

**FINE WINE ON A BEER BUDGET:
A PROCEDURAL CHECKLIST TO FACILITATE
THE MIDDLE-INCOME
COLLABORATIVE LAW CASE**

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FINE WINE ON A BEER BUDGET: A PROCEDURAL CHECKLIST TO FACILITATE THE MIDDLE-INCOME COLLABORATIVE LAW CASE

I. INTRODUCTION

In the years since Collaborative Law began, two common questions—the cost of the cases and their viability for middle-income divorces—have been debated time and time again. In Denton County, Texas, where these authors practice, there has always been a mixed blessing in its demographics—the southern part of the county is very much metropolitan and the northern and western parts of the county have remained primarily rural. The blessing part of that mixture is that it has forced collaborative practitioners in Denton County to develop processes that have enabled collaborative law to be affordable to middle-income families.

While every case is different, after being in the practice for a number of years, we feel qualified to offer the following model with estimated prices for each step in the process, so that we can finally offer to our colleagues and potential clients an estimated cost for this process. Regardless of the attorneys', legal assistants', or neutral professionals' hourly rates (which can be substituted in for those hourly rates demonstrated in this paper, we believe that these tips can be used to more efficiently facilitate and more accurately project the cost of a collaborative case for the middle-income family). It has long been these authors' opinion that unless we develop ways to make collaborative law available to the middle-class, or "everyman" as that term has been used, Collaborative Law will eventually become a historic relic or novelty rather than the cultural icon that it deserves to be and could become.

The body of this paper assumes that the clients have agreed to use the collaborative process to handle their divorce. However, in the interest of promoting the efficiency of the following model, the authors would also offer these suggestions for readying the clients for their collaborative case.

The attorney's staff should be trained in how to sell the Collaborative Law process as one option to be shared with every potential client that calls to inquire or schedule an appointment. Each potential client should be invited to stop by the attorney's office prior to the initial conference and pick up a copy of *The Collaborative Way to Divorce* by Stuart G. Webb and Ronald D. Ousky (or similar printed material) as well

as the IACP, CLI-TX, local practice group brochures, those website addresses, and the informed consent form offered on the CLI-TX website. When the client comes in for their initial consultation, it is much easier to help them make a decision as to which process in the process continuum they want for their divorce. An additional tool at the initial consultation is for the lawyer to give the client a "Client Notebook," which will have in it the Texas Family Practice Manual extensive client information sheet, the Inventory & Appraisal form, the Collaborative Law Institute Negotiation Workbook (which enables them to begin self-training in interest-based negotiation), a cash flow budget worksheet, Kevin Fuller's comparison of Collaborative Law and the Litigation process, the Rules of the Collaborative Law Process, a roadmap of the collaborative process, Tips for Parents Engaged in the Collaborative Law Process (by Gay Cox and Honey Sheff and available on the CLI-TX website), the Texas Family Code Standard Possession language and the list of parental rights and duties that will ultimately be awarded to the parties (which is attached at the end of the negotiation workbook and should be brought to the client's attention). Also included will be the client's copy of his or her contract of employment with the attorney, the Collaborative Law Institute of Texas' Protocols of Practice and the informed consent form, which are recommended to be attached to the contract and reviewed with the client at the time of the signing of the contract. In addition to these forms, you may have others that you think would be helpful to add to the client notebook, such as the financial professional's and communications coach's participation agreements.

Chip Rose, the well-known Collaborative Law trainer from California often says, "It's all in your raw material." What he means by this in the Collaborative Law context is that if you can help your client be ready, the Collaborative Law process will flow much more smoothly. Imagine your incoming client as an 18-wheeler truck: when we hear one of those trucks moving from first gear up the gears, it first moves very slowly, but eventually moves much more rapidly and with greater ease. These materials along with attorney preparation of the client will enable the client to be ready to move from first gear to sixth gear very quickly and efficiently so that even middle class clients can enjoy the benefits of the Collaborative Law Process.

II. PREPARATION FOR FIRST JOINT SESSION

A. Collaborative Attorneys' Preparation —30min. for each attorney at \$300.00/hour =\$300.00

1. The attorneys make telephone contact with each other to:
 - a. Decide location of first meeting and what type of refreshments will be provided

- b. Agree on agenda for first joint session
 - c. Discuss background and general issues in the case
 - d. Discuss “hot button” issues, including any need for temporary agreements
 - e. Determine who is to order and customize the notebooks
 - f. Discuss and decide which neutral professionals will be asked to participate and decide who will contact them; i.e. by a joint email from the attorneys or one of the attorney’s staff
 - g. Discuss any other needs of the parties
 - h. Conclude telephone conference
2. Each attorney will assign applicable duties to his or her legal assistant.

B. Legal Assistants’ Duties Prior to First Joint Session—2 hours @ \$100.00/hour = \$200.00

1. Each attorney’s legal assistant will contact their client to confirm the date and time of the first joint session and time for pre-meeting with attorney
2. One legal assistant will be assigned to contact the neutral professionals to check their availability
3. One legal assistant will be assigned the task of Ordering Standardized Notebooks (The practice group should develop and have available to each member standardized notebooks with a table of contents, tabs and the documents listed in the notebook [see Appendix A], which are used by all members of the practice group and available at the local print shop, which will keep the cost down. Additionally, as a practice tip, it is suggested that prior to the commencement of each collaborative case, the attorney’s office which is preparing the notebooks should go on the CLI-TX website and use the latest form of the Participation Agreement available, customizing the form with all the parties’ and teams members’ names and contact information.)
4. Customization of the Notebooks: The attorney’s office responsible for ordering the notebooks should also customize the front cover of the notebook with the party or team member who will be receiving the notebook, with the Style and Cause No. of the case and the names and contact information for the attorneys, the parties, and the neutral professionals (See Appendix B); the spine of each notebook should have the name of the

case, “Thompson Collaborative Case,” for example, for easy reference in a bookshelf

III. PRE-MEETINGS, FIRST JOINT SESSION, DEBRIEFINGS AND FIRST OFFLINE MEETING

A. Pre-meetings Immediately Prior to First Joint Session

1. Each attorney’s pre-meeting with client—30 minutes with each attorney and each client = \$300.00
2. Collaborative Professionals Pre-meeting—30 minutes with both attorneys and both neutrals (assume \$175.00 per hour for each neutral) = \$475.00

B. First Joint Session—1 hour = \$950.00

1. Introduction of Parties, Attorneys and Neutral Professionals
2. Review and Execute Collaborative Law Participation Agreement for Parties and Collaborative Law Participation Agreements for Neutrals (One real timesaver is to have the clients read all three participation agreements prior to the first joint session, then simply review the Summary of the Participation Agreement [form available on the CLI-TX website], highlighting certain parts and answering any questions that they have about the participation agreements)
3. Review and Execute Court Notification of the Use of Collaborative Law
4. Discuss and decide if going to file Joint Original Petition or if not, who will be filing the Original Petition
5. Discuss any need for Temporary Agreements (must be basically to keep status quo if to keep within budgeted time)
6. Discuss and decide how the professionals will be paid
7. Financial Professional explains what homework will be assigned to each party and how they will receive their homework packets, i.e. email, mail or hardcopy at the meeting
8. Agree on basic agenda for next meeting
9. Calendar next meeting(s) and agree on location(s) (to avoid additional time spent emailing and calling the members of the team to schedule next meetings)
10. One lawyer takes minutes during meeting,
11. The Legal Assistant to the lawyer who took the minutes then types the minutes and

distributes them to all team members by email within 24 hours of joint session — 1 hour = \$100.00

C. Debriefings Immediately Following First Joint Session

1. Collaborative Professionals' Debriefing—30 minutes = \$475.00; Discuss what worked, what did not work, and what can be done to improve the process before the next meeting
2. Attorneys' Debriefing with clients—15 minutes with each lawyer and his or her client = \$150.00; Discuss what worked, what did not work, and what can be done to improve the process before the next meeting

D. First Offline Meeting with Communications Coach (MHP) at Attorney's Office immediately following first joint session—1 hour = \$175.00

1. Communications coach assists clients in learning how to develop goals and interest
2. Communications coach assists clients in learning effective communications skills and trains them interest-based negotiation
3. This offline meeting can take place at the communication coach's office, but it is more efficient if it takes place at the attorney's office after the first joint session

IV. PREPARATION FOR AND OFFLINE MEETINGS WITH THE PARTIES AND THE NEUTRALS BETWEEN THE FIRST AND SECOND JOINT SESSIONS

- A. Both clients should meet together with each of the neutrals to control the cost
- B. Preparation for the Offline Meeting with the Financial Professional: The Financial Professional will email, mail or give a hard copy of an inventory and appraisal sheet and a list of any documents that will be needed to prepare the Excel Spreadsheet of Assets and Liabilities, then the clients will forward that information to the financial professional prior to the parties' meeting with him or her to enable the preparation of the Excel Spreadsheet prior to that offline meeting—1 hour = \$175.00
- C. Offline Meeting with the Financial Professional—2 hours = \$350.00; The parties meet with the financial professional to establish the values of their property and the

amount of their debt to begin to develop options for the property division

- D. Offline Meeting with the Communications Coach—2 hours = \$350.00
- E. Each of the Neutrals will have approximately 1 hour after the offline meetings with the clients of preparation prior to the next Joint Session = \$350.00

1. The Communications Coach's Preparation after the Offline Meetings

- a. The Communications Coach must have a basically vanilla form Parenting Plan with standard possession and rights and duties on his or her computer that can be adapted to each middle income case quickly; the Parenting Plan cannot be customized and stay within the budgeted cost for the middle income collaborative case
- b. The Communications Coach will prepare a proposed agenda and publish it to the parties and the other collaborative professionals prior to the second joint session

2. The Financial Professional's Preparation after the Offline Meetings

- a. The Financial Professional must use a computer program such as Excel to enable him or her to efficiently build a spreadsheet that will facilitate the clients' option building and option evaluation process
- b. While the Financial Professional may "see the handwriting on the wall," with regard to realistic options for the clients, his or her professional art is being able to assist the clients quickly and efficiently in reaching their own conclusions about what options are realistic for them

V. PRE-MEETINGS, SECOND JOINT SESSION AND DEBRIEFINGS

A. Pre-meetings Immediately Prior to Second Joint Session

1. Each attorney's pre-meeting with client—30 minutes with each attorney and each client = \$300.00
2. Collaborative Professionals Pre-meeting—30 minutes with both attorneys and both neutrals (assume \$175.00 per hour for each neutral) = \$475.00

- B. Second Joint Session—2 hours = \$1,900.00
1. Develop, evaluate, and agree on options on the children's Issues
 2. Develop, evaluate, and agree on options regarding the Financial issues, including asset and liability division
 3. Assign one attorney to prepare the Decree, Order Withholding and any other necessary documents to finalize the case
 4. Schedule a tentative closing date and prove up date
 5. The parties say goodbye to the Neutrals

C. Debriefings Following Second Joint Session

1. Collaborative Professionals' Debriefing—30 minutes = \$475.00; Discuss what worked, what did not work, and what can be done to improve the process before the next meeting (if another meeting is necessary)
2. Attorneys' Debriefing with clients—15 minutes with each lawyer and his or her client =\$150.00; Discuss what worked, what did not work, and what can be done to improve the process before the next meeting

- D. Legal Assistant types the minutes and distributes them by email to the team within 24 hours of the second joint session—1 hour \$100.00

VI. FINALIZATION OF AGREEMENTS

A. Preparation and Review of Documents

1. One attorney prepares Decree, Order Withholding and/or any other necessary documents—2 hours = \$600.00
2. The other attorney reviews the Decree, Order Withholding and/or any other necessary documents—1 hour = \$300.00

- B. Each Attorney's Legal Assistant Proofreads the Documents, Makes Copies, Prepares a Transmittal Letter and Forwards the Documents to the other attorney and his or her client for their review—1 hour x two legal assistants = \$200.00

- C. Each Attorney Meets or has a telephone conference with his or her clients to answer his or her questions and/or revisions—30 minutes =\$300.00

- D. The parties execute all documents and deliver them to his or her attorney's office

- E. One attorney and one client goes to Court to finalize the case, secures conformed copies and

delivers them to his or her legal assistant for distribution to the parties and the other attorney—45 minutes = \$225.00

- F. Legal Assistant prepares transmittal letter, forwards copies of all documents to her and the other attorney's client and closes file—30 minutes = \$50.00

- G. Cost of copies and notebooks for clients (approx.) \$150.00

- H. Total: \$9,575.00

VII. CONCLUSION

One of the authors of this paper recently had the experience of talking to a litigator who had expressed an interest in Collaborative Law training. When asked if he was coming to an upcoming training, he said, "How much does one of those cases cost for the clients?" When the answer was about \$10,000.00 for both attorneys, the communications coach, and the financial professional, the response that came back was, "Well, hell Camille, we can litigate the whole damn thing for that." Yes, in that county maybe he can, but should he? What is his client going to end up with if he does? The Decree will contain language that has come from all of the litigated issues that the Texas Family Code has jurisdiction over. 80-90% of the time, the Decree will be the result of a settlement that was entered into by looking at the pros and cons of the strengths and weaknesses of each party's side of the case. The parties' case is evaluated from having gone to temporary hearings and/or preparing the parties' and their case for final trial including evaluating all the costs and other unknowns involved with a trial. In 10-20% of cases, the Decree would be the judgment of the court, following the Texas Family Code in granting a just and equitable division of the community estate and what is in the best interest of the children. In those examples, the parties did not work together—quite the opposite, and the Judge, a stranger to the parties and their case, proclaimed the winner and loser, at least in the beholders' eyes. Why is that not in the best interest of the clients and their children?

If a case could even be tried for \$10,000.00, for that same investment of funds, you could have a completed agreement in a collaborative case that contains the issues that are important to your clients as they see them, whether those issues are included in the Texas Family Code or not. A collaborative agreement may contain, and often does contain, agreements on college expenses, taxes, or alimony in excess of three years. In a collaborative case, the clients worked on together, with the aid of their attorneys, communications coach, and financial professionals. The clients will have learned something, sometimes a lot, about communicating with other people and working with their soon to be ex-spouse. The answers

to all the questions that the clients had leading up to any of their decisions will have been answered to their satisfaction, in a controlled and respectful atmosphere.

When you look at the added value of a collaborative law case, for the same dollars, it is clear where the clients' investment should be made. While the cheapest divorce is, and will always be the true "kitchen table" agreement, ask yourself how many of those "agreed divorces" that come in the door are really agreed? Of those cases that come in with the client's statement, "I think we will agree," how many have ended up spending at least \$10,000.00 of the community's funds before that agreement is reached? And those clients received no added value for their time or money. We collaborative attorneys have the experience to know what will, in all likelihood, happen in such cases. We need to look at all those, "I think we will agree" cases and give the clients full disclosure of their options (with some gentle persuasion), counseling them that their choices include applying their money and time into the collaborative process, a system that, when successful, will end in an agreement with added value that cannot be obtained in litigation and will serve them and their families long after the divorce is over.

Collaborative Law is not going to magically make the divorcing couple a modern day divorced version of Ward and June Cleaver, where everyone happily gets along with no issues at all. Collaborative Law does, however, offer families who feel they must divorce the opportunity and experience of transitioning and transforming themselves into a different relationship in a healthy, much less traumatic, healing atmosphere. Collaborative Law is more like arthroscopic or laser surgery versus litigation, which some clients feel can be compared to chainsaw surgery. The clients end up with a product, fine wine, because they spend their beer budget resources, on what was important to them, not limited to what the Texas Family Code says is important. Even if they are the same price, there is no comparison.