**The Role of the Trust and Estates Lawyer in Collaborative Practice (Planning)**

1. The lawyer who represents the trust-maker is a full team member and participates in all full team meetings in addition to meeting separately with his or her client(s) when requested or advisable.
2. The lawyer stays in his or her role as a legal representative of the client.
3. The lawyer may represent more than one client if their interests coincide or align with each other.
4. During full team meetings (the family members and neutral(s), the lawyer is present to gain additional insight into the family’s dynamics and concerns; explain the trust-maker’s rationale for including certain concepts into their will / trust, and help the participants in general to understand elements of the law that pertain to their situation. The lawyer may also share his or her experience if it might help the family gain a deeper understanding or shift an individual’s incorrect understanding of the law, trusts in general, or the law in general. In this aspect, the lawyer is helping to educate the family.
5. The lawyer does not become a facilitator or manage conflict that may arise during the discussion. Instead the lawyer can use his or her position to better understand the family’s concerns in order to help the client integrate those concerns, if appropriate, into the trust document at a later meeting with the team and the client.
6. The lawyer meets with other team members, shares information that will help them understand the trust-maker and his or her intentions. It is the lawyer’s responsibility to educate the clients regarding the confidentiality guidelines in Collaborative Practice and how those differ from the usual lawyer-client confidentiality relationship.
7. The lawyer is in a unique position to help other team members understand legal principles that may be involved in any particular case and to give insight into the trust-maker’s personality and intentions.

**The Communication Specialist Role:**

**How Does It Work In Trusts and Estates?**

**The following is a step-by-step process for mental health professionals who are serving as Communication Specialists on an Interdisciplinary Team.**

1. The initial interview may be with a single family member or several (a couple for example). The client(s) may have come directly to you, having heard about your work, or been referred by a lawyer, financial or other professional.
2. Your initial task in this initial interview is to provide information that will help the client understand how Collaborative Practice works. Your second task is to help assess whether or not this individual seems able to participate in a Collaborative Team process. As you explain how the process works, often the client will express serious reservations regarding another family member’s ability to participate. Taking time to delve deeper into some of the history and the emotions around the reservations will help in determining whether or not to move to the next step. As you are engaging in this process, you’ll also be learning a great deal about the client’s capacity to participate as well.
3. At some point, explain to the individual that the process doesn’t move forward without your talking to each family member and determining their level of motivation and willingness to be a part of the family problem-solving experience. Reassure the client that the team will not move forward if one or more of the family is clearly unable to participate effectively.
4. If the individual is open to talking with another family member to explain the process, then you can ask if the client is open to have that person call you. You can then explain your role in getting everyone’s story and determining each person’s ability to participate. Alternatively, if the person is willing to ask other family members to consider the process, he or she may get permission from them for you to make the call to each of them individually.
5. Once you have talked with each family member and you have put together the common goals and reframed their definitions of the problem in ways that can open up discussions, you’ll be ready to meet with everyone together.
6. Let each member know that the purpose of the meeting is to come up with a common set of goals and communication guidelines to have in place before heading into a Full Team Meeting. Family members are often quite anxious about meeting together, so reassure each one that you will facilitate and help them manage any conflict should it arise.
7. Family Meeting:

* Review the common goals and interests. Make sure each member is supportive and agrees that the interests represent his or her true hopes and aspirations. (Put these on flipchart sheets around the room).
* Discuss with the family what they see as behaviors, attitudes or lack of skills that may prevent the family from reaching their goals and resolving the stumbling blocks to be able to reach agreements together. Keep the focus on them – you are not their family problem-solver but their facilitator. Elicit from the family strengths or self-definitions that may share as a common characteristic of their family that can be developed as a theme in the large group meetings. (One I remember offered: “We’re more a bunch of mavericks than people who like to be “nicey – nicey” to each other”).
* Keep the focus on what they hope to accomplish, it’s too early to get into problem solving.
* With their help, create the communication guidelines that will be used in the larger meetings (listening without interruption or body language “comments”, using “I” statements, non-defensive language etc.).
* Create notes from your meeting (on the flipcharts) and make sure the other team members have them in plenty of time before the large group meeting.
* These notes serve as the beginning of the meeting listing the clients’ interests and core values as well as the guidelines for communications.

**Engaging the Financial Professional**

**in Collaborative Practice**

**An Emerging Role:**

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 only the assistance of inside staff. 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 knows that person’s 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, rarely have lawyers had precision 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 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.

**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, trust and estates and finance

- Interdisciplinary Training in Collaborative Practice

- Basics of Collaborative Practice for legal professionals

- Mediation

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

- Financial aspects of divorce and estates

- 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

- Utilization of mediation and conflict resolution skills

- Help couples, families and individuals talk about money

- Educational, problem solving approach

- Active listening and effective communication

- Enjoy helping people in conflict

- Open-minded, creative thinking

- Team player

**Role Variations: Neutral or Not:**

Collaborative Practice has embraced the financial professional in new ways: as a neutral – unaligned with any family member or as a non-neutral – aligned with only one member. Even in an aligned role, the financial professional supports the collaborative process with creative thinking to design a financial solution acceptable to the family and the trust-makers.

As a neutral, one financial professional works alongside the lawyer and Communication Specialist to gather and share information in an open and non-defensive conversation. This helps to create a safe place where conversations about goals, interests and concerns may take place. The financial professional brings a fresh ear to each person. 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 or how to understand the complex realities of a trust or a specific inheritance or 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 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 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 Communication Specialist 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 families may request that the financial professional assist the less sophisticated individuals. The opportunity to bring that member 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 joint family meetings and lawyers can address the tough questions such as benefits or challenges of keeping the family home, meeting the family’s short-term and long-term needs, while tailoring this information to a specific individual.

Communication is key. The most important component of the financial professional’s role is the educational role he or she assumes with the family. Whenever financial estimates and/or cash flow models are presented to the clients, the team members 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. Education to clients and lawyers around financial topics has always been critical. Now it is easily available.

**Qualified collaborative financial practitioners raise the sophistication of the clients.** Rarely do both parties understand the fundamentals of family finances. For example, the Financial Professional can help the family understand the ramifications of a specific bequest, or the rationale for preserving the estate for future medical needs. He or she can model different outcomes for different scenarios and project those into the future, thus helping the family make wise financial decisions vs. uninformed emotional ones.

**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 estate planning. One mark of successful resolution is that the trust-maker understand and agree that the solution he or she is trying to 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 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 unsophisticated family members up to speed. Not only are there communication barriers, there are often trust considerations. When the less sophisticated understands 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 their family dialogues, but benefited from the specialist’s involvement in helping them personally. 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 family members view their financial situation, the increased knowledge and understanding about their ability to survive in their restructured family, and the tools that they develop to intelligently address their financial future, all support clients who are far better equipped to successfully make financial decisions in difficult times.

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**What About an Elder Care Specialist?**

***(Substitute any other Specialist serving in a consulting role to the family and the team.)***

Each case, each individual family has its own needs as we all know. As the core team members (the two Lawyers, Financial Specialist and Communication Specialist) work together to meet these needs, they will often be considering how to incorporate these professionals so that they not only serve the individual client but also the entire family and the core team to create the most effective solutions. Often these professionals become central in the decision-making and invaluable resources for the team. The following is a description of how a specialist might sign onto the team and implement the obligations / confidentiality agreements that need to be in place to preserve the integrity of the Collaborative Process.

**Elder Specialist: Preliminary Preparation**

Prior to any Specialist meetings, the team will have discussed with the family the advisability and rationale of including this professional on the team. With the family’s agreement, the Elder Specialist will then be retained by a family member or a designated surrogate. The role of the Specialist is to be an advocate for the client and an informational resource for the team.

The Specialist then will send the client the necessary paperwork that meets their professional standards. This paperwork may include intake forms, questionnaires, signed releases to the team members or other participating members of the team, and other documents that will inform and prepare the client and the family for his / her involvement. The Specialist, who has been collaboratively trained, understands that the information gained from the client and other family members is shared in an appropriate way to inform the client, family and team members of information that will be important in helping the family make appropriate decisions going forward.

**Beginning with the family member alone**, or if desired, in the presence of another family member, the Specialist proceeds to get to know the client and begin an assessment of the client’s needs. Once that phase of the work is in progress and the Specialist believes that he or she has both a connection with the client and information that will be useful to the client, the rest of the family and professional team, he or she will meet separately with each family member to obtain other viewpoints regarding the situation.

**Elder Specialist Meeting With Each Family Member:**

The purpose of these meetings is to meet each Family Member and gain relevant information from them while building trust in her / his role. The Elder Specialist meets with each family member separately to provide and review the retainer agreement, terms of confidentiality, and other pertinent provisions defining the professional engagement. The Specialist also may review information previously provided by the family member. She / he also defines his / her role as an advocate for the client.

**The Elder Specialist will share the information** with the rest of the team in a professional team meeting prior to presenting the information to the family. Some of this information is clearly of a sensitive nature. All professionals take great care to respect both how it is presented and how to utilize it in a way that makes it most helpful to the family.

**Together with the Specialist, the team** may decide which professionals should be involved in hearing the information and how and in what venue the information should be presented. For example, the information may be presented in a full team meeting with all family members present, with the client’s lawyer and one or both of the neutral team members, or some other ideas that emerge from the planning meeting. If it is a pre-mortem situation, the client’s spouse may also be a part of the information sharing.

**The Elder Specialist** may continue to serve in the role of advocate after the case is closed, subject to the agreement of the client. This allows the client to continue working with this professional who has served in a consulting role to the team but is not a core team member.

**The Case Manager**

By Nancy J. Ross, LCSW, BCD

As the Collaborative team developed, it soon became evident that teams often needed one of the professionals to serve as case manager. Case manager, in this forum, meant a professional who could keep track of the clients’ progress (or, in some cases, the lack of progress) and any problematic interactions among or between team members themselves. Typically, the Communication Specialist, since mental health professionals have usually had experience in some aspects of case management and the role is somewhat natural for them. Moreover, those individuals have had a great deal of experience in working within a framework of systems’ theory and have the training and skills to keep the big picture in view; a crucial requirement for the role.

The case manager often proves to be a key player when problems arise. An effective case manager can head off minor problems before they become major ones, facilitate communications between team members who are not communicating well with each other, minimize confusion and misunderstandings by being the “go-between” between different members, or initiate team meetings (usually phone bridges) to strategize on a case. A good case manager who keeps his/her focus on the case can make the difference between a case that struggles and one that takes advantage of the unique skills that each team member (including clients) brings to the case.

The biggest challenge for case managers is staying in contact with team members and educating them to fully utilize the role by initiating contact with the case manager as the case progresses. As case loads grow, the time pressures placed on those professionals who do this role increase as well. The case manager is often challenged to keep track of the key aspects of the case and keep team members alerted to possible problems. Other team members who may not fully understand how to best use the skills of the case manager often underutilize this professional and fail to keep the case manager in the loop, thus losing opportunities to benefit the case.