

**HOW TO DRAW CLIENTS TO THE COLLABORATIVE MODEL
AND KEEP THEM SATISFIED**

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Named "Best Lawyers in Dallas" Family Law by D Magazine (2001, 2005, 2006, 2007, 2008, 2009, 2010, 2017, 2018).

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- Best Lawyers Under 40, D Magazine, 2018, 2019
- Best Lawyers in America, Woodward and White Press, 2018
- Texas Rising Stars, Thomson Reuters, 2014, 2015, 2016, 2017, 2018
 - Up-and-Coming 100: Texas Rising Stars, Thomson Reuters, 2017, 2018
 - Up-and-Coming 50: Women Texas Rising Stars List, Thomson Reuters, 2017, 2018

PAPERS AND PRESENTATIONS

- *Defending the Accused* (written materials) with Diana S. Friedman, Hon. Dennise Garcia, Karen Lawson, Ph.D., and Richard Warshak, Ph.D., Innovations: Breaking Boundaries in Custody Litigation, State Bar of Texas, 2019.
- *Navigating Your Family Law Matter When Someone with a Personality Disorder is Involved* (written materials) with Hon. Roy L. Moore and Kelly Ausley Flores, Advanced Family Law Course, State Bar of Texas, 2018.
- *High Conflict Family Law Matters, Personality Disorders, and the Effects on Parenting and Children's Experiences* with Hon. Roy L. Moore, Leigh de la Reza, and Jonathan Gould, Innovations: Breaking Boundaries in Custody Litigation, State Bar of Texas, 2018
- *Family Law for Real Estate Professionals*, Dallas, Texas, 2018
- *Direct and Cross of a Tracing Expert Demonstration*, with Hon. William Harris, Douglas K. Fejer, and Diana S. Friedman, Advanced Family Law on a Shoestring, Tarrant County Family Law Bar Association, 2017
- *High Conflict Family Law Matters and Personality Disorder*, Dallas Area Paralegal Association, Family Law Section, 2017
- *Is a 50/50 Possession Schedule Right for Me?*, Goranson Bain Blog, 2017
- *Direct and Cross of a Tracing Expert (including Characterization Issues)*, with Hon. Roy L. Moore, Douglas K. Fejer, and Diana S. Friedman, Advanced Family Law Course, State Bar of Texas, 2017
- *Different Strokes for Different Folks* (written materials), with Hon. Denise Garcia, Hon. Graham Quisenberry, Brian Webb, and Diana S. Friedman, Innovations: Breaking Boundaries in Custody Litigation, State Bar of Texas, 2018
- *Direct and Cross of a Tracing Expert* (written materials), with Hon. Roy L. Moore, Jonathan Bates, Douglas K. Fejer, and Diana S. Friedman, Advanced Family Law Course, State Bar of Texas, 2016
- *Married or Not Married, That is the Question: Common Law Marriage in Texas*, Goranson Bain Blog, 2014
- *High Conflict Family Law Matters and Personality Disorders* (written materials), with Beth E. Maultsby, Advanced Family Law Course, State Bar of Texas, 2013
- *Taking Notes and Testifying in Courts*, with Laurel Arnold Clement, Dallas Metro Counseling Association, 2010
- *Legal and Ethical Issues Dealing with Divorced Families and Stepfamilies*, with Laurel Arnold Clement, Ethics Seminar for the Dallas Association of Marriage and Family Therapists, 2009
- *Eldorado, A Case Study: Duties of an Attorney Ad Litem*, with Laurel Arnold Clement, Dallas Bar Association and North Dallas Bar Association, 2008

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HOW TO DRAW CLIENTS TO THE COLLABORATIVE MODEL AND KEEP THEM SATISFIED

I. INTRODUCTION

As collaborative law professionals, we recognize the inherent advantages to the process that most potential clients are not aware of. It is critical to educate potential clients about the benefits of the collaborative model if it is determined that the case is a good fit for the process. In addition, it is important for the practitioner to appropriately screen cases to determine whether the case is good candidate for success in the collaborative process and educate potential clients about their options. If the client desires to participate in the collaborative process, the challenge then shifts to ensuring the process remains just as dynamic and customized for the client throughout the duration of the case as it was in the first meeting. This paper examines techniques and strategies to bring clients into the collaborative process and ways to keep them satisfied once they are engaged in the collaborative model.

II. WHY DO POTENTIAL CLIENTS CHOOSE THE COLLABORATIVE MODEL

When developing a plan on how to draw clients to the collaborative model, it is helpful to review the research conducted by the International Academy of Collaborative Professionals (IACP) regarding client satisfaction in the collaborative process. An article by Linda Wray, J.D. entitled "What Clients Say About Their Experience in the Collaborative Process" which was published in the Spring 2012 edition of *The Collaborative Review: The Journal of International Academy of Collaborative Professionals*, discussed the findings of the Client Experience Survey conducted by IACP. The survey of 98 participants who participated in the collaborative process was conducted between 2007 and 2010. The participants included both men and women, with the majority of the respondents between the ages of 40 and 49 years old with a marriage of 16 years or more who used the collaborative process to dissolve their first marriage. The results of the survey concluded that the most highly rated reasons clients chose the collaborative model on the 5 point scale (with all reasons ranked as very important) were clients' expectations that the collaborative process would:

1. Result in a better outcome;
2. Better focus on what was most important to them (with this factor being significantly more

important to female respondents than male respondents;

3. Be a less confrontational and adversarial process;
4. Be a more respectful process; and
5. Provide more client control over the outcome.

Understanding the reasons why the surveyed clients selected the collaborative process provides guidance to the collaborative professional on how to educate potential clients about the collaborative process.

III. EDUCATING NEW CLIENTS ABOUT THE BENEFITS OF THE COLLABORATIVE MODEL

Developing and implementing a plan to effectively educate clients about the benefits of the collaborative model is a vital step in drawing clients to the collaborative model. Education about the collaborative process often begins before the client meets with you for a consultation.

A. Online Education and Information Can Create a Lasting First Impression

The professional's webpage often creates the potential client's first impression of the attorney, so it is important to create a professional page that educates the client about you and your collaborative practice. Many potential clients conduct a great deal of online research prior to scheduling a consultation with an attorney, so it critical to keep your webpage current and provide enough information to educate the potential client. Collaborative Divorce Texas (www.collaborativedivorcetexas.com) (also known as the Collaborative Law Institute of Texas) has prepared an informative and educational webpage containing numerous articles, forms, and information on the collaborative law process. Linking the Collaborative Divorce Texas webpage and other collaborative resources (including links to articles, links to your collaborative practice group page, links to news stories about collaborative law, links to blog posts about collaborative law, links to social media content regarding collaborative law) on your webpage is a great way to provide the potential client with additional information about the collaborative process.

Another way to reach and educate a wider range of potential clients about the collaborative process is through social media. Social media posts do not necessarily have to be elaborate or take a lot of time to prepare to be effective. Sometimes simply sharing or reposting a news story about a person's success in collaborative law or sharing an interesting article about the collaborative law process can serve as an educational resource for potential clients. The social

media postings can be linked on the professional's webpage (and vice versa).

Professionals may also educate potential clients about the collaborative law process by publishing blog posts or articles on relevant collaborative law topics. Again, these blogs or article postings may be linked on the professional's webpage to provide a comprehensive resource educating the client about the collaborative process.

Frequently, potential clients are looking for online reviews of potential attorneys when selecting one to meet with. One way to attract collaborative cases and provide a springboard to educate potential clients about the collaborative process is through online reviews from clients who have successfully completed the collaborative process. One way to gain positive online reviews is to ask clients if they will share their experience with you and the collaborative process in an online review.

Many collaborative professionals are part of collaborative practice groups which also can provide resources to help educate the potential client, including social media pages, blogs, and/or webpages. In addition, linking your practice group's webpage can also help the potential client identify and research other professionals who may be involved in the process and their roles.

You can cohesively link all of these resources, including outside webpages, social media posts, blog posts, and other outside resources, on your webpage to provide potential clients a centralized location to obtain information regarding the collaborative law process. The ability for potential clients to learn about the collaborative process prior to their initial consultation can help them better understand their options and feel more prepared to discuss the collaborative law process when consulting with you.

B. Raising Awareness About the Collaborative Process During Intake Phone Calls

When seeking to draw clients to the collaborative model, it is also important that the staff in your office, from the receptionist to the paralegals, is educated about collaborative law to enable them to raise awareness to the client about collaborative law. The staff can let the potential client know that you practice collaborative law, either exclusively or in addition to a traditional litigation model, and he or she can direct them to information about your practice and the process to review prior to the consultation.

Often potential clients are not familiar with collaborative law and even the mention that you practice collaborative law may be enough to pique their interest to learn more about the process. During the initial phone intake, the staff can be encouraged ask the potential client if he or she is interested in learning about

collaborative law, which may also spark their interest and raise awareness of the availability of the collaborative option.

IV. EDUCATING CLIENTS DURING THE INITIAL CONSULTATION

Once a potential client finds you and is in your office for an initial consultation, two questions frequently arise: (1) why should they choose the collaborative model over traditional litigation; and (2) why should they hire you above anyone else. Being prepared to answer these questions can make the difference between only having a client consultation and having a potential client hire you and decide to proceed collaboratively.

A. Determining Whether the Case is a Good Fit for the Collaborative Model

"Why should I choose the collaborative process," should be the first question a potential client asked you at your first meeting and, if not, it should be the theme of your meeting.

Potential clients should be educated about the differences between collaborative law and the traditional litigation approach and the advantages of the collaborative model and how it can work for them. The client should be educated about the wide range of cases for which the collaborative model works. Helping a client understand that the collaborative model can be personalized for their case to address their unique issues is a great way to draw clients to the collaborative model.

When assessing a case, it is critical to understand what a potential client sees as his or her biggest issues (i.e. hidden property, mental health issues, need for future support) and then explain how these issues are addressed in the process. Delving into a potential client's biggest concerns is frequently the best way to help the client understand the collaborative model and understand how the process can be used to address these concerns in a constructive and productive manner.

Frequently, addressing these big concerns often provides a mechanism to emphasize to the client the benefits of the collaborative process. For example, if a client is concerned about hidden assets, you can discuss the role of the financial neutral and their role in sifting through the finances and determining what additional information is needed. Also, if a client is concerned that a spouse has mental health issues that makes communicating difficult, you can explain to them the role of the mental health professional and how they are far more skilled than the attorneys and court in helping couples understand how to communicate and work through their issues. Finally, if a client is concerned about his or her financial future, the financial neutral can

help assess future financial needs and prepare and evaluate options in addressing those needs.

Further, it is important for practitioners to point out the comparisons between litigation and collaborative law. Collaborative Divorce Texas has a handout available on its website that compares the two processes and highlights the advantages of the collaborative model. Some of the advantages of collaborative law include the focus on solutions rather than blame, privacy, flexibility in outcomes, and transparency. By being able to point out the advantages of the collaborative model, potential clients will likely feel more confident in the appropriateness and effectiveness of the model.

A final step in drawing clients to the collaborative process is having the potential client actively choose the collaborative process over the litigation process instead of the attorney selling the process to the client. To do so, Pauline Tessler recommends having the client convince you that the collaborative process is the best approach for his or her case. When the client is educated about the process, he or she is able to do this. By doing so, the client invests in the process as well as the outcome.

Some cases may not be a good fit for the collaborative model, and it is important for the practitioner to be able to identify the factors and warning signs where the collaborative process may not succeed and discuss this with the client. The IACP has identified factors in the IACP Professional Practice Survey that have led to a significantly higher level of termination of the collaborative process. These results and the implications behind them are tremendously beneficial to a practitioner meeting with a client and attempting to discern the likelihood of success using the collaborative process. As former clients typically become some of our best referral sources, it is critical to discern if a collaborative case is likely to be a success. The findings of the study suggest that lawyers need to consider whether such factors are present when they initially meet with a prospective client and, if so, how their presence may impact the success of the collaborative case.

The research covered 933 cases and 386 were deemed “difficult,” “very difficult,” and “terminated” by the respondents. The top difficulty factors from such cases were as follows:

1. One or both clients invaded the privacy of the other;
2. Verbal abuse;
3. Cooperation is always or almost always impossible;
4. A client has reluctance or refusal to disclose;
5. One or both clients acted unilaterally;
6. Unrealistic expectations of process;

7. Unrealistic outcome expectations;
8. Clients have little to no trust for one another;
9. Mental health issues;
10. A client has extreme lack of empathy; and
11. Clients attributed little or no value to contribution of other.

In addition, Kenneth F. Wise, Psy.D. and Jeffrey H. Shore, J.D. outline other factors to consider when assessing whether the case is a good fit for the collaborative model in their 2017 article entitled *An Ounce of Prevention: Avoiding Problems that Could Derail the Collaborative Process with Effective Client Screening*. Wise and Shore suggest using the Lawyer’s Initial Collaborative Consultation Checklist in the initial consultation as well as the Confidential Collaborative Law Family Safety Questionnaire. Some factors considered are identifying the client’s goals, interests, issues and assessing challenging circumstances (including substance abuse, other addictions, medications taken, health or mental health issues, imbalance of power between spouses, personality and/or character problems, and criminal history).

Wise and Shore describe a “screening spotlight” to assist the practitioner and client in determining whether the collaborative model is a good fit. In their article, they describe “Red Light” clients as individuals or their spouses who would not be suitable for collaborative law, including:

1. Consistently cannot communicate effectively with their attorney or others;
2. Have untreated anger management problems or a documented history of violence;
3. Have a severe personality disorder or maladaptive personality traits to the extent that it impairs their reality testing, judgment, and decision making; and
4. Have a high conflict personality.

“Yellow Light” clients are described by Wise and Shore as clients who may have some issues with their functioning, mood, mental status, or personality features but who may, with additional supports and structures in place, be able to participate in the collaborative process. Characteristics of “Yellow Light” clients include:

1. Have obvious signs or symptoms of depression, anxiety, or emotional distress;
2. Are isolated and alone, have little or no outside social support;
3. Have problems in their attention and concentration -- need re-direction and

clarification from their attorney, but can still communicate effectively;

4. Have a history of impulsivity, questionable judgment and decision making; and
5. Have a history of substance abuse but the condition is in remission.

Furthermore, Wise and Shore describe “Green Light” clients as ideal candidates for participation in a collaborative divorce. These are clients who:

1. Function well in their daily lives;
2. Can communicate clearly and effectively with their attorney and others;
3. Have no significant mental health issues outside of normative adjustment challenges to their divorce situation;
4. Are free of any substance abuse or addictions;
5. Have a strong support system of family and friends;
6. Have a high level of “readiness” for divorce;
7. Have no history of family violence or uncontrolled anger issues; and
8. If parents of a minor child, they have a history of healthy parenting and co-parenting.

The factors outlined above, including those contained within the “Screening Stoplight,” should be considered by the professional by gathering information from the client in order to screen the likelihood of success in the collaborative process. Additionally, as the choice to proceed collaboratively ultimately rests with the clients, it is imperative that they be made aware of the potential risks for failure or difficulty if these factors are present. Upon that awareness and acknowledgment, the client needs to actively choose the process if they desire to proceed. Doing so will decrease the likelihood that a client will complain later saying he or she had no idea how difficult working collaboratively would be.

B. Selling Yourself During the Consultation

With the rise in popularity of the collaborative model, potential clients have more attorneys to choose from. Therefore, it is critical in the initial consultation to assist the clients in feeling confident that choosing you to represent them is a good choice. As practitioners, we must think about what sets each of us apart from other attorneys.

Competency in the collaborative process should be a first selling point to any potential client. There are so many ways to become competent in the collaborative model, including joining a practice group, attending trainings, handling many collaborative cases, and becoming a member of and being involved with Collaborative Divorce Texas and IACP. Not only does this involvement demonstrate your commitment in the

collaborative movement, it ensures that your professional skills are constantly evolving. Collaborative Divorce Texas is constantly looking for practitioners to submit blogs and articles to its website which can be something that you can provide clients at the first meeting and demonstrate first hand your knowledge of the process.

To effectively sell yourself at the consultation, you must be able to showcase your experience and confidence in the collaborative process. You should know how many collaborative law cases you have handled and be able to suggest other collaborative attorneys for a potential client’s spouse.

V. MAKING SURE THE PROCESS REMAINS PRODUCTIVE, POSITIVE, AND CLIENT-DRIVEN

Once the parties are involved in the collaborative law process, it is important to ensure the process remains productive and positive. This is an ongoing effort and is necessary to ensure not only that the present case is successful but also that your practice continues to thrive.

A. Making the Collaborative Model Fit the Case and Not the Case Fit the Collaborative Model

Every collaborative law case is different and there is not a single mold for each case. To keep your clients satisfied, it is important that you understand what makes their case unique in order that you fit the process to the case rather than trying to use the same approach for each case.

It is critical at the beginning of each case to assess what the case needs and to make sure the scope of your involvement matches the clients’ needs and resources. As early as the initial consultation, it is wise to engage in a cost-benefit analysis with the client to scale and tailor the process appropriately. You should assess the case and discuss with the client the potential costs and benefits associated with utilizing the full team, as well as the potential risks associated with proceeding without one or both neutral professionals. Additionally, it is important to determine whether the entire team needs to meet in full team meetings or if the clients are best served meeting either the mental health professional or the neutral financial professional outside of full team meetings. Throughout the case, you must continually adjust the process to meet the participants’ needs.

B. Understand and Implement a Non-Defensive Communication Style

Sometimes, differences in communication styles can hinder the collaborative process and create unnecessary problems and tensions. A strong mental health professional and aligned team can assist with this. In addition, a wonderful resource for collaborative law

practitioners and parties participating in the collaborative process is Sharon Ellison's book, *Taking the War Out of Our Words: The Art of Powerful Non-Defensive Communication*. This book discusses various communication styles and educates the reader about the non-defensive communication model and how to implement it.

C. Avoid Unnecessary Delays

Frequently, clients utilizing the collaborative process complain that the process "takes too long." There can be a multitude of reasons why a client might have this concern, making it important for an attorney to do everything possible to alleviate this complaint.

Sometimes, the issue with the perceived slowness of the process rests on the clients themselves. The collaborative process moves at the speed of its slowest participant. It is important for clients to understand this if a client is struggling with the process that this will temporarily slow down progress. Having clients be reassured that this occurs and does not mean that the process is "doomed" will help reassure them to stay invested in the collaborative law process.

However, if it is an attorney or neutral participant that is slowing the process down, the case can be in trouble, especially if the attorney or other professional has not done their homework. As such, it is crucial to avoid procrastination and remain proactive and efficient. Set realistic collaborative deadlines and treat such deadlines with the same respect as you would litigation deadlines and obligations.

D. Use Your Time Wisely

Productivity in collaborative cases can ebb and flow with legitimate delays in the information-gathering, option development and decision-making phases of the process. Remind clients who complain about perceived delays in the collaborative process that it is in fact a process, and there are usually legitimate reasons why the flow becomes stymied.

The professionals should strive to carefully plan and adhere to an agenda for each meeting. They should strive to get all homework done for upcoming meetings and help the clients get their homework done as well. The team should schedule and hold a pre-meeting phone call to ensure that the most pressing issues on the agenda remain live and to ensure that there is sufficient material to warrant a meeting. On occasion, it may make sense to cancel a joint session because there is insufficient information to justify a meeting. Using time effectively and making judgment calls such as this can show your

clients that you value their time and investment in the process.

E. Be Creative When Hitting Impasse

Many times, despite an attorney's best efforts, a case reaches what initially seems like impasse. At this point, more than any other time in the case, you as the lawyer need to seek creative solutions to move beyond impasse. Typically, clients will feel especially frustrated and hopeless that they have expended so much time and money into a process that they see as a failure. However, we are not limited to proceeding without change. The collaborative process allows us to be creative and to have a fluid course, rather than simply proceed in a static direction. The consummate collaborative professional works with challenges and may have the parties attend mediation if they reach impasse.

Scott Clarke, Linda Solomon, and Melinda Eitzen outline options to employ to get past impasse in their 2014 article *Getting Past Impasse*. According to the article, the first question to ask when you reach an impasse is, "why are they stuck?" Understanding why the case has reached an impasse can help move you past it. Some options outlined in the article include:

1. Sending someone or everyone to counseling;
2. Bringing in a collaborative coach to help the team;
3. Mediation with a collaboratively trained mediator;
4. Consider retaining another expert to assist. For example, if the value of a business is an issue and a neutral business evaluator prepared an opinion of value, bring in another business valuation expert to review and provide feedback on the business valuation report.
5. Retain a litigation attorney to give a litigation opinion;
6. Take a break – sometimes the parties need a healing or cooling off period;
7. Arbitrate the issue that is in dispute;
8. Go to a caucus style where the neutrals and/or attorneys travel between rooms, working with each party without the parties being in the same room;
9. Provide clients with more information. For example, if the client has fears about his or her financial future, encourage the client to work with the financial neutral or hire another

financial professional to assist them with post-divorce budgeting;

10. With the assistance of the mental health professional, help each client see the other party's perspective or any other perspective;
11. Change your approach to option development. For example, sometimes the approach does not work for the client and the way he or she processes information. Some people are able to reach the best solution in a full team meeting where others need more time to process and study on an issue;
12. Increase team communication – sometimes clients can create disruption amongst the team. Taking time to identify the problem with the team and brainstorm ways to resolve it can help move past impasse;
13. Involve other people of influence with the client, including counselors, family members, religious leaders, financial planner, best friend, significant others, and shadow figures.

Other options include:

1. Have the parties meet individually with the mental health professional or financial professional if they are not able to meet together without conflict or would benefit from having the individual meeting; and
2. Involve additional professionals, such as a child specialist to provide a mechanism for the child's voice to be heard in the process.

There is no limit to what can be done to overcome what seems insurmountable. It simply takes creativity and willingness to explore options that could lead to an acceptable final resolution for the parties.

If the clients have reached the ends of their respective ropes, it is important for them to understand the potential consequences of opting out and the consequences for staying in. The team may collectively suggest that the clients to seek a litigation opinion to assist them in determining whether to stay in the process or opt out. It may be wise, after consultation and disclosure to the team, to attend the consultation with the litigation attorney with your client to help fill in the gaps.

Referring clients to litigation attorneys who understand and handle both collaborative law cases and traditional litigation cases is important in receiving a litigation opinion. This person will be able to explain the pros and cons of litigation but can also help explain and emphasize the strengths and benefits of the collaborative process.

Following the tips and strategies set out in this paper will help ensure that you continue to draw clients

to the collaborative model, that your collaborative practice continues to grow and succeed, and that clients recognize the benefits of what you have to offer as a collaborative practitioner.