

The Family Law Review

A publication of the Family Law Section of the State Bar of Georgia – Winter 2017

Litigating Custody of Homeschooled Children in Georgia

PLUS:

ABOUT FACE - CONGRESS ALTERS THE AGE OLD MILITARY RETIREMENT SYSTEM

USING VOCATIONAL EXPERTS TO PROVIDE EARNING CAPACITY EVIDENCE OF SPOUSES AND PARENTS

MAY 2017 FAMILY LAW INSTITUTE AGENDA

Editors' Corner

By Kelley O'Neill-Boswell
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I hope you all find this edition of The Family Law Review full of useful information. I also hope that you have all made your reservations to attend the Family Law Institute in May. The Family Law Section continues to provide its members exemplary education and networking opportunities. Also, please consider submitting an article for publication in our next edition.

The section would benefit from information about family law cases and developments throughout our state. *FLR*

Editor Emeritus

By Randy Kessler
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This has been quite a year. The elections, the Super Bowl and new judges in many different courts. But one thing is constant, the need for good family law representation. I remain honored to be a part of our Section and *The Family Law Review* and know that we will continue to strive to improve our bar to help the people of our state through their family law crises. It has also been an honor to watch the section under Marvin Solomiany's stewardship and our future seems brighter than ever as the line officers move onward and upward, including the newest elected officer, Ivory Brown. Please continue to submit your contributions to the FLR and to make suggestions for topics of interest you'd like to see covered in future editions. And finally, congrats to Kelley O'Neill-Boswell for another fine edition of our number one member benefit, *The Family Law Review*. *FLR*

The Family Law Review is looking for authors of new content for publication.

If you would like to contribute an article or have an idea for content, please contact
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Using Vocational Experts to Provide Earning Capacity Evidence of Spouses and Parents

By Silvio S. Reyes

Introduction

The rising divorce rates in Georgia and other Southern states can be attributed to several factors. Household incomes in the South are lower than the national average and people in the Southern states have been shown to marry earlier in life. Many people are separated from the work force within the State of Georgia due to many reasons that are at times out of their hands. A spouse may be out of work by mutual agreement, e.g., health reasons or raising children, or may be unemployed involuntarily, e.g., job change or downsizing. A spouse may be purposely out of work or underemployed, or hiding income and this is when imputed income is needed. When issues arise regarding support of the spouse or children, determining the earning capacity for which either spouse should be responsible becomes a critical issue which warrants the invaluable services of a Vocational Expert (VE). VE's are an important inclusion in the divorce process as they are a useful tool in providing a litigant's earning capacity. They are professionals that are knowledgeable of the local labor market and possess an expertise that is helpful to the courts as they assess earning potential. They opine on the earning capacity of a person or whether the person is employed in a position which maximizes their earning potential and provide pertinent, foundational information by completing an Employability and Earning Capacity Evaluation.

This evaluation summarizes and documents findings on the cost and duration of needed education and training, availability of geographically appropriate job openings, salary data, and the estimated time it will take a spouse to find a job. The conclusions and opinions in the report are based on an interview, vocational testing (if necessary), and an assessment of his or her career values, marketable skills, and job possibilities. Labor market research is conducted based on the data collected regarding the litigant being examined.

Vocational Expert Qualifications

Vocational experts (VE) are rehabilitation counselors with extensive experience in researching the local and national labor markets. VE's must possess the certified rehabilitation counselor certification (CRC) which is the nationally recognized credential for vocational rehabilitation counselors. VE's must hold a Masters Degree (M.A., M. Ed., or M. S.) in Rehabilitation Counseling or a Doctorate (Ph.D. or Rh. D.) in Rehabilitation Counseling from a Council on Rehabilitation Education (CORE) accredited program. Information regarding the vocational experts qualifications which include any education, credentials (certifications and licenses), employment history, professional association memberships, publications

and presentations are found within the expert's curriculum vitae. This information can be furnished upon request for review of the attorney interested in the services of a vocational expert in a matrimonial matter.

Vocational Expert as a Resource

Vocational experts can be invaluable in family law cases. VE's can cast light on a party's earning capacity and whether the person is employed in a position which maximizes their earning potential. A VE may serve as a resource to:

- Skill requirements of past work
- Determining underemployment;
- Effects of injury or illness on the ability to work and spouses earning capacity;

The following are the types of situations that may arise which may warrant the inclusion of a VE:

- **Unemployed Spouse:** A spouse that may have been out of the competitive labor market due to their responsibilities of child care or may have never worked due to other circumstances.
- **Underemployed Spouse:** A spouse that may be presently employed, however, due to layoffs, downsizing or a poor economy, may be working in a job which is not consistent with their past education and/or work experience.
- **Disabled Spouse:** A spouse that is unable to engage in competitive employment due to their medical or psychological disability or may work in a reduced capacity.
- **Change of Financial Circumstances:** After a divorce has been settled, an assessment of a spouse may be made due to a loss of a job, a new career, injury, or relocation.
- **Evaluation of a Lifetime Medical Costs of a Disabled Child:** The lifetime costs of a disabled child are sometimes calculated into the financial settlement in a divorce.

The VE concentrates on determining the type of work and skills the litigants has at the time of the evaluation. This process consists of gathering information, either from the retaining spouse, or by conducting an in person interview of the opposing spouse. Occasionally, when the VE is met with resistance and uncooperativeness, it is necessary to compel the retaining spouses' attorney to file a motion to compel their spouse to appear for an evaluation.



These steps are based on ones expressed interests as well as their ability to be employed, whether or not they want to return to a previously held job or career.

Conclusion

Many of these individuals are not in the workforce by choice, although they will give you a list of issues and reasons why they are not working. As the need for information supporting requests for Alimony and Child Support increases, so does the need for assessment of earning capacity and vocational potential. Determining a spouse's earning ability can pose a difficult and complex dilemma. A spouse may be out of work by mutual agreement, e.g., health reasons or raising children, or may be unemployed involuntarily, e.g., job change or downsizing. A spouse may be purposely out of work or underemployed, or hiding income and this is when imputed income is needed. When issues arise regarding support of the spouse or children, determining the earning capacity for which either spouse should be responsible becomes a critical issue.

An employability evaluation completed by a Vocational Expert in Matrimonial matters can assist in the determination of the person's highest earning capacity in the labor market. The evaluation determines the spouse's highest level of employability and future earning capacity in the local labor market given their past education, work history, skills, and vocational capacity.

This assessment consists of a review of the medical records, a vocational diagnostic interview, if determined, vocational testing, analysis of the spouse's transferable skills, and research as to what the person can earn in the competitive labor market.

An evaluation of the effects of these life changes on the spouse's employability and earnings can be made based on a transferable skills analysis and local labor market research which will document the spouse's new earning capacity.

In cases involving permanent medical conditions associated with children, the Vocational Expert can evaluate the long-term medical costs of the child's disability by researching the cost of the required medical services in the local area. This may result in the development of a Life Care Plan which can assist the court in adjudicating this complex issue. *FLR*



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Employability Evaluation in Divorce/Family Law Cases

The Employability Evaluation process in a matrimonial matter consists of the following: The first step is usually a diagnostic interview, which is a question/answer session to gather pertinent information affecting employability (e.g. work/life experiences, health, age, length of absence from the work force, educational background, vocational/career goals or priorities, motivation, and current family/personal situation). As part of the occupational section, the earnings for each job should be reported, if possible, using W-2 or income tax records, employer wage verifications, or union contract information.

The next step is vocational testing, if necessary. There are a wide variety of vocational testing instruments used to assess employability. In general, these instruments cannot be passed or failed but are used to develop a worker trait profile.

The VE then conducts labor market research to produce information as to occupational outlook, earnings, qualifications/training requirements for specific job titles within the appropriate geographical area.

The fourth step is the completion of the Employability Evaluation based on the integrations of all information gained throughout the evaluation process. This includes client self-report, vocational consultants observation, medical/psychological reports, test data, and diagnostic information.

Finally, recommended next steps are made based on both immediate and long-term job/career objectives/goals.