

**NEW YORK
CITY BAR**

**COMMITTEE ON
ALTERNATIVE DISPUTE RESOLUTION**

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January 28, 2010

Via U.S. mail
Via email (stein@umn.edu)

Robert A. Stein
President, Uniform Law Commission
111 N. Wabash Avenue - Suite 1010
Chicago, Illinois 60602

RE: Uniform Collaborative Law Act

Dear Mr. Stein:

I serve as Chair of the Alternative Dispute Resolution Committee of the Association of the Bar of the City of New York ("the Association"). I write in that capacity to convey the views of the Association concerning the resolution to be voted on by the American Bar Association House of Delegates on February 4 concerning ABA approval of the Uniform Collaborative Law Act (UCLA). My letter goes to you as I understand that the Uniform Law Commission is the proponent of the resolution concerning the UCLA upon which the House of Delegates will be voting.

Upon the recommendation of the Alternative Dispute Resolution Committee, the Association has adopted a position supporting approval of the UCLA by the House of Delegates. Some words explaining the basis of the Association's position follow below.

Before discussing the benefits conferred by the UCLA, a brief description of Collaborative Law might be in order for possible readers of this letter who may still be unfamiliar with this relatively new but now widely utilized and respected dispute resolution process.

The process was first conceived in 1989 by Minnesota divorce lawyer Stuart Webb who was dissatisfied with how his clients were faring in court and in mediations. Since then it has not only come to be widely used in the United States and Canada but is also clearly beginning to gain acceptance abroad. New York alone now has hundreds of lawyers who have been trained in and are practitioners of Collaborative Law. Additionally, New York has been in the forefront of recognizing the value of a Collaborative Law approach in helping clients to resolve their disputes. Under the tenure of the Honorable Judith Kaye as Chief Judge of the New York Court of Appeals, New York became one of the first states to establish a publicly funded Collaborative Law Center. Moreover, although its use has primarily been in the family law area, there now seem to be clear indications of the expansion of Collaborative Law into other areas of civil law practice as well.

Prior to commencing a Collaborative Law proceeding, the parties and their lawyers sign a Participation Agreement which typically contains provisions calling for good faith negotiation, the sharing of relevant information, the use of joint experts, client participation in the negotiations, respectful communications, and the confidentiality of the negotiation process. An additional mandatory provision of these agreements is that the parties will refrain from seeking resolution of any disputed issues in court during the collaborative process. The breach of that provision triggers a requirement that the Collaborative Law attorneys withdraw and refrain from participating in the subsequent litigation.

Twenty years of experience with Collaborative Law – and thousands of cases using this technique – have demonstrated to practitioners and clients alike that Collaborative Law promotes interest-based, problem-solving negotiations which have often proved more advantageous and satisfactory for the clients than adversarial negotiations or proceedings.

But this expansion of Collaborative Law, which is still ongoing, has been accompanied by the rapidly proliferating adoption of court rules and statutes regarding its use. Their sometimes conflicting variations make this a particularly good time for the promulgation of the UCLA, before an extensive patchwork quilt of state laws develops.

After extensive consideration and review, the UCLA was approved in July, 2009, by a unanimous vote of the Uniform Law Commission (“ULC”). The ABA Section of Dispute Resolution, by unanimous vote of its Council, endorsed the UCLA shortly thereafter. Both the Section of Dispute Resolution and the Family Law Section of the ABA, which also thereafter endorsed the UCLA, are acting together with the Uniform Law Commission as its co-sponsors. The endorsement of the UCLA by the Association, and this letter urging others to join in supporting it, has been a result of the cogent reasons advanced by these sponsors for their support including, among others, the following:

Like mediation and other forms of alternative dispute resolution, Collaborative Law provides an important – and now well-established – settlement tool for lawyers. Tens of thousands of lawyers in the U.S. and in other countries have already utilized this tool, and many thousands of clients have benefited from that choice. As stated in the Prefatory Note of the UCLA, “experience to date indicates that Collaborative Law is a valuable dispute resolution

[option] for those parties who choose to participate in it with informed consent.”

Collaborative Law offers three important advantages in appropriate cases.

First, empirical data suggest that it saves the parties time and money, by focusing their attentions on settlement. With a settlement rate of more than 98% in civil cases filed in the United States, the parties in the vast majority of cases benefit from early and focused attention to the possibilities for settlement.

Second, in those cases where the parties will have some ongoing relationship, Collaborative Law avoids the animosity, antagonism, and aggravation of a public airing of the parties’ grievances. This is particularly helpful in those cases (such as divorces) where acrimony can boil over and harm children and other third parties. There are many business as well as family disputes that would benefit from the enhanced ability conferred by Collaborative Law to continue ongoing relationships. Even in those cases where there will be no ongoing relationship, the focus on settlement discussion instead of adversarial maneuvers can promote speedier and more satisfactory resolutions.

Third, by promoting an interest-based approach to settlement, the Collaborative Law process can, like mediation, generate creative options that serve the parties’ interests better than a court judgment, and produce results than can only be obtained by agreement. The confidentiality of the Collaborative Law process, which is protected (with appropriate exceptions) in the UCLA, promotes candor in settlements discussions in precisely the same way as in mediation.

The UCLA’s sponsors have been actively soliciting help in obtaining its passage because approval by the House of Delegates is not a foregone conclusion in view of opposition voiced by the ABA Section of Litigation. However, much of this opposition rests on ethical concerns which the sponsors have respectfully but persuasively rebutted with a thorough collation and analysis of ethics and other related rulings, including the Ethics Formal Opinion # 07-446 of the ABA Standing Committee on Ethics and Responsibility which concluded that the process is ethical as long as the “client has given his or her informed consent”— a requirement that the UCLA codifies. The sponsors have also set forth the following summary of the UCLA’s main points, which further serves to establish the value of the process in answer to its critics:

- Any party may withdraw from the Collaborative Law process at any time.
- Participants in a Collaborative Law process must make timely, full, and candid disclosure of all information relevant to the case (within parameters agreed upon in advance by counsel), and update that information throughout the case.
- Even while the Collaborative Law process is in effect, courts have the authority to issue emergency orders, if needed, to protect the health, safety, welfare or interests of a party.
- The attorney withdrawal provision is modified in a manner that enables governmental entities and low-income clients to continue to use firms or legal services organizations even if the case requires litigation.

- Collaborative Law attorneys must advise clients about alternatives, such as litigation, arbitration, and mediation, and must screen for instances of domestic violence or other coercive behavior.
- Participants in Collaborative Law negotiations are entitled to a privilege that is similar to the privilege accorded to mediation under the Uniform Mediation Act (which has been enacted in 11 states and introduced in 5 more).
- The UCLA acknowledges that standards of professional responsibility of lawyers and the obligations of lawyers and other licensed professionals to report abuse are not changed by their participation in the Collaborative Law process.

We concur with the conclusions of the UCLA's sponsors that Collaborative Law has become a well-established method of dispute resolution in the United States and many other countries around the world, that it serves important needs of clients and the public generally, including saving judicial resources for the cases that truly require litigation, and that the UCLA is a timely and useful statute whose passage would not only promote uniformity of the laws concerning Collaborative Law but also reassure the public that lawyers share their interest in developing more amicable, timely, and inexpensive methods of dispute resolution for use in appropriate cases. We therefore join them in urging the Sections and Divisions of the ABA, the state Delegates, and all other members of the ABA House of Delegates to support enactment of the UCLA.

Sincerely,



Peter H. Woodin

cc: John A. Sebert,
Executive Director
(via email: john.sebert@nccusl.org)