ETHICAL CHALLENGES

An Interview with James Grubman, PhD

Interviewed by Mark Harbour, CPA, CIMA®, CFA®

Family-wealth psychologist Jim Grubman works with affluent families and their advisors to help them integrate wealth into their lives. He approaches the complexities of working with families, however, by emphasizing his role as a consultant, not his role as a therapist. He frames his relationship responsibility as being with the family, not with any specific person therein. This helps him manage delicate issues around what different family members tell him and how he keeps the focus on what’s best for the family.

Dr. Grubman offers a unique ethical perspective because his work must bridge two codes of conduct: one from the psychological practitioner’s standpoint, the other from the financial advisor’s point of view. Psychological services are governed by specific legal definitions as well as professional codes and standards about confidentiality. Financial advisors’ duties include identifying the client, keeping client confidentiality, and acting as a fiduciary.

In this interview, I presented Dr. Grubman with some examples of ethical challenges that a financial advisor is likely to encounter and then asked him to respond in light of his combined knowledge and experience with psychological and financial services.

A Deteriorating Client Marriage Heading for Divorce

Mark Harbour: What is the advisor’s responsibility to one spouse if his/her primary client relationship is with the other spouse? Also, should an advisor pick one of the two to work with and resign as advisor to the other? If so, are there specific steps that should be followed?

Jim Grubman: Financial advisors should be clear about who they have a legal duty to serve. (As Chicago attorney Henry Krasnow has stated, a good test is: Who can sue you?) If only the husband signed the account paperwork, he is the legal client. You may feel morally obliged to serve both spouses no matter what, but it’s important to distinguish legal duty from moral obligation. You either have to refer out the non-client spouse with sensitivity, or you have to end your current client relationship before you take on the other spouse.

However, if both spouses signed paperwork, your duty is to both. Realistically, it is very hard to serve both through the divorce unless the process is unusually amicable. Face the question of whom you want to keep working with, then do two things: (1) have a “crucial conversation” with each spouse to share your thoughts on altering the relationship, hear his or her reactions, and make new plans; and (2) update your agreements with the client you continue to serve. Offer the other spouse two or three names of other advisors you recommend and facilitate the transfer.

Mark Harbour: Does the advisor have any responsibility for helping each or both of them get legal representation and/or identify a financial advisor to assume that responsibility for them only?

Jim Grubman: Absolutely recommend good resources to whoever needs them, and do what you can to help. But keep in mind you cannot and should not pressure anyone to hire other professionals, even if it’s clear he or she needs competent advice. If someone chooses not to follow through on your recommendations, you have to back off. Respect the limits of what you can do for people bound up in such a difficult time of conflict.

Mark Harbour: Does the attorney representing the husband or wife have a role in the decisions regarding the investment holdings for your client, and, assuming so, what is it?

Jim Grubman: The safest approach is to have your client share relevant information directly with his/her attorney, keeping you impartial. You should review (perhaps with your own attorney) any legal obligation you have toward informing or following the instructions of an attorney representing one client, particularly if both spouses are your clients. But if you are properly directed and authorized by your client to discuss things with their attorney, you have to provide the requested information directly.

What’s most helpful is to be very transparent with both spouses about what information you can and cannot share, and don’t be bullied into saying or doing anything improper. This is one reason why trying to remain evenhanded during an adversarial process is only likely to end badly, despite your best intentions. You have to constantly be aware of the trust each client is placing in you during a time of upheaval and risk.

Mark Harbour: Are there communication issues that need to be more carefully orchestrated either between husband and wife, and/or perhaps the attorneys that represent them? Also, are there issues of confidentiality that should be more carefully identified as borders not to cross?
Jim Grubman: Remember that communication and trust are the two foundations of a good client relationship. Both are severely tested when marriages are failing. Communication gets polarized, emotions run high, and trust becomes fragile. The potential for real or perceived conflicts of interests becomes a larger hazard. Advisors can get caught in the middle and, if the situation is not handled well, become collateral damage. Therefore:

• Take extra time to communicate clearly and act transparently. Offhand remarks or slips in what you say or do have an inordinate impact when couples are fighting. Respect each spouse's privacy as best you can.
• Listen carefully to any concerns raised by a client about something you said or did, even inadvertently. Express empathy for the stress they are under.
• Repair even small breaches of trust as they occur. Otherwise they will accumulate into a convincing pattern that you are untrustworthy.
• Periodically take time in client meetings to offer support and ask how the advising relationship is going.

Working with Families
Mark Harbour: When dealing with clients’ adult children, how much can or should an advisor reveal about the parents’ wealth? In other words, how should we set appropriate boundaries for confidentiality? What if a child reveals significant personal issues that could adversely impact the parents, then asks the advisor not to reveal these to the parents?

Jim Grubman: These questions require understanding the distinction between privacy versus secrecy.1 Private information is personal information we all have that is our choice to disclose, depending on trust in the relationship. What makes secrets more damaging is that the withheld personal information is important to actions in the relationship. Secrets involve information that may be highly relevant to decisions someone else may have to make.

Parents’ (or anyone’s) wealth is largely private information despite others’ curiosity to know the numbers. The same goes for adult children’s personal issues unknown to the parents. Advisors always should respect individuals’ wishes on the timing, pace, and degree of disclosure that may occur across generations.

However, sometimes one generation’s lack of disclosure means the other generation is deceived or stymied in their own planning or decision-making. The advisor is now caught holding secrets. That undermines trust. Colluding with someone to keep secrets (not legitimate privacy) also teaches people you are someone who will keep secrets, possibly against them. It’s a double-edged sword.

To prevent this, have a clear conversation at the start of any cross-generational discussions. Let each person know you are not going to go spreading around their personal information. But put everyone on notice you will not be a holder of toxic secrets that may be damaging to others in the family.

Then, if secrets do get revealed to you, live your word. Work with the individual on a plan where they will disclose the information themselves, or perhaps facilitate a meeting in which the information can come out. If a client consistently withholds key information from others and requires that you do the same, walk away from that relationship. It’s just not worth it.

Mark Harbour: What if the matriarch and patriarch want the advisor to work with all of the children, but the advisor knows some of the kids either don’t want to or are very difficult to work with?

Jim Grubman: You can’t force people to change just because their parents wish it to happen. People have to be ready to learn or change their behavior.2 Recognize your limitations and be honest with your clients. You don’t have to go into graphic detail about how difficult a child is. Just admit the process is not being productive and concentrate on working with the willing.

Mark Harbour: When working with a family business where other family members (beyond your primary advisory clients) are part of the decision-making process, are there specific protocols for sharing information?

Jim Grubman: The best thing an advisor can do is advocate for regular, formal family meetings to discuss the issues of concern. Family businesses are, by nature, complex. There are overlapping matters of family, ownership, and business that must be discussed, including by the family’s advisors. Help the family create a process for information to be shared and decided upon rather than getting caught in lots of individual discussions and splintered decision-making.

Other Questions about Ethics
Mark Harbour: Given your experience working with financial advisors, do you have other suggestions to help us with ethical dilemmas?

Jim Grubman: Realistically, while we all are trying to prevent harm to our clients, some situations are unusually difficult to overcome. Two things stand out in my experience. As a general observation, I find many advisors are less assertive than they sometimes need to be in maintaining a solid ethical posture. This is not necessarily because they are unethical. More often, they simply feel afraid. They get paralyzed when having to say no to a client or engage in conversations about sticky issues. You have to face your fears and speak up for conversations you need to have.

The other is that advisors often are looking for a cookbook approach, a set of rules on what to do or not do in every situation. You just can’t cover every possible contingency in the real world. Most good ethics workshops teach ethical decision-making more than a set of do’s and don’ts. You have to learn the basics of how to think through the components of your responsibility to clients, the law, and balancing communication, trust, and limit-setting. I encourage everyone to find readings and workshops that teach the components of ethical thinking as much as ethical rules. Then behave accordingly.
Mark Harbour: Any ideas for those resources so advisors can put these concepts into practical application?

Jim Grubman: Reviewing the ethical standards and case discussions of organizations such as IMCA®, the Financial Planning Association, the National Association of Personal Financial Advisors, and the CFP Board are obviously a great place to start. In addition, a new professional organization was started nearly a decade ago to enhance collaboration between therapists and financial advisors: The Financial Therapy Association.3 They hold conferences and publish the Journal of Financial Therapy, which sometimes publishes articles on ethics. For example, a recent article entitled “Ethical Issues and Decision Making in Collaborative Financial Therapy” provides guidelines that clarify the similarities and differences in the professional standards of psychologists and advisors.4

Other useful resources include the ethics writings of the American College of Trust and Estate Counsel or Attorneys for Family-Held Enterprises as well as the Family Firm Institute, all of which deal with the complexities of family businesses and cross-generational communication.

Our clients put their trust in us. Even when things get complicated, we still have to know how to honor that trust. ●

James Grubman, PhD, is a consultant, speaker, and educator in the multidisciplinary field of family wealth psychology. He is the author of Strangers in Paradise: How Families Adapt to Wealth Across Generations and co-author with Dennis Jaffe, PhD, of Cross Cultures: How Global Families Negotiate Change Across Generations. He is a Fellow of the Family Firm Institute and the Purposeful Planning Institute. Contact him at jim@jamesgrubman.com.

Mark Harbour, CPA, CIMA®, CFA®, has served various volunteer roles with IMCA, most recently chair of the Ethics Task Force that worked to revise IMCA's Code and Standards. He is a past president of the CFA Society of Los Angeles. Contact him at harboal@ca.rr.com.

Endnotes