

## ENGAGING THE COLLABORATIVE PROFESSIONAL IN COLLABORATIVE PRACTICE

by Cathy Daigle, CFP, CDP, CDS, Los Gatos CA  
and George Richardson, JD, Palo Alto CA

### The Emerging Role of the Financial Specialist in Collaborative Practice

Financial professionals are responding to the changing landscape that Collaborative Practice is bringing to the area of divorce and introducing new ways to assist the clients, lawyers and the process.

Traditional models involve financial professionals on an as-needed basis at the direction of the lawyer. Typically, in "less complicated" cases, the lawyer does the financial work with the assistance of inside staff only. If an outside expert is needed, the lawyer (or the client, at the lawyer's suggestion) may hire a person for a particular task. Often the client asks few, if any, questions about the financial person's role. The lawyer retains control, while the client passively awaits a report. In turn, the expert (typically CPAs and forensic accountants) may defer to the lawyer without engaging in creative dialogue about the type of information to be obtained and analyzed, or its ultimate use.

Experience tells us that lawyers' strengths usually lie in fact analysis, issue spotting, and negotiations towards acceptable solutions. Within the first few minutes of meeting a prospective client, a lawyer typically ascertains the client's level of financial sophistication. This assessment may limit options as one learns the parties' interests with respect to retaining the family home, financially sustaining the marital standard of living, intelligently planning for tax consequences of income sharing, sale, retention or encumbering assets or debts, allocating tax benefits and a multitude of subtle and not-so-subtle other concerns. However, lawyers are rarely precise in analyzing how these considerations may interact under the actual circumstances of individual cases.

If you are a lawyer, consider these questions: Do you ever wish to have the time and tools

available to truly help clients understand whether they can afford to keep the house and for how long? Would it be nice to have someone else run personal income tax scenarios for your clients? Would it be helpful to have assistance with educating the clients about the potential/possible financial ramifications of various settlement options? Would your clients like to have more information so they may address their short- and long-term financial concerns? Wouldn't you like to offer your clients cash flow modeling? [Assuming you even know what "cash flow modeling" is!]? If you've answered "yes" to any of these questions, read further! In Collaborative Practice, lawyers are learning about the tools available to assist in better understanding the financial impact of settlement decisions. They are discovering that the financial professional fits comfortably into this new way of practice.

The lawyer, in Collaborative Practice, is delivering a different set of settlement tools and options to the client in conflict. No longer does the lawyer brandish the sword in support of the client's positions; rather he or she listens for the true interest of the disputing parties with the goal of supporting the parties' creation of a solution that fits their own, unique circumstances. As the lawyer shifts from traditional litigation and mediation practice to Collaborative Practice, the role of the financial professional is also shifting. In contrast to the forensic financial expert's focus on history, the professional financial planner, by training, takes a forward-looking, educational approach to problem solving and is creatively participating in Collaborative Practice. Financial planners who have been specifically trained in the fundamentals of divorce finance and trained in collaborative practice are becoming integral to the process.

### Financial Specialists: Credentials, Training and Experience

Collaborative financial practitioners are licensed, in good standing and trained in Collaborative Practice. Basic qualifications include:

**Credentials:** State License or National Certification, in good standing.

- CPA – Certified Public Accountant
- CFP® - Certified Financial Planner
- ChFC – Chartered Financial Consultant
- CMA – Chartered Management Accountant

**Training:**

- Fundamentals of divorce and finance
- Interdisciplinary Training in Collaborative Divorce™
- Basics of Collaborative Practice for legal professionals
- Mediation

**Experience:** Well-rounded financial knowledge in financial planning concepts:

- Financial aspects of divorce
- Property valuation and division
- Cash management, spending plans, budgeting
- Investments
- Retirement and pension plans
- Income tax
- Insurance
- Individual and family financial planning
- Cash flow modeling
- 3-5 years working in the profession

**Additional Skills:**

- Ability to remain neutral
- Use of mediation and conflict resolution skills
- Ability to help couples talk about money
- Educational, problem solving approach
- Active listening and effective communication
- Ability to enjoy helping people in conflict
- Open-minded, creative thinking
- Team player

*Continued on page 10*

### Role Variations: Neutral or Not

Collaborative Practice has embraced the financial professional in new ways: as a neutral – unaligned with either spouse, or as a non-neutral – aligned with only one spouse. Even in an aligned role, the financial professional supports the collaborative process with creative thinking to design a financial solution acceptable to both spouses.

As a neutral, one financial professional works simultaneously with both spouses, together, to gather and share information in an open and non-defensive conversation. This helps to create a safe place where conversations about interests and concerns may take place. The financial professional brings a fresh ear to each spouse. A skilled financial neutral brings a calm, impartial, and objective viewpoint to an emotionally loaded situation, thereby supporting the aligned professionals [lawyers and coaches] in addressing perceived power imbalance and “leveling the playing field”.

As a neutral, the financial professional is a fact finder and facilitator. She or he is not a mediator, and significant financial decisions are not being made unless the lawyers are present. Frequently, the parties’ information and conversations frame the agenda topics for the lawyer meetings. When everyone has solid, sufficient information, they can feel comfortable with investigating creative solutions. When dealing with the “nitty-gritty” of what to do with the house, how to allocate the family’s income to each household, how to allocate different types of financial assets [high-risk options, lower-risk investments] or how to choose different investment programs [whether inside or outside of tax-favored vehicles], the parties and legal professionals have fewer inhibitions to exploring options. With a financial professional on the team,

ideas can be evaluated with greater sophistication and less “crystal ball gazing”. The financial professional’s input is an essential part of the conversation both in understanding the numbers and providing the reality check that is so important to both the parties and the professionals. When lawyers have new perspectives, clients see and feel the difference.

Another benefit of the financial professional as a neutral is that he or she is very often the conduit for new information for the other professionals. Many times, parties share information with the financial professional that they have not shared with the other professionals. It is common for the financial professional to learn

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about parties’ emotions around money and often sees one or both parties get stuck, shut down and withdraw from active participation. Sharing this information with the lawyers and coaches provides an opportunity to address difficult areas so that all of us are providing

consistent communication and points of focus. The educational conversations and active listening that takes place are creating a better understanding of the information and a new perspective while proving to empower the parties to make more informed decisions.

The aligned [non-neutral] role is another way to engage the financial professional in Collaborative Practice. Some couples may request that the financial professional assist the less sophisticated spouse only. The opportunity to bring that spouse up-to-speed on financial topics is beneficial in the process. Understanding financial results brings confidence that allows decisions to be made and permits the process to move forward.

Either way, aligned or unaligned, the financial professional works together with the lawyers to understand the allocation of tasks and talk about what the clients need to move forward. Communication is on the forefront of the agenda.

### Benefits to the Lawyers

**Financial information is accessible.** The collaborative financial practitioner is specifically trained in gathering and organizing a family's financial information. No longer does the lawyer, or legal assistant, walk clients through their own data. The true blessing is that the data comes to the lawyers in an organized, easy-to-read format that promotes full understanding of the client's financial situation. With this accomplished, clients are better equipped for the four-way meetings and lawyers can address the tough questions such as retaining the family home, meeting the family's short-term and long-term needs, planning for college and retirement.

Communication is key. The most important component of the financial professional's role is the 5-way meeting. Whenever financial estimates and/or cash flow models are presented to the clients, the lawyers are present. This allows for the information and questions to be shared by all at the same time. With the use of laptop computers, cash flow models can be fine-tuned right on the spot to further promote discussion around settlement. Education to clients and lawyers around financial topics has always been critical. Now it is easily available.

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**Qualified collaborative financial practitioners raise the sophistication of the clients.** Rarely do both parties understand the fundamentals of family finances. One or the other, and sometimes both, know little about investments, deferred income, taxes, cash flow, etc. Working with the naïve or less sophisticated spouse helps to build confidence while the more sophisticated spouse recognizes that these skills and education will ultimately assist the process in moving forward. Since financial decisions are essential, this lack of sophistication can greatly slow the collaborative process.

**The educational approach saves time and money** and the clients have confidence in their

thought process. The difference in the quality of the needs assessment and understanding of financial implications that clients develop is enlightening. The less sophisticated client suddenly has a grasp of matters that he or she never before experienced. This enhances confidence levels and

makes the job of defining and accepting various solutions much easier and of far better quality. The financial professional is best suited to perform these tasks and, typically, is more focused and efficient. This alone is often worth the price in time and dollars.

**Long-range planning is supported** through this forward looking approach to divorce planning. One mark of successful resolution is that both spouses understand and agree that the solution they create fits their personal circumstances. Cash flow modeling and planning is proving to be helpful and clients are taking responsibility for their decisions. The software available and

*Continued on page 12*

## Engaging a Financial Specialist

*Continued from page 11*

the analytical ability of the financial professional is an exceptional tool. The tools are shared with the team so that the data and analysis become part of the foundation of successful resolution.

**Bring in your Financial Professional early.** Once the role and profound contribution of the financial professional is understood, lawyers say that it is a “no-brainer” to bring this piece in early in the process. The information gathered and organized is essential to the process. It is a task that is universally necessary. The lawyer is too expensive and does not have the tools, or often the interest, to effectively gather the depth and breadth of information that will result from the assistance of a financial professional.

The financially savvy client may often understand that he or she is probably not the best candidate to bring the unsophisticated spouse up to speed. Not only are there communication barriers, there are often trust considerations. When the less sophisticated spouse understand how much information needs to be gathered, organized and digested, there is a real appreciation for how great it is to have someone who really understands the financial ramifications of their decisions. The confidence that the decisions are made with good data and reasonable planning leads to solutions that last.

### Concluding thoughts:

The passage of time has taught collaborative practitioners that clients who had worked with a financial professional were not only better prepared to participate in the divorce process, but benefited from the specialist’s involvement in five-way meetings. It is during the five-way with the lawyers that we find clients taking an active role as informed participants in craft-

ing their financial solutions. Lawyers began to appreciate the value added by a financial professional who brings depth of knowledge and expertise while providing the power of objectivity and neutrality. All the participants are stimulated by client conversations that produce a better process and improved results.

Professionals who are trained collaborative financial practitioners provide key information, help to identify financial challenges and assist with exploring creative options. Sharing the burden of responsibility about financial matters is only an ancillary benefit to the process. The enhanced confidence with which the spouses view their financial situation, the increased knowledge and understanding about their ability to sur-

vive in their restructured family, and the tools that they developed to intelligently address their financial future, all support clients who are far better equipped to successfully make financial decisions, move through the process and reach a good settlement.

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*Cathy L. Daigle, CFP®, CDFA\* and George B. Richardson, JD, CFLS\*\* are both located in the San Francisco Bay Area, CA. Both are trainers in Collaborative Practice and are active members of Collaborative Practice Silicon Valley, International Academy of Collaborative Professionals and the IACP Advisory Council for Collaborative Trainers and Trainings.*

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