



## **Divorce Planners Are Negatively Perceived by Matrimonial Lawyers**

by Lili A. Vasileff, CFP®

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### **Abstract**

With one out of every two new marriages ending in divorce, it is no surprise that among financial planners there is a growing interest in divorce financial planning. Yet with increasing public awareness of this specialization and more qualified individuals developing a niche in divorce financial planning, why is it that legal professionals are defensive and even suspicious of our efforts?

Here is a rare look into how top matrimonial lawyers perceive divorce financial planners—a glimpse from the outside at our profession. It is hoped that these insights will be helpful in rebutting negative perceptions so as to lead to successful collaborations with lawyers on behalf of clients who are very much in need of our services.

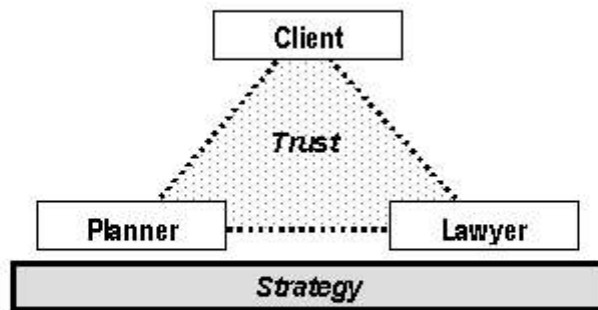
With one out of every two new marriages ending in divorce, the growing interest among financial planners and advisors to engage in divorce financial planning comes as no surprise. Statistics clearly bear out the public's need for financial expertise—not only during the divorce, but also afterward, when individuals face the grim reality of attempting to live comparably off only a share of the total marital income and property.

Divorcing individuals face daunting economic circumstances:

- Marital nest eggs—retirement accounts—have decreased precipitously in value in recent years due to market volatility, rising bankruptcy rates, and corporate downward adjustment/elimination of pension benefits during the past few years. As a result, divorcing couples approaching retirement age often have no significant financial assets other than their marital residence.
- Support issues have become muddled in recent years as judges' tendencies to award lifetime alimony dwindle and previously nonworking spouses become forced to consider low-level employment, while middle-aged, wage-earning spouses face rising unemployment rates, potential disability, and the reality that they may have topped out in their earning capacity.
- Easy access to credit and the attendant ease of accumulating excess debt have enabled many couples to become accustomed to living beyond their means. Such couples who then divorce often have unrealistic expectations about maintaining comparable lifestyles post-divorce, and find it a rude awakening to undertake draconian cost-cutting measures in order to support two households instead of one.

Many financial professionals eager to develop a niche practice have set their sights on becoming “certified” in divorce financial planning as part of their strategy for capturing assets under management. But unlike other niche practices in financial planning, divorce financial planning is entirely constrained by the law. There can be no “pure” divorce financial planning field of expertise unless it includes an interdisciplinary legal background, practical knowledge of what is considered reasonable in each legal jurisdiction, and an explicit, trusted collaboration with the client’s lawyer. One must keep in mind that divorce is a *legal* action executed according to the laws of each state. Consequently, divorce financial planning in its most successful form is a triangular relationship involving client, lawyer, and planner (see Figure 1) and is built on trust, forged by financial strategy, and governed by state law.

**Figure 1: The Ideal Divorce Financial Planning Relationship**



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With increasing public awareness of our services and more qualified individuals developing divorce financial planning practices, why are divorce financial planners among the last to be invited by the attorney to join the divorce team? To find out, I recently interviewed more than 20 leading matrimonial lawyers in New York, New Jersey, and Connecticut about their perceptions of divorce financial planners.

Following is a rare look into how lawyers perceive divorce financial planners—a glimpse from the outside at our profession—from the individuals with whom we must collaborate. I hope these insights will be helpful in clarifying perceptions about what is the added value of our benefits both during and after the divorce process for our clients. More important, divorce financial planners able to differentiate the benefits they provide will succeed in forging strong collaborations with the divorce team on behalf of clients who are very much in need of our services. As part of the divorce team, a divorce financial planner should be able to consolidate all of the discrete pieces of each team member’s contributions to communicate a global financial profile for the client’s ultimate action.

## **Confusion About Who We Are and What We Do**

Many divorce lawyers simply do not know what a CERTIFIED FINANCIAL PLANNER™ professional is. Most lawyers interviewed were not aware of our general study and examination process, credentialing, core ideology, code of ethics, and professional standards. One lawyer expressed his (obviously erroneous) opinion that we could scarcely be considered experts if we had been anything other than accounting majors in college. The tri-state courts have only begun to recognize the CFP® mark as CFP® professionals testify as expert witnesses; and to date, our testimony has been limited to projected asset dissipation and historical lifestyle.

Not only did many lawyers not even know what a CFP® professional is, they were unable to articulate *any* differentiation among us, financial advisors, investment advisors, or CPAs. As a consequence of their lack of familiarity with our comprehensive services, they unanimously ranked divorce financial planners dead last among all divorce-related professionals. Over time, as we are successful in delineating ourselves from other professionals, we should realize that the client benefits from a depth of expertise coordinated efficiently among divorce team members to minimize cost and produce satisfaction with the legal process.

## Perception That CFP® Services Are a Luxury

Out of necessity due to court protocol or fear of malpractice, lawyers bear the weight of bringing in other experts, such as guardians *ad litem*, business/real estate/pension valuation experts, appraisers, psychologists, and forensic/certified public accountants. Simply put, there is no perceived “necessity” for our services among lawyers—divorce financial planners are often perceived as offering a “luxury” service whose cost, in the lawyer’s judgment, might not be justifiable to the client.

Lawyers tend to believe that we are most useful as adjuncts to the divorce process closer to the time of settlement. In fact, 90 percent of the lawyers interviewed who brought a divorce financial planner in to the divorce process did so only as the client was preparing to *accept*—not negotiate—the final agreement. Putting a positive spin on this, lawyers did look to the divorce financial planner to make the post-divorce transition easier for the client.

What is evident is that the scope of financial tasks demanded of the client, and for the client to understand, is daunting. It is a *necessity* for the client to actively participate in making sound financial decisions that affect them for the rest of their lives. On many levels, a client only has one shot to get “it” right. When, if not now, is a better time to assist the client with financial skills, a financial overview, and a check-up to ensure they are prepared for the future? What better time than to bring in an expert who can advocate for the whole the divorce team and communicate, in a way the client can better understand, their options to move forward with their lives?

## Fear of the CFP® Professional Being a Liability

Many of the interviewed lawyers expressed reluctance to have us share in their client relationships due primarily to confidentiality fears, our perceived lack of knowledge about divorce laws, and the potential for conflicts of interest. This issue seems to be moot for many other divorce professionals because they are hired directly by the lawyers to preserve confidentiality. Lawyers can hire us directly too, but this is not often the case.

Few lawyers had had actual unfavorable experiences regarding client confidentiality despite many references to this concern. Yet many recounted negative experiences with advisors or financial planners who contradicted their recommendations, undermined the client-attorney relationship, sold unnecessary or unsuitable products to the client, or attempted to practice law. Nearly all lawyers interviewed expressed extreme reluctance to work with any individual during the divorce process who sold a product; their bias toward fee-only professionals was strong, even if misguided.

Lawyers stressed time and time again their need to delineate and control our role (defending boundaries) at each step of the working relationship. Few, however, wanted to be included directly in the planner-client relationship. Lawyers are rightfully cautious about whom they work with, and each tends to have an established team of divorce-related professionals. Becoming a player on this team takes more than having the client bring us into the process. Lawyers relied more heavily on referrals from their peers of outside divorce-related professionals than from any other source. Without a clear understanding of what we do and how we work, one negative experience on the part of the lawyer can tarnish all of us. *Their advice to us is to get our message out and do so in a reputable forum among their peers.*

Since we continue to lag our colleagues as “accepted” divorce professionals, it is clear that we have a mission. Our mission must be to send a succinct and clear message of what sets us apart from other divorce-related financial professionals. Furthermore, our message is to encourage collaboration among divorce professionals. We cannot expect lawyers to have the time or willingness to do this for us. The following three steps will help us come closer to the day when lawyers routinely consider the potential benefits of divorce financial planning in every client’s case:

**Help identify the problem and articulate the benefit.** Many lawyers are reluctant to introduce us into the divorce process for these reasons:

- Cost to client. Lawyers expressed cost consciousness for these reasons:
  - - Overlap or duplication of same tasks performed by lawyer
    - Our fees take away from their own fees
    - Our costs added to those of other “higher-ranking,” “more necessary” divorce-related professionals
    - The belief that only divorces with significant assets justified the use of financial experts
- Presuming their client’s need (not “benefit”). Many lawyers believe we are “needed” only in the following situations:
  - - Where there are power imbalances between spouses
    - Where one spouse is unsophisticated or uneducated about financial matters
    - For the woman (chauvinism remains)
- Wishing to avoid any appearance of bias from referring “one” expert
- Defensiveness about the quality of their own professional service and the misguided belief that their own staff or team of outside traditional experts can do what we do
- Believing long-term financial planning is required only close to settlement and is the carryover for the client when the lawyer’s relationship ends

From the lawyer’s perspective, a CFP® professional who specializes in divorce financial planning must be a team player. We collaborate with the lawyer as we work closely with the client. At times, we may be asked to coordinate, interpret, and even lead the efforts of other divorce-related professionals with the goal of formulating coherent and consistent financial fact gathering. We can only hope to be regarded as experts when we have successfully achieved parity with other divorce-related professionals in the eyes and minds of both the client and the lawyer.

We must not only communicate better the nature of our expertise and services, but also strive for integrity in our working relationship with the lawyer and client. A divorce financial planner should be knowledgeable but circumspect with regard to the legal system, understand negotiation, and appreciate the interplay of emotional, psychological, legal, and financial issues in divorce. Just as the lawyer is ethically bound to serve the client, we are required to be ethically sensitive to the implications of choices. No doubt, a certain maturity and realization that the legal arena is a “minefield” should be ever-present in our thinking. Our diverse services should supplement the lawyer’s efforts and seamlessly enhance the divorce process and outcome for the client. We are credible participants in divorce for only as long as both the client and lawyer perceive benefit from our services.

**Speak the lawyer’s language.** Although divorce lawyers acknowledge that we provide both tangible and intangible benefits to clients, they often fail to realize the potential for comparable benefits for themselves. In fact, knowing what really matters to lawyers is the key to how we should market our services to them. Doing so demonstrates both our understanding of what it takes to build a foundation for a long-term professional collaboration with any lawyer as well as encourages lawyers to proactively include us. Our work must meet their standards in terms of content (detail and accuracy), timeliness (however arbitrary) and presentation (report formats and legal software). Whether we deal with financially complex cases, assist with ambiguous or incomplete financial facts, help manage a client’s unrealistic expectations, or

bring creative solutions to problems, we must become part of the process and part of the solution in the eyes of the lawyer. *Our value proposition to them is this: We elevate the professional quality of their services to the client, which in turn results in increased client satisfaction, future client referrals, greater profitability, and growth for them.*

**Be comfortable wearing many hats.** More than a few lawyers related their greatest fear in any client relationship: the dissatisfied client. One of the many hats that a divorce financial planner must wear is that of an effective buffer between the client and lawyer. By building a trusted three-way relationship among ourselves, the lawyer, and the client, we can help minimize lawyer suspicions about the likelihood of clients suing them for malpractice, failing to pay them, developing or maintaining unrealistic expectations, experiencing inappropriate dissatisfaction with legal services received, or attempting to practice their own type of law contrary to advice. It is also in our clients' best interest if we can help them better understand the financial realities of their situation, create reasonable expectations, and help them feel secure with the fairness and adequacy of their outcomes. We can and should play a crucial role in guiding the client toward rational decisions and successful negotiations.

We must be realistic about the fact that many lawyers are unaccustomed to sharing their clients. Therefore, our task at hand is to communicate the added value of our focused financial expertise. Over time and with an accumulation of positive experiences, lawyers who introduce divorce financial planners into the client relationship will send a message both to the client and to the opposing counsel that financial issues are worthy of expert attention in the divorce process. This is our opportunity to help both the client and lawyer measure genuine success.

## Conclusion

It is incumbent upon the divorce financial planner to organize, gather, and analyze all pertinent financial information. The objectives are to understand the client's historical lifestyle as a married couple, interpret changes in lifestyle during the divorce, and project their needs on a post-divorce basis. It is not unusual that the pattern of spending provides greater insight into their lifestyle than the examination of sources of income. In my experience, most individuals either tend to overestimate or vastly underestimate their expenses; rarely are they accurate in their own self-assessment of lifestyle. For this reason, it is usually an eye-opening experience to dissociate their perception of financial behavior from reality. It is often a labor-intensive and time-consuming effort to cautiously explore the client's lifestyle priorities and help them to redefine their dreams for the future that are now precipitously changed due to divorce.

Without such an exercise, the client is susceptible to feeling diminished and overwhelmed by the legal process that provides neither justice nor absolute compensation for the perceived grievances. The crunch occurs also because clients are focused on sustaining needs, while the legal process is focused on available income and "discoverable" assets. In other words, the client fears his or her future, while the attorney deals with what is "now."

The attorney regularly acts *de facto* as the lightning rod for the incongruence of the clients' expectations with reasonable legal advice. The attorney may misinterpret the client's paralysis for confrontational behavior or unreasonable expectations. The level of stress in their relationship heightens and the potential for miscommunication and mistrust is palatable. Multiply this risk by four (two spouses and two attorneys) and one can readily grasp why legal fees, desperate behavior, and acrimony are the hallmark of many of today's divorces.

We, as divorce financial planners, have a unique role to play in the divorce process as well as on a post-divorce basis. During divorce, we must be experienced to recognize what the wage earner or business owner is receiving: an income stream or asset. We either perform an income reconciliation to determine historical lifestyle and future support capacity, or we value the asset for equitable distribution purposes. We must try to bring together all of the tangible and intangible benefits (such as retirement, deferred

compensation, perquisites) to accurately portray what value they are to the client now, and upon disability, termination, retirement, or death. We educate the client in a way that leads to confident resolution of financial issues.

We have an opportunity to contribute factually to the case, but more importantly, holistically as well. We provide expert financial analysis and strategy but take care to tailor it within the legal environment. We perform our work in a way that enhances current decision-making (for the benefit of the attorney) on the part of the client by making it more powerful and enabling the client to project for his or her own future. The future is not territory typically covered by most attorneys or any other divorce-related financial professionals. It is our territory. It is our mission to hone our unique skills to develop our professional niche to gain not only wider acceptance, but ultimately to promote our complete integration within the divorce process.

#### **How Lawyers Perceive Us — Selected Survey Findings**

- 1. Have you ever brought a divorce financial planner into the divorce process?**  
Yes: 54% (20% of whom did so at the express request of the client)  
No: 46%
  
- 2. Has a divorce financial planner ever positively influenced divorce negotiations or affected the actual settlement outcome?**  
Yes: 67%  
No: 33%
  
- 3. What tasks do you think a divorce financial planner has expertise in?**

Educating the client about financial issues:	100%
Giving investment advice:	100%
Providing long-term projections:	33%
Analyzing historical lifestyle:	33%
Quantifying dissipation of assets:	20%
Analyzing tax issues:	10%
Providing cash-flow analysis and projections:	2%
Crafting financial strategy:	0%
  
- 4. What are the greatest risks you perceive in working with divorce financial planners?**

Creating unrealistic client expectations:	45%
Giving contradictory advice:	20%
Being inexperienced with divorce and the law (malpractice):	20%
Failing to communicate with the lawyer:	5%
Other:	5%