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WIN-WIN DIVORCE BY JORYN JENKINS

The Financial Professional ©

The neutral financial professional (often referenced as the “FP”) plays an important role in the collaborative process, whether he is the facilitator in the “two-coach model” or the FP in the “one-coach model.” Unlike his persona in a litigated courtroom case in which both parties may hire CPAs to battle it out against one another, in a collaborative case, the FP acts as a neutral for both clients. The obvious benefit is that the clients save money by only retaining one FP and sharing the cost.

But that savings isn’t a straight 50% of the amount that two experts would cost. When an expert prepares for trial, he also prepares to defend his opinion, and helps the trial attorney attack the other expert’s reasoning and opinion. Although sometimes much more, on average, this added responsibility doubles the expense of the simple preparation of an opinion.

He’s essential, even if the clients don’t have high incomes or extensive assets. In some divorces, the biggest challenge is divvying up the debt. These days, whether to file a joint petition for bankruptcy protection *before* obtaining the divorce is often an issue that clients should consider — one far easier to do in a collaborative setting.

A financial professional will know best how to maximize the income and assets that the clients do have. He facilitates gathering financial information and problem-solving for everyone. Additionally, an FP may help clients identify their financial goals, interests, and concerns. He’ll likely prepare an inventory of the clients’ assets and liabilities. He may help the clients to develop budgets and to better understand the financial issues and options for property valuation. He may assist the attorneys and clients to address separate property and reimbursement claim issues. He will likely help the clients to develop, evaluate, and negotiate options for their financial settlement.

The FP will help the clients gather and organize their financial information. In a litigated divorce, the attorneys are generally responsible for organizing and reviewing the mandatory discovery. However, in the collaborative process, the FP, who is better trained in financial matters and who generally bills at a lower hourly rate than the attorneys do, will prepare the clients’ joint mandatory discovery response.

In a litigated case, the attorney usually presides over any conferences between the client and the expert, and often meets with the expert outside the client’s presence. In most collaborative communities, any meeting between the FP and the client takes place without the need for the attorney’s attendance. Obviously, this is another huge cost savings to the collaborative client.



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Because the clients pledge transparency, fully and candidly exchanging information of the nature, extent, value of, and all developments affecting their income, assets, liabilities, and all other relevant matters, costs are lowered. The clients avoid wasting time and money paying their attorneys to play litigation games to avoid fully disclosing financial information.

The information exchanged during the FP's meetings with the clients is not confidential with respect to the collaborative team; it will be shared with the other team members.

However, while the clients are transparent as to the team, the team agrees to maintain the confidentiality *within the team* of all collaborative communications relating to the subject matter of the case, whether before or after the institution of formal judicial proceedings, if any. The clients also agree to keep as much of their financial information confidential as the court will allow. (Remember the requisite final step in *any* divorce is still to get that final judgment of dissolution of marriage from a judge.) The amount of privacy allowed is based on what the individual judge or venue law requires, but here, in Florida, the team aims to file what we call "naked" financial affidavits, and many judges permit it. These are affidavits with the bare minimum of identification information that state that the fully completed versions (containing the personal financial information) have been exchanged by the clients. They attest that the clients have each placed the other's original affidavit in a secure location for future use, if needed.

We also avoid filing marital settlement agreements so that the information disclosed in these documents likewise doesn't become available to the public. By contrast, in the vast majority of litigated divorces, highly detailed marital settlement agreements are filed in the public court file for all to see.

The FP must appear neutral to the clients in his oral and written communications. Often, he'll spend more time with one client or the other because she is the one who has more of the financial information or because she is ignorant of the finances and requires more in the way of explanation. If so, the FP should explain to the clients why more time is being spent with one or the other, without making that client feel insecure.

The FP must only work within the scope of his engagement during the collaborative process. If the scope of engagement increases or decreases, the changes should be made in writing and approved by the team.

While engaged in the process, the FP may not solicit the clients for services outside the scope of engagement. However, after the process, the FP may perform services for the clients if requested by a client during the engagement, if the FP is able to remain neutral, if it is disclosed to the team, and if both clients consent to it after disclosure.

Early in the process, the clients may have less contact with the FP compared to the facilitator and their attorneys. If the attorneys and clients agree that the clients should be involved in



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choosing the neutrals, the clients may briefly interview potential FPs. They'll discuss their fees and the scope of their work. They'll assess FPs based on resumes, personality types, and the clients' perceived needs. To avoid overwhelming the clients early in the process, the FP may wait until after the first full team meeting to begin dialogues with the clients about financial disclosures, completion of financial affidavits, and their desires for the distribution of the assets and liabilities.

At that point, the FP will meet with each client one-on-one to identify their assets and liabilities and determine which client will provide which documents regarding sources of income and records of earnings. He'll discuss possible valuation dates, methods of valuation, and the need for appraisals.

Once he has the information, he'll organize it in a manner that will best facilitate settlement. He may assist the clients in obtaining values for their assets. He may recommend appraisers. He may educate the clients on financial and tax matters, if these are in his area of expertise. He may recommend additional neutral professionals, if, in his judgment, the clients' financial picture requires more specialized help. He will assist the clients in crafting financial scenarios for settlement.

An FP (and the other professionals, too, for similar cause) may withdraw from the process for the following reasons:

- ✓ if a client attempts to limit the scope of the FP's representation;
- ✓ if a client withholds information;
- ✓ if a client or attorney attempts to work outside the collaborative protocols;
- ✓ if there are threats of litigation, coercion, or intimidation;
- ✓ if the clients refuse to pay the FP;
- ✓ for problematic communications with a client or attorney; or
- ✓ for any other reason outlined in the FP's retainer agreement or the collaborative participation agreement.

If an FP does withdraw, he must give the team written notice, he must aid his successor FP, and he must make all relevant documents accessible to the team, though his work product is not admissible in court.

The FP is an integral part of every collaborative team. And because he is neutral, the clients benefit from reduced expert fees, as well as from having a representative who is looking after both of their interests, rather than those of just one of them.

Contact Open Palm Law now. We can help you resolve your disputes.