

Fact Sheet on the Uniform Collaborative Law Rules/Act

The Uniform Collaborative Law Rules and Act ("UCLR/A") will be presented to the ABA House of Delegates in February 2011 for approval. The UCLR/A was approved by vote of the Uniform Law Commission ("ULC") in July 2009 and the 2010 Amendments became official in June, 2010.

The 2009 version of the UCLR/A was presented to the ABA House of Delegates in February 2010, with the support of, among others, the ABA Section of Dispute Resolution, the Section of Individual Rights & Responsibilities, and the Family Law Section. The UCLR/A was opposed by the ABA Litigation Section, Young Lawyers Division, and the Judicial Division, and ultimately the ULC decided to withdraw the UCLR/A from consideration at that time.

Subsequent to the February 2010 meeting, the ULC amended the UCLR/A in three significant ways to address concerns raised at that meeting. These amendments logically required the renaming of the act to reflect its anticipated adoption by rule (hence, "UCLR/A").

(1) The ULC drafted court rules that mirror the statute, thereby giving states the explicit discretion to adopt the amended Act, or adopt court rules, or a combination thereof.

(2) States are provided with the explicit option of limiting application of the Rules/Act to matters arising under the family laws of a state.

(3) The final amendment provides that if a proceeding before a tribunal is already underway, the court retains discretion to grant a stay of that proceeding (and related calendaring matters) rather than the stay being automatically granted as a matter of law.

**Some basic facts:**

- Four states already have Collaborative Law statutes – California, North Carolina, Texas, and Utah. The UCLR/UCLA will prevent a patchwork quilt of court rules and statutes.
- The UCLR/A is supported by the Ohio Bar Association, Ohio Judicial Council, South Carolina Bar Association, Tennessee Bar Association Board of Governors, Vermont Bar Association Board of Managers, and the Association of the Bar of the City of New York, as well as the Family Law Sections of the Minnesota, New Mexico and Wisconsin Bar Associations and the ADR Sections of the Virginia and Wisconsin Bar Associations.
- The use of Collaborative Law was approved by the ABA Standing Committee on Ethics and Professional Responsibility (Formal Opinion #07-447 - "Ethical Considerations in Collaborative Law Practice").
- The ABA published the first text on Collaborative Law (Pauline Tesler, COLLABORATIVE LAW: ACHIEVING EFFECTIVE RESOLUTION IN DIVORCE WITHOUT LITIGATION) in 2001, with a second edition published by the ABA in 2009.
- Courts in California, Florida, Louisiana, Minnesota, Ohio, and Utah have promulgated rules providing for the use of Collaborative Law. Hon. Judith S. Kaye (ret.) of New York established the first court-based Collaborative Family Law Center in the U.S.
- Collaborative Law is practiced throughout the United States, every Canadian province, Australia, England, France, Germany, and at least 10 other countries
- Legal ethics opinions in at least nine states (Kentucky, Maryland, Minnesota, Missouri, New Jersey, North Carolina, Pennsylvania, Washington, and South Carolina) approve the use of Collaborative Law.

### **What is Collaborative Law?**

Collaborative law is a voluntary, contractually based alternative dispute resolution process for parties who seek to negotiate a resolution of their matter rather than having a ruling imposed upon them by a court or arbitrator. The parties agree that their lawyer's representation is limited to representing them solely for the purposes of negotiation, and that if the matter is not settled, new lawyers will be retained if the matter proceeds to litigation or arbitration.

The lawyers and the clients agree to engage in good faith negotiation, share relevant information, use of joint experts (if experts are needed), client participation in the negotiations, respectful communications, and the confidentiality of the negotiation process.

### **Benefits of Collaborative Law.**

The Collaborative Law process provides clients and lawyers with an option for amicable, non-adversarial dispute resolution. Like mediation, it promotes problem solving using interest-based negotiations and can result solutions that cannot be obtained in litigation or arbitration. As with the division of labor between solicitors and barristers, lawyers in a Collaborative case can focus solely on settlement.

**Why is the UCLR/A needed?** The UCLR/A will promote a more uniform approach to the development of Collaborative Law, and provides significant advantages compared the current reliance solely on individualized contracts, such as:

- Informed consent requirements for the clients and reasonable, clear, disclosures about the pros and cons of collaborative law versus other mechanisms of dispute resolution
- Practical guidelines and clear expectations for attorneys considering collaborative representation
- The availability of emergency orders by a court if they are needed
- Mandatory screening for domestic violence or other coercive behavior
- Appropriate limited exceptions for governmental entities and low-income clients
- A clearly enforceable evidentiary privilege (patterned on the Uniform Mediation Act previously approved by the ABA House of Delegates) applicable to collaborative communications
- Withdrawal at any time by any party to the Collaborative Law process.

The UCLR/A explicitly states that standards of professional responsibility of lawyers are *not* changed by their participation in the Collaborative Law process.

***For more information, please contact the co-chairs of the Collaborative Law Committee of the ABA Section of Dispute Resolution:***

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