NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS

REPORT TO THE HOUSE OF DELEGATES

RECOMMENDATION

RESOLVED, That the American Bar Association approves the Uniform Collaborative Law Act, promulgated by the National Conference of Commissioners on Uniform State Laws in 2009, as an appropriate Act for those states desiring to adopt the specific substantive law suggested therein.

REPORT

Uniform Collaborative Law Act

A Summary

and

***F**requently-**A**sked **Q**uestions*

The Uniform Collaborative Law Act was promulgated by the Uniform Law Commission in 2009 because of the need for a comprehensive statute addressing the practice of collaborative law. Collaborative law is a voluntary, client-driven form of alternative dispute resolution practiced in all 50 states. However, existing state statutes vary in length and complexity. Collaborative law has been widely used in family law cases, but is beginning to be used in other types of cases, such as insurance disputes or disputes between members of closely held businesses. Although collaborative law is not appropriate for all disputes, its increased use as a dispute resolution mechanism calls for consistency between state law regarding collaborative agreements.

The Uniform Collaborative Law Act standardizes the most important features of collaborative law that protects consumers, prevents lawyers from engaging in unethical practices, and creates rules covering disclosure of information and evidentiary privilege. The main provisions of the Uniform Collaborative Law Act are as follows:

- The Uniform Collaborative Law Act provides consistency from state to state regarding the enforceability of collaborative law agreements**.** This consistency is important for parties that may choose collaborative law as a process to resolve interstate disputes.

- The Uniform Collaborative Law Act establishes minimum requirements for collaborative law participation agreements**.** These requirements include written agreements that state the parties' intention to resolve their dispute through the collaborative processes, description of the matter, and designation of collaborative lawyers.

- Consistent with the Formal Opinion (07-447, issued in August 2007) of the ABA Standing Committee on Ethics and Professional Responsibility, the Uniform Collaborative Law Act requires the informed consent of each client prior to executing a collaborative agreement, including an assessment of the appropriateness the process with respect to a particular client and dispute, and disclosures about the relative strengths of other forms of dispute resolution.

- The Uniform Collaborative Law Act gives specific instruction on when and how the collaborative process begins and concludes.

- The Uniform Collaborative Law Act codifies the disqualification requirement for collaborative lawyers if the collaborative process concludes. The disqualification requirement is a fundamental characteristic of the collaborative process.

- The Uniform Collaborative Law Act modifies the disqualification rule for lawyers representing low income clients or government parties. As a result, the Act allows legal aid offices, firms providing pro bono services, and law school clinics to continue representation of the low income client even if the collaborative process fails. By modifying the disqualification rule, the act assures that low income and government parties have access to this form of dispute resolution without detrimentally affecting their future ability to obtain legal services.

- The Uniform Collaborative Law Act directs lawyers to advise clients about alternatives (such as litigation, arbitration, and mediation), mandates that the lawyers screen for instances of domestic violence or other coercive behavior, and orders the lawyer to assess whether a collaborative law process is appropriate for the client's case with the prospective client

- The Uniform Collaborative Law Act creates a privilege for communications during the collaborative law process that would not be otherwise be available or could vary when a dispute crosses state lines.

The Uniform Collaborative Law Act
Frequently Asked Questions

In July 2009, the Uniform Law Commission approved the Uniform Collaborative Law Act (UCLA). The UCLA is the result of a 3 year drafting process that called upon the expertise and experiences of a wide variety of individuals. Various American Bar Association entities considered and commented upon the final draft. These entities included the Section of Family Law, Section of Alternative Dispute Resolution, Section on Litigation, the Standing Committee on Ethics and Professional Responsibility, and the ABA Commission on Domestic Violence. The final act incorporates the distinctive features of collaborative practice into a stand-alone statute that is both ethical and practical for states to enact.

It is important to point out that the UCLA creates a nationally uniform statutory framework in which collaborative law can be ethically practiced, but does not mandate the use of the collaborative law process in ***any*** specific situation or dispute. The UCLA specifically prohibits any person from being ordered into collaborative law over that person's objections. It also contains detailed provisions to insure that a party enters into collaborative law with informed consent, including a comparison of collaborative law with other dispute resolution options. Parties and their attorneys remain free to choose other dispute resolution mechanisms (including traditional litigation). The approval of the UCLA by the ABA House of Delegates would be approval of the statutory framework contained therein for states wishing to adopt such a policy – it would not mean the approval by the ABA of collaborative law as a preferred practice or a recommendation that collaborative law principles be used in any particular situation.

WHAT IS COLLABORATIVE LAW?

Collaborative law is a form of alternative dispute resolution that developed over 20 years ago in Minnesota. Since its initial use in Minnesota, the practice has spread to all 50 states, as well as Canada, England, Ireland and Australia. Roughly 22,000 lawyers have been trained for collaborative practice, a number that continues to grow as more clients seek out alternatives to the traditional adversarial approach.

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 distinctive feature of collaborative law as compared to other forms of alternative dispute resolution such as mediation is that parties are represented by lawyers ("collaborative lawyers") during negotiations. Collaborative lawyers do not represent the party in court, but only for the purpose of negotiating agreements. The parties agree in advance that their lawyers are disqualified from further representing parties by appearing before a tribunal if the collaborative law process ends without complete agreement ("disqualification requirement"). Parties thus retain collaborative lawyers for the limited purpose of acting as advocates and counselors during the negotiation process. Studies indicate high levels of success in this form of alternative dispute resolution and high client satisfaction. Because the parties agree in advance to seek settlement and avoid litigation, both the atmosphere and the incentives

of the collaborative process are aligned to that end. Disqualification of the collaborative process attorneys from pursuing subsequent litigation in the event a collaborative process fails is an important factor is achieving that result.

WHY DRAFT A UNIFORM COLLABORATIVE LAW ACT?

The Joint Editorial Board on Uniform Family Laws (JEB-UFL) recommended that the Uniform Law Commission draft a statute to address this developing area of law. The JEB-UFL members include representatives of the Uniform Law Commission, the ABA Section on Family Law, and the American Academy of Matrimonial Lawyers. The JEB-UFL noted that despite textbooks published by the ABA, court rules allowing for collaborative practice, and canons provided by local collaborative associations, the statutes and rules governing its practice vary in length and complexity, or did not exist at all. The lack of national standards created variance in the practice, leaving some lawyers to practice collaborative law in a manner that could contravene the traditional duties and responsibilities of lawyers. Without clear standards, the chance that a lawyer unknowingly commits malpractice during a collaborative agreement increases significantly.

The UCLA is the most comprehensive statutory framework developed to date for collaborative law. By enacting the UCLA, states will guarantee that when collaborative law is being practiced, it is done so under a framework that protects the interests of both the client and the lawyer.

IS COLLABORATIVE LAW ETHICAL?

The ABA Standing Committee on Ethics and Professional Responsibility explicitly deemed collaborative law as an ethical practice of law in Formal Opinion 07-447, issued in August 2007. The Committee issued its formal opinion in response to a Colorado Ethics Opinion that found it was "unethical" for the collaborative lawyers to sign the participation agreement as "parties". The Colorado Opinion left open, however, the option of the clients agreeing to collaborative law without the lawyers signing the agreement.. It is of note that in addition to the ABA, eight states have issued ethics opinions deeming collaborative law ethical.

According to the ABA Standing Committee on Ethics and Professional Responsibility, collaborative law is ethical as long as:

"[b]efore representing a client in a collaborative law process, a lawyer [advises] the client of the benefits and risks of participation in the process. If the client has given his or her informed consent, the lawyer may represent the client in the collaborative law process. A lawyer who engages collaborative resolution processes still is bound by the rules of professional conduct, including the duties of competence and diligence."

Throughout the drafting process, ABA advisors from the Section of Family Law, Section of Litigation, and Section of Alternative Dispute Resolution reviewed the language with special attention to the ABA Ethics Opinion. Moreover, the ABA Standing Committee on Ethics and Professional Responsibility commented on several sections, resulting in language more compliant with the Ethics Opinion. As a result of these comments, the Act comports with the

ABA Ethics Opinion and mandates essential elements of disclosure and discussion between prospective parties in order to guarantee that all parties enter into the collaborative agreement with informed consent. Additionally, the Act mandates that the collaborative agreement contains the disqualification and voluntary disclosure of information that are essential to the collaborative process.

At the time of approval by the Uniform Law Commission, all ABA advisors were unanimous in their belief that the Act is true to the 2007 Ethics Opinion.

WILL THE UCLA CHANGE MY PRACTICE?

Collaborative law is a 100% voluntary practice, for both the parties and lawyers involved.

Some lawyers may see collaborative practice as antithetical to the traditional adversarial role of a lawyer as litigator. However, many attorneys choose to focus their efforts on acting as a counselor to their clients, an approach which also has a long tradition in American practice. Just as one lawyer may choose to practice only in a mediation setting over more the traditional practices of transactional law or litigation, collaborative lawyers devote their time and their professional skills to the non-judicial resolution their client's disputes. The UCLA does not diminish the duties of loyalty and zealous representation that are common throughout all practices of law.

Again, **nothing in the UCLA mandates a lawyer to enter into a collaborative agreement**. Lawyers and firms that have concerns regarding the possibility of disqualification can refrain from entertaining the collaborative practice in its entirety. In addition, by having a nationally standard model to draw from, all attorneys will be better able to explain the benefits and limitations of a collaborative law approach when asked by clients.

WHY DOES THE ACT ALLOW FOR COLLABORATIVE PRACTICE IN NON-FAMILY LAW SITUATIONS?

Currently, it is estimated that 90 percent of collaborative cases arise out of family law disputes. However, collaborative law, like other forms of alternative dispute resolution, is driven by the demands and preferences of the marketplace. The use of collaborative law has spread to other areas of practice, as parties seek to resolve their disputes privately and without the enmity that litigation can bring.

Collaborative law is particularly favorable for non-family law disputes where privacy and maintain ongoing relations is important, as is the case in many business and commercial disputes, or in the division of estates, disputes involving closely held family businesses, employment disputes, construction and real estate disputes, and sexual harassment claims.

The Uniform Law Commission understands that collaborative law may not be suited for certain disputes. Therefore, its use is not mandated in any context. It exists as an option for those individuals, businesses and non-profit entities that believe, after close consultation with their lawyer, that it would be useful under the circumstances of their dispute. As the use of

collaborative law expands beyond family disputes, prudence dictates that the statute be broad in nature, as the situations in which parties may choose collaborative law cannot be predicted. No other ADR process is limited to a particular subject matter, and it would be very difficult to define "family law" for purposes of a workable subject matter limitation.

WHY DOES THE UCLA REQUIRE A LAWYER TO INQUIRE INTO POTENTIAL VIOLENCE OR COERCIVENESS IN A REALTIONSHIP?

The issues related to abuse were added as Section 15 of the UCLA at the request of the ABA Commission on Domestic Violence. The Drafting Committee was mindful of the Commission's comments and sought to assure the safety of victims of domestic violence who are prospective parties in collaborative law. Although the application of this Section will occur mainly in the family law context, coercive relationships in other situations may limit the effectiveness of the collaborative approach. Coercion may arise in relationships between members of a closely held family business or in employment situations. Therefore, collaborative lawyers should inquire into all circumstances related to the dispute and participate in the collaborative process only if there is no longer a threat of coercion of violence.

WHY IS THE DISQUALIFICATION REQUIREMENT MODIFIED FOR LOW INCOME OR GOVERNMENTAL AGENCIES BUT NOT OTHER FIRMS?

Section 10 of the Act modifies the disqualification rules for lawyers in law firms that represent low-income clients without a fee. The goal of the modified rule is to provide low-income individuals with access to collaborative practice without limiting their ability to receive any legal services in situations where the parties are unable to resolve their dispute in the collaborative process. In order for representation to continue, all parties to the collaborative agreement must consent to the departure from the disqualification rule, and in any adversarial proceeding the collaborative lawyer must be screened from further participation in any matters related to the initial collaborative matter. The UCLA draws heavily from the ABA Model Rules of Professional Conduct, which make similar accommodations for the needs of low-income parties by exempting non-profit legal firms from imputed disqualification rules applicable to other law firms (See Rule 6.5).

The exception for governmental entities in Section 11 of the UCLA follows the treatment of government agency attorneys under rule 1.11 of the Model Rules. Without such an exception, in the event that a collaborative process went on to litigation all lawyers in an government office would be disqualified from further representation. Subject to additional restrictions and disclosures (specifically advance consent of all parties to the continued representation and the screening of the individual collaborative lawyer from further participation in it and related matters), the policy choice of the drafting committee was to encourage the use of collaborative law by governmental agencies for resolving disputes.

IS THE UCLA LEGISLATING LEGAL ETHICS?

The UCLA does not change the rules of professional responsibility. Section 13 of the Act acknowledges that the standards of professional responsibility or lawyers are not changed by

their participation in the collaborative process. Rules of professional responsibility are canonized by court rule and not legislation. The UCLA does not set any special training requirements for lawyers who practice collaborative law, nor does it limit the practice of law to one group of lawyers or another. Many state ethics committees have supported the concept of collaborative law. Further, similar alternative dispute resolution acts, such as the Uniform Mediation Act and the Uniform Arbitration Act, have not been contested for 'legislating ethics' despite containing language similar to that found in the UCLA.

HOW DOES THE COLLABORATIVE LAW PROCESS AFFECT NORMAL CASE MANAGEMENT?

Collaborative law is designed to find solutions that maximize the outcome of the dispute for all parties. To this end, collaborative practice requires a stay of proceedings, such as pretrial conferences, trial conferences, and discovery hearings, once a notice of collaborative law is filed, lifted automatically when CL terminates. There is also an emergency order exception to the stay.. Collaborative practice takes cases off of the normal court docket, allowing a fuller exploration of possible solution to a dispute while also allowing courts to attend to other disputes more expediently.

HOW DOES THE UCLA ENCOURAGE VOLUNTARY DISCLOSURE?

The act generally requires parties to "make timely, full, candid, and informal disclosure of information related to the collaborative matter without formal discovery" and to "update promptly previously disclosed information that has materially changed."

Voluntary disclosure of information is a hallmark of collaborative law. Participation in ADR processes like collaborative law typically does not include the authority to compel one party to provide information to another. A collaborative law participation agreement typically requires timely, full, candid and informal disclosure of information related to the collaborative matter. Voluntary disclosure helps to build trust between the parties, a crucial prerequisite to a successful resolution of the collaborative matter. Similar requirements have been established for parties in mediation.

The obligation of voluntary disclosure imposed on parties to a collaborative law process reflects a trend in civil litigation to encourage voluntary disclosure without formal discovery in the hope of encouraging careful assessment and settlement. Federal Rule of Civil Procedure 26(a), for example, requires that a party to litigation disclose names of witnesses, documents, and computation of damages "without awaiting a discovery request." The Federal Rules of Civil Procedure also require parties to supplement or correct a discovery response without request of the other side if "the party learns that in some material respect the disclosure or response is incomplete or incorrect, and if the additional or corrective information has not otherwise been made known to the other parties during the discovery process or in writing . . . ." FED. R. CIV. P. 26(e)(1). Many states impose similar obligations on parties.

The act does not specify sanctions for a party who does not comply with the requirements of section 12. The drafters felt that any attempt to do so would require the act to define "bad faith"

failure to disclose. The result would be the opposite of what the act seeks to encourage- more resolution of disputes without resort to the courts. Court would have to hold contested hearings on whether party conduct met it definition of bad faith failure to disclose before awarding sanctions. Such adversarial contests would also require evidence to be presented about what transpired during the collaborative law process which, in turn, would require courts to breach the privilege - and the policy of confidentiality of collaborative law communications - that the UCLA seeks to create.

It is important to remember that a party can unilaterally terminate collaborative law at any time and for any reason, including failure of another party to produce requested information. Thus, if a party wishes to abandon collaborative law in favor of litigation for failure of voluntary disclosure, the party is free to do so and to engage in any court sanctioned discovery that might be available.

Moreover, nothing in the ULCA changes the standards under which agreements or settlements that result from a collaborative law process are approved by a tribunal, or can be reopened or voided because of a failure of disclosure. Those standards are determined by law other than the act. Relevant doctrines such as fraud, constructive fraud, reliance, disclosure requirements imposed by fiduciary relationships, disclosure of special facts because of superior knowledge and access to information are not affected by the act. Courts can order settlement agreements voided or rescinded because of failure of disclosure in appropriate circumstances

Many states, for example, mandate compulsory financial disclosure in divorce cases even without a specific request from the other party. Resolution of divorce disputes in such states without these mandated disclosures would create a risk of a malpractice action against a collaborative lawyer who advised a party to accept such a settlement. It would also be surprising if courts approved agreements in settlement of particular kinds of matters such as divorce, infants' estates, or class actions without the kind of pre agreement disclosure typical for such matters.

HOW DOES THE UCLA HANDLE ISSUES OF INFORMED CONSENT

The Act places specific obligations on a collaborative lawyer which must be fulfilled prior to the signing of a participation agreement. The lawyer is required to discuss with a prospective client factors which the lawyer reasonably believes relate to the appropriateness of the matter for the process, and provide sufficient information for a prospective client to make an informed decision about the material benefits and risks of the process as compared to the material benefits and risks of other reasonably available processes, such as litigation, arbitration, mediation or expert evaluation. The UCLA sources its language on this subject directly from the 2007 ABA Formal Ethics Opinion. The Act stresses the need for attorneys to provide clear and impartial descriptions of the options available to the party prior to deciding upon a course of action. The UCLA ensures that clients will be properly informed before entering into a participation agreement. The UCLA fully comports with any and all requirements concerning ensuring informed consent.

The ABA Model Rules - Terminology - Rule 1.0 [e] defines informed consent: *"(It) denotes the agreement by a person to a proposed course of conduct after the lawyer has communicated adequate information and explanation about the material risks of and reasonably available alternatives to the proposed course of action."*

DOES THE UCLA CREATE A SPECIAL PRIVLEGE FOR COLLABORATIVE COMMUNICATIONS?

Protection for confidentiality of communications in the process is central to collaborative law. Parties may enter collaborative law without fear that what they say during collaborative law sessions may be used against them in later proceedings. Without assurances that communications made during the collaborative law process will not be used to their detriment later, parties, collaborative lawyers and non party participants such as mental health and financial professionals will be reluctant to speak frankly, test out ideas and proposals, or freely exchange information. Undermining the confidentiality of the process would impair full use of collaborative law.

The UCLA creates privileges for collaborative law communications in legal proceedings, where it would otherwise either not be available or not be available in a uniform way across the states. The language governing the issues of privilege for communications made in the collaborative law process is similar to the privilege provided to communications during mediation by the Uniform Mediation Act. This privilege is not absolute – it has exceptions for violence, to defend against malpractice, etc.

The UCLA also provides for a broad prohibition on later disclosure of communications made within the collaborative law process in the legal process, making those communications inadmissible for any purpose other than those specified in the act. For example, communications by any other participant in the collaborative law process such as jointly retained experts.

Privilege

Section 17 creates a broad evidentiary privilege for parties= communications in the process, drawing on the purpose, rationale and tradition of the attorney-client privilege. The Act also creates a privilege for a a non-party participant for their communications in the process. Extending the privilege to non-parties, such as professional counselors, financial and other experts, seeks to facilitate the candid participation of experts and others who may have information and perspective that would facilitate resolution of the matter in the process. ***Section 18*** provides that the party and non-party privilege may be waived, if agreed to in writing by all parties.

Section 19 sets forth specific and exclusive exceptions to the broad grant of privilege provided for communications in the process. The exceptions are based on limited but vitally important values such as crime prevention, protecting against bodily injury and abuse, information available under Open Records Act and the right of someone to respond to accusations of professional misconduct. Also, parties may present evidence in a subsequent proceeding to determine whether the terms of a settlement agreement made in the process have

been breached.

As with other privileges, when it is necessary to consider evidence in order to determine if an exception applies, the Act contemplates that a tribunal will hold an *in camera* hearing to determine if the claim for exemption from privilege can be confidentially asserted or defended.

The work of the Drafting Committee is available at www.nccusl.org, the website of the Conference.

Respectfully submitted,

Robert A Stein
President
National Conference of Commissioners
On Uniform State Laws
February, 2010

GENERAL INFORMATION FORM

Submitting Entity: National Conference of Commissioners on Uniform State Laws

Submitted by: Michael Kerr, Legislative Director

1. Summary of Recommendation(s)

   The National Conference of Commissioners on Uniform State Laws requests approval of the Uniform Collaborative Law Act by the ABA House of Delegates. The Act was approved by the National Conference in 2009.

2. Approval by Submitting Entity

   The National Conference of Commissioners on Uniform State Laws approved it in July, 2009.

3. Has this or a similar recommendation been submitted to the House or Board previously?

   No

4. What existing Association policies are relevant to this recommendation and how would they be affected by its adoption?

   The ABA Standing Committee on Ethics and Professional Responsibility explicitly deemed collaborative law as an ethical practice of law in Formal Opinion 07-447, issued in August 2007. The Committee issued its formal opinion in response to a Colorado Ethics Opinion that found it was "unethical" for the collaborative lawyers to sign the participation agreement as "parties". The Colorado Opinion left open, however, the option of the clients agreeing to collaborative law without the lawyers signing the agreement.. It is of note that in addition to the ABA, eight states have issued ethics opinions deeming collaborative law ethical.

   According to the ABA Standing Committee on Ethics and Professional Responsibility, collaborative law is ethical as long as:

   "[b]efore representing a client in a collaborative law process, a lawyer [advises] the client of the benefits and risks of participation in the process. If the client has given his or her informed consent, the lawyer may represent the client in the collaborative law process. A lawyer who engages collaborative resolution processes still is bound by the rules of professional conduct, including the duties of competence and diligence."

Throughout the drafting process, ABA advisors from the Section of Family Law, Section of Litigation, and Section of Alternative Dispute Resolution reviewed the language with special attention to the ABA Ethics Opinion. Moreover, the ABA Standing Committee on Ethics and Professional Responsibility commented on several sections, resulting in language more compliant with the Ethics Opinion. As a result of these comments, the Act comports with the ABA Ethics Opinion and mandates essential elements of disclosure and discussion between prospective parties in order to guarantee that all parties enter into the collaborative agreement with informed consent. Additionally, the Act mandates that the collaborative agreement contains the disqualification and voluntary disclosure of information that are essential to the collaborative process.

5. What urgency exists which requires action at this meeting of the House

Not applicable.

6. Status of Legislation (If applicable.)

As of the submission of this report, the Uniform Collaborative Law Act has not been enacted in any state legislature.

7. Cost to the Association (Both direct and indirect costs.)

None.

8. Disclosure of Interest (If applicable.)

None.

9. Referrals

Pursuant to the agreement between the NCCUSL and the ABA, all members of the House of Delegates and Chairs of all ABA entities were advised of the drafting project and those that expressed interest were provided with tentative drafts, as well as the final Act and Report. The work of the Drafting Committee is available at www.nccusl.org, the website of the Conference.

The ABA Advisor for the Uniform Collaborative Law Act was Carlton Stansbury of the Family Law Section. Lawrence Maxwell, Jr. was the Alternative Dispute Resolution Section Advisor. Charla Bizios Stevens was the Litigation Section Advisor. Gretchen Walther was the Family Law Section Advisor.

The Uniform Collaborative Law Act has been referred for review to several sections and divisions, including the Sections of Family Law and Litigation. As of November 17, 2009, the UCLA is being supported by the Sections of Dispute Resolution, Family Law, and Individual Rights and Responsibilities.

10. Contact Person (Prior to the meeting.)

John A. Sebert, Executive Director, National Conference of Commissioners on Uniform State Laws, 111 North Wabash, Suite 1010, Chicago, IL. 60602, 312/450-6603

Michael R. Kerr, Legislative Director, National Conference of Commissioners on Uniform State Laws, 111 North Wabash, Suite 1010, Chicago, IL. 60602, 312/450-6620

11. Contact Person. (Who will present the report to the House.)

Robert A Stein, President, National Conference of Commissioners on Uniform State Laws, University of Minnesota Law School, 229 19th Ave. S., Minneapolis, MN 55455
Cell: 612-812-1612.

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EXECUTIVE SUMMARY

1. Summary of the Recommendation

   That the ABA approves the Uniform Collaborative Law Act promulgated by the National Conference of Commissioners on Uniform State Laws in 2009, as an appropriate Act for those states desiring to adopt the specific substantive law suggested therein.

2. Summary of the issue which the recommendation addresses

   The Uniform Collaborative Law Act, promulgated by the Uniform Law Commission in 2009, standardizes the most important features of collaborative law practice, mindful of ethical concerns as well as questions of evidentiary privilege. In recent years, the use of collaborative law as a form of alternative dispute resolution has expanded from its origin in family law to other areas of law, including insurance and business disputes. As the practice has grown it has come to be governed by a variety of statutes, court rules, formal, and informal standards. A comprehensive statutory frame work is necessary in order to guarantee the benefits of the process and to further regulate its use. The Act encourages the development and growth of collaborative law as an option for parties that wish to use it as a form of alternative dispute resolution.

   The Act mandates the essential elements of disclosure and discussion between prospective parties in order to guarantee that all parties enter into the collaborative agreement with informed consent. The need for attorneys to provide clear and impartial descriptions of the options available to the party prior to deciding upon a course of action is stressed throughout the Act. This approach is consistent with the Formal Opinion (07-447, issued in August 2007) of the ABA Standing Committee on Ethics and Professional Responsibility, which explicitly deemed collaborative law as an ethical practice of law. Additionally, the Act mandates that the collaborative agreement contains the disqualification provisions that are essential to the collaborative process. The disqualification requirements create incentives for cooperation and settlement. By standardizing the collaborative process, the Act secures the benefits of collaborative law for the parties involved while providing ethical safeguards for the lawyers involved.

3. Please explain how the proposed policy position will address the issue

   Approval of the Uniform Collaborative Law Act by the House of Delegates would indicate to states that the Act is an appropriate mechanism for addressing the issues described above.

4. Summary of any minority views or opposition which have been identified

   The Section on Litigation has indicated opposition to Collaborative Law generally, and the Uniform Collaborative Law Act in particular.