SENATE JUDICIARY
Exhibit No. 5
Date: 2/23/15
Bill No. HB 272

SUMMARY OF HB 272 - ADOPTION OF UNIFORM COLLABORATIVE LAW ACT

Tal M. Goldin, Esq., Immediate Past-President, Western Montana Bar Association
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What is collaborative law: Collaborative Law is a straightforward, private, non-court process for resolving legal disputes. Each party is represented by an attorney. The process begins with an agreement signed by the participants to attempt to settle the matter without litigation or even the threat of litigation. The participants promise to take a reasoned stand on every issue, to share relevant information, and negotiate in good faith. The key to the process is: if either party starts a court case, both attorneys must withdraw from representation (with some exceptions). If that happens, the Collaborative Attorney helps his client transition to a new litigation attorney, but does not participate in the lawsuit. Participants also agree that the process is confidential; including any experts (such as accountants or mental health professionals) they mutually hire to help resolve the dispute.

Benefits of Collaborative Law:

- Allows voluntarily agreement to resolve the case out of court, through a private contract.
- Focuses parties on mutual interests, problem solving and exploring all possible solutions for resolution, including solutions that may not be available in court.
- Reduces conflict, minimizing the psychological, financial and social impact on the parties and their children.
- Saves time and money by keeping the case out of court and reduces caseloads in the courts.
- Protects parties' individual liberty to make personal choices about the family without government intervention.
- Highly effective: Almost 90% of family law cases are fully resolved, including 2% of cases where the parties reconcile the marriage. Compare to 50-70% settlement rate in other dispute resolution approaches.

The Uniform Collaborative Law Act (UCLA):

- Non-partisan law prepared over 3 year research and drafting period by Uniform Law Commission comprised of judges, lawyers, legislative personnel and academics from every state.
- Sets out minimum requirements for and protects the integrity of the process.
- Ensures process is voluntary. Prohibits anyone (including attorneys) from being forced to participate in the process.
- Ensures confidentiality is preserved and agreements are enforceable.
- Creates uniformity in the Collaborative Process amongst the states.
- Includes important protections for the process and the consumer.
- Ensures parties understand the risks, benefits and alternatives available.
- Ensures attorneys consider the appropriateness of the process for the particular case, including consideration of domestic violence issues.
- Requires attorneys and other professionals to comply with (and does not modify) their respective ethics requirements (e.g. Rules of Professional Conduct governing attorneys).
- Since 2009, the UCLA has been enacted in 11 jurisdictions: Alabama, District of Columbia, Hawaii, Maryland, Michigan, New Jersey, Nevada, Ohio, Texas, Utah, and Washington.

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June 10, 2014

Honorable Committee Members:

As a former client of a Collaborative Divorce, I was moved last year to testify on behalf of Washington State's adoption of the Uniform Collaborative Law Act (UCLA). I am now writing in support of Montana's adoption of the UCLA.

When my divorce began five years ago, I felt angry, betrayed and, thinking about my 1-year-old son sleeping peacefully upstairs, terrified. Suffice to say I was not feeling particularly cooperative towards my now former husband and, despite being an experienced mental health professional, I was not acting, or intending to act entirely reasonable. I agreed to use Collaborative Law at my husband's suggestion, and though I was not in agreement with divorcing, I am ever grateful for his choice to pursue the dissolution with Collaborative support.

The Collaborative process and skilled professionals provided me the support I needed to move from my stance of anger and distrust to one of engagement and willingness to work together to reduce the conflict and create a future vision for our new family. If we had chosen a different route, I am certain I would have used the legal process as a weapon and my lawyer as a proxy to vent my rage and fear against my former husband. It took me a long time and a lot of support to understand my "rights" were not necessarily the best foundation to chart the future of my family.

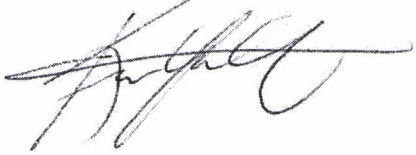
The Collaborative professionals skillfully guided me thought this process. Through transparency they assured me that the process was fair and with concrete skills they helped me to protect my own well-being and that of my child. They allowed me to grieve the loss of my dreams for my one-home family and create a new path towards a healthy future that was different, yes, but a more realistic and positive one that my family can benefit from for years to come.

As a mental health professional who has spent 17 years working to help children cope with conflict in their families, I find that Collaborative Law actually works to prevent the damage to daily life and family relationships typical in divorce and afford children and families the chance to thrive even in difficult circumstances. After my divorce, I became a Collaborative Child Specialist for this reason and am passionate about helping families create a positive future focus and develop skills that strengthen family bonds during and after the changes their families' experience.

If it were not for Collaborative Law, my former husband and I would not have gained a settlement that met the unique needs of our family and, most importantly, would not have been able to enjoy the past holidays together in peace and with warmth and support for each others new circumstances. Celebrating together with my former husband, his partner and their new baby, my parents and extended family has become our new tradition. If not for Collaborative Law, it may have happened eventually, but it may have taken years, during which my child and my family would have suffered.

As an experienced Licensed Mental Health Counselor I was persuaded by the benefits to my family and, combined with my professional experience with children and families in crisis, decided to become a part of the Collaborative Law profession as a Child Specialist. I heartily believe that our work in Washington State provides a viable option for divorcing couples that wish to challenge themselves to work together instead of deepening conflict. I hope that you can support parents in maintaining the stability and bonds of their family in the face of difficult change, and I hope you will support the Collaborative professionals who serve them at a time of great need by enacting the UCLA in Montana.

Sincerely, Kristin Little, Mom, LMHC



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Aug. 19, 2014

Law and Justice Interim Committee
Rep. Margaret Macdonald, Chair
63rd Montana Legislature
c/o Rachel Weiss, Lead Staff
PO Box 201706
Helena, MT 59620-1706

Dear Representative Macdonald;

The International Academy of Collaborative Professionals (IACP) is a 501 (c) (3) not-for-profit organization, representing an international professional community of more than 5,000 members, dedicated to the development of Collaborative Practice. The IACP Board of Directors writes to express its support for the Uniform Collaborative Law Act, recognizing that states will tailor the Act to meet each state's unique requirements.

In the more than twenty years since Collaborative Practice (also referred to as Collaborative Law) began, we have learned that the Collaborative Practice model is both robust and effective. Findings from a comprehensive IACP Survey indicate that approximately 88% of all cases settle in the collaborative process. These cases require no court involvement other than entering agreed orders. An IACP Survey of clients indicates high levels of client satisfaction with case outcomes, experience in the Collaborative Process and fees paid to professionals. Aside from survey results, the success of the Collaborative model is evidenced by the rapid growth of Collaborative Practice nationwide and around the world.

Collaborative Practice is designed to find solutions that maximize beneficial outcomes of the disputes for all parties. It is a "win win" approach. In divorce, the process supports parties in maintaining civility through the termination of marriage; in preserving positive, respectful interpersonal relationships; and in jointly minimizing collateral damage to the children. It involves full and voluntary disclosure of information, which helps to build trust between parties. Because the parties contract in advance to seek settlement and avoid litigation, both the atmosphere and the incentives of Collaborative Practice professionals are aligned to that end. Disqualification of the collaborative lawyers from pursuing subsequent litigation in the event a collaborative process fails is the crucial factor in achieving that result. This requirement encourages parties and counsel to "remain at the table" and resolve all issues when negotiations become challenging.

Enactment of the Uniform Collaborative Law Act by states will promote greater consistency and a more cohesive approach to the further development of Collaborative Law by codifying important features of this process, including the disqualification requirement for attorneys should the process terminate, the requirement of full and voluntary disclosure of information, and the confidentiality of communications occurring during the collaborative process. Experience has shown that the consequence of these provisions is that divorcing spouses are better able to focus on creating solutions for their futures due to greater support for transitioning out of marriage with civility, with far more attention given to the needs and interests of their children, and a stronger financial foundation for moving forward as a restructured family. The public will be well-served when professionals use the same basic definitions and standards for "Collaborative Law" across Montana and the nation.

Collaborative professionals in Montana who are IACP members have at their disposal a wealth of resources to support their successful work, including forms, publications, training and networking opportunities, and standards of practice and ethics. By all indications, we anticipate that Collaborative Practice will continue to grow and we believe will do so more effectively with state support through enactment of the Collaborative Law Act.

Montana is respectfully urged to take its place among the other states that enacted the Uniform Collaborative Law Act, recognizing and adding robustness to this highly effective voluntary dispute resolution process. IACP believes that Collaborative Practice serves the public in a unique and highly effective manner. We encourage you to make this option more readily available to the citizens of Montana.

Respectfully submitted on behalf of the IACP Board of Directors,

Talia L. Katz, JD
Chief Executive Officer

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June 13, 2014

Law and Justice Interim Committee
63rd Montana Legislature
c/o Rachel Weiss, Lead Staff
PO Box 201706
Helena, MT 59620-1706

Re: *SJ 22 — Uniform Collaborative Law Act (UCLA)*

Honorable Committee Members:

I write this letter in support of enactment of the Uniform Collaborative Law Act in Montana.

For identification purposes only, I formerly served as Chairperson of the Family Law Section of the Washington State Bar Association, and as Secretary-Trustee of the King County Bar Association. I am a Fellow of the American Academy of Matrimonial Lawyers and currently serve as a Board Member of the International Academy of Collaborative Professionals. I write this letter as an individual and not on behalf of any organization.

I have practiced Family Law in the State of Washington since 1987, having practiced conventional family law for nearly two decades prior to shifting my practice primarily to Collaborative Law. I started practicing Collaborative Law in 2003, and since 2007 about 90% of my full-time practice has been as a Collaborative Law attorney.

Since its initial development in 1990, Collaborative Law is today practiced throughout North America, and has spread to Europe, Asia, and Australia. The process offers the opportunity for divorcing parties to work together to solve a common problem—how to create two functional post-divorce families. I am convinced that the Collaborative Law process is the most compassionate and durable way for lawyers to help families in divorce, especially those with children.

As a practicing family law attorney, I have personally witnessed the value of the Collaborative Law process for my clients. I have often seen divorcing parties arrive at durable solutions for their families in Collaborative Law cases. Compared to conventional practice, the contrast is stark—the level of entrenchment and resentment that is so routine in divorce, is the exception in Collaborative cases.

Collaborative Law allows parties and lawyers to focus their efforts on problem-solving without the distraction or risk of possible imminent court proceedings. The Uniform Collaborative Law Act contains provisions that are important to the Collaborative Law process and the public including:

- Confidentiality for the Collaborative Law process.
- A stay of judicial proceedings during the process, similar to the stay in the Uniform Arbitration Act.
- Privilege for Collaborative Law communications, which can only be provided by statute.
- Consumer protection by providing a statutory definition for Collaborative Law, thereby avoiding confusion of the public.
- Advancing the public policy of having parties resolve disputes themselves without the need for judicial resources.

I urge you to support enactment of the Uniform Collaborative Law Act in Montana.

Sincerely yours,

LAW OFFICE OF J. MARK WEISS, P.S.

J. Mark Weiss
Attorney at Law

LEX

WESTERN MONTANA BAR ASSOCIATION

P.O. Box 7451, Missoula, MT 59807

June 26, 2014

Law and Justice Interim Committee
63rd Montana Legislature
c/o Rachel Weiss, Lead Staff
PO Box 201706
Helena, MT 59620-1706

Re: *SJ 22 — Uniform Collaborative Law Act (UCLA)*

Honorable Committee Members:

We write to urge the enactment of the UCLA in Montana. The UCLA is a uniform law that codifies a formal alternative dispute resolution (ADR) process known as collaborative law practice (Collaborative Law).

Collaborative Law is a voluntary, contractually based ADR process for parties wishing to negotiate a mutually beneficial resolution to a legal problem and avoid having a resolution imposed upon them by the win-lose adversarial court system. Collaborative Law is distinguished from other forms of mediation and the traditional litigation approach in several critical ways:

- Collaboratively trained attorneys represent each party throughout negotiations;
- Collaboratively trained subject matter specialists, such as accountants and mental health professionals, serve as neutral advisors and coaches either as an integral part of the collaborative team or on an as needed basis;
- The parties and their attorneys sign a participation agreement agreeing to participate in the Collaborative Law process in good faith; to fully disclose pertinent information; to mutually explore available options for resolution; and not to use litigation or the threat of litigation during the Collaborative Law process;
- Collaborative law attorneys limit the scope of their representation to negotiations only and agree not to engage in litigation or the threat of litigation except in specific emergencies defined in the UCLA.
- Under the UCLA, parties cannot be court ordered to participate in Collaborative Law.

Over the past 20 years, Collaborative Law has emerged and matured as an important ADR tool. Collaborative Law enhances traditional mediation's focus on meeting the mutual interests of parties by ensuring each party benefits from the advice of legal counsel and neutral specialists while exploring mutually beneficial solutions in an open environment where the focus is on collaborative problem solving rather than mitigating the risks associated with litigation.

Because the focus is on reaching mutually beneficial solutions, research indicates Collaborative Law increases parties' satisfaction with the legal process while decreasing the personal and systemic burdens of litigation—both in the initial case and in later proceedings to enforce or modify unsatisfactory resolutions reached through traditional legal approaches. Moreover, Collaborative Law is effective in maintaining continuing relationships between the parties after the legal matter is concluded.

Collaborative Law as codified in the UCLA addresses many of systemic problems and goals identified in SJ 22. The UCLA is currently adopted in 9 states and was introduced in seven other states in 2014. Several other states have statutes codifying Collaborative Law outside the UCLA. While Collaborative Law is not limited to family law matters, and is effective in many areas where the parties will have a continuing relationship at the conclusion of the matter, it is most commonly employed in the family law context. In contrast to the adversarial court system, using Collaborative Law in family law matters:

- Reduces, rather than increases, conflict;
- Assists the parties in understanding effective methods for resolving future conflict and avoiding litigation;
- Reduces the potential of contentious litigation for causing harmful psychological effects on children and draining the financial and emotional resources of all involved;
- Eases the caseload of overburdened courts by minimizing contested matters both in initial disputes and in subsequent enforcement or modification actions.

The UCLA was approved by the Uniform Law Commission (ULC) in 2009 and amended in 2010. The ULC, now over 120 years old, is a national organization of attorneys appointed by U.S. state and territorial governments to research, draft, and promote enactment of uniform state laws that are well-conceived, carefully drafted and non-partisan. Members of the ULC are drawn from the practicing bar, the judiciary, the legislature, legislative staff and law professors. ULC Uniform Laws have been widely adopted in Montana, including the Uniform (now Model) Marriage and Divorce Act, the Uniform Probate Code, the Uniform Commercial Code and many others. Adoption of uniform laws is particularly beneficial in states like Montana, with less developed bodies of case law. Uniform laws allow Montana courts, attorneys, and parties to obtain guidance from other courts' interpretations of uniform provisions where Montana courts have not examined an issue.

The UCLA provides important benefits to the public, parties, the courts and attorneys. The UCLA codifies the minimum requirements of a collaborative law participation agreement; provides guidance for determining the appropriate use of the collaborative process; sets out clear rules to guide attorneys and clients on the mechanics of this limited-scope practice; ensures information exchanged in the collaborative process is kept confidential except as otherwise discoverable; requires timely, candid and full disclosure of information related to the matter without formal discovery; and disqualifies collaborative attorneys from participating in litigation if the matter is not resolved in the collaborative process. The UCLA also provides screening mechanisms and guidelines for cases involving coercive or violent relationships.

Adoption of the UCLA in Montana is a significant step toward addressing the issues identified in SJ22. The UCLA enables parties to utilize Collaborative Law to resolve disputes outside the

adversarial system in a process focused on each party's interests through the exploration of mutually beneficial solutions. We strongly urge the honorable members of this Committee to recommend the UCLA for enactment in the 64th Legislature.

Sincerely,

The Western Montana Bar Association Executive Board

By: _____
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District Court Judge, Montana 7th Judicial District

/s/ Stephan Edwards
Executive Director, Community Dispute Resolution Center of Missoula County

/s/ Kimberly Parrow
Volunteer Coordinator, Community Dispute Resolution Center of Missoula County

Note: The signatories above sign in their individual capacity except where noted. Unless noted, titles of individual signatories are given for reference only and do not indicate consent or support of the organization or agencies with which the signatories are associated.