

INTERDISCIPLINARY COLLABORATIVE PRACTICE

INTRODUCTION

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Collaborative Practice is a voluntary, contractually based process of alternative dispute resolution for parties who seek to resolve disputes respectfully without going to court. The process can be used for both civil cases as well as family law cases. In family law, Collaborative Practice in New Hampshire has evolved over the last several years to incorporate a team approach, using coaches, child specialists and financial neutrals to assist the family. The ability to use professionals in appropriate cases makes for a more efficient and better outcome. The involvement of other professionals recognizes that divorce is not just a legal problem and that professionals other than lawyers have much to offer the family in developing an appropriate parenting plan and means of communication for the parties in the future, and in addressing financial issues that can impact a seemingly equal division of assets. The team model strives to provide clients with the support, information and structure they need to reach agreements that are voluntary and of maximum benefit to both parties.

When choosing this process, both parties sign a contract, what is referred to as the Collaborative Participation Agreement, in which they agree to resolve all issues in their divorce out of court with the help of their collaboratively-trained lawyers and other professionals. Collaborative Practice is distinguished from traditional litigation by its core elements, which are set out in the Participation Agreement, and include the willingness to negotiate a mutually-acceptable settlement without using court to decide any issues; withdrawal of the professionals if either client goes to court; engaging in open communication and information sharing; and the creation of shared solutions that take

into account the highest priorities of both clients.¹ The agreement mandates that any Collaborative practitioner must withdraw from representing or assisting either client, if either client engages in any form of litigation about the dispute. The lawyers further agree that they will not represent that client further if the matter is not fully resolved in the collaborative process. This is known as the disqualification clause. For some family law lawyers, this does not sit well, and has caused some to question whether such agreements are ethical. However, many Collaborative Practitioners recognize that this method is the best process for their clients to resolve their private disputes privately, encouraging creative solutions focusing on the priorities that the client has identified. The disqualification clause is an important part of the participation agreement. Without it, the commitment required by the parties and their lawyers to negotiate an out-of-court resolution is absent. The threat of court is removed from the collaborative process. This allows the parties to focus on resolution, not trial preparation. The Collaborative Law participation agreement is really just an agreement to provide unbundled services, limiting the scope of representation by agreement.

The bar associations of seven states have issued ethical opinions regarding Collaborative Practice, all of which have been favorable and supportive with the exception of Colorado. New Hampshire has not issued an ethics opinion relative to the practice of Collaborative Law. In addition, three states have adopted statutes that recognize Collaborative Practice: California, North Carolina and Texas. A favorable ethical opinion by the American Bar Association was issued in the fall of 2007. The ABA opinion concluded “Before representing a client in a collaborative law process, a lawyer must advise the client of the benefits and risks of participation in the process. If the client has given his or her informed consent, the lawyer may represent the client in the collaborative law process. A lawyer who engages in collaborative resolution processes still is bound by the rules of professional conduct, including the duties of competence and diligence.”²

The New Hampshire Rules of Professional Conduct have been amended to provide for limited representation: c) A lawyer may limit the scope of the representation if the limitation is

reasonable under the circumstances and the client gives informed consent. In providing limited representation, the lawyer's responsibilities to the client, the court and third parties remain as defined by these Rules as viewed in the context of the limited scope of the representation itself; and court rules when applicable.

In Collaborative Law, the use of the Participation Agreement provides for the disclosure and explanation of the limited nature of the representation as contemplated by Rule 1.2(c) and (f).

In this article, the team model of collaborative practice will be addressed from the viewpoint of an attorney, a financial neutral and a mental health professional acting in the role of a neutral process coach.

THE LAWYER'S ROLE IN THE INTERDISCIPLINARY COLLABORATIVE PROCESS

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The International Academy of Collaborative Professionals (IACP) recently published the results of the most comprehensive research study to date of the strengths and weaknesses of the Collaborative Law Process. Two of the original tasks were to provide accurate information about the process, including the professionals' roles and to determine client satisfaction with the model. Most of the responses were from the United States and 97 percent involved divorces. Slightly more than half of the 933 cases reported used either a mental health professional and/or a financial professional. In 43 percent of the reported cases, the parties used two lawyers but no other professionals in the process.⁴

Compared to the general trend towards the team model, the vast majority of New Hampshire lawyers continue to employ the lawyer-only model, without the aid of mental health or financial professionals.⁵ Many practitioners have yet to be trained in the Interdisciplinary model, which was introduced for the first time in New Hampshire two years ago. In addition, many lawyers and their clients perceive inclusion of mental health and/or financial professionals to be too costly or unnecessary. Often, it is not until a problem occurs mid-case that the need becomes apparent to the parties and their attorneys. At that point, it is often difficult to bring someone in.

The lawyer's role in the Interdisciplinary Collaborative process differs from that in a litigated, negotiated, or even mediated case. For many practitioners, it is a difficult shift to make, even when one believes in the value of a no-litigation divorce, or one's clients insist that they do not wish to fight.

What does it mean to advocate for one's client in the Interdisciplinary Collaborative context?

Lawyer to Client

Adversarial and Collaborative advocacy are distinguishable by the contract not to litigate at the heart of Collaborative practice. In addition, the Ethical Standards for Collaborative Practitioners, which have been put forth as voluntary, aspirational guidelines and best practices by the International Academy of Collaborative Professionals, delineate other significant distinctions:

"These ethical standards do not preempt the ethical standards of various disciplines; rather, they supplement them by addressing unique challenges posed by Collaborative Practice. The documents set forth on the IACP website (<http://collaborativepractice.com>) reflect more than five years of ongoing effort in the development, revision, and adoption of these Standards. Experienced collaborative practitioners from the fields of law, mental health, and finance serving on the Standards committee have contributed their knowledge, perspective, and experience to this evolving work."⁶

The nature and scope of advocacy is one area where the IACP ethical standards supplement our state's rules. Section five of the Standards states:

"5. Scope of Advocacy.

5.1 A Collaborative Lawyer shall inform the client(s) of the full spectrum of process options available for resolving disputed legal issues in their case.

5.2 A Collaborative Practitioner shall provide a clear explanation of the collaborative process, which includes the obligations of the practitioner and of the client(s) in the process, so that the client(s) may make an informed decision about choice of process.

5.3 A Collaborative Practitioner shall assist the client(s) in establishing realistic expectations in the collaborative process and shall respect the clients' self-determination; understanding that ultimately the client(s) is/are responsible for making the decisions that resolve their issues.

5.4 A Collaborative Practitioner shall encourage parents to remain mindful of the needs and best interests of their child(ren).

5.5 A Collaborative Practitioner shall avoid contributing to the conflict of the client(s)."

This section highlights the special obligations undertaken by the Collaborative Practitioner that specifically result from the unique nature of Collaborative Practice. Psychologists and social workers are free to recommend outcomes to their client(s) believed to be in the client(s)' (or the clients' family's) best interest, provided that they take care to do no harm. The traditional model of lawyering includes advocacy by the lawyer for the client's position so long as that position is legally supportable. Thus, this section has particular impact for lawyers because it reflects the considerations underlying law society and bar association rules in a number of jurisdictions. *For example, rule 2.1 of the American Bar Association's Model rules of Professional*

conduct recognizes that the role of the attorney encompasses more than providing purely technical legal advice. (Emphasis added.)

As the comment to rule 2.1 explains, the attorney's advice can properly include moral, ethical, and practical considerations, and may indicate that there is more involved in resolving a particular dispute or even the client's entire case than strictly legal considerations (emphasis added.) In Collaborative Practice, the practitioner specifically contracts with the client(s) to provide advice that recognizes a full range of options for dispute resolution and *takes into consideration relationship and family structures when looking at the possible outcomes for the client(s)* (emphasis added.)⁷

What do these IACP Standards and best practices mean in a practical sense?

A client-centered process means that the lawyer advises the client about the law and advocates on his or her behalf, but does not speak for the client, as in a litigated case. The Collaborative Law practitioner empowers the client to discern and express his or her authentic needs, interests and concerns. Rather than telling or advising the client what to do, which is the standard top-down method of most attorneys, a Collaborative Law attorney coaches the client to make the best choices in the divorce. It is the role of lawyer as counsel, where the client is an active participant in the process, rather than a passive recipient of advice. In the client-driven model, the client ideally learns both substantively and procedurally throughout the process.

Ideally, in the Collaborative process, the client also learns some constructive dispute-resolution and communication methods to carry forward into post-divorce life, whether the goal is to co-parent more effectively or to become more effective personally. In Collaborative training, especially in the more advanced courses, the lawyers are specifically taught to model good dispute-resolution and communication methods for their clients. Since so much of Collaborative work is done in face-to-face meetings, lawyers cannot help but influence how clients deal with conflict and conflict resolution.

With the use of the neutral Divorce Process Coach as part of the Collaborative team, the lawyer can focus on what he or she is trained to do, while leaving the management of the emotional complexities to the mental health professional. So many family law cases are filled with hurt, anger, and fear on the part of clients. The emotions often thwart the efficient resolution of cases and cause the clients to remain stuck in untenable positions. From the clients' perspective, they often just need to be heard and validated vis a vis the other party. They need to feel that their marriage had some value, despite the current levels of pain.

While many divorce lawyers are empathetic and listen well, it is quite costly for clients to use their lawyers to help manage all of the emotional components of the divorce. The coach alleviates some of the attorney's burden by facilitating discussions on communication style, hot-buttons, and true needs and concerns. While adding a coach's services may appear to cost more than hiring two lawyers to manage each side of the Collaborative case, in a circumstance where emotions

are heightened, the coach, who charges a lower hourly fee than the lawyers, efficiently provides needed services, thus reduces the overall cost to the clients. The coach helps address the emotions which recent neuroscience research tells us drive most decision-making during times of high stress. The rational world of litigation and its 11th hour settlements is simply not suitable for helping people achieve the most durable and positive results.⁸

Similarly, using a neutral financial expert aids the lawyer-client relationship for both sides. Litigators know the value of a neutral appraiser in a contested case and that dueling experts can easily drain marital resources. The financial professional in a collaborative case provides invaluable input at a reasonable rate on such topics as specific tax consequences, assumptions about investment returns, business valuations, and mortgage rates and types.

The lawyers manage and direct the Collaborative process from start to finish, determining when and to what extent the other team professionals will be used. Clients know that under the hourly fee arrangement, a shorter case overall is generally a less costly one. With the team model, the client receives a high-quality legal experience where professionals' strengths are maximized and service efficiencies are expected.

Lawyer to Lawyer

In any Collaborative case, a shift occurs in the lawyer-to-lawyer relationship. In the Interdisciplinary Collaborative model, the relationship shifts further because other collaboratively-trained non-lawyer professionals are involved in the case.

As with all Collaborative-practice models, instead of advancing relatively extreme positions and negotiating back to acceptable terms, the Collaborative attorneys help their clients focus on reasonable goals, priorities and needs, given their individual circumstances. This commitment to reasonableness comports with ethical standards which require lawyers to avoid wasting the court's and their colleagues' time.

Since the negotiation occurs within the context of New Hampshire family law, this reasonableness standard often takes into consideration the range of most likely outcomes where the case being tried. This standard might have the lawyers discussing ahead of time, on behalf of their clients, what they believe case law would suggest for results. Disagreements and differing points of view do not disappear simply because a case is Collaborative. Instead, under this model, the lawyers find interest-based rationales for advocating certain solutions over others.

With the team model, the lawyers work with each other in an interest-based style; and because the end product is a legal binding contract, which must comply with the laws and rules of the State of New Hampshire, the lawyers manage the process. The other professionals support and provide their expertise where needed, but they are not advocates.

Where appropriate, relevant and useful, the other professionals are copied on communications. The other professionals attend appropriate meetings at the lawyers' request. The interaction between lawyers necessarily shifts as the coach or financial neutral is brought into the

case: the norm is not to posture or take positions, and it is harder to do so when non-lawyer professionals are in the conversation; rather, the interaction becomes more like a working-group meeting than a typical settlement conference. At the same time, there is no question about whose client is whose.

Ethical Considerations and the Interdisciplinary Team Model

Because there can be many players in an interdisciplinary process, it is critical that all practitioners be aware of the lawyers' ethical constraints.

Collaborative practice is described as "transparent" - a term that can cause confusion, especially for the non-lawyer professionals. It does not mean that lawyers have to share with the other side every fact or goal their clients disclose. It does mean that all critical and material information must be disclosed. In all Collaborative cases, as in all cases, one's loyalty is to one's client and confidentiality must be maintained.

Although, according to the IACP research, only around 11 percent of Collaborative cases fail to result in a settlement, the fact that the risk exists, and those parties usually move to a litigation model, makes it imperative to receive informed consent and maintain client confidentiality. Currently, the New Hampshire Collaborative community holds professional meetings each month in five locations; these meetings often involve workshops and learning events with lawyers, mental health practitioners and financial professionals. It is important that case studies are presented in a manner that preserves client confidentiality.

On the other hand, loyalty to one's client does not preclude the attorney from caring about the children or about the restructured family unit.⁹ It also does not require the lawyer to dismiss the other party's concerns outright. Rather, the Collaborative practitioner appreciates that to achieve a durable, mutually-acceptable result, both parties should understand and respectfully consider the other parties' concerns. This is what a court would do and the Collaborative process helps people reach those fair and reasonable results more quickly and with more control over the decisions.

One way to lead clients to acceptable and lasting agreements is to help them find common goals. Such big-picture goals could include a shared desire to have the children remain unharmed by the divorce process; or a shared interest in mutual financial security.

Conclusion

The Collaborative Process is not always the best option and may be inappropriate in a given case. Nonetheless, the failure rate is relatively small: only 11 percent of cases terminate before reaching an agreement on all issues and 14 percent of the terminated cases resulted in partial agreements.¹⁰ Clients appreciate that 100 percent of the resources are devoted to settlement. They especially value that the majority of cases successfully complete the process in eight months or less¹¹ Finally, when it comes to the interdisciplinary model, it is critical to note that "... the presence of an interdisciplinary team resulted in greater client

satisfaction with individual professionals. That is, clients were more satisfied with their own lawyer if the client also worked with [non-lawyer] professionals" (emphasis added.)¹²

THE MENTAL HEALTH PROFESSIONAL'S ROLE IN THE INTERDISCIPLINARY COLLABORATIVE PROCESS

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Therapists have long known that children whose parents have divorced will do better when their parents are able to remain emotionally strong and supportive for their children. Divorcing parents who are able to co-parent in a respectful manner help their children adapt more easily to a stressful time in the family's life. What we know is that children are impacted negatively by high-conflict divorce more than the divorce itself. High-conflict creates "toxic stress" to children that increases anxiety, decreases the ability to perform well, and leads to depression and acting-out behaviors.¹³ Sadly, the litigated approach often contributes to enhancing conflict rather than reducing it. The Collaborative approach is a kinder, gentler, healthier and smarter process of divorcing. Kinder and gentler because a team will support the couple through this process, healthier because it provides opportunities for teaching communication and co-parenting skills, and smarter because it supports the couple in arriving at their own decisions financially and in the best interests of their children. This approach offers hope towards the future re-building of two separate households rather than the fear - with its accompanying emotions of anxiety and anger - of de-construction.

The "full-team" approach to Collaborative Divorce is a relatively new addition to the Collaborative Process in New Hampshire. Until recently, four-way meetings with two collaboratively trained lawyers and their respective clients have been the norm. Since the first interdisciplinary training in May, 2010, the Collaborative Law Alliance of NH has expanded to include trained mental health professionals (often referred to as "coaches" or "facilitators"), as well as financial professionals, joining their colleagues throughout the United States and internationally who are currently using the full-team approach with great effectiveness.

In the collaborative world there is the two-coach model as well as the one-coach neutral model. The two-coach model involves a separate coach for each client to support them through the collaborative process. The one-coach model is the model being embraced currently by NH. Many states, including Massachusetts, use this model. The one-coach model is a neutral model and includes the ability to help facilitate the

process more actively.

The International Academy of Collaborative Professionals' (IACP) website describes the role: "A Divorce Coach is a skilled professional, trained to manage a wide variety of emotions and issues that arise during divorce. Collaborative Divorce Coaches are licensed mental health professionals (for example, psychologists, social workers, and marriage and family therapists). Each Coach is experienced in the area of divorce and each Coach receives specialized training in Collaborative Divorce and the Collaborative process. Divorce coaching is not legal advice and is not therapy. Coaching is not about placing blame, finding fault or dealing with the past."¹⁴

The Divorce Process Coach is best suited to support the emotional turmoil the couple is experiencing as they undertake this process. Strong emotions will create difficulty in the type of rational decision making that is necessary in settlement meetings. A coach will meet with the couple together initially and help them prepare for the collaborative process. Then there will be an individual session for each to work on identifying their unique "hot buttons" that the coach can then help them manage with suggested strategies. Overall, the coach will help by:

- Identifying goals, clarify interests and concerns;
- Providing effective communication tips and conflict resolution skills;
- Reducing misunderstandings and subduing emotional intensity;
- Providing specific problem-solving tools and overcoming obstacles;
- Collaborating with the couple, their attorneys, and other involved professionals;
- Developing effective co-parenting skills when children are involved;

The Neutral Coach also serves as a facilitator of the process. After the coach has met with the couple, there is communication with both lawyers to give input as to the dynamics and communication style of the couple. This helps prepare everyone before the process is undertaken. Intense emotion has been known to either temporarily, or permanently, de-rail the Collaborative process. More frequently lawyers are finding that involving a coach in the settlement meetings (five-way meetings or six-way if the financial neutral is involved) helps maintain the calm atmosphere that is conducive to wise decision-making. The coach will continually monitor the emotions in the settlement talks and provide support as well as interventions. This also helps the attorneys remain focused on their role as they guide their clients through the Collaborative negotiations. After each settlement meeting, a de-briefing session with the Collaborative Team is helpful in continuing to work effectively for the benefit of the clients. Again, the expertise of the mental health professional is useful in helping the team members with their own dynamics and communication skills. After all, the Collaborative team should be modeling the same behavior that they are expecting of the clients!

The Coach can also help with co-parenting issues. At the heart of the Collaborative Divorce is the benefit to children (even adult

children!) of having their parents go through divorce in a respectful, calmer, healthier manner. We know that children do much better in low- conflict divorces. High-conflict creates an unhealthy environment for children that can have long- term consequences. A neutral coach (as opposed to the two-coach model) has the added benefit of being able to work with the parents in co-parenting sessions which are separate from the settlement meetings. The neutral coach can also work on the parenting plan. As trained experts in the field of child development, the neutral coach not only supports the parents, but also contributes to an efficient use of financial resources, by reducing the amount of time the lawyers would have worked on the many non-legal, logistical details of a parenting plan. Most trained coaches can also function as a child specialist. In that role the mental health professional will interview all the children to understand better what their concerns are. The child specialist will then impart this information, and recommendations, to the parents and the other team members.

It is important to discuss the ethics of doing this work. Clients must have informed consent about the process - the benefits, as well as the limitations, of divorce coaching. Once that is accomplished, then the clients execute an Informed Consent contract. This work is not therapy. There is an expectation explained in the Informed Consent (which they will sign after any questions are answered) that confidentiality is waived in order to permit full communication with other members of the Collaborative Team. There is also full disclosure that a Divorce Process Coach is still a licensed Mental Health Professional and therefore obligated to the professional standards in their field. We are mandated reporters on issues of protecting others from harm, or the client from self-harm. This is explained thoroughly in the Informed Consent contract. Once the divorce is completed the divorce process coach is available to consult on co-parenting issues as needed but will not be able to become a therapist for either parent, or for any of the children.

This manner of divorcing is long overdue. Therapists are relieved to know that a dedicated, and growing, group of attorneys in NH is embracing this Collaborative Process and helping their clients divorce with more respect, dignity, control and support. It is a major paradigm shift but once the benefits are appreciated, it will be seen as a shift well worth undertaking.

THE FINANCIAL PROFESSIONAL'S ROLE IN THE INTERDISCIPLINARY COLLABORATIVE PROCESS

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The role of the financial professional in Collaborative Divorce is to provide clear, unbiased explanations of the financial details and alternative strategies to the divorcing couple and their attorneys. That, in turn, helps all the parties develop a realistic vision of possibilities for their post-divorce financial lives. Six benefits flow from this role if it is executed effectively:

First, fantasies about possible post-divorce life styles and misunderstandings about available resources can be quickly dispelled. Misinformation and misconceptions about the process of divorce can be detrimental. Often there are unreasonable expectations regarding the continuation of the parties' accustomed lifestyle. With the help of a financial professional, focus can be placed on ensuring a good, stable, realistic economic future. This can prevent long-term regret over decisions made during the divorce process.

Second, the financial professional can bring the spouse who is less familiar with money matters some peace of mind as he/she navigates the complex financial issues in the divorce. Often, lack of trust and limited knowledge cause delays as one party tries to explain a proposed settlement to the other. In the collaborative process all the financial elements are placed on the table and solutions are built in a transparent process gaining agreement and understanding along the way. This allows both parties and their attorneys to proceed with the confidence that they understand the ramifications of each decision.

Third, the role of the financial professional is to save money for the divorcing couple. By capturing all the available resources, especially opportunities within the tax code, a financial professional can actually give the couple a larger pie to divide, making tax-efficient use of alimony, child support and child deductions. Avoiding traps such as alimony recapture and giving proper consideration to cost basis and the after-tax effects on various assets can substantially improve the divorce agreement for all concerned.

Fourth, the financial professional will save time. The average length of a litigated divorce in New Hampshire is over a year. In the beginning stages both parties spend a great deal of time trying to get a clear understanding of financial aspects and terminology. Just deciphering each other's excel spreadsheet can be a daunting task. The financial professional will present the numbers in a consistent, clear format and explain the financial aspects of pending decisions and empower both parties to make educated decisions throughout the proceedings. Saving time saves money, and reduces the duration of the emotional distress associated with the process.

Fifth, financial pitfalls can be avoided. By creating reasonable projections, the financial professional can show the effect of each alternative strategy on such things as after-tax cash flow and projected net worth. With these projections, the couple can see when living expenses might require withdrawal from savings, investments and retirement plans. With the graphical representations of these projections, the couple will have a picture of whether a given scenario creates a relatively stable economic future or is merely a short-term fix that could end in financial disaster.

Finally, using the financial professional can help avoid post-divorce financial conflicts. By taking into account life insurance,

Figure 1

Marital Property Division						
Total of Marital Asset Line Items:						
	Paula			John		
1. Non-retirement	\$2,289,888 (50.0%)			\$2,289,888 (50.0%)		
2. Retirement	\$ 344,876 (50.0%)			\$ 344,876 (50.0%)		
3. Debt	\$ 0 (0.0%)			\$ 0 (0.0%)		
4. Total	\$2,634,764 (50.0%)			\$2,634,763 (50.0%)		
To end up with	50 % to Paula, increase marital property of			John	by \$ 1	
Asset Line Items:						
	Paula's	\$ Amount of	\$ Amount of	John's	\$ Amount of	\$ Amount of
	% of	Marital	Separate	% of	Marital	Separate
Non-retirement Assets:						
<i>Real Estate Equity:</i>						
60 Bear Hill Road	100	507,000	0	0	0	0
<i>Cash & Investments:</i>						
Paula's Trust Morgan	100	282,834	0	0	0	0
John's Trust Morgan	13	321,249	0	87	2,223,209	0
John's Trust Rothchild	100	108,045	0	0	0	0
Paula's Trust Vanguard	100	323,760	0	0	0	0
TD Ameritrade John	100	702,000	0	0	0	0
TD Ameritrade Paula	100	45,000	0	0	0	0
<i>Life Insurance:</i>						
NM Life Insurance	0	0	0	100	53,187	0
Prudential Life Insurance #2	0	0	0	100	13,493	0
Retirement Assets:						
<i>IRAs and 401(k)s:</i>						
John's GTC IRA Rollover Rothc	50	125,438	0	50	125,438	0
John's Keogh Fidelity	50	29,910	0	50	29,910	0
John's Decedent IRA Chase	50	45,621	0	50	45,621	0
ICMA Retirement	50	4,341	0	50	4,340	0
Present Value of TW SERP	50	29,392	0	50	29,392	0
<i>Defined Benefit Pension:</i>						
Marital Portion of TP Pension	50	110,174	0	50	110,173	126,002
Debts:						
[No Debts]						

health insurance, cost of living increases, changes in income and a whole host of other issues, the process can reduce dramatically the likelihood of encountering unexpected outcomes that could require future adjustments to support obligations.¹⁵

Many financial mistakes can occur in the divorce process. The following example shows one benefit of working with a financial professional within the Interdisciplinary Collaborative Process.

John and Paula Doe are seeking a straightforward division of property. One approach could be to let each spouse keep the assets that are in his or her name, to the extent practical, and then shift all or part of a taxable account or IRA to achieve the desired division.

Figure 2

Marital Property Division on an After-Tax Basis							
Total Marital Property After Tax:							
	Paula			John			
	\$2,411,696 (48.6%)			\$2,555,096 (51.4%)			
	(a)	(b)	(c)	(d)	(e)	(f)	(g)
Description	Pre-tax Marital Equity	% Kept	% Paid In Tax	After Tax Equity (a*b*(1-c))	% Kept	% Paid In Tax	After Tax Equity (a*e*(1-f))
Real Estate							
60 Bear Hill Road	507,000	100	0.03	491,790	0	0.00	0
Total Real Estate				491,790			0
Cash & Investments							
Paula's Trust Morgan	282,834	100	0.00	282,834	0	0.00	0
John's Trust Morgan	2,544,458	13	-0.02	327,674	87	-0.01	2,245,441
John's Trust Rothchild	108,045	100	0.10	97,241	0	0.00	0
Paula's Trust Vanguard	323,760	100	0.13	281,671	0	0.00	0
TD Ameritrade John	702,000	100	0.09	638,820	0	0.00	0
TD Ameritrade Paula	45,000	100	0.11	40,050	0	0.00	0
Total Cash & Investments				1,668,290			2,245,441
Life Insurance							
NM Life Insurance	53,187	0	0.00	0	100	0.08	48,932
Prudential Life Insurance #2	13,493	0	0.00	0	100	0.08	12,414
Total Life Insurance				0			61,346
IRAs and 401(k)s							
John's GTC IRA Rollover Rothc	250,876	50	0.28	90,315	50	0.28	90,315
John's Keogh Fidelity	59,820	50	0.28	21,535	50	0.28	21,535
John's Decedent IRA Chase	91,242	50	0.28	32,847	50	0.28	32,847
ICMA Retirement	8,681	50	0.28	3,126	50	0.28	3,125
Present Value of TW SERP	58,784	50	0.28	21,162	50	0.28	21,162
Total IRAs and 401(k)s				168,985			168,984
Defined Benefit Pension							
Marital Portion of TP Pension	220,347	50	0.25	82,631	50	0.28	79,325
Total Defined Benefit Pension				82,631			79,325
Total Marital Property After Tax				2,411,696			2,555,096

In the Does' case, we see that what appears to be a 50/50 division of marital property may not actually be 50/50. In Figure 1 we see a \$5 million dollar estate divided equally. Paula is keeping the house and John is taking an offsetting share of the investment portfolio. John also wanted to keep his inherited trust, half his pension and the cash value life insurance. He offered Paula the house and everything else. To make this an even 50/50 division just 13 percent of John's Trust at Morgan Stanley needs to be transferred to Paula. There is no alimony and neither party is planning to work after the divorce. This appears to be just \$1 off from an exact 50/50 division.¹⁶

Now look at figure 2. Here we have the after-tax view of the same 50/50 division of assets in figure 1. Focus on the bottom line. There is a \$143,340 advantage to John after taxes are considered. This makes the after-tax division 48.6 percent to Paula and 51.4 percent to John. How does this happen? John's inherited trust account received a step-up in basis when his mother died. Not only that, but the investments have also lost value since he inherited them. As a result John's trust when liquidated will actually generate tax savings in the form of long-term capital losses. Because Paula's assets have a very low tax basis they carry with them a significant tax burden when she liquidates. The message here is that ignoring the tax basis and other details that affect the after tax value of each asset can significantly alter the intended results.

Now let's look at after-tax cash flow in Figure 3. In the case of Peter

Figure 3 shows the after Tax Cash Flow for Peter and Mary.

Figure 3

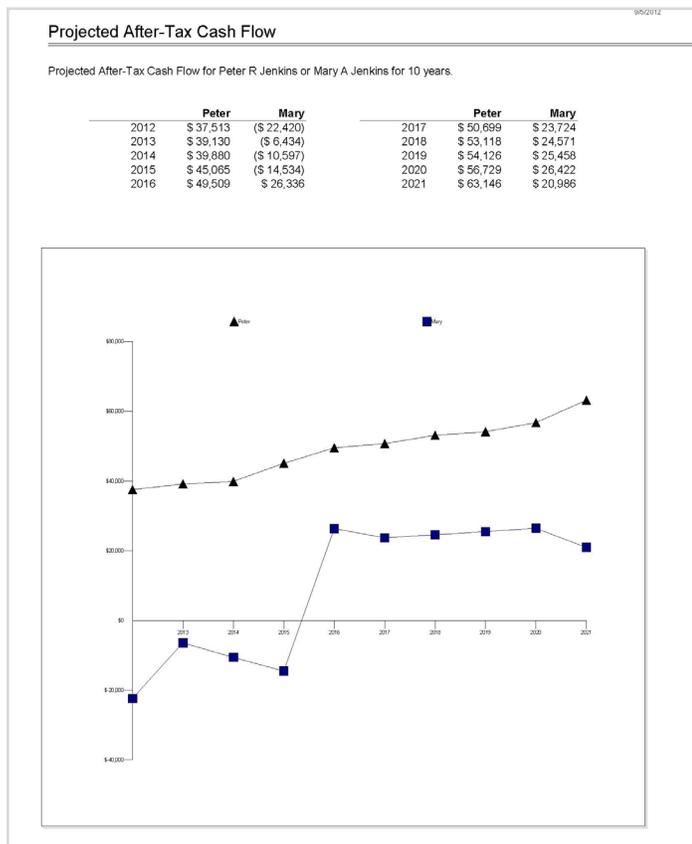
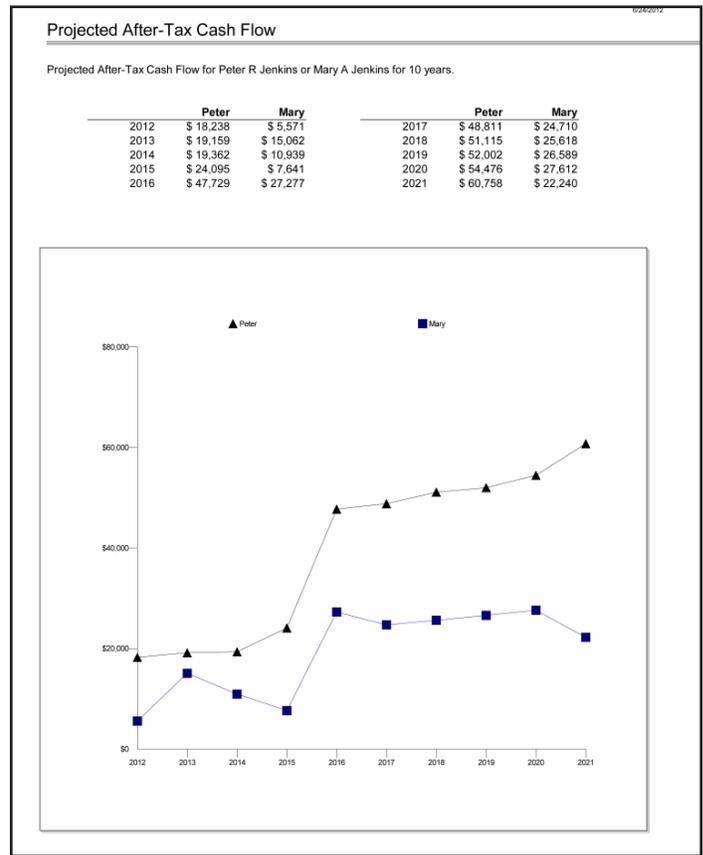


Figure 4



and Mary Jenkins we see that Mary will suffer a severely negative cash flow in the first few years post-divorce. She plans to complete her MBA and significantly improve her income, but it will take four years part time while she takes care of the boys through the high school years. She feels confident that she can get a good job once she updates her education.

In 2012 through 2015 Mary won't make ends meet. One way to deal with this situation is to provide Mary with four years of spousal support.

Figure 4 shows the effect of Peter agreeing to pay \$2,500 per month in alimony through the end of 2015. The descending cash flow for Mary in 2014 and 2015 are a result of reduced child support as the boys graduate and cease to qualify even though she plans to continue her support beyond that point. Collaborative attorneys report that some of the easiest alimony discussions they have had result from this kind of objective, graphic demonstration.

Figures 5 and 6 show Projected Net Worth before and after the addition of spousal support.

Often in a litigated divorce, competing financial experts consume considerable resources of the divorcing couple. There can also be a significant amount of time spent by the attorneys in discovery and simply deciphering the various proposals and counter proposals. A properly credentialed and collaboratively trained neutral financial professional can dramatically reduce the time to reach and increase the quality of the final financial agreement.

Figure 5

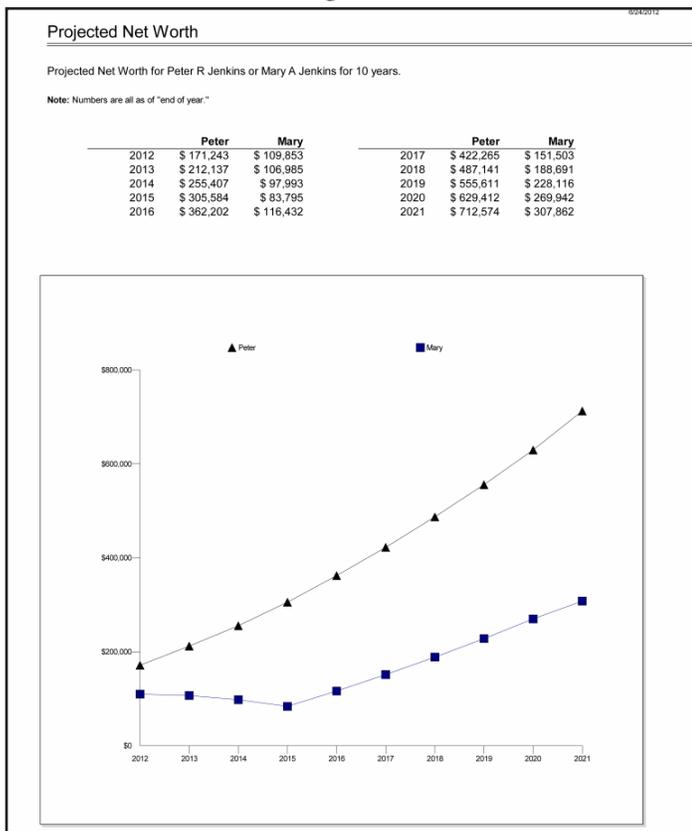
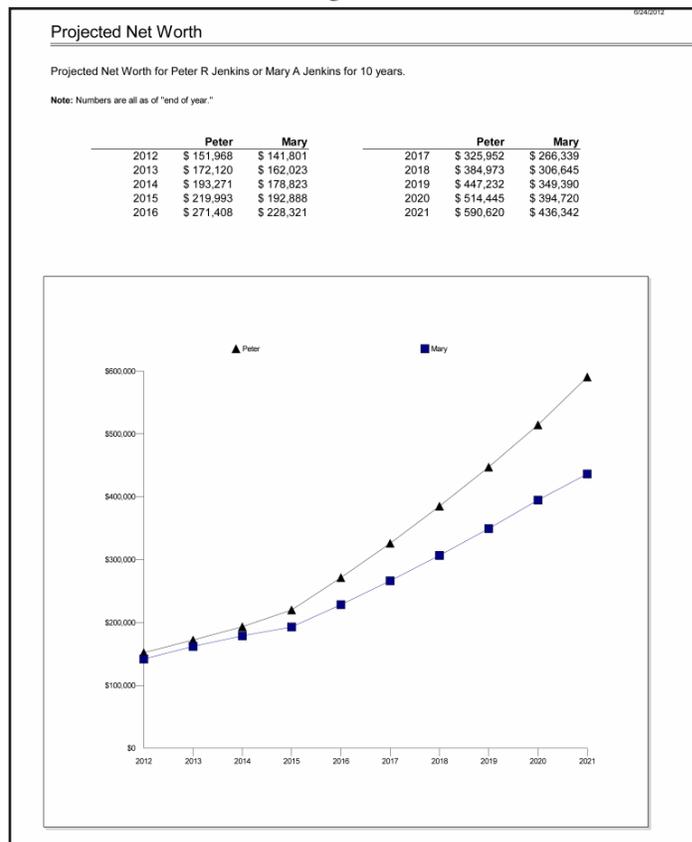


Figure 6



Might a financial professional have conflicts of interest? Might they attempt to sell financial products or attempt to gain financially some other way from participation in the process? Imagine a financial professional who knew the husband or wife would be their client after the divorce. They might be tempted to shift certain types of assets one way or the other. This is why financial professionals in the collaborative process adhere to a strict “no ongoing business relationship” standard.

Below are the Ethical Standards for Collaborative Professionals from the International Association of Collaborative Professionals (IACP)

“A Collaborative practitioner serving as a neutral financial specialist in a Collaborative case shall not have an ongoing business relationship with a Collaborative client during or after the completion of the Collaborative case, but may assist the clients in completing the tasks specifically assigned to them by the clients’ written, final agreement. Such assistance may not include the sale of financial products or other services.”

In summary, the Interdisciplinary Collaborative process is a new approach which offers a higher quality solution for all concerned and a restructured family which is stronger and more financially stable.

ENDNOTES

1. IACP – Collaborative Review Vol. 11, issue 3, pg. 7
 2. ABA Formal Opinion 07-447 (Aug. 2007)
 3. N.H. R. Prof. Conduct 1.2(c).
 4. IACP – Collaborative Review Vol. 12, issue 1, page 6.
 5. This comment is based on anecdotal evidence and personal experience of the author, since no data are kept in New Hampshire at this point.
 6. IACP – Collaborative Review Vol. 11, issue 3 pg. 6.
 7. IACP – Collaborative Review Vol. 11, issue 3 pg. 12.
 8. See seminar materials from NHBA-CLE “Practical Neuro-Literacy: Where Divorce Practice, Neuroscience and Legal Conflict Resolution Intersect, presented by Pauline H. Tesler on June 14, 2012.
 9. IACP – Collaborative Review Vol. 11, issue 3 pg. 12.
 10. IACP – Collaborative Review Vol. 12, issue 1, page 7.
 11. IACP – Collaborative Review Vol. 12, issue 1, page 6.
 12. IACP – Collaborative Review Vol. 12, issue 1, page 21.
 13. Middlebrooks JS, Audage NC. The Effects of Childhood Stress on Health Across the Lifespan. Atlanta (GA): Centers for Disease Control and Prevention, National Center for Injury Prevention and Control; 2008
 14. International Academy of Collaborative Professionals(IACP)
 15. Institute for Divorce Financial Analysts, Module One: The Fundamentals of Divorce Copyright © 1988–2012 by IDFA Publishing, LLC
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