

## Memorandum

**To: NCCUSL Drafting Committee for the Uniform Collaborative Law Act**

**CC: Observers**

**From: Andrew Schepard**

**Re: Draft # 6 of the UCLA**

**Date: April 11, 2008**

### *Introduction*

Thanks to all who made comments on Draft # 5. Enclosed you will find Draft # 6 of the UCLA in two versions, with prefatory note and commentary and without.

Draft # 6 is, in my view, ready for first reading at the NCCUSL meeting in July in Big Sky scheduled for Tuesday, July 22<sup>nd</sup> from 9-12:00 a.m.

Draft # 6 will be transmitted to the Style Committee for its comments.

### *Timing*

We have to have our completed work product to NCCUSL by June 9<sup>th</sup>. For personal reasons, I would really appreciate your sending any final comments to me by *Thursday, May 15<sup>th</sup>*

I will be out of the Country starting on April 22<sup>nd</sup> until May 15<sup>th</sup> (my wife is taking me to China to celebrate my 60<sup>th</sup> birthday). I have a heavy travel schedule after I return. Thus, as much as I admire all of you, I will not be able to consider any comments received after May 15<sup>th</sup>.

### *Changes from Draft # 5*

I made some significant changes in response to comments and suggestions on Draft #5, but I wouldn't characterize them as major or substantive. You might, however, especially want to note:

- (1) Insertion of the disqualification requirement as a mandatory term of a collaborative law participation agreement (section 3(b)(1)). As several commentators pointed out to me, that requirement was inadvertently omitted from Draft # 5 (sorry folks).

- (2) Revisions of Section 4 on beginning and terminating collaborative law made largely to clarify that a collaborative lawyer could only appear in uncontested proceedings or motions to seek approval of agreements.
- (3) Revision of Section 5 on the relationship of collaborative law and proceedings made for the same purpose as (1).
- (4) A new definition of “prospective party” in section 2(11) and use of that term rather than “client” in section 8. This change was made to make it clear that lawyer-client relationships are determined by the law of professional responsibility, not the UCLA.
- (5) The limit placed on the “emergency” exception to the disqualification requirement in section 3(b)(1) and in various other places in the act. This insertion was made to clarify when the collaborative lawyer’s obligation to a victim of domestic violence ends.

I made what I regard as stylistic and clarifying changes in the prefatory note and commentary for Draft # 6, which sparked much less commentary than the statutory language in Draft # 5.

*Here is what I would like you to do:*

As before, I ask you to place your comments into one of the following categories:

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

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

I hope by this point that most of your suggested changes and those of the Style Committee will be in category #1 but I never know whether when I make one change, I need to make another.

Thank you for all of your help, advice and encouragement. The feedback on Draft #5 has been good, and it would not be possible without you. I hope and expect that we will be able to present a well thought out work product to the Conference. This experience and working with all of you continues my education on how complex and challenging statutory drafting is and how important it is to have help from good people while doing it.