



# Forensic Accounting Today

Newsletter of Ron J. Anfuso, CPA/ABV, An Accountancy Corp.

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## We Have Moved!

I am pleased to announce we recently relocated our offices to Rolling Hills Estates. Our move became necessary due to unprecedented growth, which we owe to many of you.

### Our Commitment to You Remains Unchanged

It is true that, due to the demand for our services, we have had to add additional staff. However, I recognize that for us to continue to thrive, we must maintain our commitment to meet or exceed the expectations of our referring attorneys and their clients. Our standard has been and will always remain 100 percent attorney and client satisfaction. We are organized and poised to continue to meet this challenge.

Our promise to you remains:

- Personally taking all calls that are directed to me from referring attorneys and their clients
- Prompt return of phone calls
- Thorough, exemplary work that meets the highest standards
- All work completed on time unless delays are caused by circumstances beyond our control
- Continuing to conduct our work solely with the objective of achieving the best possible settlement or testimony at trial
- Meticulous preparation for all court appearances
- Continuing to deliver all testimony myself
- Continuing to provide information I feel is of importance to you through our website, blog and newsletters.

I wish to thank those of you who have placed your faith in my firm to fulfill your Forensic Accounting needs. We look forward to continuing to serve you and your clients.

Ron

## Double Dipping and Breach of Attorney Standard of Care (Part 2)

Ron J. Anfuso, CPA, ABV, CFF, CDFA, FABFA

### The Case of Smith versus Jones & Jones (Continued)

Part one of this feature article introduced the malpractice action against the firm of Jones & Jones, LLP.\*\* In this case, the plaintiff, Simon Smith, alleged that the law firm breached the Attorney Standard of Care for Family Law practitioners. In part one, I presented background on the case of *In re Marriage of White (1987) 192 Cal. App. 3d 1022 {237. Rptr.764}*, which influenced the outcome of the Smith's marital dissolution settlement.

Nine issues were addressed in the case of Smith versus Jones & Jones, LLP. Of those, two involved the need for a Forensic Accountant. The first, *responsibility to include a Marital Standard of Living in the Marital Settlement Agreement*, I discussed in part one of this article. The second, *failure to place a cap on spousal support*, I examine here. Should you wish to review what was covered in part one and do not have our last newsletter issue handy, you may download a copy at: (<http://anfusocpa.files.wordpress.com/2014/08/newsletter-28.pdf>).

### Failure to Place a Cap on Spousal Support

It took a motion by Simon Smith to be able to place any cap at all on spousal support based on the Marital Standard of Living—a \$500,000 cap on income. This limit was not based on an assessment of the Marital Standard of Living, a major issue that would be addressed in the malpractice case.

The cap Mr. Smith was awarded still allowed for considerably more in spousal support payments than would have been anticipated if the marital dissolution case had proceeded to trial rather than settle via the Instant Marital Settlement Agreement. Thus, it was the task of the Forensic Accountant to develop alternative scenarios given the facts of the case.

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\* For an explanation of these titles, please visit our website or request a copy of Issue 3 of *Forensic Accounting Today*.

\*\* The names of the parties used in this case are fictitious. Any similarity to actual names is unintentional and purely coincidental.

The Forensic Accountant developed two scenarios, which calculated the amount Mr. Smith lost due to the double dip and not having a cap. The calculations were based on the percentage of time Mr. Smith spent with the children (five percent), and the support he would be required to pay if the dissolution case had gone to trial, should the parties have sold their home and split the stock units and home 50/50. Since child support is always determined before spousal support, it was necessary to calculate child support first, as this would reduce the amount owed for spousal support. The accountant's calculations were made based on a five-year period, 2006 through 2010.

### **Calculation Findings**

This scenario the Court considered was calculated on damages incurred based on careful review of tax returns and a five percent custodial timeshare without an MSOL cap. Also, this synopsis assumed their residence, and 2006, 2007 restricted and incentive stock options (RSUs/ISOs) had been sold and split 50/50.

1. **Over-payment of spousal support through 2009:** Failure to include an MSOL and spousal support cap derived therefrom in the MSA subjected the payor spouse to the possibility of increasing spousal support obligations with damages calculated at over \$97,000.
2. **Over-payment of child support through 2010:** Failure to equally divide the tuition obligation subjected the payor spouse to the possibility of increasing child support obligations. The damages were calculated at over \$214,000.
3. **Spousal support damages on RSU/ISOs by failing to exclude these from income:** Had the trial occurred, the community property and RSUs/ISOs would have been equally divided in kind and no additional support would have been paid. Therefore, the damages equal 100% of the additional support calculated and paid or ordered on the RSUs/ISOs. The damages were calculated at over \$284,000.
4. The amount paid in arrearages ordered on child and spousal support to be paid pursuant to December 2006 was calculated at \$98,000.
5. The amount of arrearages ordered on child and spousal support to be paid pursuant to December 2007 was calculated at \$19,000.

In addition, attorney and accountant fees were \$176,000. Thus, the total amount claimed was \$888,000.

### **Conclusion**

The Court ruled in favor of Smith. Although most of the fees were covered by the firm's liability insurance, the attorneys were required to pay a sizable deductible out-of-pocket.



## **3 Essential Actions that Ensure Forensic Accountants Will Meet Their Deadlines**

1. **Meticulous Planning:** Meeting deadlines requires thorough planning prior to beginning work on a case. Ask Forensic Accountants to detail their planning methods before handing them a project.
2. **Careful Delegation and Timely Completion of Tasks:** Part of the planning effort should include clear assignments to team members with deadlines for completing their work. The firm's managing shareholder must be expert at motivating staff, yet, at the same time, be strong and intolerant of failures to meet deadlines.
3. **Firms Should Never Take on a Case Unless They Have the Manpower to Handle the Work:** This is the most important element, yet is the most frequently violated. It seems some Forensic Accounting firms fail to realize how much failure to meet deadlines can damage their reputation and cost them business later on. *A Forensic Accounting firm should only agree to take on work when they know they will deliver on time.*



At **Ron J. Anfuso, CPA/ABV, An Accountancy Corporation**, we complete assignments on time because we diligently plan and carefully delegate our tasks... and only take on assignments if Ron and the staff can allocate the time to meet the demands of the case. We gladly share how we plan and manage our workload with Family Law attorneys and welcome you to contact us.

**Hire Ron to Take On Your Next Case. Call today: (310) 378-6606**