

## *The Use of Employment Evaluations in Divorce*

In many instances, one of the spouses in a divorce case may be unemployed or underemployed. A spouse may be unemployed due to layoff or termination or because of a voluntary exit from the job market. A spouse may be underemployed because of a job transfer, a choice to work part-time, or the pursuit of a less stressful career than their education warrants. Sometimes unemployment or underemployment comes about due to one party's decision. Other times, it may be due to both parties' agreement to have a parent at home with young children.

Since alimony and child support are based on both parties' incomes, the employed spouse, who will have to pay a higher alimony or child support amount if his or her spouse has no income or insufficient income, will generally seek to have his or her spouse evaluated by a vocational expert or employment evaluator.

A vocational expert will perform an assessment of the employability of that spouse. This is done through a review of that person's present and/or prior earnings, job history, experience, education and training. It will also include testing relating to vocational interests and aptitude. If the unemployed or underemployed spouse has a medical or psychological issue, that must also be evaluated.

After the vocational expert meets with the spouse to be evaluated for an interview and testing, the expert will then perform a review and assessment of the above information ending

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with a written report. This report will make reference to the above data, the information obtained from the interview and testing, and will discuss job options with commensurate salaries. The report will also address whether the evaluated spouse needs any type of training to obtain those jobs, especially if that spouse has been out of the job market for a period of time.

This report is used in divorce litigation or mediation in order to ascribe a reasonable salary to the unemployed or underemployed spouse. That salary will then be imputed to the spouse in order to determine the appropriate amount of alimony or child support.

For example, suppose the Wife in a divorce case has a Bachelor's Degree in business, had worked full-time seven years ago earning \$50,000, and has not worked outside the home since then because she stayed home to raise the children. The employment evaluator would take the above into consideration, but would also consider whether this person needs to enhance her skills through education, how long that education would take, what jobs would be available to her in today's market and what those jobs would pay. The evaluator would then give his/her opinion about what this person could earn. We would then utilize that income in determining child support and alimony.

One employment evaluator may be hired as a joint expert by



both parties, or each party may hire their own. Generally, if one expert is hired, both parties agree to be bound by that expert's opinion. If two experts are hired, and if they are not in the range of each other's opinion, then it becomes the battle of the experts. In the end, whether determined by a judge after trial, or through a settlement by the parties, an imputed income will be determined for that unemployed or underemployed spouse.

This type of assessment, along with an expert opinion, are very important in matrimonial cases to determine the earning capacity of an unemployed or underemployed spouse and should be considered if dealing with alimony and child support issues.

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