

**Collaborative Practice San Francisco  
Protocols for the Financial Professional**  
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## **Initial Contact**

The financial professional introduction to the clients usually first takes place by phone. The clients are interviewing the financial professional and the professional is offering an overview of who they are and what they do.

It is important that a similar call takes place with the other spouse in order to demonstrate and maintain neutrality.

Some professionals and clients prefer the first contact take place face-to-face.

## **First Client Meeting**

During the first meeting the following usually takes place:

1. Create an agenda
2. Review credentials and create better understanding of the professional role.
3. Define concerns and hopes of the clients.
4. Explain how the out-put may help to address the above to create a better understanding of what we do.
5. Review Assets, Debt, Income & Expenses.
6. Out-line next steps.
7. Notes are taken by the financial professional and distributed to the clients and the team.

## **Role of the Financial Specialist**

Financial Specialists are educators and facilitators. They provide a neutral place to assess financial concerns and objectives while gathering financial facts. They do not dispense legal advice. The role of the Financial Specialist encompasses seven principal categories:

1. Gathering data such as identifying spending patterns, needs analysis, income history and potential, and asset and debt values, including investments, pensions and insurance;
2. Understanding and prioritizing client financial concerns;
3. Educating on concepts, addressing financial concerns, bringing spouse(s) up to speed and "leveling the playing field;"
4. Cash Flow projections, including the impact of inflation and taxes;
5. Graphic illustrations showing short-term and long-term detailed financial estimates;
6. Assisting with implementation of various elements of the financial settlement;
7. Communicating and collaborating with all members of the team.

## **Process Guidelines**

1. The financial specialist does not do support calculations unless requested to do so by the attorneys. The assumptions must be agreed upon by the attorneys before the calculations are done.
2. The initial cash flow reports will not have support numbers unless requested by the attorneys and the numbers have been agreed to by both attorneys.
3. The presentation of the financial reports is done in a 5-way meeting with both attorneys and both clients.
4. Communications will be sent to other team members via e-mail or USPS.
5. Minutes will be sent to other team members after all client meetings.
6. An e-mail from client, making a request or disclosing information, will be sent to both attorneys prior to acting upon a request or responding to the e-mail.
7. If possible, phone calls to attorneys should be a 3-way conversation. If this is not feasible, the other attorney should receive a summary of the telephone call as soon as possible.

## **Timing**

1. The typical case begins by gathering data:
  - a. Goals and objectives
  - b. Assets and debts
  - c. Income and expenses
2. Minutes of the client meeting will be prepared and shared with entire team.
3. Preparation of Table of Assets and Debts and Income and Expenses then send to both attorneys.
4. Assumptions and data are reviewed by both attorneys and verified by both clients.
5. Prepare reports:
  - a. Cash Flow
  - b. Net Worth
  - c. Other professionals may be brought in as needed in the following areas such as but not limited to:
    - i. Pension Valuation
    - ii. Taxes
    - iii. Sale of home
    - iv. Stock options
    - v. Business appraisals
6. 5-way meeting is held with attorneys, clients, and financial specialist.
7. Minutes of 5-way meeting are prepared and distributed by one of the attorneys.
8. Revisions of reports are prepared and additional meetings held as required.
9. When the process is complete, there will be a team debriefing in person or by telephone.

## **THE NEUTRAL FINANCIAL PROFESSIONAL IN COLLABORATIVE PRACTICE**

I. The role of the neutral financial professional in the collaborative process is to be an educator/facilitator in matters relating to finance. All neutral financial professionals should consider themselves part of the collaborative practice team working together to achieve a mutually agreeable settlement. Each neutral financial professional should be informed of any sensitive issues, e.g., mental health issues, which might complicate settlement of the case.

The duties of the neutral financial professional are to request, gather, analyze, and evaluate financial data provided by the clients and the lawyers. It may also be necessary to educate one or both clients regarding any and all aspects of their financial position.

- A. Clients' Financial Goals: The neutral financial professional should verify the clients' interests, goals, and expectations that influence the financial analyses.  
The financial professional's role is to help the client's understand the possible implications, both positive and negative, of the desired goals. By laying out these possibilities, the financial professional provides information the clients need to make an informed decision for themselves.
  
- B. Possible Services: The neutral financial professional's duties may include gathering financial details, developing budgets, educating one or both parties about finances, providing financial modeling, presenting possible financial settlement scenarios, valuing property, evaluating tax and inflation consequences, forecasting cash flows, examining retirement and insurance issues, preparing inventories, analyzing pension plan requirements, tracing and characterizing property, identifying spending patterns, performing needs analyses, researching income history and potential, and preparing asset and debt reports and income and expense reports.
  
- C. Scope of Engagement: The scope of the neutral financial professional's engagement is defined by the clients with input from the neutral financial professional and the collaborative attorneys. If, during the course of a neutral financial professional's engagement, a client or attorney requests additional services that are beyond the scope of the engagement, the neutral financial professional has a duty to bring this to the attention of the collaborative team before the additional work may be performed. If one client needs "financial coaching" or additional help working through expenses, for example, the planner may meet with that client only if the entire team is in agreement.

D. Legal Issues: The financial professional shall not provide legal advice. Because transparency is paramount in the collaborative process, once the consent form is signed, financial information may be shared with all collaborative team members. However, outside the collaborative team, most financial information and communication between the financial neutral and team members remains confidential.

## II. Suitability of the Collaborative Engagement

- A. The neutral financial professional is expected to exercise prudent judgment in accepting or declining a collaborative engagement. Appropriate engagements are those in which (1) the financial professional is able to be neutral, (2) clients' and attorneys' objectives are consistent with the principles of collaborative practice, and (3) there is no indication of dishonesty of purpose or of fraud.

This does not preclude the use of specialized financial professionals who are retained for specific financial purposes and are not neutral.

The neutral financial professional shall adhere to the ethics of the neutral financial professional's respective discipline.

### B. Terms of Engagement

1. The neutral financial professional becomes engaged in a collaborative case through a written agreement reflecting a collective and informed joint decision of the clients and their respective attorneys. This agreement should clearly define the scope and purpose of the neutral financial professional's responsibility; address such matters as agreements regarding communications, retainers, fees, and sources of funds from which the neutral financial professional is paid.
2. If one client is paying all or substantially all of the fees, the other client should be informed that this fact will not cause any bias in favor of the client who is responsible for the fees.
3. The neutral financial professional should remain current on fees during the course of the engagement to avoid any perception that a buildup in fees receivable is impairing the neutral financial professional's objectivity. Timely and adequate fee status updates should be made to attorneys and clients. Fees are a valid subject for any meeting agenda.

### C. Communications

1. A neutral financial professional is engaged in a collaborative case with the expectation that the neutral financial professional serve the interests of both clients in an impartial, unbiased, confidential, and independent manner. The neutral financial professional recognizes that the clients' and attorneys' perception of the neutral financial professional's continued impartiality and objectivity is largely influenced by the nature and extent of

the neutral financial professional's written and oral communications with the clients and attorneys. The neutral financial professional will work diligently to maintain the trust and confidence of all clients, carefully avoiding the perception of bias.

2. The neutral financial professional recognizes that the information and knowledge they provide to both clients may significantly influence the outcome. Every effort should be made to provide accurate, unbiased information presented in a format that is easily understood and available to both clients.
3. Specific facts and circumstances of a case may require more interaction with one client or attorney than the other. Whenever this occurs, it is important that the clients understand and agree to this inequality of time. Interactions perceived as excessive can give rise to the appearance of bias. The parties may agree that one client possesses less skill than the other in personal money management and requires additional time with the neutral financial professional. This would include the situation where a neutral financial professional needs to educate the client who has a lower level of financial expertise.
4. The neutral financial professional recognizes that honesty and full disclosure by the client of relevant information is critical to the successful outcome of a collaborative case. The neutral financial professional should assist the client in complying with the requirement of making a full and candid exchange of all pertinent and requested documents and information. The clients should be informed that all information given to the neutral financial professional may be made available to all members of the collaborative team.
5. The neutral financial professional may, in the course of performing the requested work, make a discovery that is contrary to the information provided or the position taken by one of the clients. Often information has inadvertently been left out or forgotten and the opportunity should always be provided for further discussion without making either party uncomfortable. If full disclosure is not readily embraced by the offending party, the neutral financial professional shall seek the assistance of one or both attorneys and the mental health professional to address the problem without derailing the collaborative process.
6. The neutral financial professional may, through faulty information and/or human error, create a false impression or provide inaccurate data. When the error is discovered it should be promptly corrected and disclosed.

#### D. Documentation

1. The level of engagement documentation should be commensurate with the scope of work and should provide support for the neutral financial professional's work product. All documents provided by a client to the neutral financial professional should also be provided to the other client and their attorney.

2. The neutral financial professional should perform adequate inquiries to perform the engagement. If the neutral financial professional is not provided adequate information to support a complete analysis, then the neutral financial professional should discuss the inadequacy with the attorneys. The neutral financial professional's work should always adhere to all applicable professional standards. The neutral financial professional should clearly communicate an explanation of all assumptions and methodologies used.

#### E. Financial Information Timeline

1. In most cases it will be most prudent for the neutral financial professional to hold the first meeting with only the two clients. There are several reasons for this with the most important one being to establish trust. Clients often tell the neutral financial professional things they would not share with the attorneys or coaches. Clients are also hesitant to use "the team", so adding on the cost of other professionals (two attorneys at a financial intake meeting) before it is necessary, does not sit well.
2. Waiting for 5 people to coordinate their schedules for a meeting can take time. In the meantime the neutral financial professional can be very productive by moving forward with content for disclosures. By the time the 5-way or 7-way meeting comes around, everyone is able to have an understanding of the assets to be addressed, identify the topics for discussion around those assets, come to agreement about assumptions used, and identify the scenarios that may best help the case move forward.
3. The following is a guideline to follow to manage the flow of information for the neutral financial professional and is meant to touch on all major pertinent matters. Each collaborative practice team will need to be somewhat flexible in their own approach to best meet the needs of the clients.
  - a. Hold first meeting with both clients:
    - i. Set scope of engagement
    - ii. Sign fee and retainer agreement
    - iii.. Agree on methods of communication
    - iv. Discuss clients' goals and objectives
    - v. Obtain information concerning assets and debts
    - vi. Obtain income and expenses
  - b. Minutes of client meeting will be shared with entire team

- c. Sign last page of “Principals and Guidelines for Collaborative Team Process”
- d. Prepare spreadsheets of Assets and Debts and Income and Expenses. Send to attorneys
- e. Assumptions for support scenarios are identified by the clients, attorneys and with the help of the financial specialist.
- f. Prepare reports:
  - i. Cash flow
  - ii. Net worth
- g. Consider the need for additional specialized financial professionals who will act as either neutral or consulting financial specialists. Examples may include but are not limited to:
  - i. Pension valuation
  - ii. Real estate appraisals and/or finance options
  - iii. Taxes
  - iv. Appraisal of business or other assets
  - v. Stock options
- h. Hold 5-way meeting or 7-way meeting, if needed, to discuss possible settlement options
- i. Minutes of client meeting will be prepared by one of the attorneys and shared with entire team
- j. Debrief every meeting.
- k. Revisions of reports are prepared and additional meetings are held as needed
- l. Hold a team debriefing when process is complete.

#### F. Process Guidelines

1. Communications other than 5-way or 7-way meetings will be sent to team members via e-mail or USPS
2. Minutes will be sent to team members immediately after client meetings



3. A communication from either client making a request or disclosing information will be sent to both attorneys prior to acting upon the request or responding to the e-mail
4. If possible, phone calls to attorneys should be a 3-way conversation. If this is not feasible, the other attorney should receive a summary of the telephone call as soon as possible

#### G. Other Professionals

1. If the clients agree in writing, the neutral financial professional may communicate directly with other professionals such as another financial professional who has a different scope of work. This may occur when in the neutral financial professional's judgment it would be helpful in achieving the clients' goals. In the absence of prior discussion or agreement the neutral financial professional should communicate with both of the attorneys when facts or issues are discovered during the scope of the neutral financial professional's engagement which is relevant to the case. In addition, there may be instances where there is already a longstanding relationship with a financial professional such as a stock broker, tax accountant, or the like who is not neutral and who may very well continue to have a relationship with one of the clients. In this case the non-neutral financial professional should be instructed up front that anything disclosed would be shared with the team.
2. The neutral financial professional may also ask for the involvement of a mental health professional when it would help further the collaborative process.

#### H. Financial Services Outside of the Collaborative Engagement

A neutral financial professional's solicitation for services outside of the collaborative case is strictly prohibited in any manner at any time. A neutral financial professional who serves on a collaborative case in a neutral role shall not sell any product to a collaborative client during or after the completion of the collaborative case, shall not manage assets for any collaborative client, and shall not perform consulting services such as tax preparation, consulting, or have any ongoing business relationship. This is to protect the neutrality of the process and is an IACP standard.

#### I. Withdrawal from the Team

- A. The neutral financial professional has an obligation to communicate to the clients and the attorneys any circumstances which might precipitate withdrawal of the neutral financial professional, thus

affording the collaborative team an opportunity to remedy the situation. Examples of events which may require withdrawal if not resolved include:

1. An attempt by either party to limit the scope of the engagement
2. The withholding of information required for the performance of the engagement
3. The attempt by either client or attorney to work outside the protocols of collaborative practice with respect to the neutral financial professional's engagement, including excessive lobbying or attempts to influence the judgments or conclusions of the neutral financial professional.
4. Any threats of litigation, coercion, or intimidation from either client or their attorneys
5. The continued uncorrected problematic communications with either client or their attorneys
6. The continued non-payment of agreed upon fees
7. The termination of the collaborative process.

B. A neutral financial professional may withdraw from a collaborative law engagement by giving three business days' written notice to the clients and their attorneys. Notice of withdrawal of a neutral financial professional does not terminate the collaborative law process. The clients should be given the opportunity to engage another neutral financial professional. It is prohibited for a neutral financial professional who withdraws from an engagement, voluntarily or otherwise, to develop, encourage, or solicit any future business relationship with either of the clients involved.

C. The resigning neutral financial professional should acquaint any successor collaborative financial professional with the financial facts of the case in an impartial manner. The withdrawing neutral financial professional has an obligation to make all relevant documents available to both clients as soon as possible after withdrawal.