

PROJECT PROPOSAL GUIDELINES & FORM

SUBMITTED BY:

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SUBMITTED ON BEHALF AND ON RECOMMENDATION OF THE JOINT EDITORIAL BOARD ON UNIFORM FAMILY LAW

DESCRIPTION OF PROJECT:

The Revised Uniform Arbitration Act has been enacted in 15 states. In those states where the RUAA has yet to be passed, vestiges of the 1955 Uniform Arbitration Act exist. The UAA and RUAA provide that parties may agree in writing to submit to arbitration “any controversy” then existing between them or include in any written contract a provision for settlement by arbitration of “any controversy” arising between them relating to the contract or nonperformance. The agreement is valid, enforceable and irrevocable except with consent of the parties without regard to the character of the controversy. Neither act creates restrictions that would prohibit the use of arbitration in a family law setting.

But, the issues present in family law cases vary from the more commercial focus of the UAA and RUAA. As an example, traditional arbitration does not address the need for an arbitrator’s decision to be modifiable under future and possibly unforeseen conditions. Moreover, in commercial arbitration does not allow for rulings on substantive law. But in family law cases, an arbiter must make written findings of fact to support the award of spousal or child support. The finding of fact is critical to appeal and modification. The finality of commercial disputes is not replicated in a more dynamic and evolving family relationship.

Recognizing that traditional arbitration statutes were not suited for family law cases, states are beginning to draft family law arbitration cases. In 1999, North Carolina became the first state to adopt an arbitration statute designed specifically for family law. Six other states have enacted specific family law arbitration statutes—Colorado, Connecticut, Indiana, Michigan, New Hampshire, and New Mexico. The North Carolina statute served as the model for the Model Family Law Arbitration Act drafted by the American Academy of Matrimonial Lawyers. The AAML project was completed in 2004.

A uniform act may differ from commercial arbitration in 7 areas:

1. Modification of Child Support, Child Custody, and Alimony
2. Interim Relief
3. Default to a Single Arbitrator

4. Default to a Reasoned Award
5. Non-binding provisions of a premarital agreement
6. Judicial Review for Child's Best Interest
7. Judicial Review of Substantive issues

NEED FOR AND BENEFITS OF UNIFORMITY IN THIS SUBJECT MATTER AREA:

A uniform act on this issue has broad implication. It is based upon a prior and well received ULC product. The ULC can successfully address the changing nature and increasing use of alternate dispute resolution in family law.

SUMMARY/ANALYSIS OF EXISTING STATE LAW AND TRENDS CONCERNING THIS SUBJECT:

The NC statute and the AAML Model Act are included

IMPACT OF FEDERAL LAWS AND REGULATIONS ON THIS PROPOSED SUBJECT:

N/A

IDENTITY OF ORGANIZATIONS OR PERSONS INTERESTED IN SUBJECT AREA, AND ASSESSMENT OF SUPPORT/OPPOSITION:

The ULC could partner with the AAML and family law specific ADR practitioners