

**DRAFT  
MEMORANDUM**

**TO:** Carlton D. Stansbury, ABA Advisor, Uniform Laws  
Commission  
Gretchen Walther, Section Advisor, Section of Family Law  
Lawrence R. Maxwell, Jr., Section Advisor, Section of Dispute  
Resolution  
Charla Stevens, Section Advisor, Section of Litigation

**FROM:** David S. Baker, Chair, ABA Standing Committee on  
Professional Discipline

**CC:** ABA Standing Committee on Professional Discipline  
Robert H. Mundheim, Chair, ABA Standing Committee on  
Ethics and Professional Responsibility  
Donald B. Hilliker, Chair, ABA Center for Professional  
Responsibility, Coordinating Council  
Jeanne P. Gray, Director, ABA Center for Professional  
Responsibility  
George A. Kulhman, Ethics Counsel  
Mary M. Devlin, Regulation Counsel  
Robin K. Roy, ABA Staff Liaison to Uniform Laws  
Commission

The ABA Standing Committee on Professional Discipline reviewed the draft Uniform Collaborative Law Act. We note that the ABA Standing Committee on Ethics and Professional Responsibility issued Formal Opinion 07-447 (August 9, 2007) entitled Ethical Considerations in Collaborative Law Practice. In summary, that opinion determined that:

Before representing a client in a collaborative law process, a lawyer must advise the client of the benefits and risks of participation in the process. If the client has given his or her informed consent, the lawyer may represent the client in the collaborative law process. A lawyer who engages in collaborative resolution processes still is bound by the rules of professional conduct, including the duties of competence and diligence.

Section 18(a) (Standards of Professional Responsibility and Mandatory Reporting and Collaborative Law) of the proposed statute on Collaborative Law provides that “The professional responsibility obligations and standards of a collaborative lawyer are not changed because of the lawyer’s engagement to represent a party in a collaborative law process.” The “Legislative Note” to Section 7 provides that:

**In states where judicial procedures for management of proceedings can be prescribed only by court rule or administrative guideline and not by legislative act, the duties of courts and other tribunals listed in sections 5-7 [of the Act] should be adopted by the appropriate measure.**

**It is the clear policy of the American Bar Association that “Regulation of the legal profession should remain under the authority of the judicial branch of government.” In order to make clear that lawyers who participate in the collaborative law area remain subject to the jurisdiction’s rules of professional conduct (promulgated in most jurisdictions by the highest court), we suggest that Section 18 be moved before Sections 12 (Required Disclosures Concerning Collaborative Law; Domestic Violence) and Section 13 (Confidentiality of Collaborative Law Communication). Those sections address the professional responsibility obligations of lawyers and cannot be abrogated by the statute.**

**Thank you for this opportunity to comment on the draft Uniform Collaborative Law Act.**