The Uniform Collaborative Law Act: *It's Here*

By Lawrence R. Maxwell, Jr.*

The Uniform Collaborative Law Act ("Act") was unanimously approved by the Uniform Law Commission at its Annual Meeting in Santa Fe, New Mexico on July 15, 2009.[1] The Act will be available for consideration by state legislatures in mid-2010.

This article will provide a brief history of the Uniform Law Commission ("Commission")[2] give an overview of the collaborative law process, identify the reasons that the Commission deemed it appropriate to codify the process into a uniform law, take a peek into the drafting process to see what is included in the Act, what is not and why, take a walk through the Act highlighting its significant provisions, and discuss the road to enactment of the Act in Texas and nationwide.

Uniform Law Commission

The uniform law movement began in the late 19th century. With the rapid expansion of interstate commerce and travel, states began to recognize the legal tangles created by wide variations in state laws. In 1889, the American Bar Association decided at its 12th Annual Meeting to work for "uniformity of the laws" in the then forty-four states.

In 1892, seven states sent commissioners to the first meeting of the Conference of State Boards of Commissioners on Promoting Uniformity of Law in the United States which was held in Saratoga Springs, New York. By 1912, all of the then forty-eight states had joined the Commission. Today, the Uniform Law Commission includes Commissioners from every state and the District of Columbia, the Commonwealth of Puerto Rico and the U.S. Virgin Islands.

The purpose of the Uniform Law Commission is "to provide states with non-partisan, well conceived and well-drafted legislation that brings clarity and stability to critical areas of law." Now in its one-hundred and eighteenth year, the Commission has drafted more that 250 uniform laws on numerous subjects and in various fields of law where uniformity is desirable and practicable.

The Uniform Commercial Code, the signature product of the Commission working in conjunction with the American Law Institute, has recently been revised, updated and enacted in whole or in part in all jurisdictions. The Uniform Commercial Code is a prime example of how the work of the Commission has simplified the legal life of businesses and individuals by providing rules and procedures that are consistent from state to state.[3]

In 2006, with the use of the collaborative dispute resolution process becoming widespread throughout the country, the Commission identified a need for uniformity in the practice of collaborative law, recommended the development of a uniform collaborative law act and established a Drafting Committee ("Committee").[4]

Overview of Collaborative Law and the Need for Uniformity from State to State

Collaborative law is a part of the movement towards the delivery of "unbundled" legal representation. It separates, by agreement, representation in settlement-oriented processes from representation in adjudicatory processes. The organized bar has recognized unbundled legal services like collaborative law as useful options available to clients.[5]

Collaborative law is a dispute resolution process for parties represented by counsel. As is the case with mediation, collaborative law has its roots in the area of family law, and is expanding into many areas of civil law.[6] The process is a structured, voluntary, non-adversarial approach to resolving disputes wherein parties seek to negotiate a resolution of their matter without having a ruling imposed upon them by a court, arbitrator or other adjudicatory body.

The process is based upon cooperation between the parties, teamwork, full disclosure, honesty and integrity, respect and civility, and parity of costs. The collaborative process enables individuals, families, businesses and organizations to maintain control over their relationships with others by empowering them with the ability to resolve their disputes peaceably.

Prior to entering into the process, it is the practice of collaborative lawyers to provide prospective clients with sufficient information to enable them to make an informed decision as to the appropriateness of their matter for the process.
The collaborative process is initiated by the parties signing a participation agreement.[7] Research shows that most participation agreements will contain the core elements of the process: a stay of court proceedings while parties are in the collaborative process, confidentiality, a commitment to voluntary disclosure of relevant information and a requirement that attorneys withdraw in the event the process terminates without resolution. However, these fundamental provisions and other terms of the agreement vary widely from state to state.

In addition to Texas, two other states presently have collaborative law statutes in the area of family law, and bills are pending in

other states.[8] Collaborative Law participation agreements are crossing jurisdictional boundaries and there is no uniformity in the existing statues or in the pending legislation.

As more and more individuals and businesses in different states utilize the collaborative law process, it will become increasingly unclear which state law applies to transactions. Further, without uniformity in the collaborative process, parties in the process cannot be assured of the enforceability of participation agreements, the evidentiary privilege against disclosure, the stay of court proceedings or the confidentiality of communications in the process.

The Commission determined that uniformity would bring "clarity and stability" to the collaborative process, and set about the task of codifying the process. The stated purpose of the Uniform Collaborative Law Act (referred to herein as "Act") is "to support the continued development and growth of collaborative law by making it a more uniform, accessible dispute resolution option for parties."

What is Included in the Act, What is Not, and Why

The Commissioners recognized the importance of preserving the autonomy of clients in the collaborative process and have attempted to provide such minimal regulation as is necessary to inform and protect prospective parties. The Commissioners further recognized the different models of Collaborative Law being practiced around the country, and the Act does not in any way regulate the detail regarding the practice of Collaborative Law. Indeed, there was an expressed interest in "stimulating diversity and experimentation in collaborative law."

The objectives of the Drafting Committee were to create a product that: (1) maintained the integrity of the collaborative dispute resolution process, (2) while providing as much flexibility as possible, (3) was user-friendly, and (4) was appropriate for enactment by the states.

The first meeting of the Drafting Committee was in February 2007, and a threshold question needed to be decided up front. Should the Act be confined only to divorce and family law matters, or should it be a broad act applicable to all areas of civil law? Proponents of a broad act asked why the benefits of the act should be limited only to persons seeking to resolve a family law matter in the process. Neither the Uniform Arbitration Act nor the Uniform Mediation Act forecloses parties in particular types of disputes from using those dispute resolution processes.

The query that ended the discussion was: How to define "divorce and family law matters?" The Committee wisely chose to avoid the daunting task of defining "divorce and family law matters" and voted unanimously to create a broad act that would apply to all areas of civil law.

The decision to create a broad act was a proper decision, but it did create additional challenges for the Drafting Committee. For example, should the act address tolling issues involving statutes of limitation? In view of the various statutes of limitations applying to a myriad of causes of action among the states, the Drafting Committee concluded that tolling issues, if they were to be addressed at all, should be dealt with by the individual states.

Should the act address in-house counsel serving as a collaborative lawyer for his or her employer? With the expansion of collaborative law beyond the family law arena, this issue has raised considerable discussion. A collaborative law purist believes that since a collaborative lawyer must withdraw and is disqualified from representing a client in an adversarial proceeding involving the subject matter of the collaborative process, under no circumstances can in-house lawyers serve as a collaborative lawyer for their employer.

However, some collaborative practitioners, realizing the probability that the use of the collaborative process will be greatly expanding with in-house lawyers serving as collaborative counsel for their employers, endorse the practice with full disclosure of the employment relationship, and if agreed to by all parties in the process.[9] Seeking to build as much flexibility as possible into the Act, the Drafting Committee left the question of in-house counsel serving as a collaborative lawyer to individual states in considering the Act.

Most members of the Drafting Committee have a family law background, and one of the most hotly debated issues was the question of whether the Act should address the issue of domestic violence, and if so in what manner. The final draft of the Act which was submitted to the Commission included such a provision which placed an affirmative duty on collaborative lawyers to discuss domestic violence with prospective clients.

On final reading before the entire Commission, several Commissioners expressed concern that this provision placed extra liability on lawyers, and a motion was made to delete the entire provision. The motion was defeated by a close vote. The Drafting Committee did address the concerns of the Commissioners and the provision was rewritten to apply a "reasonableness" standard in the assessment of whether there has been a history of coercive or violent relationships with a prospective party in the process.

Another contentious issue addressed by the Drafting Committee was whether the Act should create exceptions to the collaborative lawyer disqualification provisions for lawyers in legal aid clinics or lawyers in law firms representing low-income parties without fee, or lawyers representing government agencies. The Committee decided to retain the disqualification provision for collaborative lawyers representing parties without fee and lawyers representing government agencies. However, if agreed in advance by all parties, once the process terminates other lawyers in the law firm with which the collaborative lawyer is associated may represent such parties in an adjudicatory proceeding involving the subject matter of the collaborative process, provided that the collaborative law-

yer is appropriately "isolated" from participation in such adjudicatory proceeding.

A number of other issues were discussed by the Drafting Committee. For example, the Committee decided that it would not be appropriate to set standards to review settlement agreements created by parties in a voluntary process. Likewise, it was decided to leave conflict of laws issues to be determined by existing law.

Should the Act address multiparty disputes? If so, a number of questions would need to be resolved. For example, what provision should be made regarding terminating or continuing the process when a party, but not all parties, wishes to terminate the process? The Committee decided that issues raised in multiparty disputes should be dealt with by the parties in the participation agreement, and should not be included in the Act.

The issue as to whether the Act should establish training standards for lawyers practicing in the collaborative process was discussed. At present, collaborative law practice groups throughout the country establish their own qualification and training standards for membership, which can be quite extensive. In the interest of providing as much flexibility as possible, the Committee chose not to include any training requirement in the Act, anticipating that collaborative lawyers and affiliated professionals will continue to form and participate in voluntary associations and prescribe standards of practice and training for their members. Further, the Committee had separation of powers concerns, since there is no precedent for legislatures to set standards for which lawyers could or could not practice a particular form of dispute resolution.

A Walk Through the UCLA: *Significant Provisions*

By focusing on the key provisions of the Act, we see flexibility that has been built into the Act, and how the Act provides for the intersection of the collaborative process and the judicial process.[10]

The Drafting Committee sought to make the benefits of the collaborative process available not only for resolving "disputes," but also in a myriad of problem solving situations, which could include transactional work. The breadth and flexibility of the Act can be seen in several defined terms.

Definitions: *Section 2*

A number of terms which are defined in the Act give clarity to the purpose and scope of the Act.

The word "dispute" which had been in earlier drafts of the Act was changed to "*collaborative matter"* to describe what parties may attempt to resolve through the process. The broader term emphasizes that parties have greater autonomy in using the process and encourages broad and creative use of the process.

"Collaborative Law Participation Agreement" is defined simply as a written agreement by persons to participate in the collaborative law process.

"Collaborative law process" means a process in which parties represented by lawyers attempt to resolve a matter without the intervention of a tribunal, as evidenced by their signing of a participation agreement.

"Collaborative law communication" means a statement, whether written or oral, verbal or nonverbal, that occurs between the time the parties sign a participation agreement until the process is concluded, that is made for the purpose of conducting, participating in, continuing, or reconvening the process.

"Person" is broadly defined to include an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

"Proceeding" is not limited to a judicial proceeding and a "Tribunal" may be a court, arbitrator, administrative agency or other body acting in an adjudicative capacity, or a legislative body conducting a hearing or similar process.

The definition of "law firm" is adapted from the definition of the term in the *ABA Model Rules of Professional Conduct* Rule 1.0 (c). It includes lawyers who practice law together in a

partnership or other type of professional entity, lawyers in a legal service organization, in-house lawyers or lawyers employed by or representing governmental agencies.

The definitions of "sign" and "record" adopt the standard language approved by the Commission, intended to conform uniform acts with the Uniform Electronic Transactions Act (which has been endorsed by the ABA House of Delegates and enacted in a majority of the states) and its federal counterpart, Electronic Signatures in Global and National Commerce Act (E-Sign).

The Participation Agreement: *Section 4*

A hallmark of the collaborative process is the commitment of parties and collaborative lawyers to abide by the terms of the participation agreement. The Act establishes minimum requirements for a participation agreement and allows for the creative design by collaborative lawyers and their clients of a process that is best suited for the clients' needs.
A participation agreement (a) must be in a record (a writing or in electronic form), (b) signed by the parties, (c) describe the nature

and scope of the matter, and (d) state the parties intention to attempt to resolve the matter in collaborative law.

In current practice, the signatories in most participation agreements are the parties and their lawyers. However, lawyers signing the agreement and thereby being in privity of contract with parties other their respective clients has raised ethical issues.

In establishing minimum requirements for a participation agreement, the Act addresses these ethical concerns. Rather than the collaborative lawyers being signatories to the agreement, the party signatories to the agreement must "identify the collaborative lawyer who represents each party in the process," and the agreement must "contain a statement by each collaborative lawyer confirming the lawyer's representation of a party in the process."

If parties and lawyers wish to sign the Agreement they can continue to do so, as the Act provides that "parties to a collaborative law participation agreement may agree to include additional provisions not inconsistent with the Act."

The requirement that parties specifically state their intention to attempt to resolve the matter in collaborative law is included in the Act to prevent collaborative-like settlement agreements to be accidentally covered under the Act, which would result in the disqualification of collaborative lawyers.

A Look at Places Where the Collaborative Process Intersects the Judicial Process

Section 3 emphasizes that collaborative law is a voluntary process and a party may not be ordered to participate in the process over that party's objection. ***Section 5*** specifies when and how the process begins and terminates. Any party may unilaterally terminate the process at any time, with or without reason or cause. However, since other events may trigger termination of the process, establishing a beginning and end of the process is particularly important for the application of the evidentiary privilege and/or disqualification provision by tribunals.

Section 6 creates a stay of proceedings once parties give file notice of a collaborative law proceeding. A tribunal may require status reports; however, the scope of information that can be requested is limited to insure confidentiality of the process**.** ***Section 7*** authorizes a tribunal to issue emergency orders to protect the health, safety, welfare or *interest* of a party; and permits the collaborative lawyer to appear before a tribunal regarding such emergency orders.[11] ***Section 8*** authorizes a tribunal to approve an agreement resulting from the collaborative process.

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. In what appears to be a significant departure from current law, the Act also creates a privilege for 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.

Section 20 deals with enforcement of a participation agreement that does not meet the minimum requirement of the Act in Section 4; and, situations where a lawyer has not complied with the disclosure requirements of Section 14, to determine the appropriateness of the process and obtained a prospective clients's informed consent. The Section provides that when the interests of justice so require, a tribunal may enforce a flawed agreement and apply the lawyer disqualification provisions and/or evidentiary privilege upon finding that (a) the parties intended to enter into a participation agreement and (b) they reasonably believed that they were participating in the collaborative process.

Lawyer Disqualification Provision: ***Sections 9, 10 and 11***

A fundamental defining characteristic of collaborative law is the requirement that collaborative lawyers must withdraw if the process terminates without resolution of the matter,
and they are disqualified from representing their clients in an adjudicatory proceeding relating to the matter which was the subject of the collaborative process.

Section 9 preserves this core element of the process and extends the disqualification requirement beyond the individual collaborative lawyer to lawyers in a law firm with which the collaborative lawyer is associated. Exceptions to the disqualification requirement permit collaborative lawyers to seek or defend emergency orders (Section 7), and to obtain approval of agreements resulting from the collaborative process (Section 8).
Sections 10 and 11 modify the "imputed disqualification" rule for lawyers in legal aid clinics, lawyers that represent low-income

clients without fee, and lawyers that represent government agencies.

Voluntary Disclosure of Relevant Information: *Section 12*

Voluntary disclosure of information is a hallmark of the collaborative process. A participation agreement typically requires timely, candid and informal disclosure of information substantially related to the collaborative matter.

This Section preserves the voluntary disclosure requirement, with a slight variation from the disclosure requirements in most participation agreements, which require such disclosure whether or not the information is requested. The Act requires the informal disclosure of information related to the collaborative matter *on the request of another party.* The Section requires prompt updating of previously disclosed information that has materially changed, and provides that parties are free to define the scope of disclosure in the process, so long as they do not violate any other law, such as an Open Records Act.

Standards of Professional Responsibility and Mandatory Reporting: *Section 13*

This Section reaffirms that the Act does not alter the standards of professional responsibility of lawyers and abuse reporting obligations of lawyers and all licensed professionals who participate in the collaborative law process.

Appropriateness of the Process and Informed Consent: *Section 14*

Much has been written, discussed and debated regarding the duty of collaborative lawyers to determine the appropriateness of a prospective client and the client=s matter for the collaborative process, and the necessity of obtaining a prospective client's informed consent to use collaborative law. This Section places specific obligations on a collaborative lawyer which must be fulfilled prior to the signing of a participation agreement.[13]

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."
Law review articles[14] and state ethics opinions have addressed the question of whether collaborative practice is consistent with the ABA Model Rules (and the various versions of those rules in the fifty states). In August 2007, the ABA Standing Committee on Ethics and Professional Responsibility issued Formal Opinion 07-477 squarely supporting the use of collaborative law participation agreements so long as clients are well informed about the process.[15]

The requirements in the Act are consistent with, and appear to go above and beyond, the requirements of Model Rules and ethical opinions.

Coercive and Violent Relationships: *Section 15*

The Act does not define "domestic violence" as that term is defined differently from state to state. To avoid the definition problem the Act uses the term "coercive and violent relationships" and requires only that a collaborative lawyer make a reasonable effort to screen prospective parties for a history of coercive or violent behavior, and throughout the process to continue to assess the situation. Screening protocols already exist which lawyers can use to satisfy the requirement of the Act. *See Commission on Domestic Violence, American Bar Association, Tools for Attorneys to Screen for Domestic Violence (2007).*[16]

Confidentiality: *Section 16*

Protection of confidentiality of communications is central to the process. Without assurances that communications in the process will not be used to their detriment later, the participants in the process will be reluctant to speak frankly, explore options for resolution or freely exchange information.

The broad evidentiary privilege prevents communications in the process from being admitted into evidence in legal proceedings, with certain exceptions. This Section provides that communications in the process are confidential *to the extent agreed by the parties,* thereby permitting parties in the process to agree on broader confidentiality such as non-disclosure of communications in the process to third parties outside of the process.

The Road to Enactment of the UCLA

The UCLA will be before the House of Delegates of the American Bar Association at its mid-year meeting in February 2010. The ABA Section of Dispute Resolution and other Sections and ABA entities have endorsed the Act. The only opposition within the ABA has come from the ABA Litigation Section. It is anticipated that the ABA House of Delegates will endorse the Act, as it has done with virtually all products of the Uniform Law Commission.[17] The Commission has established an Enactment Committee which is selecting key states to target for submitting the Act for consideration by their state legislatures.

Chances for Enactment in Texas

A collaborative law provision has been a part of the Texas Family Code since 2001.[18] Bills were filed in the 2005 and 2007 Sessions of the Texas Legislature to include a similar provision in the Texas Civil Practices and Remedies Code, thereby expanding the statutory benefits of the process to all areas of civil law. In the 2005 Session, the bill was unanimously passed in the Senate but died in conference committee with the House. In the 2007 Session the collaborative law bill did not make it out of the Senate Jurisprudence Committee.

In each Legislative Session the only opposition to the bills came from the Texas Association of Defense Counsel and the Texas Trial Lawyers Association. The many supporters of the collaborative process find it interesting that these strange bedfellows who usually cannot agree that the sun comes up in the east and sets in the west, have been able to ***collaborate*** in their opposition to collaborative law.

The Uniform Collaborative Law Act, which is a quality product of the venerable Uniform Law Commission now in its one-hundred and eighteenth year, will be before the Texas Legislature in 2011. Will the politically powerful and influential trial lawyer organizations choose to oppose enactment of the UCLA? The "Perfect Storm" may be brewing in Austin.

A Final Thought: *The Promise of the UCLA*

A recent book by Professor Julie Macfarlane based on extensive empirical research and subtitled "How Settlement is Transforming the Practice of Law" has been much discussed and widely received in ADR circles.[19] The preface points to "signs that the patience and deference of the consumers of legal services is beginning to fray around the edges" and has ignited a growing demand among clients of all types - individual and corporate - for their lawyers to serve as "conflict resolvers" rather than "warriors."

In *The New Lawyer,* Professor Macfarlane coined the phrase "conflict management advocates," referring to the new role for lawyers engaged in conflict management and dispute resolution. The task of lawyers practicing in this area should be to assist clients in meeting their goals and interests, resolving disputes ethically, with civility and professionalism, as quickly, economically and peacefully as possible.

The phrase "conflict management advocates" and the book's subtitle, *How Settlement is Transforming the Practice of Law*, bring to mind the 1976 Pound Conference convened by the American Bar Association to examine concerns about the efficiency and fairness of the court systems.

Following the Pound Conference, Derek Bok, the former Dean of Harvard Law School and former President of Harvard University, reflected on the significant events of the conference and opined:

> *"Over the next generation, I predict, society's greatest opportunities will lie in tapping human inclinations towards collaboration and compromise rather than stirring our proclivities for competition and rivalry. If lawyers are not the leaders in marshaling cooperation and designing mechanisms that allow it to flourish, they will not be at the center of the most creative social experiments of our time."*

Collaborative law is indeed one of the "mechanisms" envisioned by Derek Bok. It offers parties a meaningful choice in the selection of methods for resolving disputes. The process can be tailored to the needs of the parties in the context of the unique characteristic of their dispute. The process encourages voluntary, early and peaceable settlement of disputes, thereby enabling parties to avoid the significant expense that, unfortunately, will be incurred in any adversarial process.
Collaborative law is a rapidly developing process for managing conflicts and resolving disputes outside of the courthouse, and its future growth and development has significant benefits for clients and the legal profession. The enactment of the UCLA will encourage and support the continued growth of the process.

Endnotes:

[1] The Uniform Collaborative Law Act (July 15, 2009).

[2] Early in its life the Commission adopted the name "National Conference of Commissioners on Uniform State Laws" (NCCUSL). In 2007, the Commissioners decided to shorten the name of the organization to the Uniform Law Commission (ULC). The Commission's website contains a detailed history of the Commission, how it is funded, its organizational structure and its procedures for selecting subjects and drafting uniform acts.

[3] The University of Pennsylvania Law School, in partnership with the Uniform Law Commission, maintains an extensive library of drafts of all uniform laws and final acts.

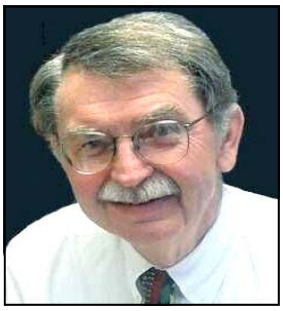
[4] The Drafting Committee includes eight Commissioners, four ABA Advisors and several Observers. The State of Texas has been well represented in the drafting process. Peter Munson of Sherman is a voting Commissioner and serves as Chair of the Drafting Committee; Harry Tindall of Houston, co-author of Sampson & Tindall's *Texas Family Code Annotated*, is a voting Commissioner; Norma Trusch of Houston, past president of the International Academy of Collaborative Professionals, serves as an Observer on behalf of the IACP; and Lawrence R. Maxwell, Jr. of Dallas, a founding director and president of the Global Collaborative Law Council, formerly Texas Collaborative Law Council, and co-chair of the ABA Section of Dispute Collaborative Law Committee, serves as the Section's Advisor.

[5] *ABA Model Rules of Professional Conduct* Rule 1.2 (c).
[6] The International Academy of Collaborative Professionals was established in 1999, as an organization of family collaborative lawyers. The organization has recently established a Civil Collaborative Committee and membership is expanding with members practicing in various areas of civil law. In 2004, The Texas Collaborative Law Council (now Global Collaborative Law Council) was established to promote the use of the collaborative process for resolving disputes in all areas of civil law. In 2007, the ABA Section of Dispute Resolution established a Collaborative Law Committee to educate ABA members and the public as to the benefits of the collaborative process.
[7] A Participation Agreement was developed by the Global Collaborative Law Council in 2004, and is being periodically revised.
[8] Texas, North Carolina and California statutes have enacted collaborative law statutes.
[9] The Protocols of Practice for Collaborative Lawyers developed by the Global Collaborative Law Council provide that in-house counsel may serve as a collaborative lawyer for their employers, with the informed consent of all parties in the collaborative process.
[10] The Collaborative Law Committee of the ABA Section of Dispute Resolution has prepared an Executive Summary of the Uniform Collaborative Law.
[11] The term "interests" could encompass financial or other interests. Although an unlikely possibility, collaborative lawyers would be permitted to seek an emergency order, such as a temporary restraining order to protect the status quo, while parties continue in the collaborative process. More likely, the process would be terminated.
[12] These exceptions to the imputed disqualification rule are supported by the ABA Model Rules of Professional Conduct (2002): Rule 6.5 regarding low-income parties, and Rule 1.11 regarding government lawyers.
[13] Section 14 of the Act reads as follows:

> Before a prospective party signs a collaborative law participation agreement, a prospective collaborative lawyer shall:
>
> (1) discuss with the prospective party factors the prospective collaborative lawyer reasonably believes relate to whether a collaborative law process is appropriate for the prospective party's matter;
>
> (2) provide the party with information that the lawyer reasonably believes is sufficient for the party to make an informed decision about the material benefits and risks of a collaborative law process as compared to the material benefits and risks of other reasonably available alternatives for resolving the proposed collaborative matter, such as litigation, mediation, arbitration, or expert evaluation; and
>
> (3) advise the party that:
>
> (A) after signing an agreement:
>
> (i) if a party initiates a proceeding or seeks tribunal intervention in a pending proceeding related to the collaborative matter, the collaborative law process terminates; and
>
> (ii) the collaborative lawyer and any lawyer in a law firm with which the collaborative lawyer is associated may not represent a party before a tribunal in such a proceeding except as authorized by Section 9(c), 10(b), or 11(b);
>
> (B) participation in a collaborative law process is voluntary and any party has the right to terminate unilaterally a collaborative law process with or without cause; and
>
> (C) when the process concludes, the collaborative lawyer and any lawyer in a law firm with which the collaborative lawyer is associated may not appear before a tribunal to represent a party in a proceeding related to the collaborative matter, except as authorized by Section 9(c), 10(b), or 11(b).

[14] The ABA Section of Dispute Resolution Collaborative Law Committee has prepared a Discussion Draft of Suggested Protocols to Obtain Clients' Informed Consent to Use a Collaborative Process (September, 2009). Scott R. Peppet, The Ethics of Collaborative Law, Vol. 2008 Journal of Dispute Resolution 131. Scott R. Peppet, The (New) Ethics of Collaborative Law, 14 Dispute Resolution Magazine 23-27, Winter (2008). John Lande and Forest S. Molsten, *Duties to Screen the Appropriateness of Collaborative Law and Obtain Clients= Informed Consent to Use Collaborative Law*, 25 Ohio State Journal on Dispute Resolution (forthcoming 2010).
[15] The ABA Section of Dispute Resolution Collaborative Law Committee has prepared a Summary of Ethical Rules Governing Collaborative Practice (2008) which analyzes all ethics opinions issued by states and the ABA Ethics Opinion.
[16] Tool for Attorneys to Screen for Domestic Violence, American Bar Association Commission on Domestic Violence (2007).
[17] Approval of the ABA House of Delegates, although not required, will be helpful as the Act is considered by state legislatures.
[18] Texas Family Code, Sec. 6.603 and Sec. 153.072. In the author=s opinion, the UCLA will be an improvement over the current Texas Family Code provisions in a number of respects, particularly in places where the collaborative process intersects the judicial process. A comparison of the provisions in the current Texas statute and the UCLA will be the subject of a future article.

[19] Julie Macfarlane, *The New Lawyer: How Settlement is Transforming the Practice of Law* (UBS Press 2008).



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