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More than the Basics: What Vocational Evaluations Can Do for You

by

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Vocational evaluations in California family law cases accomplish two basic functions, but their influence on successful case conclusions can be much broader than envisioned in the Family Law Code sections that establish them as a useful part of resolving marital dissolutions. Vocational evaluations can make the attorney's job much easier, can reduce conflicts between the parties and can improve the emotional and financial health of the evaluated party.

A vocational evaluation client said it best:

The work we did together was the first time I ever got to think about what I wanted to do. You really pushed me to go for what I wanted; our talks were the best part of the divorce. Thank you for your help and support.¹

The 2 Basic Functions of Vocational Evaluations

The first outcome of a vocational evaluation is the determination of the evaluated party's wage earning capacity. The vocational evaluator concludes that a particular range of earnings reflects the best fit between the individual's traits - skills, abilities, aptitudes, physical and psychological capacities, interests and values - and the offerings - available jobs and their salaries - of the current local labor market for specified vocational alternatives. This earning capacity can be used instead of actual income for support determination, according to Family Code Section 4058 (b), for an imputation of income.

A number of Family Code sections indicate a second important intended outcome of a vocational evaluation: providing vocational planning when it is necessary. Section 4320(1) calls for the consideration of the possible need for retraining or education of the supported spouse. Section 4331(d) requires that the evaluator be expert in "interviewing, administering, and interpreting tests for analysis of marketable skills, formulating career goals and planning courses of training and study." The evaluator must have knowledge of education and training programs in the area with costs and time plans for these programs. The supporting spouse may be required to pay for the costs of such a plan.

¹ This is a real quote from a client of Betty Kohlenberg in a letter dated 7/10/01.

Following these Code sections and standard counseling practice, a vocational plan

- outlines the steps needed to achieve a vocational goal,
- compares sources of training and specific programs, if needed, and
- includes costs, duration and identification of potential barriers to success.

The Family Code and Beyond: More Benefits of Vocational Evaluations

Bringing a vocational evaluator into the divorce case from either side can help the attorneys, especially in communicating with difficult clients. A vocational evaluation will help in each of these familiar examples.

- The husband whose wife hasn't worked in 20 years but who insists that she's able to earn well above the median wage in his county and wants you to make sure his support levels to reflect his feelings. Are they realistic? The evaluator can tell you - and him - whether his assessment of her earning capacity is confirmed by the employers in the area. The answer isn't speculation, but is based on labor market research.
- The wife whose anxiety about her life is expressed in 20 calls each week to your office. Want her to calm down? Send her to talk about her prospects with a vocational counselor who will expect her to put some effort into jointly creating a vocational plan. Being active in deciding about her future will give her a clearer sense of who is controlling her life.
- The mother who tells you, "I have to be at home when the children get home from school so they will be properly supervised. That was the arrangement we made when we got married and that's how I'm raising our children. I can't work till they are 18." Will her children suffer if she works? Vocational counseling, a professional assessment of any special needs of the children in accord with Section 4320(2)(g), and some reality testing about finances will help this mother make her decision based on whether she can afford to stay at home and what her options are. Statements like these are often based on old feelings, current fears and the uncertainty of her future, rather than on immutable values. Let a counselor help her - and you.
- The spouse who says, "I'm too depressed [or too sick, too old] to work. And there's nothing out there I can do anyway with my limitations." Is this health issue large enough to have an impact on earning capacity? The same impairment may present different levels of disability and interfere with earnings at different levels for dissimilar jobs. Someone with mobility impairment may not be able to work as a plumber but could be a paralegal. A vocational evaluation can include an assessment of the impact of physical or mental health factors on earnings, and should address the issue if either spouse brings it into the support determination process.

- The spouse whose earnings have never matched the educational background or who reports earning far less than in prior years. Is it the economy or is it willful suppression of income? You'll be able to explain it to your client and plan for appropriate support levels if you ask a vocational evaluator both to look at the economy of a job and an industry, and to assess the adequacy of the job search efforts, using Section 3558 to require "good faith attempts at job training and placement."

Standards for vocational evaluations now exist for your use in appraising the evaluations you see. A small group of Northern California vocational evaluators formed Bay Area Vocational Experts (BAVE) in 2003 and have written VOCATIONAL EVALUATION: STANDARDS of PRACTICE in California Family Law.²

The chart attached is provided to give you an easy way to explain what will happen in a vocational evaluation to your client.

The best result from a vocational evaluation may come after the conclusion of the case, when your client thanks you for getting her or him through this difficult transition and tells you how satisfying the new career path is, the one you pushed for by urging a vocational evaluation.

² Contact Betty Kohlenberg, Kohlenberg & Associates in San Francisco, at (415) 665-6902 or www.bkohlenberg.com for a copy of the Vocational EVALUATION: STANDARDS of PRACTICE

VOCATIONAL EVALUATION PROCESS
 for
DETERMINATION of WAGE EARNING CAPACITY
 In California Family Law Cases

ACTIVITY	PURPOSE	RESULTS
DIAGNOSTIC INTERVIEW	<ul style="list-style-type: none"> • Explain vocational process • Collect basic information • Diagnose vocational assets and deficits and motivational factors • Identify transferable skills 	<ul style="list-style-type: none"> • Diagnostic knowledge • Client involvement in evaluation process • Client assignments for self-assessment and information
VOCATIONAL TESTING	<ul style="list-style-type: none"> • Obtain objective measurements of interests, skills, aptitudes, achievements and work values 	<ul style="list-style-type: none"> • Confirmed transferable skills • Potential vocational alternatives
IDENTIFICATION of VOCATIONAL OPTIONS	<ul style="list-style-type: none"> • Interpret test results and consider client feedback • Consolidate subjective and objective findings to identify viable vocational options 	<ul style="list-style-type: none"> • Specific job titles for vocational exploration • Increased client self-awareness and self-confidence • Assignments for client research activities
LABOR MARKET RESEARCH	<ul style="list-style-type: none"> • Explore job availability, current and potential wages, entry methods for selected jobs in appropriate geographic area 	<ul style="list-style-type: none"> • Current data used to determine wage earning capacity
WAGE EARNING CAPACITY ANALYSIS & REPORT	<ul style="list-style-type: none"> • Summarize individual earning capacity, integrating client background and labor market conditions 	<ul style="list-style-type: none"> • Objective, verifiable expert opinion of wage earning capacity
VOCATIONAL RECOMMENDATIONS	<ul style="list-style-type: none"> • Outline specific activities, resources, costs and timing to achieve vocational objective 	<ul style="list-style-type: none"> • Clear, concise individual plan to reach maximal employment
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