

Perspectives from a Family Law Judge

Judge Susan R. Burch
18th Judicial District
Guilford County, North Carolina

May 3, 2017

Introduction

Authority of Family Court matters:

- * STATE COURT JURISDICTION
 - Rules and procedures vary state to state
 - Limited uniform codes - UCCJEA, UIFSA
- * No Federal oversight or jurisdiction

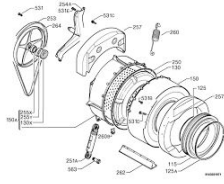
Issues and claims related to family law:

- Child Custody
- Child Support
- Post-Separation Support
- Alimony
- Division of Property
- Divorce

Court Approach:

Each issue has separate rules and procedures.

The court breaks each issue apart into separate hearings and orders.



Helping reach resolution
by considering:

The Big Picture



Role of the Financial Expert in Family Law Cases

Role of the Financial Expert in Family Law Cases



One Household becomes Two Households

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Living Expenses

Debts / Savings

Family Obligations

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Living Expenses

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Family Obligations

Reasonable Approach:

- Make arrangements for dependents
- Make living arrangements for each of us
- Make arrangements for future needs
- Take care of transactions / necessary documents
- Shake hands and be polite to one another

Litigation Approach:

- Race to secure assets
- Decline to pay debts (in some cases)
- Fight over custodial time and support
- Fight over funds for living arrangements
- Fight over distribution of assets and debts
- Refuse to cooperate with transactions and production of necessary documents
- Relationships and actions defined by animosity

Litigation Approach: why?

- Emotional issues related to the break up
- Outside influences on decision-making

Litigation Approach: why?

- Emotional issues related to the break up
- Outside influences on decision-making

- Lack of understanding and knowledge about the issues
- Lack of TRUST



Litigation Approach:

Pre-Trial

Court Action

Litigation Approach:

Pre-Trial

Court Action

Gathering of information

Analyzing and assessing

Negotiation

Litigation Approach:

Pre-Trial

Gathering of information

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Court Action

Hearing preparation

Presentation of evidence

Assessing outcome

Role of the financial expert - PRE TRIAL

- Skill and expertise in understanding financial information
- Organizing and compiling financial data
- Neutrality and independent examination
- Explanation and planning



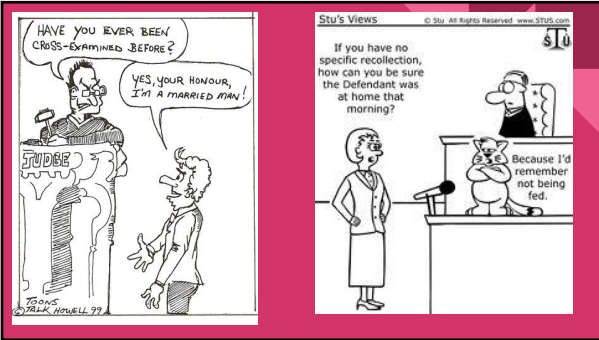
Involvement with the court at this stage:

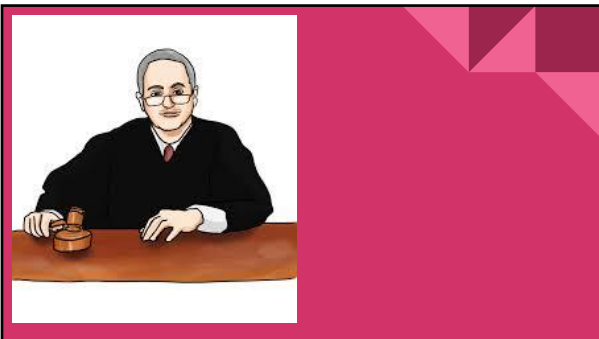
- Pre-trial conferences (outlining of issues)
- Pre-trial contentions and submissions
- Scope and classification of evidence



But remember

Preparation of documents at this stage may become part of discovery or submitted in future hearings.





Role of the financial expert in Court Action

- Expert testimony
 - Analysis of financial data
 - Valuation
 - Effects of asset division scenarios
 - Tax implications



Role of the financial expert in Court Action

REQUIRES Qualification for testimony as EXPERT

Daubert standard vs. Frye standard



Role of the financial expert in Court Action

The judge's particular gatekeeper function under **Rule 104(a)** applies in three situations: whether a particular witness is competent to testify, either in general, or as an expert; whether statements are protected by evidentiary privileges and thus, inadmissible; and whether **evidence** is generally admissible under the rules of evidence.



Role of the financial expert in Court Action

Rule 702. Testimony by experts.

(a) If scientific, technical or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion, or otherwise, if all of the following apply:

(1) The testimony is based upon sufficient facts or data. (2) The testimony is the product of reliable principles and methods. (3) The witness has applied the principles and methods reliably to the facts of the case

Role of the financial expert in Court Action

- Curriculum Vitae

Role of the financial expert in Court Action

- Curriculum Vitae

cur-ric-u-lum vi-tae

kə_rik(y)ələm `vē_tī/
noun

1. a brief account of a person's education, qualifications, and previous experience, typically sent with a job application.

Role of the financial expert in Court Action

- Curriculum Vitae
- Questions on Voir Dire
- Tendering to court -
 - Area of Expertise
 - Financial Analysis
 -

Role of the financial expert in Court Action

TESTIMONY:

- Preparation of documents
 - Analysis
 - Summary
- Analysis of financial data
 - Income / Expense
 - Balance sheets

Financial Expert vs Party or Lay Witness

- Knowledge, skill and experience
- Understanding and explanation of methods
- Explanation of analysis

Financial Expert vs Party or Lay Witness

- Knowledge, skill and experience
- Understanding and explanation of methods
- Explanation of analysis

- Independent and neutral professional

Role of the financial expert in Court Action

TESTIMONY:

- Preparation of documents
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Role of the financial expert in Court Action

TESTIMONY:

- Presentation to court -
 - Clear, direct and as simple as you can make it
 - Anticipate questions
 - Documents easy to follow and titled and marked so they will make sense to the judge later

Role of the financial expert in Court Action

REMEMBER:

- The difference between the analysis (which is yours)
- And the DATA (which is your client's)



Role of the financial expert in Court Action

REMEMBER:

- The difference between the analysis (which is yours)
- And the DATA (which is your client's)

This is where your professional role and neutrality can make the critical difference to the court.



Post-Trial Court Action?

- Order submission / Review
- Post-order analysis

NO JOB IS FINISHED



UNTIL THE PAPERWORK IS DONE !



CONCLUSION

Financial Experts are a welcome addition to a family financial case - ESPECIALLY one with complex financial arrangements.