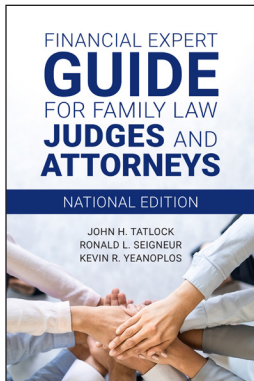


FINANCIAL EXPERT
GUIDE
FOR FAMILY LAW
JUDGES AND
ATTORNEYS

NATIONAL EDITION

EXCERPT





WHAT THE EXPERTS ARE SAYING ABOUT THE **FINANCIAL EXPERT GUIDE FOR FAMILY LAW JUDGES AND ATTORNEYS!**

“As a Fellow of the American Academy of Matrimonial Lawyers, I have been involved with many valuation experts and read many books and treatises on valuations of business interests in the family law arena. Ron and Kev have accomplished what, in my view, is the single most important goal that every valuation expert should have: They have managed to simplify—for judges and attorneys both—a subject that is complex and can easily be confusing. Many valuation experts have failed, in writing their reports or in their expert testimony, by being too complex, too esoteric, and maybe even a bit condescending. Nothing is worse than the expert who makes a judge feel threatened or uneducated. They are a lawyer’s worst nightmare. Ron and Kev have solved this challenge brilliantly—this is a wonderful, clear, understandable, and functional guide that makes the difficult easier, the complex more simple, and the mysterious more clear. This is a must-read guide for every family lawyer and every judge. I particularly liked the chapter on critiquing a business valuation report—it is a gold mine for family lawyers. Once you have read this guide, your next trial will be better—the issues will be more clearly presented, and the judicial officer will be thanking you (even if he or she doesn’t say so)!”

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“This book will surely help family law judges and attorneys to master divorce engagements involving business interests and professional practices! Tatlock, Seigneur, and Yeanoplos have condensed their vast expertise as divorce forensic experts into a deskbook that belongs on the shelf of every family lawyer. Business valuation and financial forensics can be bewildering topics for judges and lawyers who may not have accounting degrees or business school training. The *Financial Expert Guide for Family Law Judges and Attorneys* provides a solid, readable summary of the topics that matter most when facing the challenge of litigating or negotiating divorces where businesses are at stake. Those are the cases we want in our practices, and this book will build the confidence to handle them skillfully.”

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— Stacy Preston Collins, CPA/ABV, CFF

"Experienced and new attorneys alike will enhance their abilities to work effectively with forensic accountants by adding this book to their arsenal of resources. The authors cleverly relay essential strategies with good humor and memorable illustrations, especially in Chapter 6 concerning hidden and misvalued assets. Explanations about modern financial realities, including the ability to hide cryptocurrency and to leverage technology, make this book especially valuable."

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Fellow, American Academy of Matrimonial Lawyers

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— Andrew Z. Soshnick, Esq.
Fellow, American Academy of Matrimonial Lawyers

Financial Expert Guide for Family Law Judges and Attorneys

NATIONAL EDITION

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What It's Worth

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John is a shareholder with Epstein Patierno LLP, practicing domestic relations law, with an emphasis on litigating high-asset, high-net-worth cases involving substantial business and financial issues, and complex discovery and trial-preparation planning and execution.

Over his 34-year legal career, John has managed and tried complex civil cases in federal and state court involving toxic torts, product liability, securities fraud, breach of contract, fraud, trade secrets, employment law, and professional malpractice. In addition, he has represented private equity funds in fund formation, the drafting of fund transactional documents, and the acquisition and sale of fund portfolio companies.

Before practicing law, John worked for nearly a decade at a major multinational energy company and, before that, was a member of the political science faculties at the University of Houston and Wichita State University, and the director of testing at Wichita State.

He received a B.A. degree, magna cum laude with University Honors, from Wichita State University, a master's degree in political science from the University of Iowa, and his law degree from the University of Denver.

John is a regular contributor to family law publications and a presenter at family law continuing legal education programs. He has served as a faculty member for the National Institute of Trial Advocacy and Family Law Trial Advocacy Institute.

With Ronald L. Seigneur and Kevin R. Yeanoplos, John co-wrote *Financial Expert Guide for Family Law Judges and Experts* (Colorado edition), which was published in 2020.

SuperLawyers recognized John in 2017 as one of its Top 100 Colorado attorneys. The Colorado Lawyers Committee designated John as its “Individual of the Year” award recipient in 2011, and he has been recognized by Best Lawyers in America for Family Law from 2014 through 2022, as a Colorado Super Lawyer in Family Law from 2012 through 2022, and in Commercial Litigation for 2007 and 2008. He served from 2011 until 2018 as the co-chair of the CBA/DBA Professionalism Coordinating Council and currently serves as the chair of the Colorado Lawyers Committee Education Task Force.

RONALD L. SEIGNEUR

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Ron has been an adjunct professor at the University of Denver, Strum College of Law and Daniels College of Business where he has taught law firm leadership and business appraisal classes. He has a B.A. from Michigan State University and an MBA from the University of Michigan. He is a frequent speaker and author on valuation, cost of capital, and professional practice issues including leadership, strategic planning, compensation, and related topics. Ron is currently writing a children's book on the sayings of our elders with his daughter, Chelsea.

Ron has been actively involved in a traditional tax compliance and attestation practice for over three decades and works with clientele throughout the U.S. on the valuation of closely-held business interests and other intangible assets, including patents, trademarks and brand-related assets, whether it be for divorce or other business litigation, gift and estate taxes, mergers and acquisitions, or ESOPs.

Ron has been endorsed as an expert witness in several jurisdictions, including federal and state courts, U.S. Bankruptcy Court, and for private arbitrations. Ron has served as a court-appointed special master, receiver, and trustee.

Like Kevin, Ron is a popular and experienced presenter and frequently lectures throughout the United States on the topics of valuation, practice management, leadership, and succession and exit planning. He has made presentations to the Environmental Protection Agency, the American Institute of Certified Public Accountants (AICPA), the American Society of Appraisers (ASA), several state CPA societies, the State Bars of Colorado and Nevada, and many other professional organizations. He has been a planning committee member and a faculty member for the American Association of Matrimonial Lawyers (AAML)/Business Valuation Resources (BVR) Divorce Conference, the American Institute of Certified Public Accountants' Expert Witness Workshop, and the American Society of Appraisers Business Valuation Conference. Ron is currently on the faculty of the National Institute for Trial Advocacy.

Ron is on the editorial board of *Law Office Management, Accounting and Financial Planning for Law Firms*, and the *Business Valuation Update*

newsletters. Ron is a charter member of the American Academy of Matrimonial Lawyers Business Valuation and Forensic Division and a Fellow of the College of Law Practice Management. Ron was the chair of the 2012 and 2013 AICPA Forensic and Valuation Services National Conferences.

Ron has been an active volunteer to his profession and to other nonprofit interests over his career. He has volunteered time and perspective to his profession, including prior service as an AICPA member of its governing council, commissioner on the AICPA's National Accreditation Commission, chair of the AICPA's ABV Credential Committee, and board member and past chair (2009-10) of the Colorado Society of CPAs. The AICPA honored Ron's contributions by naming him its 2005 and 2008 Business Valuation Volunteer of the Year and inducting him into the AICPA Business Valuation Hall of Fame in 2006, recognizing fewer than 30 individuals whose lifetime achievements and contributions have significantly advanced the valuation discipline and have enhanced the valuation profession for CPAs.

KEVIN R. YEANOPLOS

Kevin R. Yeanoplos, CPA/ABV, ASA, is a shareholder and the director of valuation services for Brueggeman and Johnson Yeanoplos PC, a firm with offices in Seattle and Tucson, Ariz., that specializes in the areas of business and intellectual property valuation, financial analysis, and litigation support. Kevin is also one of the founders of YS Advisory Services, utilizing his extensive experience over the last four decades in advising professional service providers and their clients on strategic planning and management issues. He is an adjunct professor at The University of Denver Daniels College of Business where he teaches business valuation in the Graduate School of Accounting.

Over the last four decades, Kevin has assisted clients around the country with the valuation of a diverse array of intangibles, including patents, trademarks, and song catalogs to name a few, whether it be for divorce or other litigation, financial reporting, gift and estate taxes, mergers and

acquisitions, or ESOPs, among others. The diversity extends to Kevin's extensive business valuation experience, with a partial client roster that includes high-tech companies, aircraft parts manufacturers, biomedical companies, construction companies, professional practices, and automobile dealerships. As both an expert witness and court-appointed neutral in state and federal courts across the country, Kevin has assisted triers of fact in understanding a variety of complex valuation, financial analysis, and damages issues.

A popular and experienced presenter, Kevin frequently lectures throughout the United States on the topics of valuation, applied finance, and financial analysis, including presentations to the Federal Bureau of Investigation, the American Institute of Certified Public Accountants (AICPA), the American Society of Appraisers (ASA), the State Bars of Arizona and Utah, and many other professional organizations. He has been a faculty member for the AICPA's National Business Valuation School for close to 25 years and is currently on the faculty of the National Institute for Trial Advocacy.

An accomplished author, Kevin has contributed to *Valuing Professional Practices & Licenses*, *Forensic Accounting in Matrimonial Divorce*, *Financial Valuation: Application and Models*, *Guide to Personal v. Enterprise Goodwill*, and *Reasonable Compensation: Application and Analysis for Appraisal, Tax and Management Purposes*, among many others. He is currently lending his editorial skills to the *Financial Valuation and Litigation Expert* and the *Business Valuation Update* as a member of their respective editorial boards.

Throughout his professional career, Kevin has volunteered his time and talents to give back to the public and his profession, including prior service as a commissioner on the AICPA's National Accreditation Commission, chair of the AICPA's Accredited in Business Valuation (ABV) Credential Committee, board member of the Arizona Society of CPAs and chair of the Arizona Board of Appraisal among others. He is a former member of the AICPA's ABV Examination Task Force, which is responsible for developing the exam that those that hope to earn the ABV credential must pass. He is currently serving as a commissioner on the Arizona Commission on Judicial Performance Review, appointed

by the Arizona Supreme Court, and as a member of The Appraisal Foundation's Business Valuation Resource Panel.

The AICPA honored Kevin's contributions by naming him their 2006 Business Valuation Volunteer of the Year and inducting him into the AICPA Business Valuation Hall of Fame in 2010, recognizing fewer than 30 individuals whose lifetime achievements and contributions have significantly advanced the valuation discipline and have enhanced the valuation profession for CPAs. The Expert Resource Connection group of nationally recognized financial expert witnesses recently named Kevin the 2018 recipient of the Thomas Burrage Award for Compassion, Collegiality, and Character. In 2022, the Arizona Society of Certified Public Accountants honored Kevin with a Lifetime Achievement Award for his contributions to the CPA profession.

The 1983 Magna Cum Laude graduate of the University of Utah and 2021 graduate of the University of Denver is a Certified Public Accountant Accredited in Business Valuation (CPA/ABV) and was in the charter class of those earning the ABV credential. In addition, he is an Accredited Senior Appraiser in the business valuation discipline for the American Society of Appraisers.

When he's not chasing down the value of the invaluable, you can find Kevin running around the country on a 200-mile Ragnar Relay, raising money for a children's hospital as part of the Distinguished Clown Brigade, using his business acumen as a board member for a local theater or radio station, volunteering for the Special Olympics, educating the public about the wonders of nature as the president of the Tucson Orchid Society, advocating for royalty reform as a former member of the National Academy of Recording Arts and Sciences, or interviewing the likes of Roger Daltrey, John Oates, and Brian Wilson as a beat writer for AXS Entertainment and the webzine that he recently founded, Trebled Minds.

FOREWORD

The three of us, as authors of this guide, participated for many years in a nationally recognized annual litigation training program for newly minted family law attorneys. This week-long program is focused exclusively on the attorney's preparation for conducting a family law permanent orders hearing. The attorney-participants apply what they have learned in a carefully structured trial preparation sequence that flows from opening statements through lay and expert witness examinations to closing arguments. During their final half-day trial, the attorneys represent the petitioner or the respondent in a dissolution hearing where Kevin and Ron assume the roles of financial experts who have valued the respondent husband's medical practice using commonly accepted valuation approaches and methodologies, and John, as a faculty member, serves as the judge for the hearing and a mentor after the mock trial.

After being involved in this annual week-long training together for several years, we each have an enhanced recognition of the need to assist the attorneys to grasp the economic and business appraisal concepts necessary for them to understand and apply the well-designed model valuation reports that they must use in litigating the value of the husband's 25% interest in his radiology practice. In the program's trial preparation materials, the husband's expert has produced a report that indicated a value of \$660,000 for the husband's interest in the practice, while the wife's expert has produced a report indicating a value of \$1,960,000 for the same 25% ownership interest. Child custody and maintenance issues are also litigated at the final hearing but with

a focus on providing the new litigators with the knowledge needed to understand how to analyze the strengths and weaknesses of the two expert opinions. The authors of this guide believe the guidance we have compiled is spot-on for this sort of applied practical approach to family law litigation that will be useful whenever valuation and other related financial issues are in play in a dissolution of marriage proceeding.

Attorneys involved in family law matters must comprehend financial issues to serve the needs of their clients adequately. While some dissolution proceedings may proceed with little or no need to delve into complex appraisal approaches, methods, and techniques or related financial issues, many require the attorney—and the courts, for that matter—to know how to assess their clients' needs with respect to the best use of financial experts and to assess the work product those financial experts produce. The cooperation between legal counsel and a financial expert is paramount to running an efficient case on behalf of the client. The coordination of efforts and the flow of information between attorneys and financial experts is often the critical difference between success and disappointment at trial.

The *Financial Expert Guide* provides excellent guidance for family law practitioners, including the paralegals and other paraprofessionals who support the work of the attorney. While the guide is targeted to legal practitioners with less than five to seven years of trial experience, we firmly believe it can be an invaluable resource for more experienced attorneys and legal professionals, as well as judges and mediators, who seek input on appraisal concepts and best practices. The guide provides exemplar reports for both a conclusion of value level of expert service and a calculation of value level of service, along with several useful reference guides that assist in the examination and understanding of financial statements, a bibliography of other valuation reference sources, and commonly used valuation and financial forensic terms and concepts.

DEDICATIONS

JOHN H. TATLOCK

To Laurie, Erin, and Beth, without whom this book would not have been possible.

RONALD L. SEIGNEUR

To my bride and wife of more than 42 years, who has endured long hours of me banging on a keyboard or with my nose in professional readings, trying to capture meaningful thoughts related to my life work as a professional accountant and financial expert.

KEVIN R. YEANOPLOS

To my darling Julie, who taught me that perfection comes in the process of doing.

ACKNOWLEDGEMENTS

The authors accept full responsibility for the text of the *Financial Expert Guide for Family Law Judges and Attorneys*, but the quality of the effort is the result of contributions from many generous individuals who contributed their time, attention, and experience to the effort and supported and provided guidance either throughout the writing or who at critical times redirected, sharpened, refocused, or vaporized early drafts of chapters or the overall manuscript.

First and foremost, Chelsea Seigneur managed the original Colorado edition manuscript—chapters, preliminary sections, addendums, and appendices—with dedication to making this a comprehensive, accurate, and top-drawer professional publication. We also want to recognize Jessika Krueger at Epstein Patierno LLP who guided the current manuscript for the initial Colorado publication much of which forms the basis for this national edition.

The manuscript also benefited extensively from the insights, guidance, comments, and drafting recommendations from a dedicated group of family law judges, attorneys, and professionals who reviewed and commented on the overall manuscript as well as individual chapters. This talented group generously contributed their time, judgment, and guidance to John, Ron, and Kevin with their thoughtful recommendations, occasionally unsparing critiques, and frequent and welcome encouragement during the effort. We are grateful and extremely proud to have the opportunity to acknowledge the substantial contributions that Judge

Financial Expert Guide for Family Law Judges and Attorneys

Ann Frick (Ret.), attorneys Gary Polidori, Kim Willoughby, Megan Sherr, and former Program Director Mark Caldwell at the National Institute of Trial Advocacy (NITA) provided us through their comments and recommendations to our initial Colorado edition of this book. Brenda Clarke, Ron's partner at Seigneur Gustafson LLP, generously allowed us to include her article on "Reading Financial Statements" as an appendix to the guide, and Mark Caldwell and NITA graciously gave permission to include Mark's excellent summary on expert witness examination as an appendix.

The three of us—John, Ron, and Kevin—thank all of the contributors who made this guide possible. Without their contributions, the guide would not have been possible.

INTRODUCTION

Financial issues are often the cornerstone of dissolution of marriage cases. Contests over the division of marital assets and debts, the determination of whether individual assets are part of the marital estate or one spouse's separate property, and disagreements over value and allocation frequently merge to become a primary area of focus of protracted domestic relations litigation. If a private, closely-held business is part of this property mix, spousal disputes frequently become even more charged and contentious. The litigation spreads to embrace financial and valuation experts who are engaged to perform a host of financial services, ranging from the valuation of assets, particularly closely-held businesses, asset tracing to assist the court in classifying the asset as either marital or separate property, and engaging in the financial forensics necessary to identify and locate concealed or misvalued assets.

For the parties, the mistrust and future financial uncertainty loom from the outset of the case and assume different features and complexity throughout, accompanied by rising and falling anxiety.

For the financial experts, the rules of evidence, existing relevant case law, and other legal issues can create roadblocks to an effective engagement if one is unfamiliar. Vast differences in jurisdictional case law and statutes also add to the complexity of sorting out financial issues in dissolution of marriage proceedings.

For the attorneys, the financial issues introduce another evidentiary layer to the case and require a specialized expertise that must be

communicated to the court in a clear, persuasive, and unassailable combination of fact, logic, professional standards, and evidentiary compliance. Efficient and effective case management requires the highest and most efficient coordination between attorney and expert for both sides.

And, finally, for the judges and magistrates who must sift and evaluate the competing evidence, theories, and arguments, the special complexity that business valuations introduce requires a solid grounding in the financial concepts and valuation standards that may be generally understood, but may veer into new theories, approaches, and methodologies that have yet to be addressed in existing appellate opinions.

To assist all the parties confronting the many and varied financial challenges domestic relations cases present, the authors prepared this guide to assist all of them, but especially the attorneys and judicial officers who must present and decide these cases. For parties, attorneys, and financial experts, **Chapter 1** describes and summarizes the essential requirements for effective attorney-expert cooperation in a case with expert valuation of a marital business as a central element. We use selected representative statutes and case precedents as an example of the importance of understanding respective local jurisdictional rules and protocols in any specific dissolution proceeding. For this edition, we have not attempted to address all of the jurisdictional differences between states.

Chapters 2, 3, and 5 provide the fundamental building blocks for the valuation analysis of a business, beginning with the discussion of the essential standards and premises of value that must apply in every valuation engagement. This is then followed by the analysis of the business owners' reasonable compensation and the specific recognized approaches and methods for conducting and reporting the results of a valuation analysis. In conjunction with Chapters 2, 3, and 5, **Appendices 1 and 2** provide an example of a valuation report and a calculation report. An exemplary detailed conclusion of value report in Appendix 1 presents a comprehensive assessment of the privately held business in the context of its market and performance compared to similar businesses in its business or industry. Appendix 2 presents a calculation of value

example, which is more limited in scope and often used for settlement and mediation purposes to conserve both costs and time.

Chapter 4 begins with a survey and summary of some of the most fundamental valuation issues and legal principles that are relevant to dissolution of marriage proceedings.

To address the often-darker side of financial analysis in domestic relations cases, **Chapter 6** focuses generally on financial forensics, but more specifically on concealed or misvalued assets and the techniques and approaches available to the forensic financial analyst and investigator to locate and properly value those hidden or undervalued/overvalued assets. Detailing the last steps once the valuation analyst has completed his or her work, **Chapter 7** focuses on the attorney's work preparing for the hearing that presents the expert's opinions and methodologies to the court. Chapter 7 guides the practitioner and the court in systematic detail through the steps for analyzing and applying the financial expert's report, from data and first principles through the analysis and conclusions that the court must evaluate, weigh, and apply as part of a permanent orders hearing.

Finally, **Chapter 8** addresses practical considerations for financial experts when considering engagement in a dissolution proceeding. Experts will find the sample engagement letters, statement of assumptions and limiting conditions, document request, management questionnaire and other practice helps particularly useful.

The guide also includes valuable appendices discussing in detail cost of capital (**Appendix 5**), understanding financial statements (**Appendix 3**), important emerging issues raised in a sample valuation case relating to the appropriate standards of value attorneys and experts must consider (**Appendix 4**), preparing and conducting a valuation experts' direct examination (**Appendix 6**), a glossary of financial terms used in business appraisals (**Appendix 7**), and a robust bibliography (**Appendix 8**). The authors welcome comments and suggestions on how we can continue to expand and evolve the guide to make it more useful for family law attorneys and domestic relations and appellate judges.



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