

Memorandum

To: NCCUSL Drafting Committee for the Uniform Collaborative Law Act

CC: Observers

From: Andrew Schepard

Re: Draft # 4 of the UCLA and Request for Comments and Help

Date: February 20, 2008

Enclosed you will find Draft # 4 of the UCLA. I hope it captures the agreements made during our robust discussions at our January meeting.

Here is what I ask of you:

Review Draft # 4, and send comments via e mail by Friday, March 7th preferably tied to specific pages and lines of Draft # 4.

As we are not going to meet again before the first read of the Act, I would appreciate your placing your comments into one of the following categories:

Category 1- Typo, technical or suggestion that I, as reporter, have discretion to make or not.

Category 2- Important change that must be incorporated for you to support the UCLA. I will discuss all changes that you put in this category with Peter and Harry to decide how best to proceed.

I plan to start work on the commentary while you are reviewing Draft # 4. I hope to circulate Draft #5 and draft commentary to you by approximately March 24th. A final version of the Act and commentary must be submitted to the Style Committee by April 21st to qualify for first read in July.

Context for your review of Draft # 4:

I did do substantial editing and rewriting of Draft # 3 in the interests of clarity and conciseness in incorporating the new provisions that we agreed to in January. I do not think my rewriting changed the substance of what we agreed on.

Nonetheless, I do want to especially draw your attention to the following features of Draft # 4:

- (1) I added definitions of “law firm”, “substantially related” “and “tribunal”. These terms which were not defined in Draft # 3. These terms are, however, used repetitively in Draft #4 and I thought it prudent both to define them and to do so

- in the manner in which they are defined in existing professional responsibility rules. I took the definitions as close to verbatim as I could from identical terms as those in the text or commentary of the American Bar Association's *Model Rules of Professional Conduct*.
- (2) Note that the definition of "tribunal" includes quasi judicial legislative action, but not pure legislative action. I remember that the Committee voted to exclude legislative hearings from the privilege provisions of the statute. The distinction between legislation and quasi judicial legislative action is, however, a typical administrative law distinction, and is made in the ABA Model Rules for the definition of tribunal. Local legislative bodies, for example, often hold licensing proceedings that look a lot more like a trial than a legislative inquiry. I thought it helpful to include this definition in the interests of expanding the applicability of the statute beyond family law.
 - (3) I revised the definition of "matter." The revised definition is very close to what we reviewed, but I expanded it a bit and tried to clarify the relationship of matter to a proceeding.
 - (4) I alphabetized the definitions, as required by NCCUSL drafting policy.
 - (5) I combined all disclosure, screening and informed consent requirements into a single section instead of the two separate sections that we discussed at the January meeting. This unified section includes the domestic violence sections we agreed to at the January meeting. I also moved the section later in the draft (to section 8). I did all this for several reasons.
 - a. Logical clarity and compactness of drafting.
 - b. NCCUSL drafting policy requires statutes to be drafted to "[a]void an organization [of a statute] that requires an understanding of a later section to understand an earlier section." It seemed to me that a reader can't understand what a lawyer has to disclose and advise the client of about collaborative law until the concept is defined in earlier sections.
 - c. Also, I thought that moving the most specific family law oriented sections (though I understand that DV is not limited to family law cases) to the end of the statute made the statute appear applicable to all fields of law.
 - (6) I revised and reordered section 6 on collaborative law in a pending proceeding as I think I was instructed at the last meeting. I also added a legislative note about enactment of that section by court rules if appropriate in a particular state.
 - (7) I created a special section on collaborative law for low income clients (section 9) that contains the provisions that I think we agreed upon at our January meeting.
 - (8) I added a legislative note recommending a long lead time before the statute takes effect.

Thank you for all of your help, advice and encouragement. I think we are making good progress, which would not be possible without you. I look forward to your suggestions and comments on Draft # 4.