

## **The Top ~~Ten~~ Fourteen Reasons Why AAML Should Endorse the Uniform Collaborative Law Rules/Act**

### ***From the AAML Collaborative Law Committee***

*Margaret L. Anderson, Committee Chair*

*Gregg Herman, Committee Vice-Chair*

*Committee members: Leota Alexander, Hal Bartholomew, David Fink, Henry Gornbein, Steve Kriegshaber, Edith McClure, Charles McEvily, Marlene Moses, Margaret Nichols, Mark Ogle, Ron Supancic, Mary Pence, Elizabeth Borchers, Sandra Morgan Little, Imogen Papadopoulos, Martha Bourne, J. Mark Weiss, Thomas L. Ausley, Jeff Brend*

Collaborative Law is a *voluntary* process in which the lawyers and clients agree that the lawyers will represent the clients solely for purposes of negotiation, and that the clients will hire new counsel if the case does not settle. The Collaborative Law process provides lawyers and clients with an important, useful, and cost-effective option for amicable, non-adversarial dispute resolution. Like mediation, it promotes problem-solving and permits solutions not possible in litigation or arbitration. As with the division of labor between solicitors and barristers, lawyers in a Collaborative Law case are able to focus solely on settlement. The UCLR/A creates a uniform structure that provides appropriate ethical and procedural safeguards for the use of Collaborative Law, in the same way that the Uniform Mediation Act provides a structure for the use of mediation.

On behalf of the AAML Collaborative Committee, and the broader AAML collaborative community, we urge you to endorse the Uniform Collaborative Law Rules/Act. Here are the reasons:

1. Collaborative Law is voluntary. Like mediation, Collaborative Law is a *voluntary* process. No one is required to participate. Tens of thousands of clients have freely – and thankfully -- chosen the collaborative process to resolve divorces and other conflicts. The UCLR/A has very strong informed consent requirements for parties to enter into Collaborative Law with an understanding of the costs and benefits of participation.

2. The ABA Ethics Committee has approved the use of Collaborative Law. 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”). Counsel for the Committee has stated that *there is nothing in the UCLA that is inconsistent with the ABA Model Rules of Professional Conduct.*

3. Collaborative Law has been approved by state legislatures and courts. Three states have already enacted Collaborative Law statutes – California, North Carolina, and Texas. In addition, Utah has already enacted the UCLA. The UCLR/A will help establish uniformity in procedures and protections, and prevent a patchwork quilt of statutes. Courts in California, Florida, Louisiana, Minnesota, Ohio, and Utah have also promulgated rules providing for the use of Collaborative Law, and Hon. Judith S. Kaye (ret.), former Chief Judge of New York established the first court-based Collaborative Family Law Center in the U.S.

4. The UCLA has broad support in the bar. To date, the UCLA is supported by several sections of the ABA, and also by the Ohio Bar Association, 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.

5. The Uniform Law Commissioners unanimously approved the Act. The Uniform Law Commission (formerly known as NCCUSL), which has active representatives from every state (including an AAML Fellow), voted *unanimously* in favor of the UCLA, after a long and thoughtful process in which representatives from the ABA and many other organizations participated. Harry Tindall, an Academy Fellow from Texas, has been on the drafting committee for this work since 2009.

6. Collaborative Law has been widely and successfully used. Collaborative Law is practiced throughout the United States, every Canadian province, England, France, Germany, and twelve other countries. Data show that these cases have produced excellent results and satisfied clients.

7. State ethics opinions support the use of Collaborative Law. Legal ethics opinions in nine states have addressed Collaborative Law (Colorado, Kentucky,

Maryland, Minnesota, Missouri, New Jersey, North Carolina, Pennsylvania, and Washington) and all of them except Colorado have approved the use of Collaborative Law. Even in Colorado, the process was approved if the parties, instead of the lawyers, sign the Collaborative Law agreement.

8. Collaborative Law is similar to the distinction between solicitors and barristers. Collaborative law reflects the same division of labor that has been used for centuries in Commonwealth countries where solicitors represent clients in negotiations and settlement, and barristers go to court. Lawyers in a Collaborative case can focus solely on settlement.

9. Collaborative Law is an important form of “unbundling,” which has been approved by the ABA. The Collaborative Law process provides lawyers and clients with an option for an amicable, non-adversarial, and more affordable dispute resolution. Collaborative law is similar to the limited-scope arrangements that many clients seek and want – this is known as “unbundling,” in which clients contract for some services but not others.

10. The UCLA gives clients the right to choose. An endorsement by the Academy of the UCLR/A will communicate to the public that this organization supports the right of clients to choose the dispute resolution process that fits their case – whether it is litigation, arbitration, mediation, or Collaborative Law – each process affording the same ethical safeguards. The Academy should continue its leadership in providing the public with more options, and not restricting reasonable options for the amicable, cost-efficient and respectful resolution of conflict.

11. The Academy has a long history of endorsing uniform laws. These have included the Uniform Parenting Act, the Uniform Premarital Agreement Act, the Uniform Mediation Act, the Uniform Child Custody Jurisdiction and Enforcement Act, Uniform Interstate Family Support Act, etc.

12. One of the Academy’s strategic targets is focus on service to clients. This includes promoting/demanding excellence in the delivery of legal services for the benefit of clients, promoting appropriate legislation, and providing clients with information that assists them in choosing a fellow with the problem solving skills they desire. These goals, which are consistent with collaborative process

principles, can be best met when the Academy remains in the forefront by supporting high quality and cost-efficient dispute resolution systems and processes.

13. Another of the Academy's strategic targets is focus on service to the profession. This includes being active in the legislative and court process as advocates and advisors (such as endorsement of the UCLR/A) and enhancing the profession by developing and promoting interdisciplinary relationships. The team work with mental health professionals and financial professionals in collaborative team practice directly supports this Academy strategic goal.

14. Many Academy Fellows are already using the collaborative process. The survey of fellows in 2010 regarding dispute resolution models we each use showed that more than one-third of the respondents have collaborative law as part of their practice.

\* \* \* \* \*

In sum, a careful reading of the Uniform Collaborative Law Rules/Act establishes that it provides the public with another important option to help resolve disputes – one that makes possible amicable, cost-efficient, and respectful resolutions of conflict. The Academy of Matrimonial Lawyers should enthusiastically endorse, *not ignore*, this option.