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Life After Love Gone Wrong – A Fox Rothschild Family Law Podcast Series

Episode Three: Mo Money Mo Problems

Featuring Sandra Fava, Katherine Nunziata and Dan Roche

Sandra Fava: Hi everyone, welcome to Life After Love Gone Wrong. We are Sandra Fava and Katherine Nunziata, two Family Law attorneys from Fox Rothschild, an *AmLaw* 100 firm with offices all over the country, in New Jersey and beyond. We are here to ask and answer the tough questions about Family Law topics like divorce, custody, prenups and all sorts of other family law issues, which may come up in your life that you need to be informed about.

Katherine Nunziata: We recognize that if you are involved with a family law issue, your life doesn't begin or end with the law. We are bringing you this legal lifestyle podcast to answer your questions about a difficult process, while helping you live your life to the fullest along the way.

Sandra Fava: Family law matters are no laughing matter, but we hope to bring some levity, transparency and, dare I say, fun to these difficult topics. We hope you enjoy this podcast designed to help you through life after love gone wrong.

Sandra Fava: Hello there, and welcome back to the Life After Love Gone Wrong podcast. We're Sandra and Katherine, Family Law attorneys from New Jersey, here to answer the tough questions about divorce that no one wants to talk about, but everyone wants to know. Today, we have a guest to help us talk about one of the most uncomfortable subjects on the planet: money. But be prepared to get comfortable with being uncomfortable because if you're going through a divorce, this is something you have to get up to speed on right away.

Katherine Nunziata: When we have clients come in for initial consultations, especially clients who may have been out of the workforce for a while, or earn substantially less than their spouses earn, there is always an aura of taboo surrounding discussions about finances. I hate to say that these clients are mostly women who sacrifice their careers to raise a family, only to be many years out of the workforce and feeling out of touch with the family finances as they are looking at a divorce. Many are reluctant to proceed with a divorce for this very reason. We're here to tell you that you're not alone, and there is absolutely nothing wrong with wanting to get knowledgeable about your finances. In fact, you have to do this if you're going through a divorce.

Sandra Fava: So today, we have Dan Roche, who is a Partner at Marcum LLP, a national accounting firm. He's here to answer the question everyone is reluctant to ask about finances. Thanks for joining us, Dan.

Dan Roche: Happy to be here.

Sandra Fava: You have been immensely helpful in some of our cases over the years, assisting as a forensic accounting expert. We'll talk about the role of a forensic expert a little while later. But, before we get into that, I'm hoping you can run us through some basic questions about household finances our listeners are curious about. When we have clients who might be a bit in the dark about the family finances, we always advise them to do a little recon at home before starting the divorce process. One thing we ask them to do is to take a look in the family filing cabinets at financial records and statements to create a list of accounts that they can find and make copies of the statements if they can. A lot of times the clients tell us they don't know what they're looking for. In your opinion, what kind of financial information is most important to gather at the beginning of a case?

Dan Roche: OK, that's a great question. The tax returns will be the most critical documents that you can gather, as they will give you a lot of information about the family finances. They're really helpful in serving as an initial roadmap for marital assets and income.

Katherine Nunziata: So, are you talking about that two-page form that all of the taxpayers sign when they do their taxes in April? Is that enough?

Dan Roche: So, that is the form 1040, which provides a summary of the party's tax return. But it's important to know that's not the complete return. A full federal tax return will be more than just those two pages and can be quite long, depending on the complexity of the return. It will have a lot of helpful information that can show you, the attorney, what you need to look into further. The state returns will have helpful information, too.

Sandra Fava: Like what?

Dan Roche: Again, the tax returns are a really good place to start when you're considering what the universe of assets and income is for a marital estate. You mentioned the two-page 1040, that's really a summary of the information presented on the rest of the return. After the 1040, there is schedule A, which shows itemized deductions. This is a bit shorter this year, 2018, given the recent change in the tax law. Using this Schedule A, you may be able to do the following: one, Identify any real estate taxes paid. Then you ask yourself, do I own real estate? Because if you don't own real estate, but you're paying real estate taxes, you might have a hidden asset. Identify mortgage interest paid. Similar vein, do you have a mortgage? If you don't have a mortgage, and you're paying mortgage interest, you may have a real estate asset. Moving on from there, the next schedule is Schedule B. This shows interest and dividend income and also may list the source of these earnings. So this Schedule B is important as you can see all the reported bank, or investment accounts that generated interest income or dividend income in a

given year. So, while you're rifling through those family filing cabinets, you can make sure to look for these statements. Schedule C and Schedule E reflect monies earned from self-employment, rental real estate activities, income from trusts, and income from ownerships and partnerships and s-corporations. Also, don't just look at the most recent tax return. We typically suggest looking at the last five years, side-by-side, so that you can see fluctuations in assets and income. This can help identify if any divorce planning had taken place in the most recent years. Similarly, if a business or businesses are owned by one or both of the parties, obtaining the business income tax returns, again we suggest five years, is also an excellent starting point for your analysis into the earnings and assets of that business.

Katherine Nunziata: Is there anything else with a tax return that's helpful?

Dan Roche: Yes, your supporting wage documentation may also be stored with, or near, the tax returns, which you'll also want to gather – W2s, K1s, 1099s,

Sandra Fava: Can you explain the differences?

Dan Roche: Sure, all three of these forms – W2s, 1099s and K1s – are forms that report someone's earnings, and sometimes other information such as deductions. The difference between the forms is really a person's employment status at a company. W2s are employee wages, so if you're a traditional "employee," your earnings will be reported on a W2. If you're an independent contractor, or a freelancer, not an "employee," your wages will be reported on a 1099. What's important here is that an independent contractor will receive different 1099s from each company that hires them. So making sure that you have all the 1099s is important to understand the true earnings of an individual. Finally, form K1 reports earnings from partnerships and s-corporations. This includes business owners, partners at law firms, partners at accounting firms, etc. who may receive a salary from that entity but also share in the profits of that business. Additionally, you may also get K1s for ownership in private equity and hedge fund investments.

Katherine Nunziata: What other information might be helpful?

Dan Roche: Bank statements are helpful, and it's important to look out for consolidated bank statements, which will show multiple accounts held with the same bank.

Sandra Fava: What about retirement accounts?

Dan Roche: Getting these statements is also very helpful because they're not always held at big banks and, therefore, sometimes can be more difficult to track down later – especially if your spouse isn't cooperating with discovery requests.

Sandra Fava: We get a lot of questions about the difference between 401Ks, IRAs and Roth IRAs. Can you explain the differences?

Dan Roche: Sure, it's pretty simple. 401Ks, IRAs and Roth IRAs are different types of retirement plans. 401Ks are company-sponsored plans called defined contribution plans. The employer sets up the plan and employees voluntarily contribute to the plan on a pre-tax basis. Companies can also choose to contribute money to their employees' plans -- some call it a match, some call it profit sharing. IRAs and Roth IRAs are retirement vehicles not associated with a company. These are individual plans. The difference between an IRA and a Roth IRA is that IRA contributions are tax deductible and withdrawals are taxable. Roth IRA contributions are not tax deductible, but withdrawals are generally tax-free. There are also some income limitations on Roth IRAs.

Katherine Nunziata: OK. Why is it important to gather all of this information at the beginning?

Dan Roche: Well, because it helps you to know what it is you're looking for, and it's necessary for a forensic accountant to do their job, if they get involved.

Sandra Fava: So, can you explain what the role of a forensic accountant is, and how that differs from your regular accountant?

Dan Roche: Your regular accountant is going to prepare your personal tax returns. They may even prepare a tax return, or a financial statement, for a business that you own. A forensic accountant uses the information provided by the regular accountant, along with other documents such as bank or credit card statements, to provide the values of businesses owned by one or both of the parties, or to prepare an income analysis, or to prepare an asset tracing analysis, you know sort of to find hidden assets. And, in some instances, prepare an analysis of spending/saving habits of the parties during the marriage. The goal is to understand the value of all the assets that exist, as well as all of the income that is being earned, in order to fairly divide these assets among the parties, and make sure each party has a fair and equitable amount of income in the future.

Katherine Nunziata: Are there specific kinds of divorce cases, for example, that might need a forensic expert?

Dan Roche: Sure. Any case where there is a business to value will obviously need that performed by a forensic accountant. Any time there is a spouse that is self-employed, or has a cash component, such as the owner of a pizzeria, to their income; it's good to have a forensic accountant involved. Cases where there is a unique compensation structure, or a lot of business income are good candidates. A forensic accountant is also helpful when the parties have wildly different reflections of what the marital standard of living is because a lifestyle analysis can be

performed. Any time there is an allegation that monies have been dissipated, you might need an accountant to do a tracing.

Katherine Nunziata: Interesting. Do you think there is an advantage, or a disadvantage, to having a joint expert vs. an individual expert?

Dan Roche: That's a good question. Having a joint expert should allow for both parties to have input into the analyses being prepared by the forensic accountant, so both sides feel like they are being treated fairly with respect to marital assets and income. Also, the hope is to keep the cost of accounting analyses low as only one expert is preparing the work. Hiring a joint expert tends to be successful when the parties are amicable and the extent of the marital assets into too great. However, as you know, divorcing parties do not always tend to be amicable, which can lead to adversarial and contentious divorces, making the work of a joint expert very difficult, or impossible. Also, in my experience, larger and more complex marital estates tend to benefit from the individual expert's ability to focus on the analyses and not have their progress impeded by correspondence with both parties who have opposing views on the treatment of assets and income. At the end of the day, it's really a case-by case basis.

Katherine Nunziata: Thank you so much, Dan. That was so helpful. It can be intimidating for a person to ask these questions, but the answers have immense value. We like to wrap up our episode on each podcast with the top three takeaways from the day's episode. Dan, do you want to do the honors?

Dan Roche: Sure, I'd love to. So, one: get your tax return and have someone walk through it with you as it holds so much information about your family finances. Two, don't be afraid to ask what you don't know. If you're getting divorced, you should have a team of professionals ready to help you get the info you need to make an informed decision about your options. Three, talk to your lawyers about whether hiring a forensic expert is appropriate in your case sooner rather than later as they can help do a lot of the heavy lifting on the financial issues. That will make it a lot easier to bring your divorce to a conclusion.

Sandra Fava: Thanks, Dan. If any of our listeners have questions for us, or Dan, about what we discussed, or have a topic you want us to cover, please email us at LifeAfterLovePodcast@foxrothschild.com. On the next episode, we're going to discuss a different kind of expert – a custody evaluator, and the do's and don'ts of hiring one. Until then, we're Sandra and Katherine, here to help you through life after love gone wrong.