You’re conducting an initial consultation for a potential divorce case, and as you’re speaking to the potential client you, as all attorneys should do in an initial divorce consultation, ask the client for a list of assets owned by the client and their spouse. Your potential client responds to your inquiry with, “I don’t know.”

A first instinct may be to wonder how a person does not know the entirety of their own marital estate. But it is not at all uncommon to encounter this situation in divorce cases. Many marriages involve one spouse being totally in charge of finances – bank account balances, bills, investments – while the other has little to no knowledge of any of it. Your potential client also appears to be distrustful of their soon-to-be ex-spouse. What do you do?

While not all cases involving one spouse controlling finances involve abuse – often, spouses simply agree that one will handle the finances and it is a mutual decision – it is also important to be able to recognize cases that involve economic abuse, and to develop a discovery plan unique to your client’s needs.

Economic abuse often goes hand-in-hand with physical and psychological abuse. Economic abusers typically use three strategies:

• Financial control;
• Financial exploitation; and
• Financial sabotage.¹

Financial Control

Financial control can include a spouse actively denying the other spouse access to bank accounts and funds, demand control over the other spouse’s income (for example, demanding all paychecks be deposited into the abusive spouse’s account), or even physically taking money away from the victim spouse.²

If you have a client who has been denied access to any financial information, your first step will be to get a full and accurate picture of the marital estate. The first thing you will want to ensure is that the financially advantaged spouse files a Financial Disclosure Form. Nevada Rule of Civil Procedure (NRCP) 16.2 mandates that this form – which provides an overview of income, assets, and expenses – be filed within 30 days after service of the divorce complaint. It is an extremely important document – the rule even provides that if an asset is omitted from the form, the other party can request that they be awarded 100 percent of that omitted asset.

But maybe your client does not trust their spouse to fill out this form accurately, or suspects there have been omitted assets. Often, family law practitioners see the strategic use of vagueness in these forms – for example, under assets, a litigant may simply say “checking account” with no indication of where that account is located.

In this case, you will want to make sure the opposing party serves their initial disclosures. These disclosures, also mandated by NRCP 16.2, include things like bank account and credit card statements, tax returns and other documents showing assets, debts and income. Review these disclosures carefully. Ensure statements are provided for every account listed on the financial disclosure form. Review bank and credit card statements to look for unusual expenditures or transfers to or from unlisted accounts.

If records are needed for a longer time period,
Spousal Control of Finances

Financial Exploitation

Financial exploitation involves the abusive spouse forcing the victim spouse to generate money for the abuser. This exploitation can take the form of generating debt (coined “coercive debt”) by taking out credit cards in the victim spouse’s name, ruining the victim spouse’s credit (therefore making it harder to leave), or fraudulently taking debt in a victim spouse’s name. If your client is the victim of financial exploitation, you are going to need to make a case for the unequal distribution of community property. Per NRS 125.150(1)(b), the court must make an equal disposition of community property and debt unless there is a “compelling reason” to make an unequal disposition.

Have your client pull credit reports and search for any odd accounts. Records, including credit card applications, can then be subpoenaed from the original creditor, giving you good evidence to use in support of your request for an unequal disposition. Keep in mind that NRS 52.035 allows a nonexpert opinion as to handwriting identification as long as it is based on a familiarity not acquired for purposes of litigation. This means that if your client did not sign a credit card application, a nonexpert witness familiar with your client’s handwriting can testify that the handwriting on the credit card application was not your client’s handwriting.

Financial Sabotage

Finally, financial sabotage occurs when an abusive spouse actively seeks to prevent the victim spouse from having his or her own financial resources. Often, this takes the form of the abusive spouse trying to prevent the victim spouse from obtaining employment – for example, by inflicting visible injuries, purposefully turning off the alarm clock before an interview, or refusing to provide transportation or childcare for an interview. Sometimes abusive spouses also do things, like making constant phone calls, to cause a victim spouse to lose his or her job.

Attorney’s Fees

Regardless of the type of economic abuse, in almost all cases involving economic abuse, you will want to ask the court for an award of attorney’s fees. Sargeant v. Sargeant is perhaps the most important piece of caselaw in Nevada for divorce cases. In Sargeant, the Nevada Supreme Court held that where there is an income or asset disparity between spouses, the disadvantaged spouse should be “able to meet her adversary in the courtroom on an equal basis” without having to “liquidate her savings.”

Under this case, the court is able to make an award of attorney’s fees to the disadvantaged spouse either from the advantaged spouse or out of the community. Not only can the court have your client reimbursed for all or part of your initial retainer, but the court can also award preliminary fees to get your client through trial. This is a critical method to ensure your client is able to fully prepare for negotiations or, if necessary, for trial.

Representing a victim of economic abuse presents a unique set of challenges. If you do careful, thoughtful and efficient work, you will be able to discover the extent of the marital estate and competently navigate your client through the divorce process to their best outcome with the knowledge you did your due diligence for your client.
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