

Vocational Evaluations Need New Basis in Reality

By Fred Silberberg

It is not uncommon in family law cases to require parties to undergo vocational evaluations. The purpose of these evaluations is to provide the court with information on a party's earning capacity when that party is seeking spousal support.

Unfortunately, these evaluations rarely serve what could be a useful purpose. The "experts" who render these reports often leave out key information. The reports don't demonstrate that the subject actually could obtain the employment that the evaluator suggests. Without that information, the party who is going to receive the support gets cheated.

Family Code Section 4331 authorizes these types of examinations. Its purpose, according to the code, is to determine "a party's ability to obtain employment." The evaluation is supposed to tell the court how much training is required as well as what kind of job the person could find at present. The evaluation, however, often fails at these goals.

When doing the examination, the evaluator typically determines the subject's interests and skills. On discovering the subject's interests and skills, the evaluator usually will conduct research to determine what types of jobs are available to

the subject and their pay scale. If the evaluator does not find that the subject has any immediately employable skills or finds that the person's skills may lead to lower wages than the subject could earn with additional training, the evaluator investigates what additional training may be available.

While all of this information is interesting, it fails to disclose whether the subject actually is able to get the jobs that the evaluator thinks are out there.

These reports, which cost between \$1,500 to \$3,000, should tell us what the party could make in the workplace and also should describe what work the subject has been offered. After all, case law on imputing income turns, in part, on refusing gainful employment. Without any evidence of offers of employment, the information provided through these reports are as reliable as a crystal ball.

Take the following real-life hypothetical: Margie was a stay-at-home mother for 16 years when her marriage to Michael ended. In addition to taking care of the children, she bicycled, lifted weights, jogged, rode horses and skied. Margie also was an excellent cook, and she also dabbled in businesses that never amounted to much. She had a woman's clothing shop and a gift-basket business, but they

didn't make it. She also worked as a party planner, although she decided not to pursue that, either. And, while she had a high school diploma, she had no office skills and suffered from minor depression.

The evaluator hypothesized that Margie could make money as a personal trainer after completing the required education. The evaluator projected how much time it would take for Margie to accomplish this and discussed the types of jobs that would be available to her at that time, based on the jobs that were available now. By that time, however, the market and the economy could change significantly.

The evaluator then suggested that Margie could work for a florist, which would have paid slightly more than minimum wage. Margie also could work for a party planner, although the evaluator couldn't find much available in terms of jobs, and there was little market information available on assistant party planners. Finally, the evaluator concluded that Margie could work as an assistant chef and gave referrals to various catering services. She also surmised that, if a service or restaurant did not hire her, she could work in a private home as a cook.

The problem with this, and most evaluations, is that it is based on speculation.

Although it might be possible for Margie to get these jobs, it still is rather conjectural and doesn't consider Margie's depression. The problem is that evaluations state occupations that one could do, but they don't demonstrate that the subject actually could get hired. Moreover, these evaluations rarely address physical or mental limitations.

For these evaluations to be useful, they need to go further. They should state what employment is being offered to the subject, not just what might be offered if contingencies are met. If that means having the subject interviewed by prospective employers, so be it. Without that additional step, the report is mere conjecture. If a court makes an order based on the report's unrealistic assumptions and the employment cannot actually be attained, the supported spouse will receive a lesser amount of support than is needed.

If these evaluations are to be used, they need to be relevant to the specific situation of the party being evaluated. Without that, there is no reason to conduct them at all.

Fred Silberberg is a certified family law specialist with offices in Century City.

Forum