

Do you have the qualities and credentials to be an ADFP member? Everything you need to know about membership in this dynamic, growing organization can be found in this handbook.

## Association of Divorce Financial Planners

### A 501(c)(6) Not-for-Profit Professional Association

#### Membership Handbook

April 1, 2013

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#### Definition of Divorce Financial Planning and the Divorce Financial Planning Process:

1. Divorce Financial Planning is a process, not a product.
2. The divorce financial planning process encompasses the time a divorce or separation is first contemplated through the time a final outcome that includes such post-divorce events as asset transfers and changes of beneficiaries is reached. During the divorce financial planning process, financial issues associated with divorce are identified and analyzed.
3. Divorce financial planning provides insights into financial issues associated with divorce or separation, helping parties arrive at knowledge-based outcomes. It is informational in nature and should not be construed or relied upon as legal or tax advice. Individuals seeking legal or tax advice should solicit the counsel of competent legal or tax professionals knowledgeable about the divorce and tax laws in their own geographical areas.
4. Divorce financial planning is a fee-only process. It does not involve investment advice or securities or insurance transactions. It is a process that focuses on a specific life transition. Divorce financial planning focuses on financial issues associated with divorce in both short- and long-term contexts. It involves the gathering, summarizing, and analysis of current and historical data and may

include economic forecasting/financial modeling. Long-term post-divorce financial planning is not part of the divorce financial planning process and requires a separate engagement.

Traditional financial planning can take place prior to or subsequent to divorce financial planning. If traditional financial planning and elements of divorce financial planning are practiced in conjunction with one another, the resulting process falls outside the definition of divorce financial planning and into the realm of traditional financial planning.

The divorce financial planning process may include, but is not limited to, some or all of the following steps. These steps are:

1. Establishing and defining the client-planner relationship,
2. Establishing and defining planner-professional relationships,
3. Gathering, organizing, summarizing and analyzing financial data,
4. Identifying and addressing immediate and short-term financial needs and paying abilities,
5. Identifying and analyzing longer-term financial issues,
6. Developing options, opinions and recommendations,
7. Assisting in the implementation of direct post-divorce or post-separation financial outcomes.

### **Divorce Financial Planning Services:**

Divorce financial planning may occur even if the material elements are not provided to a client simultaneously, are delivered over a period of time or are delivered as part of distinct services.

It is not necessary to provide a written report to engage in the divorce financial planning process.

A divorce financial planning engagement exists when a divorce financial planning practitioner performs any type of mutually agreed upon divorce financial planning service for a client or allied professional.

The universe of activities engaged in by a divorce financial planning practitioner is diverse, and a divorce financial planner may perform all or some of the following services in a divorce financial planning engagement. Services may include, but are not limited to:

1. Financial statement preparation and analysis (including cash flow analysis, analysis of financial position and budgeting),
2. Assistance in identifying financial discovery needs,

3. Assistance in the preparation and analysis of interrogatories,
4. Assistance in preparing for depositions and court proceedings,
5. Financial review of transcripts from depositions or court proceedings,
6. Analysis of financial reports prepared by outside experts,
7. Assistance in the preparation or analysis of applications for *pendente lite* awards and arguments opposing such applications,
8. Analysis of current or projected needs and/or paying abilities,
9. Child support calculations,
10. Assist attorneys in the preparation of separation agreements, decrees, stipulations and pre- and post-marital agreements at their request.
11. Review of Qualified Domestic Relations Orders (QDROs), valuations and employee benefit documents,
12. Tax impacting of retirement assets, potential property distributions and alternative support scenarios.
13. Analysis of financial and tax issues related to the marital residence, the filing of tax returns and dispositions of property,
14. Analysis of unrealized capital gains and losses,
15. Review of tax returns to identify assets, sources of income, undisclosed, transferred, hidden or obligated assets or carryover credits or refunds,
16. Identify and analyze career assets, such as health, life and disability insurance, retirement assets, stock options, restricted stock, assets associated with nonqualified plans and other perquisites,
17. Review and analysis of estate planning documents,
18. Analysis and evaluation of marital lifestyle,
19. Analysis of short- and long-term potential outcomes of alternative settlement proposals on net worth and cash flow,
20. Analysis of long-term needs and paying abilities in different post-divorce or post-separation contexts,
21. Identification and analysis of tax planning opportunities and potential pitfalls,
22. Participation in strategic planning or settlement conferences,
23. Testimony as an expert witness in court and
24. Assisting in post-divorce or post-separation transfers of assets, changes of beneficiaries, trustees or owners of wills, trusts, retirement plans and life insurance policies and execution of QDROs.

#### **Examples of Services that Fall Outside the Definition of a Divorce Financial Planning Engagement:**

Based on the above definition of the divorce financial planning process, the following are examples of services that fall outside the realm of divorce financial planning. The ADFP does not preclude members from providing such services, should members have expertise in these areas. However, it does require

that services falling outside the realm of divorce financial planning not be identified as divorce financial planning services in a divorce financial planning engagement. Services such as these must be governed by separate and completely independent contracts:

1. Any services that might constitute the practice of law, including the drafting of QDROs or other legal documents
2. Business valuations
3. Pension valuations
4. Appraisals of real or personal property
5. Valuations of licenses and degrees
6. Valuations of stock options and restricted stock
7. Mediation
8. Tax preparation
9. Investment advice or securities transactions

To avoid misunderstandings, all literature related to divorce financial planning services provided by a practitioner, including websites, email communications, reports and advertising or promotional materials should include the following disclaimers or something analogous to them:

*[Name of divorce financial planning] is **NOT AN ATTORNEY AND DOES NOT PROVIDE LEGAL ADVICE**. All information (s)he provides is financial in nature and should not be construed or relied upon as legal [or tax] advice. Individuals seeking legal [or tax] advice should solicit the counsel of competent legal [or tax] professionals knowledgeable about the divorce laws in their own geographical areas.*

***Divorce financial planning** is a fee-only process that does not involve investment advice or securities or insurance transactions.*

#### **Divorce Financial Planning is NOT Forensic Accounting:**

While there is sometimes overlap between the skillset and work product of divorce financial planners and forensic accountants, divorce financial planning is *NOT* forensic accounting.

Divorce financial planning is a forward-looking process that focuses on lifestyle issues relevant to divorce or separation, issues such as the respective post-separation needs and paying abilities of the parties or the financial workability of potential outcomes.

In contrast, forensic accounting is a more backward-looking process that focuses on finding, characterizing and valuing assets and income. While the divorce financial planner is a generalist with a broad background in personal financial issues, the education and experience of the forensic accountant is generally more focused on a more limited set of divorce-related issues such as business valuation, fraud or the discovery of hidden assets.

The forensic accountant is often used as an outside expert in the divorce process, with a limited and specific assignment. While the divorce financial planner is sometimes used in this fashion, he/she is increasingly becoming more directly involved as an intimate member of a divorce team.

Whatever their respective roles or services provided, divorce financial planners and forensic accountants can both play important roles in the divorce process.

### **Divorce Financial Planning in the Contexts of Litigation, Mediation and Interdisciplinary Collaborative Divorce:**

Divorce financial planning can take place in a variety of settings:

1. The divorce financial planner can function either as an unbiased (neutral) consultant or resource for both parties in a divorce or separation or in a financial advisory capacity to only one of the parties.
2. In either of these capacities, the divorce financial planner can potentially share information, analyses or opinions with either or both parties. In an advocacy situation, sharing of such information requires written authorization from the individual or entity that hires the practitioner. Other than disclosure authorized in this fashion, information, analyses or opinions are held in strictest confidence by the practitioner except where required for licensing or compliance purposes or by law.
3. In situations in which the divorce financial planner functions as an unbiased consultant or resource for both parties, the divorce financial planner is not automatically precluded from providing post-divorce or post-separation services to either or both parties (see collaborative divorce exception below). Such services, however, must not be contemplated, anticipated or included in the divorce financial planning engagement. In addition, the divorce financial planner is required to obtain written permission from both parties prior to providing such services and must always provide such services in a fashion subordinate to the best interests of the client. This standard does not preempt ethical standards established by other disciplines. For example, interdisciplinary collaborative divorce engagements specifically prohibit this particular practice, and members of the ADFP are required, both directly and indirectly, to abide by this policy.
4. The divorce financial planner can function as an outside expert or as a member of a team.

5. The divorce financial planner can provide a very broad or a very narrow range of divorce financial planning services.
6. The divorce financial planner can provide divorce financial planning services in both contested and uncontested divorces.
7. The divorce financial planner can provide divorce financial planning services in collaborative divorce, mediation, litigation and *pro se (pro per)* settings, in all of their respective models and variations. Whatever the setting, and irrespective of whether there is a separate global agreement involving other professionals, the divorce financial planner should have a separate engagement letter defining the planner's participation in the process.
8. The relationships a divorce financial planner has with other professionals in individual cases and his/her responsibilities, level of interaction with other participants or role in a team can vary even when settings appear similar, and these must be defined during the engagement process.
9. Irrespective of the setting, the divorce financial planning process, as defined above, is operative in all of these contexts and any variations of them.
10. The role of the divorce financial planner in the divorce process is continuously evolving from that of outside expert to that of intimate team member. The evolving role of the divorce financial planner in collaborative divorce is described in greater detail in the articles by Pauline Tesler contained in Appendix A.

### **Association of Divorce Financial Planners (ADFP):**

The Association of Divorce Financial Planners (ADFP) is a 501(c)(6) not-for-profit professional association that is led exclusively by its democratically-elected Board of Director members. It is not affiliated or competing with any company, school, organization or other entity offering financial divorce training, certification, or support services.

Criteria for membership in ADFP are rooted in its Mission Statement, and an internal accreditation process, not intended to compete with any existing credentialing process, has been established to help ensure high standards of practice among its practitioner members. The areas upon which this process is based are discussed below:

### **Mission Statement:**

The mission of the Association of Divorce Financial Planners (ADFP) is:

- To heighten awareness of the benefits and the added value of divorce financial planning so that it becomes an integral part of the divorce process.
- To encourage knowledgeable and trustworthy financial professionals to enter the field.
- To continuously refine and maintain practice and professional standards of excellence and a strict code of ethics.
- To build professionalism.
- To unify the divorce financial planning profession.

To accomplish this mission, the ADFP will:

- Develop outreach programs to financial professionals, allied divorce professionals and the general public.
- Provide continuing professional education and training opportunities for divorce financial planning practitioners.
- Hold members to high professional and ethical protocols and standards.
- Promote communication, networking and peer review.
- Market and promote divorce financial planning through the ADFP website, speaking opportunities to the public and divorce professionals, public relations and other appropriate means.
- Establish and encourage membership participation in local chapters throughout the United States, Canada and other countries.
- Participate in policy making regarding financial issues in divorce.

### Two Classes of ADFP Membership:

There are two (2) classes of ADFP membership, **Members** and **Associate Members**.

#### Members:

**Members** are divorce financial planning practitioners, i.e. use the divorce financial planning process as defined by ADFP. They must charge a reasonable fee-for-service and cannot be compensated in other ways for providing divorce financial planning services. Needs-based pro bono work may be an exception to this requirement, but a written needs-based policy must be in place and made available to ADFP upon request.

Divorce financial planning cannot be offered as a free service in exchange for or in anticipation of acquiring or being otherwise linked to a post-divorce money or investment management engagement or product sale, directly or indirectly through other professional relationships.

Individuals otherwise using the divorce financial planning process who do not charge a specific fee, in the appropriate market range and within geographical norms for his/her level of divorce financial planning expertise, are not eligible for either class of membership.

- **Membership Criteria**

To be accepted as Members, applicants must provide evidence supporting satisfaction of certain educational, experience and ethical criteria.

- **Education**
- **Financial Planning** – CFP or ChFC or CPA/PFS designation *OR*

**Personal Income Taxation** – CPA or EA or CA (Chartered Accountant) or CGA (Certified General Accountant) or Master of Science in Taxation

*AND*

- **Divorce Financial Planning** – successful completion of a basic course in divorce financial planning such as that offered by Institute for Divorce Financial Analysts, Financial Divorce Association or Academy of Financial Divorce Specialists
- **Experience**
- At least 3 years of experience in financial planning

*AND*

- Successful completion of at least five (5) comprehensive divorce financial planning case engagements.
- **Ethics and Professional Responsibilities**

- Agreement to abide by ADFP Code of Ethics and Professional Responsibility
- Agreement to adhere to Practice and Professional Standards established by ADFP
- Agreement to be supportive of the ADFP Mission Statement
- Agreement to be supportive of the ADFP, its local chapters, its members and the profession in general

*Absent satisfaction of one or more of the above sources of evidence, applicants may make application to the Board of Directors by providing alternative evidence demonstrating their level of knowledge or experience. Examples of such supplemental information include testing, evidence of equivalent education, training or experience, letters of support from divorce professionals for whom they have directly or indirectly provided divorce financial planning services or with whom they have had mentoring or other supervisory relationships, reports from previous casework and any additional evidence they can provide that testifies to the level and quality of their experience, knowledge, skills and professional ethics.*

*In addition, an Associate Member who has demonstrated a long-term commitment to ADFP and has made significant contributions to the profession of divorce financial planning, who wishes to also serve in a leadership position, such as membership in the Board of Directors, Committee Chair or Chapter Chair, may petition the Board of Directors for a full Member exception to the above Member criteria.*

#### Disclaimers:

- ADFP does not recommend or endorse specific Members based on satisfaction of its membership criteria. It is the client's responsibility to carefully research, interview and identify competent and trustworthy professionals before hiring one.
- Agreement by members to adhere to ADFP Practice and Professional Standards is a requirement of membership but should not be construed as a basis for any legal liability of ADFP to third parties. It is strictly a condition for membership. The ADFP does not perform divorce financial planning services or take responsibility for divorce financial planning or other services offered by members.

#### Membership Application and Accreditation Process:

**The Membership Application and Accreditation Process** is designed to help ensure that Members are knowledgeable, trustworthy and experienced divorce financial planning practitioners. It is also designed to encourage applicants who do not meet ADFP Practice and Professional Standards to aspire and establish a path toward achieving them. The process is outlined below:

- Individuals interested in applying for ADFP membership submit an **ADFP Application Form** and **Dues Payment** to the ADFP administrative office. **Forms and Instructions** for this purpose can be found on the ADFP website at [http://www.divorceandfinance.org/join\\_adfp.php](http://www.divorceandfinance.org/join_adfp.php).
- Applications are reviewed initially by the Membership Chair, who may approve or reject the applicant; make further information requests; encourage further professional development by identifying apparent weaknesses in the application, make recommendations for strengthening such weaknesses and offer applicants the opportunity to become Associate Members; or refer the application to the Board of Directors for independent review and decision-making.
- Applicants not accepted as Members can appeal the decision by submitting a letter and supporting documentation to the Board of Directors at its administrative headquarters.

#### **Additional Membership Responsibilities:**

- Provide divorce financial planning services on a fee-only (flat or hourly) basis
- Charge a reasonable and customary fee for such services
- Consistently use an engagement letter that clearly delineates the scope of a divorce financial planning engagement and includes a fee schedule
- Maintain Errors and Omissions insurance that covers divorce financial planning services
- If a registered representative with a broker/dealer, Member must be able to provide evidence (such as a services contract) that divorce financial planning services are part of the broker/dealer's business model or must have written approval from the broker/dealer for divorce financial planning as an outside business activity (OBA) and for charging fees for such services
- Maintain one or more periodically monitored, and ADFP-approved (based on substantial initial and ongoing continuing education, compliance and ethics requirements), professional designations or licenses
- Attest to a clean record of business integrity
- Disclose of any and all past or current suspensions, revocations or disciplinary actions related to any license or professional designation ever held
- Attest to good standing with all current monitoring and compliance entities
- Agree to notify the Board of Directors within 10 calendar days of any events or issues that could potentially affect eligibility for ADFP membership or membership status with any other entity

- Register individually as investment advisors with the appropriate regulatory authority or authorities, if required by state or federal law
- Submit an annual and timely **Renewal Application, Dues Payment and Attestation to Satisfaction of Continuing Education Requirements**

### Continuing Education Requirements:

- A minimum of 10 divorce-related continuing education credits each year in ADFP-approved divorce financial planning-related programs (It is the Member's responsibility to determine in advance whether a particular program might satisfy this requirement).
- Continuing education credits accrue annually and are reported on a calendar year basis on the annual Membership renewal application. Members are required to maintain proof of satisfaction of continuing education requirements for a period of five (5) years and may be subject to periodic audit.
- In addition to the above, two (2) credits in ADFP Ethics every two (2) years.
- If ADFP chapter meetings are held within a 50-mile radius of a Member's home or office, the Member must join the chapter and attend at least four (4) hours of local meetings each year. In addition to benefitting from the important direct interaction with local ADFP peers, the continuing education portion of such meetings may be used to satisfy the continuing education requirements outlined above. Although not a requirement, it is strongly recommended that Members attend the comprehensive annual conference at least once every two (2) years to further benefit from this important face-to-face level of interaction.

*From time to time, ADFP may conduct random audits to help assure that Members are in full compliance with all Membership Criteria. Misrepresentation of ADFP accreditation by a Member constitutes grounds for permanent disbarment from ADFP membership.*

### Associate Members:

**Associate Members** have a professional interest in divorce financial planning. They are, for example, studying to become or contemplating becoming divorce financial planning practitioners, are financial educators or otherwise provide adjunct, specialized or supporting services to the divorce financial planning community.

The cost of Associate Membership is the same as that of practitioner Membership, and Associate Members are eligible for membership discounts for attending the annual conference and local chapter meetings and for participating in webinars or other ADFP programs. Names of Associate Members are also accessible to Members for professional networking or referral purposes, but they are not open to the public.

An Associate Member who has demonstrated a long-term commitment to ADFP and has made significant contributions to the profession of divorce financial planning, who wishes to also serve in a leadership position, such as membership in the Board of Directors, Committee Chair or Chapter Chair, may petition the Board of Directors for a full Member exception to this policy.

Associate Members must clearly identify themselves as Associate Members in all written, electronic or verbal communications that make reference to their membership in ADFP and must not engage in any activity that might lead the public to conclude that they have been accredited by ADFP as practitioner Members. Any misrepresentations with respect to class of membership can result in immediate termination of Associate Member status and impact the possibility of future membership reinstatement.

#### Associate Membership Criteria:

- Must have a professional interest in divorce financial planning
- Agreement to support and/or abide by ADFP Code of Ethics and Professional Responsibility
- Agreement to support and/or abide by Practice and Professional Standards established by ADFP
- Agreement to be supportive of the ADFP Mission Statement
- Agreement to be supportive of the ADFP, its local chapters, its members and the profession in general
- Attestation to a clean record of business integrity
- Disclosure of any and all past suspensions, revocations or disciplinary actions related to any license or professional designation ever held
- Attestation to good standing with all current monitoring and compliance entities
- Agreement to notify the Board of Directors within 10 calendar days of any events or issues that could potentially affect eligibility for ADFP membership or membership status with any other entity
- Submission of an annual **Renewal Application** and **Dues Payment**
- Report to the ADFP Board of Directors, for review, any and all past suspensions, revocations or disciplinary actions related to any license or professional designation ever held
- Become a member of a local chapter and attend an average of four (4) hours of ADFP meetings per year if chapter meetings are held within a 50 mile radius of their home or office or, if a local chapter is not a feasible alternative, attend the annual conference at least once every other year.

*Those who practice divorce financial planning without charging a specific fee in the appropriate market range for his/her expertise level and geographical norms are not eligible for membership as either Members or Associate Members.*

*Compensation shall expressly exclude any payment for the sale of a product as a substitute for an hourly or flat fee engagement. It shall also exclude the obligation (created either by inference or expressly outlined by the practitioner) of the client to purchase a product in lieu of an hourly or flat fee engagement. Furthermore, the concept or practice of rebating is expressly prohibited. By way of example, the practice of rebating, refunding or crediting of fees for divorce financial planning services either in part or in full provided that the client (potentially or ultimately) engages the divorce financial planner for asset management on a commission, assets under management or flat fee basis, accountancy or audit work, either on a flat fee or retainer basis, or insurance planning or the sale of insurance and/or annuities is expressly prohibited.*

*Pre-Existing Members as of January 1, 2013:*

Prior to the establishment of two (2) classes of membership, ADFP members included both divorce financial planning practitioners and non-practitioners and did not distinguish between them. Subsequent to this change in policy, pre-existing members in good standing, who would not qualify for Membership under the new Member criteria, were given a two-year period to maintain their current Membership status and continue to identify themselves as Members. This period, which was intended to give them an opportunity to make up deficiencies, was set to expire December 31, 2012. With this date now past, and in light of more recent revisions in Membership criteria, this deadline will automatically be extended to December 31, 2013. The affected Members will be individually notified of their status and given the opportunity to respond to the Board of Directors. Under extenuating circumstances, an affected Member may, in exceptional cases, be granted an additional extension by the Board of Directors.

All persons who provide divorce financial planning services and are Associate Members because they do not meet all Membership criteria must provide a plan, with timeline, indicating their intentions to comply with all Membership criteria within a reasonable timeframe. Associate Membership is not available to persons who practice divorce financial planning without intending to meet all ADFP Membership criteria.

*DivorceIllinois.org Members:*

In 2012, Divorcillinois.org merged into ADFP to become its Illinois chapter. As part of this merger, Divorcillinois.org members who did not satisfy our current membership criteria were grandfathered in. This grandfathering process will expire December 31, 2014. Divorcillinois.org Members will be individually notified of and helped to satisfy these requirements by that deadline. Divorcillinois.org members will otherwise be subject to the same Membership re-evaluation process as other ADFP Members.

### Membership Class Q&A:

The following Q&A is designed to help applicants decide whether to apply as a Member or Associate Member. Into which membership class would each of the following applicants fall?

1. A person who is in the process of taking the IDFA, FDA or AFDS course or has recently completed one of these courses but has only worked on a limited number of cases [Associate Member]
2. A forensic accountant who doesn't practice divorce financial planning but has a designation from one of the above entities [Associate Member]
3. A Certified Financial Planner™ professional who has completed one of the above courses but has only worked on a limited number of cases [Associate Member]
4. A financial planner who practices divorce financial planning but who has not taken one of the above divorce financial planning courses [Could be a Member or Associate Member depending upon the nature and extent of the person's knowledge and experience]
5. An investment adviser who does not practice divorce financial planning but has a referral arrangement with a divorce financial planner/analyst practitioner [Associate Member]
6. A person who is thinking about getting into the field and would like to learn more about it [Associate Member]
7. A person who views ADFP membership strictly as a networking opportunity [This person has not demonstrated an interest in divorce financial planning and is not eligible for either class of membership]
8. A media person [Unless this person has written or is interested in writing about divorce, this person has not demonstrated an interest in divorce financial planning and is not eligible for either class of membership]
9. A person who does not do divorce financial planning on a fee-only basis or does not charge a reasonable fee for service [Not eligible for either class of membership]

10. A person who does traditional financial planning and works as a traditional financial planner in association with divorce practitioners [Associate Member]

### Fitness Standards:

Services provided by members are provided independently of the ADFP and are completely the member's responsibility. Implying otherwise is a serious offense and grounds for membership termination.

Misrepresentation of ADFP accreditation by a Member is grounds for censure and permanent disbarment from membership.

The following conduct is unacceptable and will always bar an individual from membership:

- Felony conviction for theft, embezzlement or other financially-based crimes.
- Felony conviction for tax fraud or other tax-related crimes.
- Revocation or suspension of a financial or professional (e.g. registered securities representative, broker/dealer, insurance, accountant, investment adviser, financial planner, real estate, law) license, unless the revocation is administrative in nature, i.e. the result of the individual determining not to renew the license by not paying the required fees.
- Felony conviction for any violent crime or non-violent crimes such as perjury.

### Additional Chapter Membership Policies:

- Practitioner Members must represent greater than 2/3 of the membership of each local chapter.
- Should acceptance of an Associate Member into a chapter cause representation of Members in the chapter to fall below 2/3 of total membership in that chapter, the prospective Associate Member must be placed on a waiting list. Future Associate Members will be drawn from this list, although not necessarily on a first-come first-served basis, with the Chapter Director maintaining a balance of professions among non-practitioners. Exceptions to this waiting list rule are Associate Members who have submitted a plan demonstrating they are actively working toward fulfillment of requirements for full Membership.

### Standards of Professional Conduct (adapted from the Standards of Professional Conduct of the Certified Financial Planner Board of Standards, Inc.):

### Terminology:

“**Client**” denotes a person or persons who engage a member and for whom professional services are rendered.

“**Compensation**” is any non-trivial economic benefit, whether monetary or non-monetary, that a member or related party receives or is entitled to receive, and retains, for providing professional activities.

A “**conflict of interest**” exists when a member’s financial, business, property and/or personal interests, relationships or circumstances reasonably may impair his/her ability to offer objective advice, recommendations or services.

“**Fee-only.**” Divorce financial planning is a fee-only process. A Member may describe his or her divorce financial planning practice as “fee-only” if the Member’s compensation from his or her divorce financial planning client work comes exclusively from the clients in the form of fixed, flat or hourly fees.

“**Fiduciary.**” One who acts in utmost good faith, in a manner he or she reasonably believes to be in the best interest of the client.

“**Member’s Employer**” denotes any person or entity that employs a member to provide services to a third party on behalf of the employer, including members who are retained as independent contractors or agents.

### Code of Ethics and Professional Responsibility:

#### **Principle 1 – Integrity**

Provide professional services with integrity.

*Integrity demands honesty and candor which must not be subordinated to personal gain and advantage. Members are placed in positions of trust by clients, and the ultimate source of that trust is the Member’s personal integrity. Allowance can be made for innocent error and legitimate differences of opinion, but integrity cannot co-exist with deceit or subordination of one’s principles.*

#### **Principle 2 – Objectivity**

Provide professional services objectively.

*Objectivity requires intellectual honesty and impartiality. Regardless of the particular service rendered or the capacity in which a Member functions, Members should protect the integrity of their work, maintain objectivity and avoid subordination of their judgment.*

### **Principle 3 – Competence**

Maintain the knowledge and skill necessary to provide professional services competently.

*Competence means attaining and maintaining an adequate level of knowledge and skill, and application of that knowledge and skill in providing services to clients. Competence also includes the wisdom to recognize the limitations of that knowledge and when consultation with other professionals is appropriate or referral to other professionals necessary. Members make a continuing commitment to learning and professional improvement.*

### **Principle 4 – Fairness**

Be fair and reasonable in all professional relationships. Disclose conflicts of interest.

*Fairness requires impartiality, intellectual honesty and disclosure of material conflicts of interest. It involves a subordination of one's own feelings, prejudices and desires so as to achieve a proper balance of conflicting interests. Fairness is treating others in the same fashion that you would want to be treated.*

### **Principle 5 – Confidentiality**

Protect the confidentiality of all client information.

*Confidentiality means ensuring that information is accessible only to those authorized to have access. A relationship of trust and confidence with the client can only be built upon the understanding that the client's information will remain confidential.*

### **Principle 6 – Professionalism**

Act in a manner that demonstrates exemplary professional conduct.

*Professionalism requires behaving with dignity and courtesy to clients, fellow professionals, and others in business-related activities. Members cooperate with fellow Members to enhance and maintain the profession's public image and improve the quality of services.*

## **Principle 7 – Diligence**

Provide professional services diligently.

*Diligence is the provision of services in a reasonably prompt and thorough manner, including the proper planning for, and supervision of, the rendering of professional services.*

### **Rules of Conduct:**

The *Rules of Conduct* are binding on all members, regardless of their title, position, type of employment or method of compensation. The universe of activities engaged in by a member is diverse, and a member may perform all, some or none of the typical services provided by divorce financial planning professionals.

Violations of the *Rules of Conduct* may subject a member to discipline. The Rules are applied internally and are not designed to be a basis for legal liability to any third party.

### **1. Defining the Relationship with the Prospective Client, Client or Divorce Professional**

1. The member and the prospective client, client or divorce professional shall mutually agree upon the services to be provided by the member.
1. If the member's services include divorce financial planning or material elements of divorce financial planning, prior to entering into an agreement, the member shall provide written information or discuss with the prospective client, client or divorce professional the following:
  1. The obligations and responsibilities of each party under the agreement with respect to:
    - i. **Defining goals, needs and objectives,**
    - ii. **Gathering and providing appropriate data,**
    - iii. **The formulation of any recommended actions, and**
    - iv. **Implementation responsibilities.**
    - v. **Monitoring responsibilities.**
  2. Compensation that any party to the agreement or any legal affiliate to a party to the agreement

will or could receive under the terms of the agreement; and factors or terms that determine costs.

3. Terms under which the member will use other entities to meet any of the agreement's obligations. If the member provides the above information in writing, the member shall encourage the prospective client, client or divorce professional to review the information and offer to answer any questions that the prospective client, client or divorce professional may have.

1. If the services include divorce financial planning or material elements of divorce financial planning, the member or the member's employer shall enter into a written agreement governing the divorce financial planning services ("Agreement"). The Agreement shall specify:
  1. The parties to the Agreement,
  2. The date of the Agreement and its duration,
  3. How and on what terms each party can terminate the Agreement, and
  4. The services to be provided as part of the Agreement.

The Agreement may consist of multiple written documents. Written documentation that includes the items above and is used by a member or member's employer in compliance with state or federal law shall satisfy the requirements of this Rule.

1. A member shall at all times place the interest of the client ahead of his or her own. When the member provides divorce financial planning or material elements of divorce financial planning, the member owes to the client the duty of care of a fiduciary as defined above.

## **2. Information Disclosed to Prospective Clients, Clients and Divorce Professionals**

2.1 A member shall not communicate, directly or indirectly, to clients, prospective clients or divorce professionals any false or misleading information directly or indirectly related to the member's professional qualifications, services or ADFP membership class. A member shall not mislead any parties about the potential benefits of the member's service. A member shall not fail to disclose or otherwise omit facts where that disclosure is necessary to avoid misleading clients.

2.2 A member shall disclose to a prospective client, client or divorce professional the following information:

1. An accurate and understandable description of the compensation arrangements being offered.

**This description must include:**

- i. **Information related to costs and compensation to the member and/or the member's employer, and**
  - ii. **Terms under which the member and/or the member's employer may receive any other sources of compensation, and if so, what the sources of these payments are and on what they are based.**
2. A general summary of likely conflicts of interest between the client and the member, the member's employer or any affiliates or third parties, including, but not limited to, information about any familial, contractual or agency relationship of the member or the member's employer that has a potential to materially affect the relationship.
  3. Any information about the member or the member's employer that could reasonably be expected to materially affect the client's decision to engage the member that the client might reasonably want to know in establishing the scope and nature of the relationship, including but not limited to information about the member's areas of expertise.
  4. Contact information for the member and, if applicable, the member's employer.
  5. If the services include divorce financial planning or material elements of divorce financial planning, these disclosures must be in writing.

The written disclosures may consist of multiple written documents. Written disclosures used by a member or member's employer that include the items listed above, and are used in compliance with state or federal laws, shall satisfy the requirements of this Rule.

The member shall timely disclose to the client any material changes to the above information.

### **3. Prospective Client, Client, Divorce Professional Information and Property**

3.1 A member shall treat information as confidential except as required in response to proper legal process; as necessitated by obligations to a member's employer or partners; as required to defend against charges of wrongdoing; in connection with a civil dispute; or as needed to perform the services.

3.2 A member shall take prudent steps to protect the security of information and property, including the security of stored information, whether physically or electronically, that is within the member's control.

3.3 A member shall obtain the information necessary to fulfill his or her obligations. If a member cannot obtain the necessary information, the member shall inform the prospective client or client of any and all material deficiencies.

3.4 A member shall not borrow money from a client.

3.5 A member shall not lend money to a client.

3.6 A member shall not commingle a client's property with the property of the member or the member's employer.

3.7 A member shall not commingle a client's property with other clients' property.

3.8 A member shall return a client's property to the client upon request as soon as practicable or consistent with a time frame specified in an agreement with the client.

#### **4. Obligations to Prospective Clients and Clients**

4.1 A member shall treat prospective clients and clients fairly and provide professional services with integrity and objectivity.

4.2 A member shall offer advice only in those areas in which he or she is competent to do so and shall maintain competence in all areas in which he or she is engaged to provide professional services.

4.3 A member shall be in compliance with applicable regulatory requirements governing professional services provided to the client.

4.4 A member shall exercise reasonable and prudent professional judgment in providing professional services to clients.

4.5 In addition to the requirements of Rule 1.4, a member shall make and/or implement only recommendations that are suitable for the client.

4.6 A member shall provide reasonable and prudent professional supervision or direction to any subordinate or third party to whom the member assigns responsibility for any client services.

4.7 A member shall advise his or her current clients of any certification suspension or revocation he or she receives from any entity with which he or she is associated.

## **5. Obligations to Employers**

5.1 A member who is an employee/agent shall perform professional services with dedication to the lawful objectives of the employer/principal and in accordance with ADFP's *Code of Ethics*.

5.2 A member who is an employee/agent shall advise his or her current employer/principal of any certification suspension or revocation he or she receives from any entity with which he or she is associated.

## **6. Obligations to ADFP Board of Directors**

6.1 A member shall abide by the terms of all agreements with ADFP Board of Directors.

6.2 A member shall meet all ADFP Board requirements, including continuing education requirements, to retain the right to membership.

6.3 A member shall notify ADFP Board of changes to contact information, including, but not limited to, e-mail address, telephone number(s) and physical address, within forty five (45) days.

6.4 A member shall notify ADFP Board in writing of any conviction of a crime, except misdemeanor traffic offenses or traffic ordinance violations unless such offense involves the use of alcohol or drugs, or of any professional suspension or bar within ten (10) calendar days after the date on which the member is notified of the conviction, suspension or bar.

6.5 A member shall not engage in conduct which reflects adversely on his or her integrity or fitness as a member or upon the profession.

## **DESCRIPTION OF *PRACTICE STANDARDS***

A *Practice Standard* establishes the level of professional practice that is expected of members engaged in divorce financial planning.

The *Practice Standards* apply to members in performing the tasks of divorce financial planning regardless of the person's title, job position, type of employment or method of compensation.

Compliance with the *Practice Standards* is mandatory for members whose services include divorce financial planning or material elements of divorce financial planning, but all financial planning professionals are encouraged to use the *Practice Standards* when performing financial planning tasks or activities addressed by a *Practice Standard*.

The *Practice Standards* are designed to provide members with a framework for the professional practice of divorce financial planning.

Similar to the *Rules of Conduct*, the *Practice Standards* are not designed to be a basis for legal liability to any third party.

#### **FORMAT OF *PRACTICE STANDARDS***

Each *Practice Standard* is a statement regarding one of the steps of the divorce financial planning process. It is followed by an explanation of the Standard, its relationship to the *Code of Ethics* and *Rules of Conduct*, and its expected impact on the public, the profession and the practitioner.

The Explanation accompanying each *Practice Standard* explains and illustrates the meaning and purpose of the *Practice Standard*. The text of each *Practice Standard* is authoritative and directive. The related Explanation is a guide to interpretation and application of the *Practice Standard* based, where indicated, on a standard of reasonableness, a recurring theme throughout the *Practice Standards*. The Explanation is not intended to establish a professional standard or duty beyond what is contained in the *Practice Standard* itself.

#### **COMPLIANCE WITH *PRACTICE STANDARDS***

The practice of divorce financial planning consistent with these *Practice Standards* is required for members who are divorce financial planning practitioners.

The *Practice Standards* are used by ADFP Board of Directors in evaluating the member's conduct to determine if any provision of the *Standards of Professional Conduct* have been violated, based on the

*Disciplinary Rules* established by ADFP Board.

## ESTABLISHING AND DEFINING THE RELATIONSHIP WITH THE CLIENT

### 100-1: Defining the Scope of the Engagement

*The divorce financial planning practitioner and the client shall mutually define the scope of the engagement before any divorce financial planning service is provided.*

#### **Explanation of this *Practice Standard***

Prior to providing any divorce financial planning service, the divorce financial planning practitioner and the client shall mutually define the scope of the engagement. The process of “mutually-defining” is essential in determining what activities may be necessary to proceed with the engagement.

This process is accomplished in divorce financial planning engagements by:

- Identifying the service(s) to be provided;
- Disclosing the practitioner’s material conflict(s) of interest;
- Disclosing the practitioner’s compensation arrangement(s);
- Determining the client’s and the practitioner’s responsibilities;
- Establishing the duration of the engagement; and
- Providing any additional information necessary to define or limit the scope.

The scope of the engagement may include one or more divorce financial planning subject areas. It is acceptable to mutually define engagements in which the scope is limited to specific activities. Mutually defining the scope of the engagement serves to establish realistic expectations for both the client and the practitioner.

This *Practice Standard* does not require the scope of the engagement to be in writing. However, as noted in the “Relationship” section, which follows, there may be certain disclosures that are required to be in writing.

As the relationship proceeds, the scope may change by mutual agreement. This *Practice Standard* shall not be considered alone, but in conjunction with all other *Practice Standards*.

### **Relationship of this *Practice Standard* to ADFP Board's *Code of Ethics* and *Rules of Conduct***

This *Practice Standard* relates to ADFP Board's *Code of Ethics* and *Rules of Conduct* through Principle 4 – Fairness, Principle 7 – Diligence and Rules 1.1, 1.2, 1.3 and 2.2.

### **Anticipated Impact of this *Practice Standard***

#### *Upon the Public*

The public is served when the relationship is based upon a mutual understanding of the engagement. Clarity of the scope of the engagement enhances the likelihood of achieving client expectations.

#### *Upon the Divorce Financial Planning Profession*

The profession benefits when clients are satisfied. This is more likely to take place when clients have expectations of the process, which are both realistic and clear, before services are provided.

#### *Upon the Divorce Financial Planning Practitioner*

A mutually-defined scope of the engagement provides a framework for divorce financial planning by focusing both the client and the practitioner on the agreed upon tasks. This *Practice Standard* enhances the potential for positive results.

## **GATHERING CLIENT DATA**

### **200-1: Determining a Client's Personal and Financial Goals, Needs and Priorities**

*The divorce financial planning practitioner and the client shall mutually define the client's personal and financial goals, needs and priorities that are relevant to the scope of the engagement before any recommendation is made and/or implemented.*

### **Explanation of this *Practice Standard***

Prior to making recommendations to the client, the divorce financial planning practitioner and the client shall mutually define the client's personal and financial goals, needs and priorities. In order to arrive at such a definition, the practitioner will need to explore the client's values, attitudes, expectations, and time horizons as they affect the client's goals, needs and priorities. The process of "mutually-defining" is essential in determining what activities may be necessary to proceed with the client engagement. Personal values and attitudes shape the client's goals and objectives and the priority placed on them. Accordingly, these goals and objectives must be consistent with the client's values and attitudes in order for the client to make the commitment necessary to accomplish them. Goals and objectives provide focus, purpose, vision and direction for the financial planning process. It is important to determine clear and measurable objectives that are relevant to the scope of the engagement. The role of the practitioner is to facilitate the goal-setting process in order to clarify, with the client, goals and objectives. When appropriate, the practitioner shall try to assist clients in recognizing the implications of unrealistic goals and objectives.

This *Practice Standard* addresses only the tasks of determining the client's personal and financial goals, needs and priorities; assessing the client's values, attitudes and expectations; and determining the client's time horizons. These areas are subjective and the practitioner's interpretation is limited by what the client reveals.

This *Practice Standard* shall not be considered alone, but in conjunction with all other *Practice Standards*.

### **Relationship of this *Practice Standard* to ADFP Board's *Code of Ethics* and *Rules of Conduct***

This *Practice Standard* relates to ADFP Board's *Code of Ethics* and *Rules of Conduct* through Principle 7 – Diligence and Rules 3.3, 4.4 and 4.5.

### **Anticipated Impact of this *Practice Standard***

#### *Upon the Public*

The public is served when the relationship is based upon mutually-defined goals, needs and priorities. This *Practice Standard* reinforces the practice of putting the client's interests first, which is intended to increase the likelihood of achieving the client's goals and objectives.

#### *Upon the Divorce Financial Planning Profession*

Compliance with this *Practice Standard* emphasizes to the public that the client's goals, needs and priorities are the focus of divorce financial planning. This encourages the public to seek out the services of a divorce financial planning practitioner who uses such an approach.

#### *Upon the Divorce Financial Planning Practitioner*

The client's goals, needs and priorities help determine the direction of divorce financial planning. This focuses the practitioner on the specific tasks that need to be accomplished. Ultimately, this will facilitate the development of appropriate recommendations.

#### **200-2: Obtaining Quantitative Information and Documents**

*The divorce financial planning practitioner shall obtain sufficient quantitative information and documents about a client relevant to the scope of the engagement before any recommendation is made and/or implemented.*

#### **Explanation of this *Practice Standard***

Prior to making recommendations to the client and depending on the scope of the engagement, the divorce financial planning practitioner shall determine what quantitative information and documents are sufficient and relevant. The practitioner shall obtain sufficient and relevant quantitative information and documents pertaining to the client's financial resources, obligations and personal situation. This information may be obtained directly from the client or other sources such as interview(s), questionnaire(s), client records and documents.

The practitioner shall communicate to the client a reliance on the completeness and accuracy of the information provided and that incomplete or inaccurate information will impact conclusions and recommendations.

If the practitioner is unable to obtain sufficient and relevant quantitative information and documents to form a basis for recommendations, the practitioner shall either (a) Restrict the scope of the engagement to those matters for which sufficient and relevant information is available; or (b) Terminate the engagement.

The practitioner shall communicate to the client any limitations on the scope of the engagement, as well as the fact that this limitation could affect the conclusions and recommendations.

This *Practice Standard* shall not be considered alone, but in conjunction with all other *Practice Standards*.

### **Relationship of this *Practice Standard* to ADFP Board's *Code of Ethics* and *Rules of Conduct***

This *Practice Standard* relates to ADFP Board's *Code of Ethics* and *Rules of Conduct* through Principle 7 – Diligence and Rules 3.3, 4.4 and 4.5.

### **Anticipated Impact of this *Practice Standard***

#### *Upon the Public*

The public is served when divorce financial planning recommendations are based upon sufficient and relevant quantitative information and documents. This *Practice Standard* is intended to increase the likelihood of achieving the client's goals and objectives.

#### *Upon the Divorce Financial Planning Profession*

Financial planning requires that recommendations be made based on sufficient and relevant quantitative data. Therefore, compliance with this *Practice Standard* encourages the public to seek divorce financial planning practitioners who use divorce financial planning.

#### *Upon the Divorce Financial Planning Practitioner*

Sufficient and relevant quantitative information and documents provide the foundation for analysis. Ultimately, this will facilitate the development of appropriate recommendations.

## **ANALYZING AND EVALUATING THE CLIENT'S FINANCIAL STATUS**

### **300-1: Analyzing and Evaluating the Client's Information**

*A divorce financial planning practitioner shall analyze the information to gain an understanding of the client's financial situation and then evaluate to what extent the client's goals, needs and priorities can be met by the client's resources and current course of action.*

### **Explanation of this *Practice Standard***

Prior to making recommendations to a client, it is necessary for the divorce financial planning practitioner to assess the client's financial situation and to determine the likelihood of reaching the stated objectives activities.

The practitioner will utilize client-specified, mutually-agreed-upon, and/or other reasonable assumptions. Both personal and economic assumptions must be considered in this step of the process. These assumptions may include, but are not limited to, the following:

- Personal assumptions, such as: retirement age(s), life expectancy(ies), income needs, risk factors, time horizon and special needs; and
- Economic assumptions, such as: inflation rates, tax rates and investment returns. Analysis and evaluation are critical to the divorce financial planning process. These activities form the foundation for

determining strengths and weaknesses of the client's financial situation and current course of action. These activities may also identify other issues that should be addressed. As a result, it may be appropriate to amend the scope of the engagement and/or to obtain additional information.

#### **Relationship of this *Practice Standard* to ADFP Board's *Code of Ethics and Rules of Conduct***

This *Practice Standard* relates to ADFP Board's *Code of Ethics and Rules of Conduct* through Principle 2 – Objectivity, Principle 3 – Competence, Principle 7 - Diligence and Rules 1.4, 4.1, 4.4 and 4.5.

#### **Anticipated Impact of this *Practice Standard***

##### *Upon the Public*

The public is served when objective analysis and evaluation by a divorce financial planning practitioner results in the client's heightened awareness of specific financial planning issues. This *Practice Standard* is intended to increase the likelihood of achieving the client's goals and objectives.

##### *Upon the Divorce Financial Planning Profession*

Objective analysis and evaluation enhances the public's recognition of and appreciation for divorce financial planning and increases the confidence in divorce financial planning practitioners who provide this service.

### *Upon the Divorce Financial Planning Practitioner*

Analysis and evaluation helps the practitioner establish the foundation from which recommendations can be made that are specific to the client's divorce financial planning goals, needs and priorities.

## **DEVELOPING AND PRESENTING THE DIVORCE FINANCIAL PLANNING RECOMMENDATION(S)**

The three *Practice Standards* that comprise the 400 series should not be considered alone, but in conjunction with all other *Practice Standards*.

### **400-1: Identifying and Evaluating Divorce Financial Planning Alternative(s)**

*The divorce financial planning practitioner shall consider sufficient and relevant alternatives to the client's current situation in an effort to reasonably meet the client's goals, needs and priorities.*

#### **Explanation of this *Practice Standard***

After analyzing the client's current situation (*Practice Standard 300-1*) and prior to developing and presenting the recommendation(s) (*Practice Standards 400-2 and 400-3*), the divorce financial planning practitioner shall identify alternative actions. The practitioner shall evaluate the effectiveness of such actions in reasonably meeting the client's goals, needs and priorities. This evaluation may involve, but is not limited to, considering multiple assumptions, conducting research or consulting with other professionals. This process may result in a single alternative, multiple alternatives or no alternative to the client's current course of action.

In considering alternative actions, the practitioner shall recognize and, as appropriate, take into account his or her legal and/or regulatory limitations and level of competency in properly addressing each of the client's divorce financial planning issues.

More than one alternative may reasonably meet the client's goals, needs and priorities. Alternatives identified by the practitioner may differ from those of other practitioners or advisers, illustrating the subjective nature of exercising professional judgment.

#### **Relationship of this *Practice Standard* to ADFP Board's *Code of Ethics* and *Rules of Conduct***

This *Practice Standard* relates to ADFP Board's *Code of Ethics and Rules of Conduct* through Principle 2 – Objectivity, Principle 3 – Competence, Principle 6 – Professionalism, Principle 7 – Diligence and Rules 1.4, 4.1 and 4.5.

#### **400-2: Developing the Divorce Financial Planning Recommendation(s)**

*The divorce financial planning practitioner shall develop the recommendation(s) based on the recommended alternative(s) and the current course of action in an effort to reasonably meet the client's goals, needs and priorities.*

#### **Explanation of this *Practice Standard***

After identifying and evaluating the alternative(s) and the client's current course of action, the practitioner shall develop the recommendation(s) expected to reasonably meet the client's goals, needs and priorities. A recommendation may be an independent action or a combination of actions which may need to be implemented collectively.

The recommendation(s) shall be consistent with and will be directly affected by the following:

- Mutually-defined scope of the engagement;
- Mutually-defined client goals, needs and priorities;
- Quantitative data provided by the client;
- Personal and economic assumptions;
- Practitioner's analysis and evaluation of client's current situation; and
- Alternative(s) recommended by the practitioner.

A recommendation may be to continue the current course of action. If a change is recommended, it may be specific and/or detailed or provide a general direction. In some instances, it may be necessary for the practitioner to recommend that the client modify a goal.

The recommendations developed by the practitioner may differ from those of other practitioners or advisers, yet each may reasonably meet the client's goals, needs and priorities.

### **Relationship of this *Practice Standard* to ADFP Board's *Code of Ethics and Rules of Conduct***

This *Practice Standard* relates to ADFP Board's *Code of Ethics and Rules of Conduct* through Principle 2 – Objectivity, Principle 3 – Competence, Principle 6 – Professionalism, Principle 7 – Diligence and Rules 1.4, 4.1 and 4.5.

### **400-3: Presenting the Divorce Financial Planning Recommendation(s)**

*The divorce financial planning practitioner shall communicate the recommendation(s) in a manner and to an extent reasonably necessary to assist the client in making an informed decision.*

### **Explanation of this *Practice Standard***

When presenting a recommendation, the practitioner shall make a reasonable effort to assist the client in understanding the client's current situation, the recommendation itself, and its impact on the ability to meet the client's goals, needs and priorities. In doing so, the practitioner shall avoid presenting the practitioner's opinion as fact.

The practitioner shall communicate the factors critical to the client's understanding of the recommendations. These factors may include but are not limited to material:

- Personal and economic assumptions;
- Interdependence of recommendations;
- Advantages and disadvantages;
- Risks; and/or
- Time sensitivity.

The practitioner should indicate that even though the recommendations may meet the client's goals, needs and priorities, changes in personal and economic conditions could alter the intended outcome. Changes

may include, but are not limited to: legislative, family status, career, investment performance and/or health. If there are conflicts of interest that have not been previously disclosed, such conflicts and how they may impact the recommendations should be addressed at this time. Presenting recommendations provides the practitioner an opportunity to further assess whether the recommendations meet client expectations, whether the client is willing to act on the recommendations, and whether modifications are necessary.

### **Relationship of this *Practice Standard* to ADFP Board's *Code of Ethics and Rules of Conduct***

This *Practice Standard* relates to ADFP Board's *Code of Ethics and Rules of Conduct* through Principle 1 – Integrity, Principle 2 – Objectivity, Principle 6 – Professionalism and Rules 2.1, 4.1, 4.4 and 4.5.

### **Anticipated Impact of these *Practice Standards***

#### *Upon the Public*

The public is served when strategies and objective recommendations are developed and are communicated clearly to specifically meet each client's individual divorce financial planning goals, needs and priorities.

#### *Upon the Divorce Financial Planning Profession*

A commitment to a systematic process for the development and presentation of the divorce financial planning recommendations advances the divorce financial planning profession. Development of customized strategies and recommendations enhances the public's perception of the objectivity and value of divorce financial planning. The public will seek out those professionals who embrace these *Practice Standards*.

#### *Upon the Divorce Financial Planning Practitioner*

Customizing strategies and recommendations forms a foundation to communicate meaningful and responsive solutions. This increases the likelihood that a client will accept the recommendations and act upon them. These actions will contribute to client satisfaction.

### **IMPLEMENTING THE DIVORCE FINANCIAL PLANNING RECOMMENDATION(S):**

#### **500-1: Agreeing on Implementation Responsibilities**

*The divorce financial planning practitioner and the client shall mutually agree on the implementation responsibilities consistent with the scope of the engagement.*

### **Explanation of this *Practice Standard***

The client is responsible for accepting or rejecting recommendations and for retaining and/or delegating implementation responsibilities. The divorce financial planning practitioner and the client shall mutually agree on the services, if any, to be provided by the practitioner. The scope of the engagement, as originally defined, may need to be modified.

The practitioner's responsibilities may include, but are not limited to the following:

- Identifying activities necessary for implementation;
- Determining division of activities between the practitioner and the client;
- Referring to other professionals;
- Coordinating with other professionals;
- Sharing of information as authorized; and
- Recommending products and/or services.

If there are conflicts of interest, sources of compensation or material relationships with other professionals or advisers that have not been previously disclosed, such conflicts, sources or relationships shall be disclosed at this time. When referring the client to other professionals or advisers, the divorce financial planning practitioner shall indicate the basis on which the practitioner believes the other professional or adviser may be qualified. If the practitioner is engaged by the client to provide only implementation activities, the scope of the engagement shall be mutually defined in accordance with *Practice Standard 100-1*. This scope may include such matters as the extent to which the practitioner will rely on information, analysis or recommendations provided by others.

### **Relationship of this *Practice Standard* to ADFP Board's *Code of Ethics and Rules of Conduct***

This *Practice Standard* relates to ADFP Board's *Code of Ethics and Rules of Conduct* through Principle 3 –

Competence, Principle 4 – Fairness, Principle 6 – Professionalism, Principle 7 – Diligence and Rules 1.2, 2.2, 4.1 and 4.4.

## **500-2: Recommending Products and Services for Implementation**

*The divorce financial planning practitioner shall recommend appropriate products and services that are consistent with the client's goals, needs and priorities.*

### **Explanation of this *Practice Standard***

The divorce financial planning practitioner shall investigate products and services that reasonably address the client's needs. The products and services proposed to implement the recommendation(s) must be suitable to the client's financial situation and consistent with the client's goals, needs and priorities. The divorce financial planning practitioner uses professional judgment in recommending products and services that are in the client's interest. Professional judgment incorporates both qualitative and quantitative information. Products and services recommended by the practitioner may differ from those of other practitioners or advisers. More than one service may exist that can reasonably meet the client's goals, needs and priorities. The practitioner shall make all disclosures required by applicable regulations.

### **Relationship of this *Practice Standard* to ADFP Board's *Code of Ethics and Rules of Conduct***

This *Practice Standard* relates to ADFP Board's *Code of Ethics and Rules of Conduct* through Principle 2 – Objectivity, Principle 4 – Fairness, Principle 6 – Professionalism, Principle 7 – Diligence and Rules 1.2, 1.4, 2.2, 4.1, 4.4 and 4.5.

### **Anticipated Impact of these *Practice Standards***

#### *Upon the Public*

The public is served when the appropriate services are used to implement recommendations, thus increasing the likelihood that the client's goals will be achieved.

#### *Upon the Divorce Financial Planning Profession*

Over time, implementing recommendations using appropriate services for the client increases the credibility of the profession in the eyes of the public.

## *Upon the Divorce Financial Planning Practitioner*

In the recommendation of services, putting the interest of the client first benefits the practitioner over the long-term.

## **MONITORING**

### **600-1: Defining Monitoring Responsibilities**

*The divorce financial planning practitioner and client shall mutually define monitoring responsibilities.*

#### **Explanation of this *Practice Standard***

The purpose of this *Practice Standard* is to clarify the role, if any, of the practitioner in the monitoring process. By clarifying this responsibility, the client's expectations are more likely to be in alignment with the level of monitoring services which the practitioner intends to provide. If engaged for monitoring services, the practitioner shall make a reasonable effort to define and communicate to the client those monitoring activities the practitioner is able and willing to provide. By explaining what is to be monitored, the frequency of monitoring and the communication method, the client is more likely to understand the monitoring service to be provided by the practitioner. The monitoring process may reveal the need to reinitiate steps of the financial planning process. The current scope of the engagement may need to be modified.

#### **Relationship of this *Practice Standard* to ADFP Board's *Code of Ethics and Rules of Conduct***

This *Practice Standard* relates to ADFP Board's *Code of Ethics and Rules of Conduct* through Principle 7 – Diligence and Rules 1.2, 3.3, 3.4 and 4.1.

#### **Anticipated Impact of this *Practice Standard***

##### *Upon the Public*

The public is served when the practitioner and client have similar perceptions and a mutual understanding about the responsibilities for monitoring the recommendation(s).

##### *Upon the Divorce Financial Planning Profession*

The profession benefits when clients are satisfied. Clients are more likely to be satisfied when expectations of the monitoring process are both realistic and clear. This *Practice Standard* promotes awareness that divorce financial planning is a dynamic process rather than a single action.

#### *Upon the Financial Planning Practitioner*

A mutually-defined agreement of the monitoring responsibilities increases the potential for client satisfaction and clarifies the practitioner's responsibilities.

### **Disciplinary Rules and Procedures:**

#### **ARTICLE 1: INTRODUCTION**

Association of Divorce Financial Planners (ADFP) has adopted a *Code of Ethics and Professional*

*Responsibility (Code of Ethics), Rules of Conduct and Divorce Financial Planning Practice Standards (Practice Standards)*, which establish the expected level of professional conduct and practice for members.

The *Code of Ethics, Rules of Conduct and Practice Standards* may be amended from time to time. To maintain the integrity of its membership criteria, adherence to the *Rules of Conduct* and compliance with the *Practice Standards* by members is required, with the potential for sanctions against those who violate the regulations proscribed in these documents. ADFP will follow the disciplinary rules and procedures set forth below when enforcing the *Rules of Conduct* and *Practice Standards*.

#### **ARTICLE 2: COMPLIANCE OFFICER**

##### **2.1 Function and Jurisdiction of the Compliance Officer**

The Compliance Officer is charged with the duty of reviewing and taking appropriate action with respect to alleged violations of the *Rules of Conduct* and alleged non-compliance with the *Practice Standards* as promulgated by ADFP and shall have original jurisdiction over all such disciplinary matters.

##### **2.2 Powers and Duties of the Compliance Officer**

The Compliance Officer shall be required to:

(a) Periodically, and no less frequently than annually, report to the ADFP Board of Directors on compliance operations;

(b) Recommend, as may be necessary, subject to review and approval of the ADFP Board of Directors, amendments to these *Disciplinary Rules and Procedures*;

(c) Recommend to the ADFP Board such other rules or procedures as may be necessary or appropriate.

### ARTICLE 3: GROUNDS FOR DISCIPLINE

Misconduct by a member, individually or in concert with others, including the following acts or omissions, shall constitute grounds for discipline, whether or not the act or omission occurred in the course of a client relationship:

(a) Any act or omission which violates the provisions of the *Rules of Conduct*;

(b) Any act or omission which fails to comply with the *Practice Standards*;

(c) Any act or omission which violates the criminal laws of any State or of the United States or of any province, territory or jurisdiction of any other country, provided however, that conviction thereof in a criminal proceeding shall not be a prerequisite to the institution of disciplinary proceedings, and provided further, that acquittal in a criminal proceeding shall not bar a disciplinary action;

(d) Any act which is the proper basis for professional suspension, as defined herein, provided professional suspension shall not be a prerequisite to the institution of disciplinary proceedings, and provided further, that dismissal of charges in a professional suspension proceeding shall not necessarily bar a disciplinary action;

(e) Any act or omission which violates these *Procedures* or which violates an order of discipline;

(f) Failure to respond to a request by the Compliance Officer, without good cause shown, or obstruction of the Compliance Officer in the performance of his/her duties;

(g) Any false or misleading statement made to ADFP. The enumeration of the foregoing acts and omissions constituting grounds for discipline is not exclusive and other acts or omissions amounting to unprofessional conduct may constitute grounds for discipline.

#### **ARTICLE 4: FORMS OF DISCIPLINE**

In cases where no grounds for discipline have been established, the ADFP Board may dismiss the matter as either without merit or with a cautionary letter. In all cases, the ADFP Board has the right to require members to complete additional continuing education or other remedial work. Such continuing education or remedial work may be ordered instead of, or in addition to, any discipline listed below. Where grounds for discipline have been established, either of the following forms of discipline may be imposed in these cases where grounds for discipline have been established.

##### **4.1 Termination or Suspension of Membership**

The ADFP Board may permanently terminate or suspend for a specified period an individual's membership. Members receiving a suspension may qualify for reinstatement as provided in Article 12.

#### **ARTICLE 5: INTERIM SUSPENSION STATUS**

##### **5.1 Interim Suspension**

Interim suspension is the temporary suspension by the ADFP Board of membership rights for a definite or indefinite period of time, while proceedings conducted pursuant to these *Procedures* are pending against the member. Imposition of an interim suspension shall not preclude the imposition of any other form of discipline entered by the ADFP Board in final resolution of the disciplinary proceeding.

Although a member's rights shall not ordinarily be suspended during the pendency of such proceedings, when it appears that a member or registrant has been convicted of a serious crime as defined in Article 11, or has been the subject of a professional suspension, or has converted property or funds, has engaged in conduct which poses an immediate threat to the public, or has engaged in conduct the gravity of which impinges upon the stature and reputation of the ADFP, an interim suspension may be ordered during the pendency of the proceedings.

##### **5.2 Automatic Reinstatement upon Reversal of Conviction or Suspension**

A member subject to a suspension under this Article shall have the suspension vacated immediately upon filing with the ADFP Board a certificate demonstrating that the underlying criminal conviction or professional suspension has been reversed; provided, however, the reinstatement upon such reversal shall have no effect on any proceeding conducted pursuant to these *Procedures* then pending against a member.

## **ARTICLE 6: INVESTIGATION**

### **6.1 Commencement**

Proceedings involving potential ethics violations shall be commenced upon a written request for investigation made by any person which shall be directed to the Compliance Officer or commenced at the behest of the ADFP Board.

Proceedings involving *Practice Standards* nonconformance shall be commenced upon a written request for investigation made by any person(s) who have a contractual relationship with the member whose practices are being called into question or by a member, or at the behest of ADFP Board. In either situation, the Compliance Officer may, in making a determination of whether to proceed, make such inquiry regarding the underlying facts as he/she deem appropriate.

### **6.2 Procedures for Investigation**

Upon receipt of a request for investigation containing allegations which, if true, could give rise to a violation of the *Rules of Conduct*, or upon the acquisition by ADFP Board of information which, if true, could give rise to a violation of the *Rules of Conduct*, the member in question shall be given written notice by ADFP Board that the member is under investigation and of the general nature of the allegations asserted against the member. The member shall have thirty (30) calendar days from the date of notice of the investigation to file a written response to the allegations with the Compliance Officer.

(a) No Response. At the expiration of the thirty (30) calendar-day period if no response has been received, the matter shall be referred to a Hearing Panel.

(b) Response. Upon receipt of a response, Compliance Officer shall compile all documents and materials and commence probable cause determination procedures as soon thereafter as is reasonably practicable.

### **6.3 Probable Cause Determination Procedures**

The Compliance Officer shall determine if there is probable cause to believe grounds for discipline exists and shall either; (1) dismiss the allegations as not warranting further investigation at this time; (2) dismiss the allegations with a letter of caution recommending remedial action and/or entering other appropriate orders; or (3) begin further investigation. For matters that are dismissed, ADFP Board may reserve the right to reopen the investigation in the future if appropriate.

## **6.4 Disposition**

The Compliance Officer shall conduct ADFP Board's investigation as expeditiously as reasonably practicable.

## **ARTICLE 7: COMPLAINT - ANSWER – DEFAULT**

### **7.1 Complaint**

An original Complaint shall be prepared by the Compliance Officer and forwarded to the member. The Complaint shall reasonably set forth the grounds for discipline with which the member is charged and the conduct or omission which gave rise to those charges.

### **7.2 Notification**

ADFP Board shall promptly notify the member of the Complaint by certified mail, return receipt requested, mailed to the last known address of the member.

### **7.3 Answer**

All Answers to Complaints shall be submitted in writing to the ADFP Board. The Answer shall be submitted within twenty (20) calendar days from the date of mailing of the Complaint to the member. The member shall set forth in the Answer any defenses or mitigating circumstances.

### **7.4 Default and Orders of Revocation and Denial**

If the member fails to file an Answer within the period provided by Article 7.3, such member shall be deemed to be in default, and the allegations set forth in the Complaint shall be deemed admitted. In such circumstance, ADFP Board shall serve upon the member, consistent with Article 7.2, an Order of Suspension or Termination. Such orders shall state clearly and with reasonable particularity the grounds for

the suspension or termination. These Orders are subject to the member's right of appeal as outlined in Article 10.

## **ARTICLE 8: DISCOVERY AND EVIDENCE**

### **8.1 Discovery**

Discovery of a disciplinary case may be obtained only after a Complaint has been issued against a member. A member may obtain copies of all documents in the member's disciplinary file which are not privileged and which are relevant to the subject matter in the pending action before the ADFP Board. Requests for copies of ADFP Board documents must be made to the Compliance Officer in writing. Release of information contained in a member's disciplinary file is premised on the understanding that materials will be used only for purposes directly connected to the pending ADFP Board action.

### **8.2 Administrative Dismissal**

If, upon receipt of a member's Answer to the Complaint, new information becomes available that may warrant a dismissal of the case, the Compliance Officer shall review all relevant materials and make such determination at that time.

## **ARTICLE 9: REPORT, FINDINGS OF FACT AND RECOMMENDATION**

### **9.1 Compliance Officer**

The Compliance Officer shall record his/her findings of fact and recommendations and submit the findings and recommendations to the ADFP Board for its consideration. In making his/her recommendation, the Compliance Officer may take into consideration the member's prior disciplinary record, if any. The Compliance Officer shall: (1) determine that the Complaint is not proved or that the facts as established do not warrant the imposition of discipline and recommend the Complaint be dismissed, either as without merit or with caution; or (2) refer the matter to the ADFP Board with the recommendation that discipline is appropriate. The recommendation shall state specifically the form of discipline the Compliance Officer deems appropriate.

## **ARTICLE 10: APPEALS**

All appeals shall be submitted to ADFP Board. If an order is not appealed within thirty (30) calendar days after notice of the order is sent to the member, such order shall become final.

## **ARTICLE 11: CONVICTION OF A CRIME OR PROFESSIONAL SUSPENSION**

### **11.1 Proof of Conviction or Professional Suspension**

Except as otherwise provided in these *Procedures*, a certificate from the clerk of any court of criminal jurisdiction indicating that a member has been convicted of a crime in that court or a letter or other writing from a governmental or industry self-regulatory authority to the effect that a member has been the subject of an order of professional suspension (as hereinafter defined) by such authority, shall conclusively establish the existence of such conviction or such professional suspension for purposes of disciplinary proceedings and shall be conclusive proof of the commission of that crime or of the basis for such suspension, by the member.

### **11.2 Duty to Report Criminal Conviction or Professional Suspension**

Every member, upon being convicted of a crime, except misdemeanor traffic offenses or traffic ordinance violations unless such offense involves the use of alcohol or drugs, or upon being the subject of professional suspension, shall notify ADFP Board in writing of such conviction or suspension within ten (10) calendar days after the date on which the member is notified of the conviction or suspension.

### **11.3 Commencement of Disciplinary Proceedings Upon Notice of Conviction or Professional Suspension**

Upon receiving notice that a member has been convicted of a crime other than a serious crime (as defined herein), ADFP Board shall commence an investigation. If the conviction is for a serious crime or if a member is the subject of a professional suspension, ADFP Board shall obtain the record of conviction or proof of suspension and file a Complaint against the member as provided in Article 7. If the member's criminal conviction or professional suspension is either proved or admitted as provided herein, the member shall have the right to be heard by the Compliance Officer only on matters of rebuttal of any evidence presented by ADFP Board other than proof of the conviction or suspension.

### **11.4 Conviction of Serious Crime or Professional Suspension - Immediate Suspension**

Upon receiving notification of a member's criminal conviction or professional suspension, ADFP Board may, at its discretion, issue a notice to the convicted or suspended member directing that the member show cause why his/her membership should not be immediately suspended pursuant to Article 5.

### **11.5 Serious Crime Defined**

The term serious crime as used in these rules shall include: (1) any felony; (2) any lesser crime, a necessary element of which as determined by its statutory or common law definition involves misrepresentation, fraud, extortion, misappropriation or theft; and/or (3) an attempt or conspiracy to commit such crime, or solicitation of another to commit such crime.

### **11.6 Definition of a Professional Suspension**

A professional suspension as used herein shall include the suspension or bar as a disciplinary measure by any governmental or industry self-regulatory authority of a license as a registered securities representative, broker/dealer, insurance or real estate salesperson or broker, insurance broker, attorney, accountant, investment adviser or financial planner.

## **ARTICLE 12: REINSTATEMENT AFTER DISCIPLINE**

### **12.1 Reinstatement after Termination**

Termination shall be permanent, and there shall be no opportunity for reinstatement.

### **12.2 Reinstatement after Suspension**

Unless otherwise provided by the ADFP Board in its order of suspension, a member who has been

suspended for a period of one (1) year or less shall be automatically reinstated upon the expiration of the period of suspension, provided the member files with ADFP Board within thirty (30) calendar days of the expiration of the period of suspension an affidavit stating that the suspended member or registrant has fully complied with the order of suspension and with all applicable provisions of these *Procedures*, unless such condition is waived by the ADFP Board in its discretion. A member who has been suspended for a period longer than one (1) year must petition the ADFP Board for reinstatement within six months of the end of his/her suspension, or failure to do so will result in administrative relinquishment. Before any reinstatement application, the member or registrant must meet all administrative requirements for membership. The

member must prove by clear and convincing evidence that the member registrant has been rehabilitated and has complied with all applicable disciplinary orders and provisions of these *Procedures*.

### **12.3 Investigation**

Immediately upon receipt of a petition for reinstatement, the Compliance Officer will initiate an investigation. The petitioner shall cooperate in any such investigation, and the Compliance Officer shall submit a report of the investigation to the ADFP Board.

### **12.4 Successive Petitions**

If an individual is denied reinstatement, he/she must wait two (2) years to again petition for reinstatement. The second petition must be received by the Compliance Officer within six (6) months of the expiration of the two (2) year period, and failure to submit a second petition within this time period will result in the individual's right to membership being administratively relinquished. If the second petition is denied, the individual's right to membership shall be administratively relinquished.

## **ARTICLE 13: CONFIDENTIALITY OF PROCEEDINGS**

### **13.1 Confidentiality**

Except as otherwise provided in these *Procedures*, all proceedings conducted pursuant to these *Procedures* shall be confidential and the records of the ADFP shall remain confidential and shall not be made public.

### **13.2 Exceptions to Confidentiality**

The pendency, subject matter and status of proceedings conducted pursuant to these *Procedures* may be disclosed if (1) the member has waived confidentiality; or (2) such disclosure is required by legal process of a court of law or other governmental body or agency having appropriate jurisdiction; or (3) in proceedings involving a consumer, ADFP Board staff contacts the consumer and/or the member's current and/or former employer to request documents relevant to the proceeding.

## **ARTICLE 14: GENERAL PROVISIONS**

### **14.1 Quorum**

A majority of members of the ADFP Board shall be present in order to constitute a quorum, and the approval of a majority of the quorum shall be the action of such ADFP Board.

## 14.2 Notice and Service

Except as may otherwise be provided in these *Procedures*, notice shall be in writing and the giving of notice and/or service shall be sufficient when made either personally or by certified mail or overnight mail sent to the last known address of the member according to the records of ADFP Board.

**Appendix A: The Evolving Role of the Divorce Financial Analyst in Collaborative Divorce, Pauline Tesler, New York Family Law Monthly, August/September 2010**

### The Evolving Role of the Divorce Financial Analyst in Collaborative Divorce

August 2010

By Pauline H. Tesler

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#### *Part One of a Two-Part Article*

During the early 1980s, divorce lawyers began experimenting with the use of financial planners as consultants and trial experts to enhance spousal support advocacy on behalf of the dependent spouse. Although some immediately recognized both the value of that resource in counseling fearful clients and the power of such expert testimony in persuading judges to make higher support awards, the idea did not catch on widely. For many years it remained a power tool used by a select few. Persuading family law specialists that some other professional might do a better job than they of marshalling financial evidence on the client's behalf has remained a hard sell in some quarters — even in the realm of collaborative divorce practice, where interdisciplinary professional teams are becoming the norm.

#### **Breaking Down Resistance**

It's not difficult to imagine why skillful lawyers might resist accepting the divorce financial analyst (also referred to as a divorce financial planner) as a valuable resource. Divorce lawyers practicing in an adversarial mode are masters at controlling the flow of information about financial resources — how much will be disclosed, when, how, and to whom. Information is a major strategic weapon in the battle, and good trial lawyers keep firm control over its deployment (within the limits of applicable law, of course).

The situation should be different in the collaborative law setting. Collaborative lawyers work in a client-centered, interest-based settlement model in which financial information is defined from the start as a shared resource and a basic tool for developing mutually advantageous settlement scenarios. In fact, failure to disclose all relevant financial information violates fundamental good-faith undertakings set forth in the written collaborative participation agreement. Nonetheless, it is not uncommon for beginning collaborative lawyers to embrace interdisciplinary teamwork with mental health colleagues on the professional team more enthusiastically than they welcome the divorce financial analyst. Understanding why this is so begins with acknowledging that it takes time for collaborative lawyers to switch gears. In intermediate collaborative practice training sessions, divorce lawyers who have handled only a handful of collaborative cases often protest that gathering and analyzing financial evidence is a central part of how they do their job. Why, they ask, should their clients pay some other professional to do it?

The answer lies in the significant differences between how information is prepared and used when legal rights and entitlements are the sole focus and winning big is the goal, as compared with how information can be prepared and used when client-centered interest-based negotiations are the agreed method and settlement entirely outside the court system is the sole objective. Old habits based on maintaining tight control over disclosure of financial data so that it can be manipulated for maximum strategic advantage die hard. I have found, based on nearly 15 years of experience as a collaborative divorce trainer, that it takes as many as 25 or more successful cases before a lawyer masters the skills and techniques that reflect real competency in collaborative law, and substantially more than that before most lawyers leave entirely behind them the residual habits and attitudes of the adversarial advocate, replacing them with those of a client-centered conflict resolution professional.

### **The Divorce Financial Analyst's Job**

Over time, lawyers working in communities where trained professionals are available for interdisciplinary collaborative divorce teams generally do come to appreciate the enhanced quality of financial services that an experienced divorce financial analyst can provide. Indeed, when the collaborative divorce financial analyst becomes the organizing source for information on the collaborative divorce team, the early availability to both parties and their lawyers of reliable, comprehensive financial information vetted by an expert neutral source has transformative potential, both to facilitate smoother sailing in the negotiation process and to support generation of far more comprehensive and sophisticated options for settlements. Working from carefully developed income, expenses, asset, and debt schedules that both spouses understand and accept as valid and complete, the professional team can help couples consider long-term financial consequences to both parties resulting from any set of assumptions about asset and debt division or amount and duration of alimony.

With this kind of rich and nuanced information, it becomes apparent to both parties whether a proposed solution is or is not financially viable. It becomes obvious when a settlement option will cause substantial inequity or even hardship to a party. It no longer is necessary for a dependent spouse's lawyer to argue with his client about the financial wisdom of remaining in a family residence that is unaffordable, because the spreadsheets and graphs about cash flow and net worth speak for themselves. Because the good-faith commitments that couples make when entering the collaborative process include a willingness to consider all reasonable goals of either party regardless of whether they could be achieved in court, this kind of accurate information about financial consequences of settlement options can become a catalyst for creative problem solving and even generosity. In short, when the divorce financial analyst is part of the collaborative team, financial information functions as a shared dynamic tool, not a unilateral weapon.

Because of this potentially powerful support for collaborative conflict resolution, it is not unusual in communities where integrated team collaborative divorce practice is well established for the divorce financial analyst's participation on the professional team from the beginning of the case to form part of the protocols by which collaborative divorce lawyers and their professional colleagues do their work. (This is so in the San Francisco Bay area, San Diego, Los Angeles, the Hudson Valley, Atlanta, Vancouver, Minneapolis, and many other mature collaborative practice communities in the U.S. and Canada.)

### **The Importance of Communications and Teamwork**

Collaborative lawyers and divorce financial analysts, working together on a collaborative team, can perform their respective tasks at a high professional standard only if they share a congruent understanding of the job description and ethical boundaries within which the divorce financial analyst will work. These understandings are developed and refined in the local collaborative practice group, and in many instances are incorporated into the practice group's protocols. Those protocols evolve as collaborative lawyers do more case work with the divorce financial analyst and learn from experience how to coordinate their professional efforts more effectively. As they begin each new collaborative case together, collaborative lawyers and neutral divorce financial analysts learn the importance of taking time to clarify beforehand what tasks the financial analyst will (and will not) perform, and in what sequence. They should also clearly define how they will communicate with one another, what form the work product will take, and where the boundaries lie between the lawyer's job description and the divorce financial analyst's job description. These understandings can vary considerably from one case to another, depending on the clients' needs and the collaborative lawyers' preferences.

At one end of the spectrum, the collaborative lawyers may simply ask the neutral divorce financial analyst to gather the usual financial disclosure documents required in divorce practice, to organize them, and

perhaps to prepare basic spreadsheets summarizing what they reveal. However, experienced collaborative lawyers generally ask divorce financial analysts to do far more than that. In Northern California, where I practice, it is now customary in a collaborative setting for the neutral financial consultant to:

- Confer initially with both attorneys about scope of engagement, special needs and challenges of clients, timing issues, format and venue for presenting financial information;
  - Meet with the divorcing parties jointly and separately to understand how money and records have been managed and to explain forms that will be used for gathering documentation of income, expenses, assets, debts;
  - Confer with both collaborative lawyers about financial and disclosure concerns that emerge during meetings with clients;
  - Alert lawyers to missing documents and information and possible bad faith disclosures;
  - Help clients prepare and/or review budgets, as directed by lawyers;
  - Educate financially naïve parties about basic money management;
  - Confer with family and/or business accountants to gather tax returns and business records (it is not customary for the collaborative divorce financial analyst to undertake tracing or business valuation while at the same time functioning as the collaborative neutral on the case. Most collaborative lawyers prefer joint retention of a different neutral forensic accountant to perform those tasks so that the uniquely client-focused role of the collaborative financial neutral is not compromised by rendering expert opinions on issues that often carry emotional charge);
  - Prepare preliminary asset/debt spreadsheets, cash flow summaries and estimates along with indexed supporting documentation, in binders or on CD-Rom;
  - Attend "five-way" collaborative meetings to walk parties and their lawyers through an overview of family finances;
  - Update documentation and schedules periodically throughout negotiations and before completion of settlement agreements;
  - Prepare long-term financial projections of cash flow and net worth for various settlement scenarios as directed by lawyers;
  - Attend settlement meetings as requested to provide "real time" calculations of child and spousal support (alimony), taxes, and financial consequences of settlement scenarios under consideration;
  - Meet individually with one or both clients as directed by lawyers when specific financial issues or concerns will benefit from individualized attention;
  - Prepare exhibits for inclusion in settlement agreements; and
  - Assist with collaborative modification of support agreements post-judgment.
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## The Practice Group and the Financial Collaborative Divorce

September 2010

*By Pauline H. Tesler*

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### *Part Two of a Two-Part Article*

It is important to understand that working with a divorce financial analyst in the collaborative divorce setting requires all professionals involved in the case to develop trust relationships and teamwork skills that have no place in a divorce lawyer's ordinary practice. The locus for developing these relationships and skills is the practice group. Practice groups are spontaneous organizations of collaborative lawyers, financial professionals and mental health professionals who work in the same geographic region and expect to work together on cases. (In some communities, members will sign formal collaborative participation agreements only with other professionals who are actively involved as members in the local practice group.) In the practice group, trust relationships are built, documents and protocols for practice are devised and kept updated, professional development activities are sponsored, and public education campaigns are implemented. Practice groups can be found everywhere that collaborative divorce practice is found.

The practice group helps lawyers and divorce financial analysts to avoid common pitfalls associated with lack of definition or inconsistent assumptions about how the work will proceed. Each completed collaborative team case provides a wealth of knowledge about what worked well and what did not —

information that can be shared in the practice group not only among the lawyers and divorce financial analyst who worked on that case, but with the larger community of colleagues who will work together on other cases in the future. A smoothly functioning interdisciplinary collaborative practice group can facilitate case debriefing that enhances members' shared understanding of the groundwork required for lawyers and divorce financial analysts to function as a smooth professional team on collaborative cases.

## Setting the Parameters

What kinds of understandings between collaborative team members can the practice group help to outline? Following are several rules of thumb I have seen developed, which can be elaborated in detailed protocols and roadmaps to guide effective collaborative teamwork between lawyers and the divorce financial analyst.

- Lawyers and divorce financial analysts should clarify at the start of each case exactly what the financial neutral's work will consist of — the "scope of the engagement."
- The divorce financial analyst should take instructions only from the collaborative lawyers. Requests for other services from the clients should be approved by both lawyers before the divorce financial analyst proceeds. For instance, clients may ask the divorce financial analyst to prepare guideline child support calculations. It is a "best practice" for collaborative lawyers to plan carefully when and how such support calculations will be used in the negotiations, and they will not appreciate having their process management undermined inadvertently by the divorce financial analyst.
- Some lawyers expect only spreadsheets from the divorce financial analyst, while others expect indexed supporting documents that will be updated regularly. Increasingly, lawyers request that the work product be scanned and provided in CD-ROM or other digital format rather than in bulky paper files.
- Clients often like working with the divorce financial analyst — sometimes more than with their own lawyers. They may try to get the divorce financial analyst to mediate issues, or give advice, or otherwise blur the boundaries of the job description. They may complain about their lawyers or coaches to the divorce financial analyst, who — as the only member of the professional team that deals with "just the facts," taking no direct role in facilitating decisions — may feel like a safe harbor when divorce-related stresses rise. The lawyers and divorce financial analyst should have a clear understanding of how such challenges will be handled, before they arise.
- Preparation of budgets can be a loaded process, triggering client anxiety and anger. Lawyers generally want considerable advance input into how these budgets will be prepared, when, and for what purposes. Attorneys do not appreciate disclosure of one party's budget to the other party unless and until they have prepared the clients for constructive lawyer-facilitated discussion.

Ordinarily, the divorce financial analyst should send draft budgets to counsel for review and discussion rather than sharing them directly with the other party.

- Long-term cash flow and net worth schedules are valuable tools for creative interest-based settlements, but only as part of a carefully structured roadmap for negotiations. These schedules should be prepared only when the lawyers ask for them. The assumptions to be modeled in various settlement scenarios should be approved by both lawyers, and the divorce financial analyst should not share these scenarios with clients except as directed by the lawyers, so that they serve only constructive purposes in the negotiations.

## Conclusion

Early and ongoing involvement of a skilled divorce financial analyst on the collaborative team can improve both the process and outcome in ways that no individual divorce lawyer, however skillful, can duplicate. When a collaboratively trained divorce financial analyst works directly with both clients from the start of a collaborative divorce, the resulting financial disclosure process is more efficient, thorough, cost effective and comprehensible for all parties. The collaborative divorce financial analyst has access to full and complete disclosure from both parties, supported by full and complete documentation on request. It is expected that all financial questions will be answered before negotiations begin. Over the past decade, sophisticated divorce financial software has become available that organizes and presents family financial information in a far more nuanced and sophisticated manner than most lawyers have the skills to accomplish.

Delivery of integrated interdisciplinary professional services on collaborative divorce teams is a young, complex, and evolving art. That it benefits clients and their children is beyond doubt. With a divorce financial analyst on the team, it becomes possible for collaborative lawyers to facilitate creative and financially sound settlement agreements that can meet clients' needs at a level of sophistication beyond the expertise of most divorce lawyers.

Throughout this two-part article, I have focused on the teamwork between collaborative lawyers and the divorce financial analyst. In fact, the team usually also involves two specially trained mental health professionals working as coaches with the parties, and often a collaborative child specialist who is the voice of, and to, the children as well as the source of important developmental information used in working out parenting plans. The professional collaboration across these three disciplines enables divorcing couples with a mind to do so achieve very high-quality, durable settlements. However, discussion of the ways in which the divorce financial analyst works with the coaches and child specialists on the team is beyond the scope of this article.

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