the situation in the same light and, in many ways, your work is more difficult than if you represented only one side.

A request for an interview of either or both parties will be met with acceptance. However, certainly that spouse's attorney will want to be present, and there is an excellent chance that the other spouse's attorney will want to be present. When the attorneys have a certain comfort level with you (and with each other), much of what you need to do can be done without trying to arrange a three-way or four-way conference every time you have a question.

1.2 INITIAL DISCUSSIONS WITH THE ATTORNEY. Among your first steps in dealing with an attorney is to ascertain what records are already in his or her possession. Often, the attorney has records that would be of significant benefit

1.4 DISCLOSURE AND INFORMATION STATEMENTS 5

to the investigative accountant in getting an overview of the situation and a basic understanding of the magnitude of the financial issues. All too often, because of a lack of communication, those records sit in the attorney's office unbeknownst to the accountant. Perhaps the best way to handle this situation is to go through those records at the attorney's office, decide which ones would be a benefit to you, and have copies made.

It is important to know the extent of the services that are expected of you. For instance, is the work just an overview or financial consultation, or is it more extensive, including a business investigation, a personal lifestyle investigation, and a business valuation? Perhaps your work will require providing testimony at trial, or tax input and financial consulting relevant to the divorce settlement and its tax ramifications. On the other hand, you may be the one to advise the attorney as to the extent of your involvement. For instance, although everyone recognizes that there is a business involved, you may be the one who determines that a personal financial investigation is absolutely essential in order to evaluate the magnitude of the assets available for distribution. Your initial task might be to do a business investigation, but you might quickly realize, and of course advise the attorney, that significant tax issues exist or are anticipated that will need your expertise.

1.3 INTERACTION WITH BUSINESS APPRAISERS. When working on a divorce case that involves a closely held business, accountants may be engaged only for the investigative phase, and not for the business valuation. Depending on the attorney, the magnitude of the case, your particular credentials, the credentials of your opposition, and a multitude of other factors, a business appraiser, as contrasted with a CPA, will become part of the team. Certainly, you may be amply qualified and capable of valuing that closely held business; however, it is sometimes desirable to involve disciplines other than the accounting profession.

Using an appraiser other than a CPA may be of particular importance if the business has certain peculiarities that are out of the normal domain of most accountants and for which specialized knowledge would be essential. This includes gas and electric utility companies, railroads, airlines, and even farms. Unless you have specialized knowledge in those fields, you and your client would be better served to consult an appraiser with that particular expertise. Trying to put a value on such a specialized business would probably expose you to unwarranted liability.

1.4 DISCLOSURE AND INFORMATION STATEMENTS. Notwithstanding the likelihood that they are rife with misleading information, misstatements, and outright lies, and exhibit a paucity of usable information, it is vital to obtain the case information or disclosure statements for both sides. Accountants usually obtain disclosure statements from the attorneys involved. These documents list the party's financial data, including sources and amounts of income, along with assets and liabilities, as well as any interrogatories that have been submitted and returned. Any statements made by the opposing side (and even by your client) must be taken with some degree of skepticism. Despite these types of problems, it is crucial to review whatever documentation exists and become as informed as possible.

As suspect as these documents might be, they sometimes contain bits of information that a knowledgeable and skilled practitioner can take advantage of. Look for key names or business relationships, look for indications of ownership

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interests in other business or investment ventures, and look for indications of retirement plans or banking relationships.

It is important not to overlook the fact that these documents are sworn statements that are supposed to represent the truth. It could, at least in theory, subject one to legal action if it can be shown that they were knowingly falsely prepared. However, no matter how egregious and blatant the misstatements, and no matter how obvious it is that the presenter of these falsehoods or misstatements must have known they lacked veracity, rarely does anyone suffer legal retribution for this supposed travesty of justice.

At the very least, a careful inspection of these documents will give you an overview of the financial complexity of the case and indicate which areas you may wish to target. By all means, do not consider this to be the best source of information nor the basis for going forward; it is merely one source of information that should not be overlooked.

1.5 REQUESTING DOCUMENTATION. To obtain information, one of the first steps is to submit a request for documentation and access to records. The sample records discovery request letter in **Exhibit 1-1** should serve as a guide to the documentation you will need to request. Of course, this letter is intended to cover many and varied situations for the purposes of this book and should be modified (usually shortened) as the circumstances of the particular case warrant. Often, this letter will go through the attorney with whom you are working, who will then forward it to the appropriate party. Sometimes, you may end up dealing directly with the other accountant, the business owner's accountant, or even perhaps the business owner. This often facilitates the discovery process.

1.6 WORK PROGRAMS. The work done in the investigative field, though not as routine as more common accounting work, can lend itself to using a work program. I find the work programs described and presented in this section to be useful under certain circumstances. Frankly, many cases do not lend themselves to the ready use of a work program inasmuch as there are numerous questions, unknowns, and so forth. In addition, the budgeted and actual time columns are not often easily used. It is difficult to project a budgeted time for a certain phase of the work when dealing with a nonrecurring client; you do not have the luxury of spending a day in advance with the client in order to go over a work program and determine a time frame.

The actual time elements in this type of work are a problem in that many jobs overlap. Sometimes you will abruptly disrupt one phase of your work because you have come across something else that requires your immediate attention. Also, many jobs of this nature place great time pressure on accountants, and the preparation of a work program, if done properly, can take several hours and additional time to maintain. Therefore, you will often lack the ability to utilize the luxury of a work program, even though it would be desirable from a theoretical accounting point of view.

Exhibits 1-2 through **1-4** present three work programs. The first work program is for preliminary, continuous work. This phase of work is common to any of the assignments in the investigative area and, therefore, even though part of it is at the beginning and part of it at the end of your work, it lends itself to being placed in one document, Work Program A. Next is Work Program B, for the business

1.6 WORK PROGRAMS 7

phase of your work. Use a separate work program for each business investigated; often there are multiple businesses and related corporations. Third is Work Program C, for the personal investigation phase of your work. This includes looking into the financial and banking records of the individuals involved.

The freewheeling nature of some investigative work mandates a certain degree of flexibility in how these work programs are handled. They should not be construed to have the rigidity of the by-the-book requirements of a typical audit program.

Unlike the standard audit or work program types, with which readers are probably familiar, the work programs herein do not go into any great detail as to what steps are expected to be performed. For instance, in a typical audit program, the steps in the cash function are extremely detailed and voluminous. Included are steps indicating that for each bank account, you are to test-check two months of reconciliations, look at 30 checks each month for endorsement and signature, compare to bank confirmations, and so on. These steps can extend for pages just to cover the cash function. Here, the intent and concept is that the user is expected to understand what is involved in this type of work and to be able to, from a few key words, perform whatever steps are necessary. Furthermore, audit style is not usually applicable in this work.

EXHIBIT 1-1 Sample Records Request Letter

Re: _____

Dear _____:

We have been engaged by _____ to assist in his/her pending divorce action. To that end, we will need access to and copies of various business and personal financial records of _____.

As to _____, please have the following items available for our inspection or copies for our files where so indicated. Unless otherwise stated, the records requested are for the period _____.

1. Copies of any financial statements prepared internally or externally for any reason.
2. Copies of Federal and State income tax (or information) returns.
3. All books of original entry, including general ledgers, disbursements, receipts, sales, purchase and payroll journals.
4. Copies of any buy-sell agreements and employment contracts.
5. Copies of accountant's year-end worksheets, including journal entries.
6. Canceled checks, checkbook stubs, and bank statements.
7. Payroll records, including payroll returns, and W-2s.
8. Purchase and expense invoices, paid bills, and charge slips.
9. Loan documents.

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EXHIBIT 1-1 Sample Records Request Letter (continued)

10. Appointment diaries.
11. Copies of year-end aged schedules of accounts receivable and accounts payable.
12. Sales invoices.
13. Inventory records.
14. All papers, closing statements, tax returns, agreements, and contracts related to the sale of _____.
15. Schedule of equipment (fixed assets), including motor vehicles and depreciation thereon.
16. Corporate and directors' book(s).
17. Stock register book(s) (since inception).
18. Insurance policies.
19. Copies of any revenue agent's reports.
20. Copies of any pension, profit-sharing plans, and other employee benefit plans, and the related records, statements, tax returns, and transaction information.

As to the personal financial records of _____, please have the following available for our inspection or copies for our files where so indicated. Unless otherwise stated, the records requested are for the period _____.

1. Copies of any financial statements, whether prepared by _____ or someone else, including, but not limited to, statements used for financing (business or personal), mortgaging, and tax shelter and investment qualifying.
2. Copies of personal Federal and State income tax returns.
3. Copies of savings passbooks, statements, and other indicia of savings.
4. All statements, checks, and other indicia of the use of equity lines.
5. Stock brokerage monthly transaction sheets.
6. Copies of closing statements on any real estate purchased or sold, including at least the sale of _____ and the purchase of _____.
7. Canceled checks and bank statements.
8. Schedule of tax-free securities.
9. Personal insurance policies.
10. Support for alleged liabilities to _____.
11. Copies of automobile, boat, or plane registrations owned individually.
12. All charge account statements and receipts.

EXHIBIT 1-1 Sample Records Request Letter *(continued)*

- 13. Copies of any revenue agent's reports.
- 14. Records in support of rental property income and expenses.

In addition, because of what appears to be significant and frequent financial activity (that is, issuance of checks) between _____ and _____, we expect we may need access to the financial records of those individuals/businesses.

The above list may not be complete. Additional items may be requested as our inspection progresses.

EXHIBIT 1-2 Investigative Work Program A
Preliminary

CASE _____

	N/A	BUDGETED TIME	ACTUAL TIME	DONE BY
1. Obtain documentation from attorney and/or client, such as interrogatories, tax returns, and financial statements.				
2. Set up folder and organize into file sections.				
3. Review documentation; make notes of questions to be raised.				
4. Conference with attorney and client.				
5. Discuss fees and payment arrangements with client.				
6. Send records discovery letter requesting the specific information to be reviewed.				
7. Contact the other side's representative(s) by phone to arrange for initial investigative work. Send follow-up confirmation letter.				

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**EXHIBIT 1-3 Investigative Work Program B
Business**

CASE _____

	N/A	BUDGETED TIME	ACTUAL TIME	DONE BY
<p>OVERVIEW</p> <ol style="list-style-type: none"> 1. Organize approach and know which businesses need to be reviewed. 2. Be sure you have at least three years of business records available for inspection. 3. Do preliminary review of tax returns and financial statements for areas of potential discovery and investigation. 4. Review the general ledger for insight. 5. Compare financial statements to general ledgers to tax returns. 6. Physical inspection of operation. 7. Cash disbursements and purchase journals—overview for standout items. 8. Cash receipts and sales journals—overview for standout items. <p>BALANCE SHEET</p> <ol style="list-style-type: none"> 9. Cash checks—investigate for endorsements and trace to personal finances. 10. Review petty cash documentation. 11. Review accounts receivable. 				

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EXHIBIT 1-3 Investigative Work Program B
Business (continued)

	N/A	BUDGETED TIME	ACTUAL TIME	DONE BY
12. Review bad debts reserve.				
13. Inventory—reasonableness, adequacy, and basis for valuation.				
14. Prepaid expenses—properly reflected?				
15. Loans and exchanges—watch for any washing of funds, related parties, etc.				
16. Officer loans—trace all sources of monies in and all dispositions of monies out.				
17. Fixed assets—review depreciation methods, accumulated depreciation and current carrying value, and contents of fixed asset account. Verify who uses which vehicles and the business connection of these people. Obtain schedules of all fixed asset accounts—reconcile and analyze.				
18. Patents and other intangibles—obtain as much supporting documentation as possible.				
19. Security deposits and other assets.				
20. Accounts payable.				
21. Loans payable—determine disposition of funds, interest rates, and maturity dates.				

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EXHIBIT 1-3 Investigative Work Program B
Business (continued)

	N/A	BUDGETED TIME	ACTUAL TIME	DONE BY
22. Payroll taxes payable.				
23. Sales tax payable.				
24. Equity—thoroughly review any changes in the past several years.				
25. Dividends—schedule and ascertain in proportion to stock holdings.				
26. Stock record and minutes books—review, analyze, and schedule as appropriate.				
INCOME AND EXPENSES				
27. Sales—analyze and understand extent of major customers and transactions with related companies.				
28. Check that all sales are reported.				
29. Sales returns and allowances—analyze for unusual transactions.				
30. Cost of goods sold—test for unusual postings.				
31. Based on cost of goods sold, does magnitude of sales make sense?				
32. Officer's salary—detailed schedule. Reconcile to personal finances analysis.				

EXHIBIT 1-3 Investigative Work Program B
Business (continued)

	N/A	BUDGETED TIME	ACTUAL TIME	DONE BY
33. Other payroll—review for familiar names; tie W-2s.				
34. Rent—watch for related party situations.				
35. Repairs and maintenance—watch for personal and capitalizable.				
36. Insurance—inspect policies; watch for values in excess of book, prepaid.				
37. Travel and entertainment—documentation, economic income.				
38. Automobile expenses.				
39. Telephone expense.				
40. Office supplies.				
41. Dues and subscriptions.				
42. Utilities expense.				
43. Professional fees—detailed analysis; watch for indication of major situations.				
44. Depreciation—analyze supporting worksheets and methods used, tax vs. economic.				
45. Retirement plans—type of plan, allocations, potential asset.				
46. Payroll taxes—reasonable?				
47. Tax expense—other.				

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EXHIBIT 1-3 Investigative Work Program B
Business (continued)

	N/A	BUDGETED TIME	ACTUAL TIME	DONE BY
48. Officer's life insurance expense—cash value.				
49. Employee benefits.				
50. Interest expense—reconcile to loans.				
51. Fines and penalties—ordinary vs. nonrecurring.				
52. Bad debts.				
53. Miscellaneous expenses—watch for major items.				

EXHIBIT 1-4 Investigative Work Program C
Personal Finances

CASE _____

	N/A	BUDGETED TIME	ACTUAL TIME	DONE BY
1. Review all personal bank records, savings and checking.				
2. Review all personal brokerage accounts and other indicia of savings.				
3. Reconcile deposits into personal accounts (banks, brokerage, etc.) with known income sources.				
4. Determine if expenses from personal accounts approximate lifestyle.				

1.7 STIPULATION VERSUS COURT APPOINTMENT 15

EXHIBIT 1-4 Investigative Work Program C
Personal Finances (continued)

N/A	BUDGETED TIME	ACTUAL TIME	DONE BY
5. Reconstruct standard of living to determine if reported income can account for same. 6. 1040s—review in depth. 7. Compare state income tax returns to federal income tax returns for any variances. 8. Determine if collections (coins, stamps, etc.) exist. 9. Do changes in net worth statement. 10. Prepare personal balance sheet.			

1.7 STIPULATION VERSUS COURT APPOINTMENT. That CPAs are becoming more and more heavily involved in litigation work is no surprise to anyone in the field. For many of us, the bread and butter of litigation support services is in the divorce field. Whether it be tax consulting, helping to negotiate and structure a settlement, the investigation of cash flow, the preparation of statements for the court, the investigation of a business, the reconstruction of income, or the valuation of a business, the CPA has clearly become the dominant financial advisor in this market.

What perhaps is not as clear is the contrast in our involvement when we are court-appointed as compared to being stipulated to by the parties or engaged by one of the parties. There are some very significant differences, and some very important positives as well as negatives that need to be considered by the CPA.

The way most of us get involved in this field is through a relationship with one or more attorneys who are involved in divorce work. Some of these attorneys are specialists, some are general practitioners who get a divorce case that merits the involvement of a CPA. Inevitably, that type of initial involvement means representing one side in a divorce action. For 99 percent of us, that is the way it happens. And, for most of us, at least for some time until experience and reputation are built up, that is the manner in which we do this type of litigation support service. Typically, one is approached or considered by both sides either to be stipulated to or to have the sanction of the court only after some experience and favorable reputation.

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There will be those who will say that in theory there is no difference in how we service these disparate situations. Ours is a fact-finding role and it matters not who engages us—the interaction and results will be the same. Such is not the case. There are, in fact, several significant operational and conceptual differences in how we fill our roles. The interplay among us, counsel and clients, can be dramatically different. Often our level of satisfaction and pleasure (or displeasure) from the specific assignment is based on which of these three roles we have been engaged to fill.

Being engaged by one party, sometimes incorrectly referred to as being the advocate of that party, is by far the most common of our roles. We are typically contacted by the attorney or perhaps by the client who was given our name by the attorney. We then meet with the client and the attorney. We either attempt to develop the appropriate defensive role (if we are working on behalf of the business owner) or plan our attacking role (if working on behalf of the nonbusiness spouse). We have an engagement letter with that client and usually tend to develop a good relationship, even if perhaps strained because of the emotions of the litigation. And that relationship usually remains reasonably good—at least until the settlement of the case when the day of reckoning as to our bill arrives. Then perhaps a somewhat different attitude and opinion of our services emerges. That, however, is a subject for another book.

It is not unusual to find that attorneys on opposite sides of a divorce case look to minimize the cost of using financial experts. They also look to reduce the likelihood of considerably disparate conclusions as to the level of income enjoyed by a business owner and the value of his or her business. As a result, they may be interested in jointly engaging an expert who will serve both parties rather than either one. Whether by recommendation of these attorneys or by the dominating action of a judge, CPAs are sometimes asked to fill the role of being court-appointed. This is very similar to being stipulated to but is perhaps in a sense a step up from that.

Let us deal with the differences between these positions.

Relationships. When stipulated to or court-appointed, we have no friends. It may not be much better when engaged by one party, since the “friendship” can be extremely fleeting. Nevertheless, in the latter, at least for a while, there is some semblance of a normal client relationship. Not so when we are in the middle. Neither husband nor wife is our friend, and to a degree both, especially the business owner (or the party with something to hide), will still view us as the opposition. Both parties may try to cajole us and come across in as sympathetic a manner as possible. On the surface, at least, they may display as much an image of cooperation as possible. Some of us will wind up being lulled into a sense of complacency because of what for us has become a normal situation of establishing warm relationships with various clients. Beware: You may be being played for the fool. At least when engaged by one of the parties, you have a clear sense of to whom your loyalties belong.

Attorneys. Depending on the jurisdiction, and the practical workings of your local divorce court system, even telephone calls can be fraught with issues. When you are appointed or stipulated to, you may not even be permitted to talk to one of the attorneys without the other one being either present or on the phone overhearing

1.7 STIPULATION VERSUS COURT APPOINTMENT 17

and participating in that discussion. At the very least, that can present an obstacle to the fluid functioning of what you perceive to be your role and the most efficient manner in which to fulfill it. Attorneys tend to be trained advocates—in contrast to accountants, who tend clearly not to be. Do not ever lose sight of the fact that the attorney has a very clear sense of who his/her client is and the role that attorney is supposed to fill. For the most part, it is an absolute loyalty and advocacy of that client's position. Contrast that with your role in the middle. You may have this quixotic sense of balance and of a functioning that can be the antithesis of the attorney's thrust.

Court. When court-appointed, you have a direct responsibility to the judge presiding over that case. It is most helpful, but not always easily obtainable, to understand what the judge wants. Some are mostly interested in clearing their calendars. They want you to proceed as rapidly as possible and are not terribly interested in explanations as to why there are delays. This is so even though you are their appointed/anointed representative. Some may view you as a necessary evil (do not interpret the word "evil" too literally), foisted upon the system because of the financial complexities involved. Some very much like to avoid having to decide on people's lives and strongly prefer that someone else force the case to some form of settlement. As the appointed expert, depending on the judge, you might be expected to make considerable strides in that direction. You may even act almost as an arbitrator, as a cudgel to coerce a settlement, as a proxy stand-in for the judge. Clearly, not an easy role to fill.

Your Attitude. Typically, when engaged by either side, because of our clear sense of direction, we bring a certain zeal or enthusiasm to the assignment. That sense of attack (or defense) is often not present in an appointed or stipulated situation. In fact, this is one of the areas of concern where stipulated or appointed. An approach that is as forceful as one you would utilize in a one-sided engagement may cause one or the other side to believe that you are not the independent you need to be and are rather working for the adversary. That, in turn, may cause you to hold back. You may hesitate to take certain steps, demand certain records, whatever, which you would do in the normal course of events. Do your best not to allow that to happen—your method of attack needs to be essentially the same. You simply have a much greater and more difficult job in front of you to keep both sides mollified and comfortable with your independence and equanimity.

Bias. Our role, regardless of the manner of engagement, must be one of independence and manifested by a lack of bias. Nevertheless, in much of what we do, while in a sense of a fact-finding nature, there are many situations requiring a subjective interpretation and determination. Were those four-times weekly dinners at the country club truly business, or was some part or even all of them of a personal nature? If reconstructing income, is there an 8 percent wastage factor, or should it be a 10 percent wastage factor? Is that Mercedes used 85 percent for business or is it more like 75 percent? There are rarely black-and-white answers to these types of questions. However, they are questions that commonly arise in the work we do. In all of the preceding examples, there may be legitimate questions as to which of the alternatives presented, or various shades of gray in between, are appropriate. What you choose will almost assuredly be influenced, at least in

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part, by your client. When stipulated or appointed, you do not have such a client, and you are going to hear both sides of the story, whereas otherwise you may not. Further, you will be compelled to make some conclusion that will assuredly upset one or even both sides. It is rare that splitting it down the middle is appropriate, fair, or even satisfactory to both parties.

Fees. Getting paid is a most interesting aspect of the differences between being hired by one side, stipulated, or appointed. When hired by one side, you will have an engagement letter, of course, and that side is responsible for your fee. If it is the nonbusiness person, you may have to wait a long time to collect. You may also have problems collecting depending on the success of the financial settlement. However, there is a clear sense of who your client is and to whom you look for payment. When stipulated to, the necessity of an engagement letter is just as important—and perhaps even more important. Since neither of the parties is represented by you, without some explicit understanding, no one party will have a sense of obligation as to your fees. Certainly, being stipulated to is, in a sense, financially more secure than being engaged by one of the parties. After all, there are two parties from which to collect. However, as was stated earlier, you have no friends. Therefore, neither side can be expected to have a sense of loyalty or duty to you, or even care if you get paid.

When appointed by the court, you have considerably more power in the sense that there is an order directing your engagement. In such a situation, an engagement letter is often not necessary. However, what accountants, typically the less experienced ones, tend to overlook is that a court appointment is never a guarantee of payment. You may experience collection problems if your fees are unreasonable, or if the case simply runs away with you, or if the money is not there. While a judge may be sympathetic and issue an order directing payment of your fees, the court is never directly responsible for the payment of your fees and cannot assure you of payment. It can only assure you, assuming the judge is an activist and willing to support the experts he or she appoints, that, if the parties have the money, the judge will take a very strong position as to the payment of your fees. However, if the parties do not have the money, you are not going to get paid regardless of the formality of being court-appointed.

Being Second Guessed. Make no mistake about it: When you are in the middle, you will always be second guessed. Skilled attorneys will repeatedly ask you if you've considered this or that approach, did you take this into account, did you overlook that, how did you arrive at this and why didn't you go in another direction. Keep in mind that that is their job. You may be in the middle, but they are not.

You are deeply involved in a tug of war for your mind and soul. You are balanced most precariously in the middle of that rope, with one attorney and his or her client on one side of the rope, and the other attorney and client on the other side of the rope. Sometimes that rope has been split so that on one side, not necessarily pulling together, is an attorney and his or her client, each with different agendas and a different sense of and caring for the truth.

1.8 RECOGNIZING FINANCIAL SUICIDE. Financial suicide in a divorce case, whether intentional or unintentional, leaves in its wake such damage, bitterness,

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and exposure to malpractice actions (to say nothing of uncollectable fees) that practitioners should know how to recognize it. Financial suicide is the financial self-destruction of an individual—and in the context of a divorce, of a couple or family. At times, because of the stress or friction created by divorce (or exacerbated by the divorce litigation), some people act in a manner that undermines them financially. These types of clients are among the most dangerous and least satisfying for an attorney or accountant. Money seems to be no object to such clients—as long as it doesn't have to be paid on a current basis. Practicality is not relevant; rather, it is the principle of the thing; and there is that attitude that the practitioner is in it together with the client and that you both can go down in flames together.

Case Examples. Let's review some actual cases to illustrate the problems and warning signals.

Manufacturer. From the beginning, it was clear that this was a middle-class divorce, with relatively little liquidity; the majority of the marital estate consisted of the marital home and a closely held business. There was also a modest profit-sharing plan from the business. The client made it very clear in the beginning that any and all discovery was to be resisted no matter how many trips back and forth to the courthouse and no matter how many broken appointments and unnecessary correspondence it created. It became obvious within a short time that there was going to be no compromising and that legal fees were going to exhaust financial resources.

CPA. We were warned in advance that this client had been diagnosed as manic-depressive. He went through at least four attorneys, paying retainers each time but leaving each one with a significant balance owing. Money was moved back and forth between accounts in an almost haphazard manner; tax returns weren't filed; the Internal Revenue Service was after him; and discovery was extremely difficult. Despite significant assets and warnings that it was essential (at least for the sake of his child) to take preemptive actions under the protection of a divorce suit and move assets into his wife or child's name, he ignored all such advice. In addition, he engaged in a number of risky investments with capital call exposure. He was also in the habit of alienating clients as well as not paying various bills. The result was financial devastation, loss of the marital home, and the near confiscation of virtually all assets by the IRS. Had any of his attorneys taken heed of the warning signals or had the court taken the matter seriously, much hardship might have been avoided.

Doctor. Despite sufficient income and cash flow, income taxes were not paid for a few years. Instead, money was spent on luxury cars and other adult toys; changing attorneys several times and wasting multiple retainers (and, need I say, leaving each attorney with a large balance due); fighting every motion and making every battle an unending one; fighting for sole custody with an almost insane passion, when any objective individual would have recognized the futility of such action; refusing virtually any level of compromise (demanding his wife's complete capitulation) on matters of support to such an extreme that even though the experts had agreed on values, the case had to be tried. The result was the total dissipation of the marital estate.

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Doctor (anyone notice a trend?). A long track record of spending with abandon, well in excess of family income, was present, with a trail of creditors filing one suit after another, and the doctor losing each one by default. The doctor owned several pieces of property, all of them mortgaged in excess of their values. He also drove very fancy cars—all leased—and all the leases delinquent. Tax returns were filed with substantial tax obligations, absolutely no withholding or estimated taxes paid, and substantial obligations to the IRS. The doctor's attitude would not accept any personal responsibility for living beyond one's means and routinely stiffing everyone with whom he came in contact. The result here was a bankruptcy, with the bankrupt estate having no assets (other than the medical practice) and liabilities in the millions.

There are certainly common threads—gross irresponsibility in fiscal matters and irrational actions as to financial and interpersonal relationships. In each case, every professional with whom these people dealt, after exhausting the retainer, received pennies on the dollar, was unhappy about the client servicing situation (aside from the purely financial issues), and on more than one occasion was threatened with lawsuits for malpractice because of perceived inadequate or incompetent servicing.

Steps to Be Taken. What can attorneys and accountants do to recognize such situations as early as possible and take the appropriate actions so as to stanch the bleeding? First and foremost, we need to be more selective as to whom we accept as clients. There are situations where the warning signals are flashing and we do not or choose not to see them. An attorney may be unable to withdraw from a case once engaged; therefore, the initial decision as to whether to accept a client or not is of paramount importance. We need to understand the financial position of prospective clients as well as their mental status before we allow them to become clients. We also may need to demand a larger retainer from these clients in order to limit potential exposure; nor should we begin servicing a client while the retainer is being paid on a piecemeal basis.

Perhaps an early and more critical overview of the financial situation would highlight this type of exposure. We need to take a much harder (perhaps less empathetic) position with these types of clients. This often means a more candid discussion with the client to underscore the fiscal facts of life and that certain actions or inactions are unacceptable and improvident.

It would not be out of line to require psychological testing of prospective clients. Tests may flag certain personality traits that tend to make people financially self-destructive. Test results may provide a warning against accepting that client, or make you aware of certain risks requiring extra attention, perhaps leading you to manage the case differently.

Unfortunately, the "system" is a major player in this tragedy, especially when the case is brought before the court time and time again to mollify an irrational client and to fight fights that are contrary to the best interests of the parties, yourself and everyone involved. Commonsense steps should be taken, and, where appropriate, orders and judgments enforced. Judges, attorneys, and experts may need to be more demanding of such clients to do the "right thing" rather than get wrapped up in the excitement of the battle.

Divorce professionals can do a lot more to prevent such tragedies if we would only take a more critical look, earlier on and more often; use common sense; and

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try to look out for the overall welfare of everyone—and demand that the system serve rather than abuse the litigants. The alternative, as we have repeatedly seen, is that we all lose, and the general population has more reasons to despise the legal profession.

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