

Advice for Attorneys on Selecting a Business Valuation Expert Meeting the Professional Standard of Care

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Attorneys are often called on to select an expert to value a client’s business interest or to perform expert witness and litigation support services. There are many business valuation professionals who provide these services. It is the attorney’s responsibility to choose the person with the right expertise and the highest level of competence. There are consequences for the attorney who fails to understand the issues in this selection process.

There are three main issues for attorneys to consider when selecting a business valuation expert:

1. Evaluating the credentials and experience of the expert.
2. Understanding the implications of the Daubert case and the requirement that the court and the attorneys should adequately qualify parties claiming expertise.
3. Anticipating the unfavorable impact of selecting non-experts to testify.

Evaluating business valuation credentials

There are many credentials granted in the business valuation (BV) field. Many BV experts, particularly those who are members of the ABA network, have completed rigorous training programs and have extensive experience. In addition to their BV credentials, many ABA members also hold related credentials in accounting, consulting, brokerage, or other professions that are related to business valuation.

The chart below provides a comparison of the requirements for standard BV credentials. Attorneys and judges may find this information useful in determining the most qualified expert for a particular case. A good faith effort has been made to accurately present the requirements compared. It will be evident that certain credentials require more rigorous qualifications and experience.

Business Valuation Credentials A Comparison of the Primary Requirements to Obtain & Maintain						
Requirement	CBA (1)	ASA (2)	AM (2)	CVA (3)	ABV (4)	CFA (5)
Education	College/Equiv.	College/Equiv.	College/Equiv.	College/Equiv.	College/Equiv.	College/Equiv.
Experience	No Minimum	5 years of 2,000 hours (some offsets)	2 years of 2,000 hours (some offsets)	No Minimum	Involved in 10 business valuations	3 year learning period
Qualifying Examination	Proctored, closed book	Proctored, closed book	Proctored, closed book	Take-home, open book	Proctored, closed book	3 annual, closed book
Submit reports to a qualifications review committee	Yes, 2 reports, rigorously reviewed by leading business appraisers	Yes, 2 reports, rigorously reviewed by leading business appraisers	Yes, 2 reports, rigorously reviewed by leading business appraisers	None	None	None
Continuing professional Education and re-certification	Under consideration	Yes, 100 credits; every five years	Not applicable, as expected to advance to ASA	None	60 hours and involvement in 5 reports every 3 years	None
Organization has a body of professional bus. valuation standards	Yes, for over ten years	Yes, for over ten years	Yes, for over ten years	Yes, since 1998	Under consideration	None
Organizations Awarding Closely Held Business Valuation Credentials Track to the footnote numbers following the above designations						

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(1) CBA:	Certified Business Appraiser from The Institute of Business Appraisers, Boynton Beach, Florida
(2) AM/ASA:	Accredited Member and Accredited Senior Appraiser from the American Society of Appraisers, Wash. D.C.
(3) CVA:	Certified Valuation Analyst, from the National Association of Certified Valuation Analysts, Salt Lake City, Utah
(4) ABV:	Accredited in Business Valuation, awarded to CPAs by the American Institute of Certified Public Accountants
(5) CFA:	Chartered Financial Analyst from the Association for Investment Management and Research
FIBA:	Fellow of the Institute of Business Appraisers, an honorary designation awarded for technical leadership and contribution to the Institute and the profession.
FASA:	Fellow of the American Society of Appraisers, an honorary designation awarded for technical leadership and contribution to the Society and the profession.
Other related but different designations often held by persons performing business appraisal services	
CPA:	Certified Public Accountant from the American Institute of Certified Public Accountants, an accounting, not a business valuation designation.
CBI:	Certified Business Intermediary from the International Business Brokers Association, a business brokerage, not a business valuation designation.

Implications of the Daubert case

It has been estimated that expert witnesses are used in approximately 80% of civil cases. Historically, the rules of evidence regarding the admissibility of experts have been easy to satisfy. Judges have generally concluded that the “experts” called to testify before them possess adequate qualifications. In the Daubert case (Daubert v. Merrell Dow Pharmaceuticals, Inc., 509 U.S. 572, 589 (1993)), the U. S. Supreme Court made it clear that the court (and thereby the attorneys) should adequately qualify parties claiming expertise.

By the end of 1997, there were approximately 800 cases that cited the Daubert case. Clearly, the burden is on the attorney to determine that the BV expert has the appropriate qualifications. There are people who promote and perform business valuations without the knowledge and experience, and in some cases, without the minimal competence required, to represent themselves as a BV expert.

Unfavorable impact of hiring non-professional

There are numerous cases that provide examples of unfavorable findings related to the use of non-BV experts such as accountants, business brokers, professors, doctors, dentists, and other industry-specific consultants. Although they may be experts in their professions, they are unlikely to be qualified as an expert in the valuation of interests in a business or professional practice.

Because the tax court handles a significant number of business valuation cases, tax court judges tend to be more knowledgeable about what constitutes business valuation expertise. Following is a small sample of various cases in which the court has found the BV “experts” lacking.

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Estate of Samuel J. LeFrak and Ethel LeFrak v. Commissioner, T.C.M. 1993-526, filed 11-16-93

Frymire-Brinati v. KPMG Peat Marwick, 3 F.3d 183 (7th Cir. 1993)

Estate of Ray A. Ford v. Commissioner, T.C.M. 1993-580, filed 12-8-93

Mad Auto Wrecking, Inc., v. Commissioner, No. 1950-94, T.C.M. 1995-153, filed 4-5-95

Pabst Brewing Company v. Commissioner, No. 18466-92 (USTCM) 1996-506

Furman v. Commissioner, Nos. 11568-96 – 11569-96, 1998 WL 209265 (U.S. Tax Court, 4-30-98)

Andrew J. Whelan, et al. v. Tyler Abell, et al., USDC, Dist. Of Columbia, Civil Action Nos. 97-442 & 87-1763 (SS)

Dockery v. Commissioner, No. 14915-96, 1998 WL 120369 (U.S. Tax Court, March 19, 1998)

ABA Standards

To become an affiliate member of the ABA, candidates must hold the appropriate credentials from recognized business valuation societies. Each member is responsible for maintaining the credential and we encourage our members to seek advanced credentials. On the ABA website, each affiliate member has a bio that lists their BV credentials.