

THE FINANCIAL NEUTRAL PROFESSIONAL IN COLLABORATIVE CASES

CLEBC: Getting Started in Interdisciplinary Collaborative Practice training
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Moderator: Doreen Gardner Brown, BHEc CFP® AFC

Panelists:

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All panelists are members of IACP, many with leadership and training roles in the collaborative community. Each professional has been a Financial Neutral on many collaborative cases and it is this expertise that was featured in the panel. The volunteer contribution to this CLEBC training by this exceptional group of collaborative colleagues is acknowledged and appreciated. The excellent technical and professional support of CLEBC staff for this project contributed to its success - thank you Mary Kingston, Meredith Woods, Meisze Man and Brian Quan. The panelists and facilitator listened to the recording to create this reference document for participants.

During the presentation, panelists shared ideas about their work in the Financial Neutral role. While the consulting financial professional plays an equally valuable role and one that is likely more familiar, for example pension actuaries, it is the work of the Financial Neutral that was addressed. The Financial Neutral, a financial professional that can be a Certified Public Accountant/Chartered Accountant, Certified General Accountant, Certified Management Accountant or a Certified Financial Planner, can be involved in the collaborative process from the start and continuing throughout until the process is concluded or for a specific purpose during the process. On some occasions the Financial Neutral will continue to work with one of the clients, with the agreement of all concerned, for a specific task to be completed in a specified period of time after the process.

DGB: What is it that Financial Neutrals do that makes the professional lives easier for lawyers and mental health professionals?

Amy: One of the main things we can do and probably historically what has been an entrée for many neutral divorce financial planners onto cases is that we can efficiently and effectively do a lot of the detailed financial tasks that an attorney may not like to do or may not be well equipped to do and detracts their focus from the most important things that attorneys do. Things like client budget creation and organizing financial information take time away from the important legal work. The Financial Neutral can make a lawyer's professional life easier by taking off the layers of financial work that are subsidiary to the important legal work that attorneys are doing.

Donna: As a neutral, the attorneys can lean on us to help facilitate the conversation and strip away or unpeel where the emotionality exists. We can help assess, if coaches have not yet been involved, and recommend to the attorneys that the clients would be well served by bringing on mental health professionals. Some attorneys are concerned about liability and bringing Financial Neutrals onto cases can lessen that responsibility.

DGB: Just how exactly is the work of the financial done? Who does it? How is it done? What does it look like? How long does it take?

Amy: Amy's Collaborative Practice Continuum is at 11.1.59 in the training materials. In Cincinnati, this chart is often used to ground clients in the process because we have noticed that clients often want to jump to the "resolution stage" directly after the "goals and interests determination" stage. Financial Neutrals may be brought in at any stage. The various services that the Financial Neutrals can provide at the different stages are noted in the continuum. Often we are invited in at the "option evaluation" stage.

The Financial Neutral's work can begin with helping clients clarify their financial goals and then moves into the information gathering and information evaluation stage. Financial Neutrals can gather and organize all the financial information that will be used in the collaborative process. Once confirmed by clients it is distributed to the attorneys.

Clients may have both joint and individual meetings with the financial neutral. At the next stage, the financial will be involved in option generation and option evaluation. Short and long term implications will be discussed. Once resolution is achieved, the financial may be involved in assisting clients with transition items.

Amy noted that the continuum helps client to see where they are in the process and where the process is going.

Jude: Jude's Collaborative Divorce Financial Professional Timeline is at 11.1.47 in the training materials. She is experiencing that clients are often coming to her first. She does a complete work up of all the financial pieces to come up with a complete report on the financial situation, with supporting documentation. She meets with clients one time alone, each of them separately, to go over what their financial concerns and their goals and interests are and this is included in her report. It isn't just collecting information it is educating clients and attorneys about the clients' financial situation. She assembles all the documents and supporting statements and information into a report that is then used in the process.

Bringing financial reality to the sessions with clients is an important part of her work. Financial Neutrals facilitate the conversation about finances and the attention is on the neutral rather than either of the attorneys. When she is in the room with the clients, the focus can be on her rather than either of the attorneys about sensitive issues related to the financial situation. Jude noted that the financial reality role is vital and often times it is easier for clients to hear about financial reality from the Financial Neutral.

Eva: Eva finds that education is an important function of the Financial Neutral. Sometimes one client is less sophisticated and the Financial Neutral can be effective in providing a refresher course to get this client up to speed. She finds that when clients have the same

understanding of all the aspects of the financial situation everyone is very clear going into the options generation stage.

The kind of discussion we can have about immediate financial needs is very important. When one person has moved out and there is still no agreement, it is very helpful for the Financial Neutral to be involved in helping clients create short term budgets so that each client can live on the funds that are available. The longer this period is, the more critical and useful the involvement of the Financial Neutral. There is good value of having the Financial Neutral be involved in the “in between” or transition budgets that clients will need to have.

DGB: Family Law software is often used by Financial Neutrals. This was developed in the US and is used extensively. How do you use this software?

Jude: She uses the Family Law software to prepare the personal financial statements and to do projections.

Donna: She sends invitations to clients to populate the worksheets in Family Law software so that clients begin to own the numbers in their budgets. She uses a projector with a screen during brainstorming to illustrate both short and long term projections so that attorneys and clients can easily see the impact of the various options under consideration. Impasse is often alleviated by showing both short and long term projections.

Donna thinks the collaborative process is all about self-determining clients. The Financial Neutral needs to remember this and give clients the opportunity to come up with the solutions.

Amy: Long term projections are not always done. This tool is very powerful but there may be times when the long term projections do not add useful information. Short term analyses are frequently provided.

DGB: Who can do this work?

Lili: Lili refers to the Financial Neutral as a place mark in the collaborative process. We are a safe harbor for all the “what ifs” that will be played out during the process. Respect for the legal process is a given and in addition, the Financial Neutral has to be expert in comprehensive personal financial information. We are supplementary to the legal process and we must be sure that we hold true to the neutrality. Neutrality is essential. Fee only, placing clients’ interests first, and no selling of products or giving investment advice, are the prerequisites for how Financial Neutrals maintain this neutrality. The Financial Neutral might be described as a quarterback in the process in that we hold all the information but will act in consensus with the entire team member as consensual decisions about property and support issues are made.

Financial Neutrals must be trained in Collaborative Practice, must hold true to our financial licensing bodies and abide by the protocol and standards of practice of their respective financial professional organizations and the IACP standards of practice.

DGB: For some time, IACP has had standards of practice that Financial Neutrals are asked to embrace and all the panelists adhere to these standards in their collaborative engagements.

Donna: IACP requires a professional designation - CFP, CPA or CA, CGA, CMA for the Financial Neutral. Getting these designations is a rigorous process and to keep the designations requires annual continuous professional development/education. All five have disciplinary processes in place.

Many Financial Neutrals will have a CDFA or FDS designation, which can be regarded as an add-on that allows the CFP, CPA or CA, CGA, CMA to learn more about specific content that applies to the divorcing client.

Jude: Jude's collaborative practice group requires that members be a CPA, Chartered Financial Consultant or a CFP. There are differences between the CPA and the CFP. CPAs can come from a tax or audit background, and she finds her audit and tax background important in her work whereas the CFP may have more expertise in financial planning.

DGB: Many Financial Neutrals belong to the ADFP. How do you get to be a member?

Lili: The Association of Divorce Financial Planners (ADFP) organization's mission is to heighten awareness of benefits that Divorce Financial Planners bring to the divorce process. The ADFP is providing a leadership role in this niche profession for divorce financial professionals. The goal is to have trustworthy professionals for divorcing clients that will hold themselves to a high standard of practice, protocols, and ethics.
<http://www.divorceandfinance.org>

Amy: There are lots of applicants who do not meet the Membership Level criteria. A depth of tax understanding and a deep understanding of financial planning are essential.

Membership in the ADFP is not for those who are looking to gather assets or sell product. It is a gathering of financial professionals who are competent and serious about the divorce financial planning profession and are willing and able to provide services for an hourly fee.

DGB: The Vancouver based study group, founded in 2010, while not formally linked to the ADFP uses its membership criteria. www.divorcefinancialplanners.ca It is this group that produced the two checklists in the materials at 11.1.61 and 11.1.65.

DGB: What is the value proposition of the divorce financial planner?

Lili: The value added piece could be discreet to a specific task or entail a comprehensive engagement throughout the whole process. There are a myriad of tasks that will be defined by an engagement up front.

The Financial Neutral's role is multi-dimensional. There are three steps:

1. Collecting the financial information, including clients' emotions about this financial information and making sure that the information it is as accurate and comprehensive as it can be.
2. Finessing how the financial information is analyzed and applied to different options or scenarios.
3. Making sure that all the clients' priorities and preferences are addressed. Priorities can vary depending on the outcome of different scenarios and will include tax analysis and planning, cash flow and budgeting, debt repayment, funding college education, etc.

The Financial Neutral brings all the "what ifs" into the discussion. What if you tapped into a different asset, what would be the result? What if you increased income, decreased expenses? We just don't input numbers blindly into a software program; because of our experience and knowledge, we can capture critical information and nuances as well as pull apart all the threads holding together any situation. Our job is to answer every what if that clients or other team members have.

We wrestle with the questions raised to find out what is really being asked. We can be the neutral and field all the financial questions in one place. Our job is to help clients discover what the opportunities are. We can ask, are you sure you want to do this? Or, might this be something that could work better to achieve the desired outcome?

DGB: How does the work of the financial neutral complement the work of the lawyers?

Amy: By describing a current case, the interaction of the Financial Neutral and the attorneys were illustrated. For Amy, the Financial Neutral and the attorneys' pieces are woven together in collaborative process. In the case she described, she had been involved from the beginning, so she was able to do a cash flow tracing to determine the money that had been used both inside and outside the family. This was helpful because the money that was spent on an affair was documented for use in the process.

The coach set the table for how the clients and the professionals would look at the financial situation and have the legal framework applied so that the clients could come up with options for resolution. The coach described the long term projection as the trail head and not the exact trail. The coach provided an important resource as this case was highly charged from an emotional standpoint.

All the professionals danced together very well to bring a resolution for these clients. The neutral voice of the financial was used to bring out crucial information while the coach was key in creating a safe container for the difficult conversations.

DGB: Clients often question the need for attorneys.

Amy: All of us on the panel have experienced clients who are hoping to work just with Financial Neutrals to resolve the issues of their divorce. We must clearly describe the need for the legal advocate each and every time. We gather the info, organize it, analyze it and get clients and their lawyers to the point where the discussions about options can take place.

Lili: Financial Neutrals have to be trained in the collaborative process and have enough experience with divorce cases so that we are able to stay within the bounds of the law. Financial Neutrals work under the umbrella of the legal framework and it is very important that we all respect professional boundaries.

Jude: The Financial Neutral is not the decision maker. We provide info about the options and can provide ideas if clients are short of these. It is the clients who make the decisions.

Donna: When she began doing collaborative cases she learned very quickly that she had to be clearly listening with both ears when doing financial neutral work. Collaborative means that clients decide what the solutions are going to be. Donna's role is to empower and educate clients to be self-determining. She is helping to choreograph the process of resolution.

Doreen: Spousal Support is an area that requires both legal and financial guidance.

DGB: In Toronto, Eva is part of a special initiative with one of her lawyer colleagues. How did this happen? What is it?

Eva: During many conversations with Marion Korn, family law lawyer and collaborative professional, we created a process where each collaborative professional team member describes their professional contributions in a collaborative process. The goal was to get couples to meet and hear from the different professional directly who are best able to describe who does what when. www.mutualsolutions.ca

Each collaborative professional separates out the different tasks that need to be accomplished.

DGB: How much does all of this cost? We know something from the IACP research study on Canadian cases (2009). The amount was \$3,116. However, the stats reflect both the Financial Neutral work and the fees that were incurred to do business and pension valuations. The total costs reported were for work done by both consulting financials and Financial Neutrals. In almost all conversations with divorcing clients, the topic of lawyer fees comes up. As we learn to work together better and form effective teams, we can minimize the professional fees that are payable by clients.

DGB: Please comment on the costs to clients of your work as a Financial Neutral.

Jude: Most of Jude's cases are with high net worth clients with complex situations. Her range of time spent is 10 - 30 hours on a case, at the higher end when the situation is more complex. Her time line was developed to help clients understand how many times they would be meeting with Jude. Typically the attorneys who include Financial Neutrals in their cases are getting more referrals. Clients like that there are a family professional to do the parenting plan and a Financial Neutral to do the numbers. Clients like the idea of segregated services.

Donna: Clients want segregation of services. We continue to have clients say that they don't want to pay for attorneys and they are already engaged in personal counseling. Financial Neutrals end up selling the benefits of the attorneys and divorce coaches specific to the uncoupling. Her average assignment is 6 to 10 hours, unless there is lots of emotionality or conflict.

Amy: Sometimes financial tasks get done twice because some of the attorneys also own the Family Law software. This adds to the cost. Conversation can address this. Working on the relationships between attorneys and Financial Neutrals is required. Sometimes control of the process is the issue. Collaborative practice group meetings provide opportunities for conversation. Good solutions bring more referrals.

Eva: Working as teams is essential so that we can begin to understand what each professional likes to do. What is the divorce budget? One to one relationships with collaborative colleagues, including the debriefs with others on the team may appear expensive for clients, in the long run, contributes to the overall efficiency of the team.

DGB: Projections are often used in collaborative cases. How does this happen? How long does it take to prepare such work product?

Donna: Modeling software has been used in retirement planning. Assumptions need to be set first. For divorcing clients, for longer term marriages and when clients are worried about their long term situation, projections become very important. Clients are very involved in the assumptions that are used in the preparation of the projections. For the brainstorming sessions in collaborative cases, she uses a projector so that as different scenarios are contemplated, the results can immediately be seen. This has helped avoid impasse. Final versions are emailed to clients after the session so that Donna can have some quiet time in her office to review the inputs and make sure that everything has been entered accurately.

Donna on average spends about 6 to 10 hours. If more, there would be more emotionality or multiple documents to review.

Doreen: There is an example of a projection in your materials. Doreen's experience is that a projection takes from 2 to 3 hours per client to prepare the report. Modifications take less time. This is after the financial data has been verified and assumptions clarified. The projections example in the training materials was first created for a CLE TV course in October 2011, done with Diane Bell and Carla Lewis. In this course, a fact pattern that is becoming more common - the divorce of couples about to retire was used. In these situations projections can help clients visualize how their retirement plans will change.

Doreen: This tool was borrowed from financial planners. Here are three programs that are being used in Canada for divorce financial planning assignments, in addition to the proprietary software that CDFAs and FDSs have available to use:

RRIFmetic from Fimetrics

Canadian Retirement Planner from Gobeil and Associates

Naviplan Extended

DGB: Family Law software. While this can be used in Canada, it isn't being used at this point. Eva and DGB participated in a training session about this software in January 2011 and determined that it would take considerable time to get the changes made so that the reports would reflect Canadian content as well as the financial planning software currently in use.

There are existing software programs available to use in Canada that are designed for financial planning and reference our particular government programs. Eva will be reviewing the Canadian version that was just released in November 2012 to assess how it can be used in Canada. It was noted by others on the panel that one of the co-founders of Family Law software, Dan Caine is very responsive to the needs of the divorce financial planner.

Donna: One of the features of Family Law software is clients' ability of constructing their budgets and submitting that information to the Financial Neutral. This minimizes the time the Financial Neutral spends in this area and helps get clients attached to their numbers and budgets.

DGB: Pitfalls with projections?

Jude: The whole team talks about each assumption. The team also talks about what kinds of projections might be most helpful. Her early experience was that when we do too many projections, we can cause unnecessary angst.

Amy: Has learned that it is important for attorneys to see and understand the results of any projections before the meeting. Understanding the different ways people learn needs to be taken into consideration in deciding how information is presented so it is best understood.

DGB: What can go wrong when we engage a Financial Neutral or more generally, with the process? We all have examples of this and have learned from them. Amy in particular will be able to share very current examples of this from her Grand Rounds sessions at the Chicago IACP Forum.

Amy: Honest communication among the team members is critical.

Donna: Donna has found that team-sabotage arises when we have omitted the pre-meeting stage. Too often we minimize the incredible importance of understanding our colleagues and their working preferences. We short change our clients when we are not optimally working in sync with one another. The same importance applies for debriefing where deep learning takes place and our level of competence improves.

Doreen: Having principles clearly described at the beginning is essential.

DGB: As a summary Jude will reference the responses she received from two of her collaborative attorneys. The following responses are from Attorney, first President of the Collaborative Council of the Redwood Empire, and current IACP President Catherine Conner and from Attorney and past President of the Collaborative Council of the Redwood Empire Amy Rodney.

1. What can the financial neutral do that the lawyers cannot?

- Work together with both parties to gather financial information in an efficient manner - it takes longer and is less efficient with 2 aligned lawyers.
- Raise financial issues or questions that lawyers might not think of when focused on legal issues.
- Provide financial expertise.
- Discuss with the parties their financial attitudes, history, knowledge in a way that can work better facilitated by a neutral than one of the lawyers.
- Be the voice of economic reality and bring a reality check when needed.
- Prepare financial projections.

2. What can the financial neutral add to the collaborative process that can make the lawyer's life easier?

- A lot of the above, but particularly organizing the financial information in a way that is digestible for clients and is accessible to everyone in the same format.
- Educate less knowledgeable clients about financial issues.
- Be the economic voice of reason.
- Increase the number of options during brainstorming.

3. What can the financial neutral add that will make the clients happier?

- Make financial information understandable.
- Help clients organize financial information, particularly if they are not financially minded or are disorganized or lost.
- Help clients to understand the economic consequences of possible options.
- Help clients with financial resources (e.g. insurance broker, bookkeeper)
- Flag financial follow up items.

4. How can you invite your clients to want to incur the expense of working with a financial?

- Talk to clients about the value they can bring as described above. One in particular is the cost benefit of having one professional prepare all the financial information.

5. What can go wrong if a financial neutral is not part of the Team?

- Disagreement or distrust by clients when financial information is gathered/organized in different ways by the two attorneys.
- The attorneys may miss some financial issue or consequence.
- The attorneys may miss an option that a financial professional would have thought of.

Q and A:

One participant wondered about when projections might create a crushing result. When projections would not work? Why would clients with little money not benefit.

Jude: When both cash flows are negative, it may not be helpful. Analysis and guidance is still done and this is valued and valuable.

Amy: Is the situation redeemable? If both are going to be in trouble, to emphasize this sometimes raises roadblocks and impedes progress toward resolution of the divorce.

Donna: In really tough situations, the Financial Neutral can help brainstorm the ideas that would minimize the damage. Are you really asking if there is education that might be helpful? Participant clarified that he thought it would be helpful to educate and Donna concurred. She would have clients brainstorm some ideas and other options that could minimize the damage going forward.

Amy: There is a delicate balance between divorce financial planning and financial planning. The goal is to end the marriage. It is not the point of the collaborative process to do long term financial planning.

Jude: The Financial Neutrals do address the hard issues, but not necessarily with projections.

Second question: How does neutrality play out in a situation where one of the clients manages a highly volatile portfolio? What do you do? Just the numbers?

Lili: A huge part of our role is to educate both clients. We can educate about what is held in the portfolio. Our job is to explore and explain what their portfolio of investments consists of so that both clients will understand the current portfolio. Understanding concepts of investment are important to help move clients forward.

Doreen: Going forward, each client needs their own team of advisors.

A third question: Suspicion often present around finances. Is it the role for the Financial Neutral to explain the situation?

Donna: Yes, and education is key.

Doreen: Sometimes both clients do not understand the way their affairs have been set up. The Financial Neutral can do education about this.

Final questions: Are financial neutral involved in doing risk evaluation of portfolios? How do neutral financials raise difficult issues?

Amy: Cautioned using differing rates of return for each party. This just introduces another variable in why the projected outcomes of the parties are different. Using the same rate for both parties in the projection allows us to better understand the impact of different levels of support payments or a different asset division.

Donna: Reframes the question to - How do we bring up sensitive issues? How do we bring this to the table?

Jude: Her reports include as much information as possible and then the team decides how this will be addressed, including how to investigate further if required.

Lili: It is the team's responsibility to put sensitive information on the table. Sometimes collaborative cases do fail.

Donna: Just be curious! When she is working with highly compensated employees, she asks a question like "when do those bonuses get paid?" "I read in the paper that

Lili: A degree of timing and / or subtlety may be necessary - such as: "By the way, (on your way out) what is..." as per Colombo style!

Lili: All of us are believers in the Collaborative Process because it offers an opportunity to be more holistic than any other legal process and an opportunity to contribute positively to our clients' lives for the very long term. We bring our expertise and passion to the process, to our team and most importantly, to our clients to enable us all to focus on attaining a positive and optimistic outcome. This is just a beginning of how clients will view divorce.

What is that we want to create for our clients? A better experience.

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