

# Should new (divorce) attorney negotiate a settlement without seeing old documents?

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August 23, 2012 | by Einhorn Barbarito

**Dear Ask the Attorney:**

**Should I have my new (divorce) attorney negotiate a settlement when he never saw my CIS or interrogatories, only the report from the forensic accountant?**

**L.E.**

Dear L.E.,

The financial issues that will be dealt with in your divorce are significant, and will have far ranging effect for you. It is important, therefore, that before waiving your right to a Trial by entering into a matrimonial settlement agreement (a legally binding contract between you and your soon-to-be former spouse), you and your attorney must have a full understanding of the terms and obligations contained in that agreement, and the basis for those terms and obligations.

You have the right to pursue discovery, including but not limited to: exchanging case information statements (CIS), interrogatories, and request for documents/admissions; taking depositions; hiring experts including accountants and appraisers. You also have the right to pursue other discovery techniques as may be available pursuant to the Rules of Court. These are all helpful tools to fully determine income, assets and liabilities that affect the overall settlement of your case. Full and complete disclosure is very important.

With that said, the type and extent of discovery warranted varies in each case. If you believe that the report from the forensic accountant comprehensively addresses all income, assets and liabilities, and

that your attorney has a complete and full understanding of all information/issues relevant to your case, then he or she may be able to competently negotiate a settlement on your behalf without the need for exchanging case information statements and/or interrogatories. Generally, a forensic accountant in divorce cases can perform tasks including but not limited to the following:

- 1.Prepare a lifestyle analysis – calculate spending habits of the parties to determine each party's financial need for support (i.e., alimony and child support);
- 2.Prepare an income analysis – calculate the earnings and/or potential earnings of each party to determine the ability of pay support;
- 3.Investigate any dissipation of marital assets – trace the flow of funds between accounts;
- 4.Prepare a comprehensive schedule of assets and liabilities;
- 5.Determine the value of business interests, stock ownership rights, pension plans, etc.
- 6.Calculate tax implications of certain assets, liabilities and support payments.

All of the above will be helpful in settlement negotiations.

At the end of the day, it is your comfort level that is important as it is you who will be bound by the terms of the agreement. It is your decision what discovery to waive, if any. Keep in mind that the key is to be able to make an informed decision as to whether the settlement terms your attorney negotiates on your behalf are acceptable.

*“Ask the Attorney” is a blog in which answers to your legal questions submitted to [asktheattorney@einhornlawyers.com](mailto:asktheattorney@einhornlawyers.com) may be answered. The answers to the questions are posted every Thursday and are for informational purposes only and are not to be construed as legal advice or the creation of an attorney-client relationship. The facts of each case are different, therefore you should seek competent legal representation.*