

AN ENTIRE NATION ENDORSES COLLABORATIVE LAW AS ITS FIRST OPTION, CONTINUING A TREND TOWARD ACCEPTANCE AROUND THE GLOBE

By Sherrie R. Abney*



Irish Republic President Mary McAleese

In May of this year, Mary McAleese, President of the Irish Republic, opened the Second European Collaborative Law Conference in Cork, Ireland, by stating that Ireland has endorsed Collaborative Law as its first choice for dispute resolution. Ireland's Attorney General and Minister of Justice also appeared at the conference and declared their support for the use of the collaborative process. Conference participants learned that in the future, Irish courts will encourage all parties to investigate the possibilities of settling their disputes with Collaborative Law before becoming involved in litigation.

Conference participants from the U.S. were particularly impressed by the President and other government officials' knowledge of Collaborative Law. Rather than giving a pat on the heads of the collaborative professionals for doing a "good job," President McAleese demonstrated an intimate knowledge of the collaborative process and related how she believes it will meet the needs of people facing difficult disputes. Certainly Ireland has known its share of disputes and controversies. Perhaps, for this reason, its government realizes the value of interest-based negotiation as a more-peaceable means of resolving problems than litigation.

Many Europeans who attended the conference were introduced to the civil collaborative process for the first time. A number of solicitors from Ireland, France, Austria, Holland, Switzerland, and the Czech Republic are now planning to start using Collaborative Law for business and commercial disputes. The United States, Canada, and Australia have already had success

in resolving disputes in several areas of civil law, and interest continues to grow as corporations seek to reduce litigation costs.

Companies doing business internationally are beginning to place clauses in their contracts stating that in the event of a dispute, the parties agree to consult a lawyer trained in Collaborative Law to investigate the feasibility of using the collaborative process prior to proceeding with litigation. The potential advantages of the collaborative process for international law are impressive. All issues regarding jurisdiction, scheduling, or choice of law may be resolved by the parties without court intervention. Given the fact that disputes may be settled in weeks or months instead of years or decades, companies are finding the collaborative process worthy of consideration.

In 2001, Texas was the first state to enact Collaborative Law legislation that allowed families to settle disputes on "an agreed basis without resorting to judicial intervention." Later attempts to expand the Texas statutes to include disputes in other areas of civil law have been vigorously opposed by the Texas trial lawyers' organizations. Objections have included claims that the collaborative process is unethical and creates conflicts of interest. However, the American Bar Association Standing Committee on Ethics and Professional Responsibility, in its Formal Opinion 07-447 issued August 9, 2007, put to rest all arguments and found there is no harm to clients who choose the collaborative process so long as the clients give

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“informed consent.” This simply means that collaborative lawyers should thoroughly explain the collaborative process and all other alternatives available for resolving disputes, so that clients have the opportunity to make an intelligent choice regarding the method of dispute resolution they wish to employ. Would that litigation lawyers be required to provide that same information before proceeding to the courthouse with their clients!

Supporters of Civil Collaborative Law have been joined by the Family Collaborative Law community and expect to approach the Texas Legislature once again in 2009 with a proposed statute that would provide the confidentiality and safety currently afforded to family litigants who elect the collaborative process.

The Dispute Resolution Section of the American Bar Association established a Collaborative Law Committee in February 2007 and appointed David Hoffman, a Boston attorney and former Chair of the American Bar Association’s Dispute Resolution Section, as chairperson. This committee is working to educate the judiciary, attorneys, and the public regarding the collaborative process.

The Uniform Law Commission is continuing work on a Uniform Collaborative Law Act, which is scheduled to be presented to the states for adoption in 2009. Leaders in the legal, academic, and business communities are recognizing that the collaborative process should be available for parties who are interested in an equitable, prompt method of dispute resolution.

Collaborative lawyers are quick to explain that the process is not for every lawyer, party, or dispute. Some people and situations are simply not candidates for the collaborative process and need the experience of litigation.

Since the collaborative process is voluntary, both parties must agree to participate or the process is not an option. If parties do not wish to be bound by a participation agreement (a contract setting out the participants’ agreement to abide by the collaborative process), those same parties may decide to use

Cooperative Law, which also utilizes interest-based negotiation but generally lacks the structure, focus, and promise to proceed honestly and in good faith found in the Collaborative Law participation agreement.

The Collaborative Law movement is growing in the United States from coast to coast. In June, the Attorney General’s Office in Thurston County, Washington conducted Collaborative Law training for over fifty lawyers. The Georgia State Bar has civil and family trainings scheduled in Atlanta for this fall and next year.

The International Academy for Collaborative Professionals has expanded its membership to include all areas of civil law. The next Forum will be held in New Orleans on October 18 and 19, 2008. A Pre-Forum Workshop for those interested in Civil Collaborative Law will be held October 17th. Those interested may go to www.collaborativepractice.com for details and registration forms. The Collaborative Law Section of the Dallas Bar Association and the Texas Collaborative Law Council will hold their 4th Annual Training September 17-19 in Dallas. Details regarding the Dallas training may be found at www.collaborativelaw.us. In May 2009, Australia will host its first International Collaborative Law Conference in Sydney.

There is a definite movement in the direction of a more peaceful, cost-effective, and friendly approach to dispute resolution. If you have not been trained in the collaborative process, you should get trained unless you are not interested in participating fully in the legal profession’s future.



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SUBMISSION DATES FOR UPCOMING ISSUES OF ALTERNATIVE RESOLUTIONS

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