

Civil Collaborative Law is on the Move: *But It Needs Your Help**

By Lawrence R. Maxwell, Jr. and Sherrie R. Abney

“Over the next generation, I predict, society’s greatest opportunities will lie in tapping human inclinations towards collaboration and compromise rather than stirring our proclivities for competition and rivalry.

If lawyers are not the leaders in marshaling cooperation and designing mechanisms that allow it to flourish, they will not be at the center of the most creative social experiments of our time.”

Derek Bok, former Dean of Harvard Law School and President of Harvard University

Over twenty years ago a Minnesota family attorney, Stu Webb, created the collaborative dispute resolution process. Collaborative Law continues to progress nicely in the family arena and is beginning to gain momentum in other areas of civil law. The process enables individuals, families, businesses and organizations to maintain control over their relationships with others by empowering the parties to avoid litigation and resolve their disputes *peaceably* which ultimately results in the preservation of time, money and important relationships.

If the process is truly beneficial, why don’t more people use it? The answer is simple: the majority of users of legal services have no idea collaborative law exists. For the past seven years it has been the mission of the Global Collaborative Law Council to correct that problem by expanding the use of the collaborative dispute resolution process for resolving all types of civil disputes.

As we reflect on the progress of the civil collaborative movement, the writings of 19th century philosopher and writer Henry David Thoreau come to mind.

“If you built castles in the sky; your work need not be lost; that is where they should be. Now, put the foundations under them.”

Roger Fisher and William Ury (*Getting to Yes*, 1981) leveled the construction site. Stu Webb came up with the plans (1990), and for the past several years collaborative professionals have been laying the foundation. However, the legal culture does not change overnight, and there are many tasks to accomplish in order to build a quality product that will be widely accepted by the legal profession and our client community.

It is encouraging to review the progress that has been made over the past several years in building a solid foundation for collaborative law.

- 2000, the Massachusetts Collaborative Law Council was created by a group of 20 lawyers, to train lawyers and other professionals in the use of the collaborative process, and to raise public awareness and promote the use of the process throughout Massachusetts.
- 2004, the Texas Collaborative Law Council (now Global Collaborative Law Council) was founded by a group of Dallas attorneys committed to assisting clients in managing conflict and resolving disputes without litigation.
- 2005, GCLC began training lawyers and other professionals in the collaborative process and developed Protocols of Practice and a Participation Agreement for Civil Collaborative Lawyers.
- 2005, Stu Webb and Canadian Marion Korn conduct the first Collaborative Law training in Australia. Today, practice groups are established in the Provinces of New South Wales, Queensland, Victoria, Western Australia and the Australian Capital Territory.
- 2005, Sherrie Abney authored the first book published on civil collaborative law: *Avoiding Litigation: A Guide to Civil Collaborative Law*.
- 2005, International Academy of Collaborative Professionals established a Civil Collaborative Practice Committee. Today, the organization counts over 5,000 members in all states in the U.S. and in twenty-five countries.
- 2006, the American Bar Association Section of Dispute Resolution created a Collaborative Law Committee. The ABA Collaborative Law Committee has developed a bold Mission Statement and created subcommittees and liaisons to expand the understanding and use of the Collaborative Law process nationally and internationally.
- 2007, the American Bar Association Standing Committee on Ethics and Professional Responsibility issued Formal Opinion 07477, which squarely supports Collaborative Law provided that the client has been informed about the benefits and risks of participating in the process and given his or her informed consent.
- 2008, at the 2nd European Collaborative Law Conference in Cork, Ireland, sponsored by the IACP, Mary McAleese, President of the Republic of Ireland, opened the Conference by stating that Ireland has endorsed Collaborative Law as its first choice for dispute resolution.
- 2009, the Uniform Law Commission, by a unanimous vote, approved the Uniform Collaborative Law Act, which as of this date has been enacted in the states of Utah, Nevada, Hawaii, Ohio, Texas, Washington and the District of Columbia; and introduced in several other states.

- 2009, Hofstra Law School held a symposium on Collaborative Law, featuring judges, distinguished academics and collaborative law practitioners, and the Hofstra Law Review published a special issue commemorating the release of the Uniform Collaborative Law Act.
- 2010, Southern Methodist University Dedman School of Law established a three hour course in civil collaborative law, taught by Sherrie Abney. Other law schools and universities are in the process of developing civil collaborative law courses.
- 2011, the first textbook on civil collaborative law was published, authored by Sherrie Abney: *Civil Collaborative Law: The Road Less Travelled*.
- 2011, New York State Bar Association published an outstanding article supporting the Uniform Collaborative Law Act.
- 2012, in January the first edition of *The World of Collaborative Practice: A Magazine Promoting Collaborative Dispute Resolution for the Full Range of Possibilities*, was published on-line by Carl Michael Rossi and Gloria Vanderhorst.
- 2013, ABA Section of Dispute Resolution Spring Conference included number of presentations on collaborative law, including a presentation during the Legal Educators Colloquium on “Teaching Collaborative Law.”
- 2013, the Journal of the Legal Profession of the Alabama School of Law will publish a symposium issue entitled: How Will The Introduction of Collaborative Law Practice Affect Existing Legal & Professional Obligations?
- Several states and local bar associations in the U.S. have established Collaborative Law Sections, which regularly conduct CLE programs.
- In Canada, collaborative practice is getting explicit recognition as a preferred option. The Province of Alberta has enacted, and several other Provinces are proposing legislation requiring lawyers to advise clients about the benefits of collaborative law before commencing actions in family law. A similar provision in all civil matters will be the next step.
- Collaborative Law organizations are developing *pro bono* programs to train collaborative professionals to work with Community Dispute Resolution Centers.
- Initiatives are underway to implement collaborative law principles in prestigious international organizations such as the Society of Trust & Probate Practitioners (STEP) and the World Intellectual Property Organization (WIPO).

The outstanding work of a number of dedicated individuals is creating a solid foundation for civil collaborative law, but the work is not finished. Now, it is up to you to start building a unique edifice that will provide relief for clients that cannot be accomplished through adversarial processes.

Today, litigation is the *First Option* for resolving disputes. How do we make the collaborative process and other ADR processes the *First Option*? We must educate the public regarding the benefits of the collaborative process. We must talk about the process at every opportunity, with every individual and group, make presentations, write articles, post blogs. We must exhibit a conviction, commitment, and determination beyond lip service.

On a family trip to Morocco, a youth went to a construction site where a castle was being built for the King of Morocco. The boy and his father watched as an elderly craftsman sat cross legged and carved out very small pieces of colored mosaic tiles and put them on the wall, one by one. As the young boy watched he realized that it would take years to complete the castle and the craftsman would probably be dead before it was finished. His Dad said that the meticulous, time consuming labor of the worker will result in something so magnificent that it will be special and unique. The workers who lay foundations do not get much credit for the building. But, buildings will not stand without solid foundations.

Derek Bok's prediction is coming true. Our society's greatest opportunities lie in tapping human inclinations towards collaboration and compromise. Many dedicated lawyers and other professionals around the world truly believe the collaborative process is good for their clients, and that belief gives us assurance that the future of Collaborative Law is bright.

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** Adapted from an article originally published in Alternative Resolutions the newsletter of the State Bar of Texas Dispute Resolution Section.*