

AVOIDING LITIGATION: A GUIDE TO CIVIL COLLABORATIVE LAW

By Sherrie R. Abney

Trafford Publishing, 2005,
www.trafford.com

Reviewed by Lawrence R. "Larry"
Maxwell, Jr.*

In the United States, unlike in most other countries in the world, litigation is generally the first option for resolving civil disputes. Ms. Abney's book describes a new and innovative first option. The collaborative process is a voluntary, non-adversarial approach to resolving civil disputes, which enables parties to settle their disputes privately with fair and equitable results. The author emphasizes that the process is voluntary and cannot be court-ordered. Ms. Abney reminds us that everyone has a right to be adversarial, and people cannot be forced to proceed honestly and in good faith.

The collaborative process is widely used in family law matters in the United States, Canada, and England. Ms. Abney's book is the first book published on the subject demonstrating that the process can be applied to resolving many civil disputes with the same success the process is experiencing in family law matters. With her experience in family law, the author is uniquely qualified to demonstrate that the process can work "outside of the family box."

The author does a superb job of explaining the paradigm shift that is required in order for lawyers and clients to transition from the litigation "blame game" to resolving disputes by focusing on the parties' interests and goals, freely exchanging information, and developing and evaluating options to arrive at a fair settlement. The charts comparing litigation and collaboration in the Appendices are enlightening.

The book gives the reader case studies based on actual cases, including a blow-by-blow description of a federal court case involving a large national bank and several individuals, followed by a theoretical analysis of how the case would



have played out if the parties had chosen to use the collaborative process.

If you are interested in the legislative process, you will be fascinated as the author describes the efforts of a group of lawyers to include a Collaborative Law Procedures bill in the Texas Civil Practices & Remedies Code. A copy of the bill is contained in the Appendices. We can only speculate as to why, for the past five years, trial lawyers have opposed a bill that will create uniformity throughout the state for a *voluntary dispute resolution process*.

For lawyers interested in incorporating Collaborative Law into their practices, the Appendices contain Protocols of Practice for Collaborative Lawyers, a Participation Agreement developed by the Texas Collaborative Law Council, and a list of Collaborative Law practice groups throughout the world.

This book is a must-read for every individual, family, business or organization that has ever been involved in a dispute, which includes just about all of us. As a lawyer who was involved in litigation for over forty years, I am working hard to make the paradigm shift. I believe the collaborative process is the business imperative of our time. The process captures the exponential power of cooperation.

Granted, some situations do arise when a final court order is necessary to end a dispute. However, we know that the most successful businesses and organizations are able to maintain relationships over the long run, which is not possible in the litigation "arms race." A dispute is a problem to be solved, not a battle to be won.

After reading Ms. Abney's book, you may discover that you have no interest in participating in the collaborative process because you cannot make that paradigm shift. But at least you will have an idea of how the process works, and you can use the information in dinner conversations. On the other hand, you may discover that you are a candidate for the collaborative process and are ready to be trained in the process.

* **Lawrence R. "Larry" Maxwell, Jr.** is an attorney, mediator, arbitrator and practitioner of collaborative law in Dallas. He is a co-founder and President of the Texas Collaborative Law Council, Inc., Vice-Chair of the newly established Collaborative Law Section, Past Chair of the ADR Section of the Dallas Bar Association, and a past President of the Association of Attorney-Mediators.

