



Earning Capacity in Family Law: Understanding the Law, Litigating the Issue, and Using an Expert

June 10, 2019

2:15 p.m. – 3:15 p.m.

**Connecticut Convention Center
Hartford, CT**

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Lawyers' Principles of Professionalism

As a lawyer I must strive to make our system of justice work fairly and efficiently. In order to carry out that responsibility, not only will I comply with the letter and spirit of the disciplinary standards applicable to all lawyers, but I will also conduct myself in accordance with the following Principles of Professionalism when dealing with my client, opposing parties, their counsel, the courts and the general public.

Civility and courtesy are the hallmarks of professionalism and should not be equated with weakness;

I will endeavor to be courteous and civil, both in oral and in written communications;

I will not knowingly make statements of fact or of law that are untrue;

I will agree to reasonable requests for extensions of time or for waiver of procedural formalities when the legitimate interests of my client will not be adversely affected;

I will refrain from causing unreasonable delays;

I will endeavor to consult with opposing counsel before scheduling depositions and meetings and before rescheduling hearings, and I will cooperate with opposing counsel when scheduling changes are requested;

When scheduled hearings or depositions have to be canceled, I will notify opposing counsel, and if appropriate, the court (or other tribunal) as early as possible;

Before dates for hearings or trials are set, or if that is not feasible, immediately after such dates have been set, I will attempt to verify the availability of key participants and witnesses so that I can promptly notify the court (or other tribunal) and opposing counsel of any likely problem in that regard;

I will refrain from utilizing litigation or any other course of conduct to harass the opposing party;

I will refrain from engaging in excessive and abusive discovery, and I will comply with all reasonable discovery requests;

In depositions and other proceedings, and in negotiations, I will conduct myself with dignity, avoid making groundless objections and refrain from engaging in acts of rudeness or disrespect;

I will not serve motions and pleadings on the other party or counsel at such time or in such manner as will unfairly limit the other party's opportunity to respond;

In business transactions I will not quarrel over matters of form or style, but will concentrate on matters of substance and content;

I will be a vigorous and zealous advocate on behalf of my client, while recognizing, as an officer of the court, that excessive zeal may be detrimental to my client's interests as well as to the proper functioning of our system of justice;

While I must consider my client's decision concerning the objectives of the representation, I nevertheless will counsel my client that a willingness to initiate or engage in settlement discussions is consistent with zealous and effective representation;

Where consistent with my client's interests, I will communicate with opposing counsel in an effort to avoid litigation and to resolve litigation that has actually commenced;

I will withdraw voluntarily claims or defense when it becomes apparent that they do not have merit or are superfluous;

I will not file frivolous motions;

I will make every effort to agree with other counsel, as early as possible, on a voluntary exchange of information and on a plan for discovery;

I will attempt to resolve, by agreement, my objections to matters contained in my opponent's pleadings and discovery requests;

In civil matters, I will stipulate to facts as to which there is no genuine dispute;

I will endeavor to be punctual in attending court hearings, conferences, meetings and depositions;

I will at all times be candid with the court and its personnel;

I will remember that, in addition to commitment to my client's cause, my responsibilities as a lawyer include a devotion to the public good;

I will endeavor to keep myself current in the areas in which I practice and when necessary, will associate with, or refer my client to, counsel knowledgeable in another field of practice;

I will be mindful of the fact that, as a member of a self-regulating profession, it is incumbent on me to report violations by fellow lawyers as required by the Rules of Professional Conduct;

I will be mindful of the need to protect the image of the legal profession in the eyes of the public and will be so guided when considering methods and content of advertising;

I will be mindful that the law is a learned profession and that among its desirable goals are devotion to public service, improvement of administration of justice, and the contribution of uncompensated time and civic influence on behalf of those persons who cannot afford adequate legal assistance;

I will endeavor to ensure that all persons, regardless of race, age, gender, disability, national origin, religion, sexual orientation, color, or creed receive fair and equal treatment under the law, and will always conduct myself in such a way as to promote equality and justice for all.

It is understood that nothing in these Principles shall be deemed to supersede, supplement or in any way amend the Rules of Professional Conduct, alter existing standards of conduct against which lawyer conduct might be judged or become a basis for the imposition of civil liability of any kind.

--Adopted by the Connecticut Bar Association House of Delegates on June 6, 1994



Jocelyn B. Hurwitz *Principal*

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Practice Areas

[Family Law](#)

Bar Admissions

Connecticut
U.S. District Court
District of Connecticut

Education

Cornell University Law
School, 1992, J.D.

Cornell University,
1989, B.S.

Office Location

Bridgeport, CT
Westport, CT
Orange, CT

JOCELYN B. HURWITZ is a principal and chair of Cohen and Wolf's [Family Law](#) Group. Dividing her time between the firm's Bridgeport, Orange and Westport offices, Ms. Hurwitz practices in the areas of family law litigation and divorce mediation.

She is admitted to practice in Connecticut, and the U.S. District Court, District of Connecticut. Ms. Hurwitz is a member of the American, Connecticut and Greater Bridgeport Bar Associations. She is a member of the Family Law Sections of the Connecticut and Greater Bridgeport Bar Associations.

Ms. Hurwitz serves as a special master, appointed by the Superior Court, to mediate divorce and custody disputes in the judicial districts of Milford, New Haven, Stamford and Bridgeport, and in the Regional Family Trial Docket in Middletown. She serves on the Board of the Connecticut Council for Divorce Mediation and Collaborative Law. She has been a contributor at seminars hosted by the Bridgeport Bar Association and other organizations.

Ms. Hurwitz is recognized in the area of Family Law by [Connecticut Super Lawyers](#) (2007-2018), and was ranked among the "[Top 25 Women Connecticut Super Lawyers for 2014](#)". She is also listed in [Best Lawyers®](#) (2013-2019) for her work in Family Law.

Ms. Hurwitz received her B.S. in 1989 from Cornell University and her J.D. in 1992 from Cornell Law School.

Melissa Needle, Needle | Cuda

Attorney Melissa Needle is a lifetime resident of Connecticut. She was born in New Haven and raised in Fairfield. Her family has deep roots in Connecticut and she is a third-generation attorney. (Her father is the well-known transactional lawyer Charles Needle of Zeldes, Needle & Cooper of Bridgeport.) Since her admission to the bar in 1990, Ms. Needle has practiced matrimonial law exclusively. She has been an active family law litigator and many of the cases in which she has appeared involve issues including the division of high net worth estates, complex family businesses, highly contested custody, and requests for child relocation. Before launching her own practice and subsequently jointly forming Needle & Cuda, Melissa accumulated substantial experience at several leading Fairfield County family law firms. She is well-known in Connecticut courts as a fair fighter with high principles and integrity who does not shy away from litigation if that path is the best opportunity for her client to reach an equitable solution. Melissa understands that divorce is not just about the dissolution of marriage or stop-gap solutions but helping clients to plan for the rest of their lives. She resides in Wesport, CT with her husband and has three children.



Rona Wexler Biography

Over 30 years of real world, practical experience has given Rona Wexler a unique, 360° perspective that makes her the first choice of top law firms whenever they are in need of an expert witness in labor and employment and family law matters. After receiving first-class training as a counseling psychologist, Ms. Wexler began work in academia as a career services director, then moved into the corporate world as a Fortune 200 executive, followed by her career as an executive recruiter and a vocational evaluator - wide-ranging experience that gives a solid foundation to her expertise. She practices throughout the U.S. focusing on the New England, the Tri-state area (NY, CT, NJ), Mid-Atlantic and southern Florida. Ms. Wexler has been qualified and frequently testifies in New York Supreme Court, Federal court, the NLRB, and in the Florida courts.

Ms. Wexler, a native of Rhode Island, graduated from Emerson College with a BA in English and attained an MA in Counseling Psychology from New York University. She spent several years as a career and employment counselor at the college level as a Director of Career Development and Placement. She then joined the corporate ranks at Xerox, where she built a distinguished career in sales management, consultative sales hiring and training. This experience prepared her for her next challenge: moving into executive search as a retained executive recruiter, working with, searching for, and placing mid-level and the most senior executives while working for three prestigious firms.

Rona expanded her practice and joined a vocational evaluation forensic team as an employability expert focusing on family law and employment litigation. Her education, career consulting, recruiting and business experience turned out to be the perfect fit -- a natural evolution. She combined her insider knowledge of corporate culture, experience with diverse industries in business, government and non-profit with her expertise in vocational/career disciplines to bring a unique perspective to her work as a forensic expert. Attorneys appreciate her quick grasp of the essential factors in assessing employability in the forensic process. Her objective evaluation of a party's employability, earning capacity and genuine efforts to find appropriate employment is highly credible to the trier of fact.

Her clients are some of the most demanding lawyers in the business, many of whom have been consistently selected by their peers as "Best of" and "Super Lawyers". They rely on Ms. Wexler as their go-to vocational expert and first choice for litigation support in family law and employment matters. Her clear thinking, high-caliber reports and testimony have earned her the highest accolade - cases came to her from lawyers on the opposite side.

Her articles have been published in the New York Law Journal, the New York State Bar Association Family Law Quarterly and others. She continues to present live workshops and CLE's in the tri-state area on career issues and employment. Her designation as a *Diplomate* by the *American Board of Vocational Experts* was achieved after an extensive peer review of her credentials, experience, work product, publications and passing an in-depth qualifying exam.

Ms. Wexler encourages attorneys to call for a complimentary initial consultation to help parties understand if a vocational expert evaluation can contribute to a financial decision and what important information should be obtained early in litigation process. She can be reached at 646-335-5236 or rona@TheEmployabilityExpert.com.

SERVICES PROVIDED:

Vocational/Employability Evaluation, Transferable Skills Analysis, Labor Market Assessment, Wage Earning Capacity, Job Search Assessment, Job Search Skills & Strategy, Career Coaching and Job Search Planning and Skill Development.

LEGAL AREAS:

Labor and Employment: Gender, Age and Race Discrimination, Sexual Harassment, Wrongful Hiring, Wrongful Discharge, Mitigation of Damages. Family Law/Divorce: Maintenance and Child Support, Relocation Post Divorce.

PROFESSIONAL MEMBERSHIP:

American Board of Vocational Experts (Diplomate), International Association Rehabilitation Professionals, National Career Development Association.

A few attorney recommendations:

"Ms. Wexler paid extraordinary attention to detail and thoroughly researched the complex employment issues in our matter. Her report was clear and concise, and most importantly, was stated in an unbiased way which added to its credibility." *New Jersey Employment Litigator*

"I am so impressed by Ms. Wexler's skill and professionalism that I have recommended her to other lawyers. I have had occasion to discuss her expertise with other practitioners and know that she is held in high regard by those lawyers for whom she has provided assistance." *New York City Family Law Attorney*

"Most impressive, perhaps, was the fact that Ms. Wexler made the subject crystal clear. After the trial, the Judge commented to me how impressed he had been with Ms. Wexler's presentation at the trial of the matter." *New York City Family Law Attorney*

SELECTED PRESENTATIONS & PUBLICATIONS

- Stuck on Employability and Earning Capacity? Moving Cases to Settlement with Employability Consultants, **New York Association of Collaborative Professionals**, New York, NY. Presenter, February 4, 2014
- Challenges in Imputing Earning and Employment Capacity in Continually Changing Economic Times, **Connecticut Collaborative Law Group**, Darien, CT, Presenter, June 12, 2013
- Successfully Handling Custody and Vocational Expert Witnesses, **New York State Bar Association, (NYSBA) CLE**, Presenter, October 28, 2011 Hauppauge, NY. October 28, 2011.
- Assessing Employment Capability and Earning Capacity in Family Law Matters. **Valuing Specific Assets in Divorce. Aspen Publishers (Wolters Kluwer Law & Business)**, 2013 Edition.
- Using Experts in Matrimonial Cases: the Experts Speak. **New York County Lawyers Association (NYCLA) CLE**, Panelist Presentation, New York, NY May 25, 2011.
- How to use Vocational Experts in Challenging & Changing Economic Times, Presentation to **Fairfield County Bar Association**, May 19, 2010 and **Westchester Bar Association**, February 10, 2010
- For Issues of Occupational Capacity and Imputed income, Bring in the Employability (or Vocational) Expert, was published in the Spring, 2009, the **New York State Bar Association Family Law Quarterly**
- Vocational Experts Help Decide Parties' Ability to Work, **New York Law Journal**, February 14, 2008. Co-Authors: Brett Kimmel, J.D. and Rona Wexler, M.A.

Earning Capacity in Family Law: Understanding the Law, Litigating the Issue, and Using an Expert (CLC2019-C05)

Agenda

1. Review of caselaw – 10 min. – Jocelyn Hurwitz
2. Discussion of practice tips – 10 min. – Melissa Needle and Jocelyn Hurwitz
3. Role of vocational expert – 20 min. – Rona Wexler
4. Review of specific scenarios – 20 min. – Melissa Needle, with panel discussion from Jocelyn Hurwitz and Rona Wexler

Earning Capacity Materials
CBA Annual Meeting
Monday, June 10, 2019

Jocelyn B. Hurwitz, Cohen and Wolf, P.C.
Melissa Needle, Needle Cuda

A. A court may consider a party's earning capacity as opposed to that party's actual earnings when their earnings are unreasonable or where there is evidence of that party's prior earnings.

Pursuant to §46b-82, Conn. Gen. Stat., the trial court in a dissolution of marriage action is required to consider the occupation of each of the parties, as well as both parties' ***earning capacity***, vocational skills, education and employability in determining whether to award alimony and if so, in what amount and duration. These same factors are also relevant to the distribution of property between divorcing spouses, pursuant to §46b-81, Conn. Gen. Stat. In our experience, no two earning capacity cases are exactly identical. Each turns on its own unique facts, and your analysis and development of those facts can make the difference for your client in settlement and at trial. The focus of this presentation will be assessing the factors relevant to the question of earning capacity, and determining how best to present them at trial or in settlement discussions.

"It is well established that the trial court may under appropriate circumstances in a marital dissolution proceeding base financial awards . . . on the earning capacity of the parties rather than on actual earned income." *Fox v. Fox*, 152 Conn.App. 611, 634 (2014). But what is earning capacity and under what circumstances can a court consider capacity, rather than actual earnings? As an advocate, how do you best prepare to either advance an earning capacity argument? How do you defend against such an argument when it is leveled at your client?

When used in the context of a marital dissolution, earning capacity is “not an amount which a person can theoretically earn, nor is it confined to actual income, but rather it is an amount which a person can realistically be expected to earn” *Id.* In determining a party’s earning capacity, the courts consider a variety of factors including that party’s age, education, vocational skills, and evidence of that party’s previous earnings. *See Fox v. Fox.*

Sometimes, an earning capacity argument turns on a comparison of a party’s prior earnings to his or her present earnings. When a court may consider the party’s actual earnings, a court may also consider that party’s earning capacity if the party’s earned income is unreasonable or if there is evidence of that party’s prior earnings. A person’s actual earnings are unreasonable when that party is “capable of realizing substantially greater earnings simply by applying himself or herself,” based on their education and or experience. *See Boyne v. Boyne*, 112 Conn. App. 279, 283 (2009). When using a party’s earning capacity rather than actual income, the “court must determine a specific dollar amount of earning capacity and may base that determination upon evidence of a party’s prior earnings.” *Timm v. Timm*, TT DFA165006885S, 2017 WL 6262244, at *5 (Conn. Super. Ct. Nov. 14, 2017). These claims most often arise in the context of a party who appears to be underemployed at the time of trial, or who continues at his or her job but is underperforming. Self-employed parties sometimes suddenly encounter decreases in income or business productivity at the time of trial – these must be carefully investigated, in order to avoid underestimating that party’s ability to earn. The Court, however, is not required to use earning capacity as a basis for its financial orders. *See Buxenbaum v. Jones*, 189 Conn. App. 790 (2019). Instead of using earning capacity to determine financial orders, the trial Court in *Buxenbaum* crafted its financial orders taking into consideration the fact that the defendant might be able to work a more traditional job, but also

“defendant is an entrepreneur at heart who wanted to pursue a career path different than the one that, in the past, had produced a higher income.” *Id.*, 805.

In one of the earliest Connecticut earning capacity cases, *Yates v. Yates*, 155 Conn. 544 (Conn. 1967), our Supreme Court divided the earning capacity question into two separate prongs: 1) earning potential, and 2) voluntary and deliberate reduction in earnings. The *Yates* Court recognized the fact-based nature of the inquiry and the amount of latitude that is afforded the trial court in making each of these determinations. In that case, the payor husband relocated from Arkansas, where he had been employed as a general practitioner in private practice to New York, where he took a position as a researcher. Although the trial court concluded that the wife had failed to establish that the husband had voluntarily reduced his income (the husband was earning income in New York that was roughly equivalent to what he had earned in Arkansas), the case was remanded to the trial court for further proceedings because there had been insufficient facts established at trial regarding the parties’ financial abilities.

Earning potential generally does not involve any nefarious intent on the part of the party with the potential. Rather, it may involve a party who was out of the work force caring for children who are now school-aged, a party who has been in school earning a degree, or a party who has been doing nonprofit work out of choice, but whose skills can translate into earned income if he or she changes his or her work focus and goals.

Voluntary and deliberate reductions are those where a party is intentionally depressing his or her earnings in order to get a better result in the divorce case – ie. a more favorable distribution of assets or support order.

Practice Tips:

There is a continuum of earning capacity cases. The stay-at-home spouse who earned income in the past but has been out of the workforce for an extended period of time caring for young children is differently situated than the executive who gave up a profitable fulltime position to work part-time for a non-profit organization or to work in a less lucrative field.

In your initial consultation with a client, you should identify “earning capacity” issues on both sides of a case.

Some of your most basic client questions overlap with the earning capacity inquiry:

- 1) Establish the ages of both parties
- 2) Establish the educational background of both parties
- 3) Ask about the work histories of both parties – have they consistently earned more each year? Sought or received promotions or other advancements? Received increase in income or regular bonuses? Does he or she have a history of more traditional jobs, or less traditional entrepreneurial ventures?
- 4) If a client or opposing party is self-employed, what market forces impact his or her business? Have recent trends been up or down within the applicable industry?

If your client, or his or her spouse, previously earned more than he or she is presently earning, you need to further explore certain topics and questions:

- 1) When did the decrease in earnings occur?
- 2) Was the decrease recent (ie. within a short period of time prior to initiation of the dissolution of marriage action)?

- 3) If it was recent, did that decrease coincide with problems in the marriage or a likelihood of divorce?
- 4) Were there reasons supporting a decrease in income (ie. health considerations, age-related decline, workforce reduction, a decrease in the employer's success, did other similarly situated employees also realize a decrease in income, or was the spouse at issue the only employee to realize a reduction)?

Answers to these questions will help you to determine, as a practitioner, whether an earning capacity issue exists in your case. If it does, you will move to the next step. The second part of your analysis will involve establishing facts that you can present to a decision maker to support your case regarding the party's actual earning capacity. Remember that the burden is on the party alleging earning capacity to not only establish that a party is not earning up to his or her capacity, but then to give the trial court a realistic earnings number to attribute to that party for purposes of his or her conclusions and findings.

B. A court is only permitted to consider a party's earning capacity if there is sufficient evidence to show that a party's actual earned income is unreasonable.

To determine a sufficient amount of alimony to be awarded, the court (under Conn. Gen. Stat. §46b-82) "shall consider the evidence presented by each party" in addition to a variety of factors. Alimony may be awarded based on a party's actual income or the party's earning capacity *if* there is evidence to support an argument that the party's actual earning is unreasonable. While it is understood that the court may use a party's earning capacity, it is only appropriate to consider the earning capacity where "there is **evidence** of that party's previous earnings." (emphasis added) *Boyne v. Boyne*, 112 Conn.App. 279, 283 (2009). To determine the earning capacity of a party that has been out of the work force for an extended period, the court must have evidence to support a specific earning capacity without previous tax returns. *See*

Mark-Gould v. Gould, 184 Conn.App. 512, 518-519 (2018). In other words, once you determine that a party is not earning up to his or her earning capacity, it is your job to give the judge an actual earnings number to use in his or her analysis and findings.

If a trial court makes an earning capacity determination without sufficient evidence to support the number approximated by the court, the Appellate Court can overturn the lower court's determination as clearly erroneous. *See Steller v. Steller*, 181 Conn.App. 581 (2018); *Kovalsick v. Kovalsick*, 125 Conn.App. 265 (2010). To determine a party's earning capacity, the court must consider previous tax returns and other historical evidence, or expert testimony as opposed to merely unsupported testimony from the party itself. *See Steller v. Steller*, 181 Conn.App. 581 (2018).

Remember that your allegations regarding the nature of a party's employment must be practical. Connecticut caselaw supports the idea that it is not always practical or realistic to suggest that a party take on employment that is different from what he or she has traditionally done in order to maximize his or her earnings. In *Fucci v. Fucci*, 179 Conn. 174 (1979), the husband was employed in the appliance business that generated a minimal return given the husband's investments in that business. The wife unsuccessfully argued that the husband should be required to liquidate the business and seek other, more lucrative employment. However, in *Arrigoni v. Arrigoni*, 184 Conn. 513 (1981), the husband was employed part-time as a pharmacist at the time of trial, as well as conducting an unprofitable woodworking business, despite his history of fulltime work as a pharmacist. Under this set of circumstances, the court properly found an earning capacity for the husband consistent with his prior history of fulltime pharmacist work.

Practice Tips:

If you are presenting an earning capacity argument, it is not enough to establish an inference that a party could earn more if he or she chose to work harder, to market him or herself better, or to change job locations. Remember that you are developing a story and amassing facts and evidence to support it. You need to present the court with an estimated income (or range of income) for the party for whom you are trying to establish earning capacity.

What specific evidence exists to support your claim? Does your case rely on past tax returns? If not, do you need an earning capacity expert? Should you prepare a listing of jobs for which an expert qualifies, but that he or she has failed to pursue? If a spouse is seeking employment in the context of a divorce case, is he or she seeking jobs consistent with his or her skill set and level of experience, or can you make a case that he or she is overreaching or underreaching?

If the spouse with an earning capacity has not earned significant income in the past, but you believe that he or she has been underemployed, focus on taking discovery that would establish the skill set of that individual, or any expertise he or she has that might be utilized to generate income.

Depositions of parties, but also that party's colleagues, manager, human resources manager, clients, etc. may also be warranted, depending upon the nature of the party's claim regarding the reasons for his or her decreased earnings.

Also, investigate the potential resources available to a spouse who recently departed his or her employment. Did he or she take advantage of unemployment benefits, severance pay, connections that he or she may have within a particular industry? If not, you may have an earning capacity argument to make, based upon a failure of a party to maximize his or her income at the time of divorce.

C. The Other Side of Earning Capacity Cases: Representing the Spouse Alleged to have “Capacity”

Much of what needs to be considered here is simply the opposite of what we have suggested above for the attorney representing the spouse alleging that the other party has earning capacity. In other words, as the attorney representing the spouse who is alleged to have such capacity, it is important to be aware of the burden facing the other party. Before you concede that your client has any earning capacity, be sure to carefully evaluate whether the other side has met their two-pronged burden. First, have they proven (or can they prove) that your client has unmet earning potential? If so, what evidence do they have to support an actual number upon which the trial court can rely in finding an earning capacity for your client? If the other side is successful with regard to the first prong but has not addressed the second prong, it may be sufficient for you to argue at trial that they have not met their burden of proof because they have not provided the trial court with any evidence to support an income figure for your client, and their claim must therefore fail.

If the other side has met their burden of proof (or is prepared to do so) your job is to develop your own evidence to undermine the earning capacity argument by asking many of the same questions your adversary will be asking, but to a different end.

Practice Tips:

You may decide to present evidence from third parties: your self-employed client's accountant, independent bookkeeper, or partner to demonstrate that any income reduction being experienced by your client is genuine and not manufactured for purposes of the divorce. He or she may be able to testify to market conditions more broadly that could be impacting your client's business.

If your client is not self-employed, see if you can identify downward trends in your client's income over the course of several years that might demonstrate that a drop in income at the time of the divorce was not unexpected or related to the divorce.

Regardless of whether you are on the "prosecution side" of an earning capacity case or on the "defense side" consider preparing a timeline or other visual aid that demonstrates the earnings over time of the party whose earning capacity is in question.



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“Understanding the Law, Litigating the Issue, and Using an Expert.”

Connecticut Bar Association Legal Conference



Presented by
Rona E. Wexler, M.A., ABVE/D
Wexler Vocational and Career Consulting

June 10, 2019

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Earning Capacity: What's It All About?

Your Take-Away

1. Factors experts apply to assess employability/earning capacity
2. Testing common assumptions of employability/earning capacity
3. Optimizing an employability expert for settlement

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Why IS Earning Capacity Such a Roadblock?

All those emotions about money, ending a marriage and starting over
Fear, Anxiety, Resentment, Distrust

- SAHP: My job at home is no longer valued
- Children: They need more than ever, now
- The Unknown: New role - Haven't worked in a long time?
- Self-esteem/confidence: Rusty skills, knowledge
- Age : Discrimination – how real? Don't have same energy?
- More responsibility/pressure: Moneyed spouse – what if I lose MY job?
- Distrust: What if spouse earns more money later? Do I lose out?
- Frustrated I AM REALLY trying to find a better job
- Can't earn enough Childcare costs more than what I can earn

The Key to Leveraging Employability and Earning Capacity

- **Consult *early*** –
- Test Assumptions
- Get Preliminary Assessment
- *Help remove this roadblock early in the case*

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Employability Experts Help Settlement in Mediation, Collaborative Divorce & Litigation

Advantage of an objective expert – breakthrough logjam

- Reality Test Parties' Assumptions – Calm the waters
- Brief, low-cost research can support an initial assessment
- Helps set expectations on time needed to return to work
- Lay groundwork for next steps
- Referrals to other professionals
- Short term and cost effective – Often one consultation

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6 Essentials to Assess Employability Earning Capacity

1. Skills Assessment and Transferability
2. Assets for Optimal Earning Capacity
3. Potential Obstacles to Employment
4. Hire-ability / Place-ability Assessment
5. Expected Time Needed to Get Hired
6. Real World Earning Capacity

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Common Missteps in Assuming Earning Capacity

1. Assuming job titles are comparable in different postings or industries
2. Assume skills easily transferred to other employment
3. Minimizing impact of other factors (age, absence from workforce)
4. Capability vs. Hire-ability/Place-ability
5. Economist or business valuation expert likely uses similar research
 - a. BUT not trained to assess factors and resources which are part of the Employability Expert's methodology

Skills Assessment and Their Transferability

- Review employment history, job performance, education, training, military service and volunteer/unpaid experience
- Licenses, certifications (active/inactive/ how to reactivate?)
- How skills can be applied or transferred to alternative occupations
- How to strengthen skills or bring up-to-date
- ROI on further training/education, career/job search coaching
- Testing where indicated
- Identify occupations where skills can be applied now and near term

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Potential Obstacles to Optimal Employment

- **Medical** (physical, psychological, cognitive) limitations or disability:
What documents/consultations expert need, apply for SSD?
- Lack of **skills** (computer literacy, driver's license, etc.)
- **Criminal record** (type of, conviction, misdemeanor, felony)
- **Public records**, Credit rating, Info on Internet/Social Media
- **Absence from workforce** (some industries less forgiving, more competitive)
- Little knowledge **to conduct effective job search** in current market

Hire-ability / Place-ability Assessment

Yes, your spouse is smart, well educated, healthy
and CAN return to work

But how does that affect getting hired and paid?

- Absence (and duration) from position or an industry
- Changes in required skills (still relevant or up-to-date?)
- Value of degree/licenses -- When & how last used?
- Changes in labor market or industry affecting employability
- Occupations' current demand in dynamic labor market
- Age – impacts differently

What About Long Term Unemployment or Under Employment

What are **real issues** about his/her unsuccessful job search or underemployment?

- Proper planning and strategy?
- Execution? Time spent consistently
- Personal Presentation?
- Discouraged, depressed, embarrassed, withdrawing
- Getting right advice?
- Are there funds to get proper counseling/coaching?

7 Steps of a Diligent job search

1. Analyzes personal assets/weaknesses and jobs that fit
2. Creates plan: goals, objectives & activity
3. Uses different sources for job leads & conducts research
4. Uses right documents to organize & execute job search
5. Consistent, sustained daily activity
6. Emphasizes variety of networking & face-to-face activity
(limiting time applying to jobs online)
7. Reassesses job search after longer time to hire
Seeks professional assistance

How to Prepare Your Expert

- Review assumptions: Start with preliminary research
- Provide relevant documents requested or used by other experts
- Provide other expert reports
- Consult expert for questions **to be used in deposition & interrogatories**
- Should request/demand evaluation interview (even if unlikely to comply)
- **Benefits:** Essential info, even more so if no vocational interview

Evaluating right vocational expert for your case

- Industry specific expert or academic vs. qualified employability expert
- Review and understand his/her methodology and research
- Know credentials, certifications, training, experience
- Understands industry and employability dynamics of this case
- Has the expert been qualified?

It's All in the Timing

- Early consultations can start:
 - Initial research to “reality check” assumptions
 - Learn about other directions, questions and strategy

- Pitfalls when engaged late in the case
 - Lost, incomplete or insufficient information – can’t assess
 - Lost opportunity to understand issues to settle case
 - Less chance to settle – more expense closer to trial



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