

Association of Divorce Financial Planners
A 501(c)(6) Not-for-Profit Professional Association
Membership Handbook
April 1, 2013 (Revised May 24, 2021)

Definition of Divorce Financial Planning and the Divorce Financial Planning Process:

1. Divorce Financial Planning is a process, not a product.
2. The divorce financial planning process encompasses the time a divorce or separation is first contemplated through the time a final outcome that includes such post-divorce events as asset transfers and changes of beneficiaries is reached. During the divorce financial planning process, financial issues associated with divorce are identified and analyzed.
3. Divorce financial planning provides insights into financial issues associated with divorce or separation, helping parties arrive at knowledge-based outcomes. It is informational in nature and should not be construed or relied upon as legal or tax advice. Individuals seeking legal or tax advice should solicit the counsel of competent legal or tax professionals knowledgeable about the divorce and tax laws in their own geographical areas.
4. Divorce financial planning is a fee-only process. It does not involve investment advice or securities or insurance transactions. It is a process that focuses on a specific life transition. Divorce financial planning focuses on financial issues associated with divorce in both short- and long-term contexts. It involves the gathering, summarizing, and analysis of current and historical data and may include economic forecasting/financial modeling. Long-term post-divorce financial planning is not part of the divorce financial planning process and requires a separate engagement.

Traditional financial planning can take place prior to or subsequent to divorce financial planning. If traditional financial planning and elements of divorce financial planning are

practiced in conjunction with one another, the resulting process falls outside the definition of divorce financial planning and into the realm of traditional financial planning.

The divorce financial planning process may include, but is not limited to, some or all of the following steps. These steps are:

- 1) Establishing and defining the client-planner relationship,
- 2) Establishing and defining planner-professional relationships,
- 3) Gathering, organizing, summarizing and analyzing financial data,
- 4) Identifying and addressing immediate and short-term financial needs and paying abilities,
- 5) Identifying and analyzing longer-term financial issues,
- 6) Developing options, opinions and recommendations,
- 7) Assisting in the implementation of direct post-divorce or post-separation financial outcomes.

DFP Engagement:

A DFP engagement exists when a DFP performs any type of mutually agreed upon divorce financial planning service for a client or an allied professional. The universe of activities engaged in by a DFP practitioner is diverse.

DFP advice may be a communication that, based on its content, context, and presentation, would reasonably be viewed as a recommendation that the Client take or refrain from taking a particular course of action with respect to:

- The development or implementation of a financial plan (that may be in writing or not), or that may occur even if the material elements are not provided to a client simultaneously, are delivered over a period of time, or are delivered as part of distinct services.

A DFP planning engagement, however, must be defined in writing and set forth:

- Terms of the Engagement, including
 - The scope of the Engagement and any limitations,
 - The period(s) during which the services will be provided, and
 - The client's responsibilities, including identifying the client(s),
 - The disclosure of conflict(s) of interest.

- A CFP® professional is responsible for implementing, monitoring, and updating the Financial Planning recommendation(s) unless specifically excluded from the Scope of Engagement.

Different Types of DFP Engagements:

1. Working with one party: (advocate)
 - a. Pro se litigant
 - b. Litigant represented by attorney
 - c. Consultant for attorney on an individual litigant's case
 - d. Affiliated professional in a Collaborative divorce

2. Working as a neutral:
 - a. Pro se couples
 - b. Couples working with a mediator
 - c. Financial neutral in a Collaborative divorce

DFP Duties when Working with Allied Professionals or Additional Persons

A DFP shall communicate in good faith and with transparency about their services and responsibilities relevant to the scope of their engagement. The DFP shall inform the client if the other provider did not perform services required or uphold respective responsibilities. Various roles of a DFP are explained in greater detail herein.

Divorce Financial Planning Services:

Divorce financial planning may occur even if the material elements are not provided to a client simultaneously, are delivered over a period of time or are delivered as part of distinct services.

It is not necessary to provide a written report to engage in the divorce financial planning process.

A divorce financial planning engagement exists when a divorce financial planning practitioner performs any type of mutually agreed upon divorce financial planning service for a client or allied professional.

The universe of activities engaged in by a divorce financial planning practitioner is diverse, and a divorce financial planner may perform all or some of the following services in a divorce financial planning engagement. Services may include, but are not limited to:

- 1) Financial statement preparation and analysis (including cash flow analysis, analysis of financial position and budgeting),

- 2) Assistance in identifying financial discovery needs,
- 3) Assistance in the preparation and analysis of interrogatories,
- 4) Assistance in preparing for depositions and court proceedings,
- 5) Financial review of transcripts from depositions or court proceedings,
- 6) Analysis of financial reports prepared by outside experts,
- 7) Assistance in the preparation or analysis of applications for *pendente lite* awards and arguments opposing such applications,
- 8) Analysis of current or projected needs and/or paying abilities,
- 9) Child support calculations,
- 10) Assist attorneys in the preparation of separation agreements, decrees, stipulations and pre- and post-marital agreements at their request.
- 11) Review of Qualified Domestic Relations Orders (QDROs), valuations and employee benefit documents,
- 12) Tax impacting of retirement assets, potential property distributions and alternative support scenarios.
- 13) Analysis of financial and tax issues related to the marital residence, the filing of tax returns and dispositions of property and division of property,
- 14) Analysis of unrealized capital gains and losses,
- 15) Review of tax returns to identify assets, sources of income, undisclosed, transferred, hidden or obligated assets or carryover credits or refunds,
- 16) Identify and analyze career assets, such as health, life and disability insurance, retirement assets, stock options, restricted stock, assets associated with nonqualified plans and other perquisites,
- 17) Review and analysis of estate planning documents,
- 18) Analysis and evaluation of marital lifestyle,
- 19) Analysis of short- and long-term potential outcomes of alternative settlement proposals on net worth and cash flow,
- 20) Analysis of long-term needs and paying abilities in different post-divorce or post-separation contexts,
- 21) Identification and analysis of tax planning opportunities and potential pitfalls,
- 22) Participation in strategic planning or settlement conferences,
- 23) Testimony as an expert witness in court and
- 24) Assisting in post-divorce or post-separation transfers of assets, changes of beneficiaries, trustees or owners of wills, trusts, retirement plans and life insurance policies and execution of QDROs.

For CFPs Engaged in DFP:

CFPs who are engaged in DFP must abide by the CFP Board's Code of Ethics and Standards of Conduct ("the Code"). The following represents the ADFP's understanding and distillation of the Code specifically as it pertains to divorce financial planners. It is provided to ADFP members as a guide. To the extent that anything in this document is in conflict with the Code, the CFP

Board's rulings, its interpretations or advisory opinions regarding the Code, the CFP Board's authority shall take precedence over that of the ADFP.

Specifically, for CFPs who are engaged in DFP, it is a collaborative process that helps maximize a client's potential for meeting life goals through financial advice that integrates relevant elements of the client's personal and financial circumstances and is defined by the scope of engagement and the legal process. In determining whether financial advice rises to the level of financial planning, the following are the CFP's factors:

- The number of relevant elements of the Client's personal and financial circumstances that the Financial Advice may affect;
- The portion and amount of the Client's Financial Assets that the Financial Advice may affect;
- The length of time the Client's personal and financial circumstances may be affected by the Financial Advice;
- The effect on the Client's overall exposure to risk if the Client implements the Financial Advice; and
- The barriers to modifying the actions taken to implement the Financial Advice.

Examples of Services that Fall Outside the Definition of a Divorce Financial Planning Engagement:

Based on the above definition of the divorce financial planning process, the following are examples of services that fall outside the realm of divorce financial planning. The ADFP does not preclude members from providing such services, should members have expertise in these areas. However, it does require that services falling outside the realm of divorce financial planning not be identified as divorce financial planning services in a divorce financial planning engagement. Services such as these must be governed by separate and completely independent contracts:

- 1) Any services that might constitute the practice of law, including the drafting of QDROs or other legal documents
- 2) Business valuations
- 3) Pension valuations
- 4) Appraisals of real or personal property
- 5) Valuations of licenses and degrees
- 6) Valuations of stock options and restricted stock
- 7) Mediation
- 8) Tax preparation

- 9) Insurance sales or transactions
- 10) Investment advice or securities transactions

To avoid misunderstandings, all literature related to divorce financial planning services provided by a practitioner, including websites, email communications, reports and advertising or promotional materials should include the following disclaimers or something analogous to them:

*[Name of divorce financial planning] is **NOT AN ATTORNEY AND DOES NOT PROVIDE LEGAL ADVICE**. All information (s)he provides is financial in nature and should not be construed or relied upon as legal [or tax] advice. Individuals seeking legal [or tax] advice should solicit the counsel of competent legal [or tax] professionals knowledgeable about the divorce laws in their own geographical areas.*

***Divorce financial planning** is a fee-only process that does not involve investment advice or securities or insurance transactions.*

Divorce Financial Planning is NOT Forensic Accounting:

While there is sometimes overlap between the skillset and work product of divorce financial planners and forensic accountants, divorce financial planning is *NOT* forensic accounting.

Divorce financial planning is a forward-looking process that focuses on lifestyle issues relevant to divorce or separation, issues such as the respective post-separation needs and paying abilities of the parties or the financial workability of potential outcomes.

In contrast, forensic accounting is a more backward-looking process that focuses on finding, characterizing and valuing assets and income. While the divorce financial planner is a generalist with a broad background in personal financial issues, the education and experience of the forensic accountant is generally more focused on a more limited set of divorce-related issues such as business valuation, fraud or the discovery of hidden assets.

The forensic accountant is often used as an outside expert in the divorce process, with a limited and specific assignment. While the divorce financial planner is sometimes used in this fashion, he/she is increasingly becoming more directly involved as an intimate member of a divorce team.

Whatever their respective roles or services provided, divorce financial planners and forensic accountants can both play important roles in the divorce process.

Divorce Financial Planning in the Contexts of Litigation, Mediation and Interdisciplinary Collaborative Divorce:

Divorce financial planning can take place in a variety of settings:

- 1) The divorce financial planner can function either as an unbiased (neutral) consultant or resource for both parties in a divorce or separation or in a financial advisory capacity to only one of the parties.
- 2) In either of these capacities, the divorce financial planner can potentially share information, analyses or opinions with either or both parties. In an advocacy situation, sharing of such information requires written authorization from the individual or entity that hires the practitioner. Other than disclosure authorized in this fashion, information, analyses or opinions are held in strictest confidence by the practitioner except where required for licensing or compliance purposes or by law.
- 3) In situations in which the divorce financial planner functions as an unbiased consultant or resource for both parties, the divorce financial planner is not automatically precluded from providing post-divorce or post-separation services to either or both parties (see collaborative divorce exception below). Such services, however, must not be contemplated, anticipated or included in the divorce financial planning engagement. In addition, the divorce financial planner is required to obtain written permission from both parties prior to providing such services and must always provide such services in a fashion subordinate to the best interests of the client. This standard does not preempt ethical standards established by other disciplines. For example, interdisciplinary collaborative divorce engagements specifically prohibit this particular practice, and members of the ADFP are required, both directly and indirectly, to abide by this policy.
- 4) The divorce financial planner can function as an outside expert or as a member of a team.
- 5) The divorce financial planner can provide a very broad or a very narrow range of divorce financial planning services.
- 6) The divorce financial planner can provide divorce financial planning services in both contested and uncontested divorces.
- 7) The divorce financial planner can provide divorce financial planning services in collaborative divorce, mediation, litigation and *pro se (pro per)* settings, in all of their respective models and variations. Whatever the setting, and irrespective of whether there is a separate global agreement involving other professionals, the divorce financial planner should have a separate engagement letter defining the planner's participation in the process.

- 8) The relationships a divorce financial planner has with other professionals in individual cases and his/her responsibilities, level of interaction with other participants or role in a team can vary even when settings appear similar, and these must be defined during the engagement process.
- 9) Irrespective of the setting, the divorce financial planning process, as defined above, is operative in all of these contexts and any variations of them.
- 10) The role of the divorce financial planner in the divorce process is continuously evolving from that of outside expert to that of intimate team member. The evolving role of the divorce financial planner in **collaborative divorce** is described in greater detail in the articles by Pauline Tesler contained in **Appendix A**.

Association of Divorce Financial Planners (ADFP):

The Association of Divorce Financial Planners (ADFP) is a 501(c)(6) not-for-profit professional association that is led exclusively by its democratically-elected Board of Director members. It is not affiliated or competing with any company, school, organization or other entity offering financial divorce training, certification, or support services.

Criteria for membership in ADFP are rooted in its Mission Statement, and an internal accreditation process, not intended to compete with any existing credentialing process, has been established to help ensure high standards of practice among its practitioner members. The areas upon which this process is based are discussed below:

Mission Statement:

The mission of the Association of Divorce Financial Planners (ADFP) is:

- To heighten awareness of the benefits and the added value of divorce financial planning so that it becomes an integral part of the divorce process.
- To encourage knowledgeable and trustworthy financial professionals to enter the field.
- To continuously refine and maintain practice and professional standards of excellence and a strict code of ethics.
- To build professionalism.
- To unify the divorce financial planning profession.

To accomplish this mission, the ADFP will:

- Develop outreach programs to financial professionals, allied divorce professionals and the general public.

- Provide continuing professional education and training opportunities for divorce financial planning practitioners.
- Hold members to high professional and ethical protocols and standards.
- Promote communication, networking and peer review.
- Market and promote divorce financial planning through the ADFP website, speaking opportunities to the public and divorce professionals, public relations and other appropriate means.
- Establish and encourage membership participation in local chapters throughout the United States, Canada and other countries.
- Participate in policy making regarding financial issues in divorce.

Two Classes of ADFP Membership:

There are two (2) classes of ADFP membership, **Members** and **Associate Members**.

Members:

Members are divorce financial planning practitioners, i.e. use the divorce financial planning process as defined by ADFP. They must charge a reasonable fee-for-service and cannot be compensated in other ways for providing divorce financial planning services. Needs-based pro bono work may be an exception to this requirement, but a written needs-based policy must be in place and made available to ADFP upon request.

Divorce financial planning cannot be offered as a free service in exchange for or in anticipation of acquiring or being otherwise linked to a post-divorce money or investment management engagement or product sale, directly or indirectly through other professional relationships.

Individuals otherwise using the divorce financial planning process who do not charge a specific fee, in the appropriate market range and within geographical norms for his/her level of divorce financial planning expertise, are not eligible for either class of membership.

- **Membership Criteria**

To be accepted as Members, applicants must provide evidence supporting satisfaction of certain educational, experience and ethical criteria.

- **Education**

- **Financial Planning** – CFP or ChFC or CPA/PFS designation **OR**
Personal Income Taxation – CPA or EA or CA (Chartered Accountant) or CGA (Certified General Accountant) or Master of Science in Taxation

AND

- **Divorce Financial Planning** – successful completion of a basic course in divorce financial planning such as that offered by Institute for Divorce Financial Analysts, Financial Divorce Association or Academy of Financial Divorce Specialists
- **Experience**
 - At least 3 years of experience in financial planning

AND

- Successful completion of at least five (5) comprehensive divorce financial planning case engagements.
- **Ethics and Professional Responsibilities**
 - Agreement to abide by ADFP Code of Ethics and Professional Responsibility
 - Agreement to adhere to Practice and Professional Standards established by ADFP
 - Agreement to be supportive of the ADFP Mission Statement
 - Agreement to be supportive of the ADFP, its local chapters, its members and the profession in general

Absent satisfaction of one or more of the above sources of evidence, applicants may make application to the Board of Directors by providing alternative evidence demonstrating their level of knowledge or experience. Examples of such supplemental information include testing, evidence of equivalent education, training or experience, letters of support from divorce professionals for whom they have directly or indirectly provided divorce financial planning services or with whom they have had mentoring or other supervisory relationships, reports from previous casework and any additional evidence they can provide that testifies to the level and quality of their experience, knowledge, skills and professional ethics.

In addition, an Associate Member who has demonstrated a long-term commitment to ADFP and has made significant contributions to the profession of divorce financial planning, who wishes to also serve in a leadership position, such as membership in the Board of Directors, Committee Chair or Chapter Chair, may petition the Board of Directors for a full Member exception to the above Member criteria.

Disclaimers:

- ADFP does not recommend or endorse specific Members based on satisfaction of its membership criteria. It is the client's responsibility to carefully research, interview and identify competent and trustworthy professionals before hiring one.
- Agreement by members to adhere to ADFP Practice and Professional Standards is a requirement of membership but should not be construed as a basis for any legal liability of ADFP to third parties. It is strictly a condition for membership. The ADFP does not perform divorce financial planning services or take responsibility for divorce financial planning or other services offered by members.

Membership Application and Accreditation Process:

The Membership Application and Accreditation Process is designed to help ensure that Members are knowledgeable, trustworthy and experienced divorce financial planning practitioners. It is also designed to encourage applicants who do not meet ADFP Practice and Professional Standards to aspire and establish a path toward achieving them. The process is outlined below:

- Individuals interested in applying for ADFP membership submit an **ADFP Application Form** and **Dues Payment** to the ADFP administrative office. **Forms and Instructions** for this purpose can be found on the ADFP website at <https://www.divorcefinancialplanner.org>.
- Applications are reviewed initially by the Membership Chair, who may approve or reject the applicant; make further information requests; encourage further professional development by identifying apparent weaknesses in the application, make recommendations for strengthening such weaknesses and offer applicants the opportunity to become Associate Members; or refer the application to the Board of Directors for independent review and decision-making.
- Applicants not accepted as Members can appeal the decision by submitting a letter and supporting documentation to the Board of Directors at its administrative headquarters.

Additional Membership Responsibilities:

- Provide divorce financial planning services on a fee-only (flat or hourly) basis
- Charge a reasonable and customary fee for such services
- Consistently use an engagement letter that clearly delineates the scope of a divorce financial planning engagement and includes a fee schedule
- Maintain Errors and Omissions insurance that covers divorce financial planning services
- If a registered representative with a broker/dealer, Member must be able to provide evidence (such as a services contract) that divorce financial planning services are part of the broker/dealer's business model or must have written approval from the

broker/dealer for divorce financial planning as an outside business activity (OBA) and for charging fees for such services

- Maintain one or more periodically monitored, and ADFP-approved (based on substantial initial and ongoing continuing education, compliance and ethics requirements), professional designations or licenses
- Attest to a clean record of business integrity
- Disclose of any and all past or current suspensions, revocations or disciplinary actions related to any license or professional designation ever held
- Attest to good standing with all current monitoring and compliance entities
- Agree to notify the Board of Directors within 10 calendar days of any events or issues that could potentially affect eligibility for ADFP membership or membership status with any other entity
- Register individually as investment advisors with the appropriate regulatory authority or authorities, if required by state or federal law
- Submit an annual and timely **Renewal Application, Dues Payment and Attestation to Satisfaction of Continuing Education Requirements**

Continuing Education Requirements:

- A minimum of **15** divorce-related continuing education credits each year in ADFP-approved divorce financial planning-related programs (It is the Member's responsibility to determine in advance whether a particular program might satisfy this requirement).
- Continuing education credits accrue annually and are reported on a calendar year basis on the annual Membership renewal application. Members are required to maintain proof of satisfaction of continuing education requirements for a period of five (5) years and may be subject to periodic audit.
- In addition to the above, two (2) credits in ADFP Ethics every two (2) years.
- If ADFP chapter meetings are held within a 50-mile radius of a Member's home or office, the Member must join the chapter and attend at least four (4) hours of local meetings each year. In addition to benefitting from the important direct interaction with local ADFP peers, the continuing education portion of such meetings may be used to satisfy the continuing education requirements outlined above. Although not a requirement, it is strongly recommended that Members attend the comprehensive annual conference at least once every two (2) years to further benefit from this important face-to-face level of interaction.

From time to time, ADFP may conduct random audits to help assure that Members are in full compliance with all Membership Criteria. Misrepresentation of ADFP accreditation by a Member constitutes grounds for permanent disbarment from ADFP membership.

Associate Members:

Associate Members have a professional interest in divorce financial planning. They are, for example, studying to become or contemplating becoming divorce financial planning practitioners, are financial educators or otherwise provide adjunct, specialized or supporting services to the divorce financial planning community.

The cost of Associate Membership is the same as that of practitioner Membership, and Associate Members are eligible for membership discounts for attending the annual conference and local chapter meetings and for participating in webinars or other ADFP programs. Names of Associate Members are also accessible to Members for professional networking or referral purposes, but they are not open to the public.

An Associate Member who has demonstrated a long-term commitment to ADFP and has made significant contributions to the profession of divorce financial planning, who wishes to also serve in a leadership position, such as membership in the Board of Directors, Committee Chair or Chapter Chair, may petition the Board of Directors for a full Member exception to this policy.

Associate Members must clearly identify themselves as Associate Members in all written, electronic or verbal communications that make reference to their membership in ADFP and must not engage in any activity that might lead the public to conclude that they have been accredited by ADFP as practitioner Members. Any misrepresentations with respect to class of membership can result in immediate termination of Associate Member status and impact the possibility of future membership reinstatement.

Associate Membership Criteria:

- Must have a professional interest in divorce financial planning
- Agreement to support and/or abide by ADFP Code of Ethics and Professional Responsibility
- Agreement to support and/or abide by Practice and Professional Standards established by ADFP
- Agreement to be supportive of the ADFP Mission Statement
- Agreement to be supportive of the ADFP, its local chapters, its members and the profession in general
- Attestation to a clean record of business integrity
- Disclosure of any and all past suspensions, revocations or disciplinary actions related to any license or professional designation ever held
- Attestation to good standing with all current monitoring and compliance entities
- Agreement to notify the Board of Directors within 10 calendar days of any events or issues that could potentially affect eligibility for ADFP membership or membership status with any other entity
- Submission of an annual **Renewal Application** and **Dues Payment**

- Report to the ADFP Board of Directors, for review, any and all past suspensions, revocations or disciplinary actions related to any license or professional designation ever held
- Become a member of a local chapter and attend an average of four (4) hours of ADFP meetings per year if chapter meetings are held within a 50 mile radius of their home or office or, if a local chapter is not a feasible alternative, attend the annual conference at least once every other year.

Those who practice divorce financial planning without charging a specific fee in the appropriate market range for his/her expertise level and geographical norms are not eligible for membership as either Members or Associate Members.

Compensation shall expressly exclude any payment for the sale of a product as a substitute for an hourly or flat fee engagement. It shall also exclude the obligation (created either by inference or expressly outlined by the practitioner) of the client to purchase a product in lieu of an hourly or flat fee engagement. Furthermore, the concept or practice of rebating is expressly prohibited. By way of example, the practice of rebating, refunding or crediting of fees for divorce financial planning services either in part or in full provided that the client (potentially or ultimately) engages the divorce financial planner for asset management on a commission, assets under management or flat fee basis, accountancy or audit work, either on a flat fee or retainer basis, or insurance planning or the sale of insurance and/or annuities is expressly prohibited.

Pre-Existing Members as of January 1, 2013:

Prior to the establishment of two (2) classes of membership, ADFP members included both divorce financial planning practitioners and non-practitioners and did not distinguish between them. Subsequent to this change in policy, pre-existing members in good standing, who would not qualify for Membership under the new Member criteria, were given a two-year period to maintain their current Membership status and continue to identify themselves as Members. This period, which was intended to give them an opportunity to make up deficiencies, was set to expire December 31, 2012. With this date now past, and in light of more recent revisions in Membership criteria, this deadline will automatically be extended to December 31, 2013. The affected Members will be individually notified of their status and given the opportunity to respond to the Board of Directors. Under extenuating circumstances, an affected Member may, in exceptional cases, be granted an additional extension by the Board of Directors.

All persons who provide divorce financial planning services and are Associate Members because they do not meet all Membership criteria must provide a plan, with timeline, indicating their intentions to comply with all Membership criteria within a reasonable timeframe. Associate Membership is not available to persons who practice divorce financial planning without intending to meet all ADFP Membership criteria.

Membership Class Q&A:

The following Q&A is designed to help applicants decide whether to apply as a Member or Associate Member. Into which membership class would each of the following applicants fall?

- 1) A person who is in the process of taking the IDFA, FDA or AFDS course or has recently completed one of these courses but has only worked on a limited number of cases [Associate Member]
- 2) A forensic accountant who doesn't practice divorce financial planning but has a designation from one of the above entities [Associate Member]
- 3) A Certified Financial Planner™ professional who has completed one of the above courses but has only worked on a limited number of cases [Associate Member]
- 4) A financial planner who practices divorce financial planning but who has not taken one of the above divorce financial planning courses [Could be a Member or Associate Member depending upon the nature and extent of the person's knowledge and experience]
- 5) An investment adviser who does not practice divorce financial planning but has a referral arrangement with a divorce financial planner/analyst practitioner [Associate Member]
- 6) A person who is thinking about getting into the field and would like to learn more about it [Associate Member]
- 7) A person who views ADFP membership strictly as a networking opportunity [This person has not demonstrated an interest in divorce financial planning and is not eligible for either class of membership]
- 8) A media person [Unless this person has written or is interested in writing about divorce, this person has not demonstrated an interest in divorce financial planning and is not eligible for either class of membership]
- 9) A person who does not do divorce financial planning on a fee-only basis or does not charge a reasonable fee for service [Not eligible for either class of membership]
- 10) A person who does traditional financial planning and works as a traditional financial planner in association with divorce practitioners [Associate Member]

Fitness Standards:

Services provided by members are provided independently of the ADFP and are completely the member's responsibility. Implying otherwise is a serious offense and grounds for membership termination.

Misrepresentation of ADFP accreditation by a Member is grounds for censure and permanent disbarment from membership.

The following conduct is unacceptable and will always bar an individual from membership:

- Felony conviction for theft, embezzlement or other financially-based crimes.

- Felony conviction for tax fraud or other tax-related crimes.
- Revocation or suspension of a financial or professional (e.g. registered securities representative, broker/dealer, insurance, accountant, investment adviser, financial planner, real estate, law) license, unless the revocation is administrative in nature, i.e. the result of the individual determining not to renew the license by not paying the required fees.
- Felony conviction for any violent crime or non-violent crimes such as perjury.

Additional Chapter Membership Policies:

- Practitioner Members must represent greater than 2/3 of the membership of each local chapter.
- Should acceptance of an Associate Member into a chapter cause representation of Members in the chapter to fall below 2/3 of total membership in that chapter, the prospective Associate Member must be placed on a waiting list. Future Associate Members will be drawn from this list, although not necessarily on a first-come first-served basis, with the Chapter Director maintaining a balance of professions among non-practitioners. Exceptions to this waiting list rule are Associate Members who have submitted a plan demonstrating they are actively working toward fulfillment of requirements for full Membership.

Refer to Chapter Handbook

Appendix A: The Evolving Role of the Divorce Financial Analyst in Collaborative Divorce, Pauline Tesler, New York Family Law Monthly, August/September 2010



The Evolving Role of the Divorce Financial Analyst in Collaborative Divorce

August 2010

By Pauline H. Tesler

Part One of a Two-Part Article

During the early 1980s, divorce lawyers began experimenting with the use of financial planners as consultants and trial experts to enhance spousal support advocacy on behalf of the dependent spouse. Although some immediately recognized both the value of that resource in counseling fearful clients and the power of such expert testimony in persuading judges to make higher support awards, the idea did not catch on widely. For many years it remained a power tool used by a select few. Persuading family law specialists that some other professional might do a better job than they of marshalling financial evidence on the client's behalf has remained a hard sell in some quarters — even in the realm of collaborative divorce practice, where interdisciplinary professional teams are becoming the norm.

Breaking Down Resistance

It's not difficult to imagine why skillful lawyers might resist accepting the divorce financial analyst (also referred to as a divorce financial planner) as a valuable resource. Divorce lawyers practicing in an adversarial mode are masters at controlling the flow of information about financial resources — how much will be disclosed, when, how, and to whom. Information is a major strategic weapon in the battle, and good trial lawyers keep firm control over its deployment (within the limits of applicable law, of course).

The situation should be different in the collaborative law setting. Collaborative lawyers work in a client-centered, interest-based settlement model in which financial information is defined from the start as a shared resource and

a basic tool for developing mutually advantageous settlement scenarios. In fact, failure to disclose all relevant financial information violates fundamental good-faith undertakings set forth in the written collaborative participation agreement. Nonetheless, it is not uncommon for beginning collaborative lawyers to embrace interdisciplinary teamwork with mental health colleagues on the professional team more enthusiastically than they welcome the divorce financial analyst. Understanding why this is so begins with acknowledging that it takes time for collaborative lawyers to switch gears. In intermediate collaborative practice training sessions, divorce lawyers who have handled only a handful of collaborative cases often protest that gathering and analyzing financial evidence is a central part of how they do their job. Why, they ask, should their clients pay some other professional to do it?

The answer lies in the significant differences between how information is prepared and used when legal rights and entitlements are the sole focus and winning big is the goal, as compared with how information can be prepared and used when client-centered interest-based negotiations are the agreed method and settlement entirely outside the court system is the sole objective. Old habits based on maintaining tight control over disclosure of financial data so that it can be manipulated for maximum strategic advantage die hard. I have found, based on nearly 15 years of experience as a collaborative divorce trainer, that it takes as many as 25 or more successful cases before a lawyer masters the skills and techniques that reflect real competency in collaborative law, and substantially more than that before most lawyers leave entirely behind them the residual habits and attitudes of the adversarial advocate, replacing them with those of a client-centered conflict resolution professional.

The Divorce Financial Analyst's Job

Over time, lawyers working in communities where trained professionals are available for interdisciplinary collaborative divorce teams generally do come to appreciate the enhanced quality of financial services that an experienced divorce financial analyst can provide. Indeed, when the collaborative divorce financial analyst becomes the organizing source for information on the collaborative divorce team, the early availability to both parties and their lawyers of reliable, comprehensive financial information vetted by an expert neutral source has transformative potential, both to facilitate smoother sailing in the negotiation process and to support generation of far more comprehensive and sophisticated options for settlements. Working from carefully developed income, expenses, asset, and debt schedules that both spouses understand and accept as valid and complete, the professional team can help couples consider long-term financial consequences to both parties resulting from any set of assumptions about asset and debt division or amount and duration of alimony.

With this kind of rich and nuanced information, it becomes apparent to both parties whether a proposed solution is or is not financially viable. It becomes obvious when a settlement option will cause substantial inequity or even hardship to a party. It no longer is necessary for a dependent spouse's lawyer to argue with his client about the financial wisdom of remaining in a family residence that is unaffordable, because the spreadsheets and graphs about cash flow and net worth speak for themselves. Because the good-faith commitments that couples make when entering the collaborative process include a willingness to consider all reasonable goals of either party regardless of whether they could be achieved in court, this kind of accurate information about financial consequences of settlement options can become a catalyst for creative problem solving and even generosity. In short, when the divorce financial analyst is part of the collaborative team, financial information functions as a shared dynamic tool, not a unilateral weapon.

Because of this potentially powerful support for collaborative conflict resolution, it is not unusual in communities where integrated team collaborative divorce practice is well established for the divorce financial analyst's

participation on the professional team from the beginning of the case to form part of the protocols by which collaborative divorce lawyers and their professional colleagues do their work. (This is so in the San Francisco Bay area, San Diego, Los Angeles, the Hudson Valley, Atlanta, Vancouver, Minneapolis, and many other mature collaborative practice communities in the U.S. and Canada.)

The Importance of Communications and Teamwork

Collaborative lawyers and divorce financial analysts, working together on a collaborative team, can perform their respective tasks at a high professional standard only if they share a congruent understanding of the job description and ethical boundaries within which the divorce financial analyst will work. These understandings are developed and refined in the local collaborative practice group, and in many instances are incorporated into the practice group's protocols. Those protocols evolve as collaborative lawyers do more case work with the divorce financial analyst and learn from experience how to coordinate their professional efforts more effectively. As they begin each new collaborative case together, collaborative lawyers and neutral divorce financial analysts learn the importance of taking time to clarify beforehand what tasks the financial analyst will (and will not) perform, and in what sequence. They should also clearly define how they will communicate with one another, what form the work product will take, and where the boundaries lie between the lawyer's job description and the divorce financial analyst's job description. These understandings can vary considerably from one case to another, depending on the clients' needs and the collaborative lawyers' preferences.

At one end of the spectrum, the collaborative lawyers may simply ask the neutral divorce financial analyst to gather the usual financial disclosure documents required in divorce practice, to organize them, and perhaps to prepare basic spreadsheets summarizing what they reveal. However, experienced collaborative lawyers generally ask divorce financial analysts to do far more than that. In Northern California, where I practice, it is now customary in a collaborative setting for the neutral financial consultant to:

- Confer initially with both attorneys about scope of engagement, special needs and challenges of clients, timing issues, format and venue for presenting financial information;
- Meet with the divorcing parties jointly and separately to understand how money and records have been managed and to explain forms that will be used for gathering documentation of income, expenses, assets, debts;
- Confer with both collaborative lawyers about financial and disclosure concerns that emerge during meetings with clients;
- Alert lawyers to missing documents and information and possible bad faith disclosures;
- Help clients prepare and/or review budgets, as directed by lawyers;
- Educate financially naïve parties about basic money management;
- Confer with family and/or business accountants to gather tax returns and business records (it is not customary for the collaborative divorce financial analyst to undertake tracing or business valuation while at the same time functioning as the collaborative neutral on the case. Most collaborative lawyers prefer joint retention of a different neutral forensic accountant to perform those tasks so that the uniquely client-focused role of the collaborative financial neutral is not compromised by rendering expert opinions on issues that often carry emotional charge);
- Prepare preliminary asset/debt spreadsheets, cash flow summaries and estimates along with indexed supporting documentation, in binders or on CD-Rom;
- Attend "five-way" collaborative meetings to walk parties and their lawyers through an overview of family finances;
- Update documentation and schedules periodically throughout negotiations and before completion of settlement agreements;

- Prepare long-term financial projections of cash flow and net worth for various settlement scenarios as directed by lawyers;
 - Attend settlement meetings as requested to provide "real time" calculations of child and spousal support (alimony), taxes, and financial consequences of settlement scenarios under consideration;
 - Meet individually with one or both clients as directed by lawyers when specific financial issues or concerns will benefit from individualized attention;
 - Prepare exhibits for inclusion in settlement agreements; and
 - Assist with collaborative modification of support agreements post-judgment.
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The Practice Group and the Financial Collaborative Divorce

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Part Two of a Two-Part Article

It is important to understand that working with a divorce financial analyst in the collaborative divorce setting requires all professionals involved in the case to develop trust relationships and teamwork skills that have no place in a divorce lawyer's ordinary practice. The locus for developing these relationships and skills is the practice group. Practice groups are spontaneous organizations of collaborative lawyers, financial professionals and mental health professionals who work in the same geographic region and expect to work together on cases. (In some communities, members will sign formal collaborative participation agreements only with other professionals who

are actively involved as members in the local practice group.) In the practice group, trust relationships are built, documents and protocols for practice are devised and kept updated, professional development activities are sponsored, and public education campaigns are implemented. Practice groups can be found everywhere that collaborative divorce practice is found.

The practice group helps lawyers and divorce financial analysts to avoid common pitfalls associated with lack of definition or inconsistent assumptions about how the work will proceed. Each completed collaborative team case provides a wealth of knowledge about what worked well and what did not — information that can be shared in the practice group not only among the lawyers and divorce financial analyst who worked on that case, but with the larger community of colleagues who will work together on other cases in the future. A smoothly functioning interdisciplinary collaborative practice group can facilitate case debriefing that enhances members' shared understanding of the groundwork required for lawyers and divorce financial analysts to function as a smooth professional team on collaborative cases.

Setting the Parameters

What kinds of understandings between collaborative team members can the practice group help to outline? Following are several rules of thumb I have seen developed, which can be elaborated in detailed protocols and roadmaps to guide effective collaborative teamwork between lawyers and the divorce financial analyst.

- Lawyers and divorce financial analysts should clarify at the start of each case exactly what the financial neutral's work will consist of — the "scope of the engagement."
- The divorce financial analyst should take instructions only from the collaborative lawyers. Requests for other services from the clients should be approved by both lawyers before the divorce financial analyst proceeds. For instance, clients may ask the divorce financial analyst to prepare guideline child support calculations. It is a "best practice" for collaborative lawyers to plan carefully when and how such support calculations will be used in the negotiations, and they will not appreciate having their process management undermined inadvertently by the divorce financial analyst.
- Some lawyers expect only spreadsheets from the divorce financial analyst, while others expect indexed supporting documents that will be updated regularly. Increasingly, lawyers request that the work product be scanned and provided in CD-ROM or other digital format rather than in bulky paper files.
- Clients often like working with the divorce financial analyst — sometimes more than with their own lawyers. They may try to get the divorce financial analyst to mediate issues, or give advice, or otherwise blur the boundaries of the job description. They may complain about their lawyers or coaches to the divorce financial analyst, who — as the only member of the professional team that deals with "just the facts," taking no direct role in facilitating decisions — may feel like a safe harbor when divorce-related stresses rise. The lawyers and divorce financial analyst should have a clear understanding of how such challenges will be handled, before they arise.
- Preparation of budgets can be a loaded process, triggering client anxiety and anger. Lawyers generally want considerable advance input into how these budgets will be prepared, when, and for what purposes. Attorneys do not appreciate disclosure of one party's budget to the other party unless and until they have prepared the clients for constructive lawyer-facilitated discussion. Ordinarily, the divorce financial analyst should send draft budgets to counsel for review and discussion rather than sharing them directly with the other party.
- Long-term cash flow and net worth schedules are valuable tools for creative interest-based settlements, but only as part of a carefully structured roadmap for negotiations. These schedules should be prepared only when the lawyers ask for them. The assumptions to be modeled in various settlement scenarios should be approved by both lawyers, and the divorce financial analyst should not share these scenarios

with clients except as directed by the lawyers, so that they serve only constructive purposes in the negotiations.

Conclusion

Early and ongoing involvement of a skilled divorce financial analyst on the collaborative team can improve both the process and outcome in ways that no individual divorce lawyer, however skillful, can duplicate. When a collaboratively trained divorce financial analyst works directly with both clients from the start of a collaborative divorce, the resulting financial disclosure process is more efficient, thorough, cost effective and comprehensible for all parties. The collaborative divorce financial analyst has access to full and complete disclosure from both parties, supported by full and complete documentation on request. It is expected that all financial questions will be answered before negotiations begin. Over the past decade, sophisticated divorce financial software has become available that organizes and presents family financial information in a far more nuanced and sophisticated manner than most lawyers have the skills to accomplish.

Delivery of integrated interdisciplinary professional services on collaborative divorce teams is a young, complex, and evolving art. That it benefits clients and their children is beyond doubt. With a divorce financial analyst on the team, it becomes possible for collaborative lawyers to facilitate creative and financially sound settlement agreements that can meet clients' needs at a level of sophistication beyond the expertise of most divorce lawyers.

Throughout this two-part article, I have focused on the teamwork between collaborative lawyers and the divorce financial analyst. In fact, the team usually also involves two specially trained mental health professionals working as coaches with the parties, and often a collaborative child specialist who is the voice of, and to, the children as well as the source of important developmental information used in working out parenting plans. The professional collaboration across these three disciplines enables divorcing couples with a mind to do so achieve very high-quality, durable settlements. However, discussion of the ways in which the divorce financial analyst works with the coaches and child specialists on the team is beyond the scope of this article.

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