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June 10, 2009

Mr. Robert Rothman Chairman ABA Section on Litigation 321 North Clark Street Chicago, IL 60654

Dear Mr. Rothman,

Thank you for sharing the Section of Litigation's comments on the draft Uniform Collaborative Law Act (UCLA).

The NCCUSL Drafting Committee on the UCLA has benefited from the consideration and comments of various ABA sections and others in its two-year drafting process. The Final Reading Draft, which I enclose, incorporates your suggested deletion of the phrase "substantially related", substituting "related to a collaborative matter" (Section 9). The Drafting Committee believes they have produced an Act that brings uniformity to the standards governing collaborative law practiced in every state with twenty years of exponential growth.

The Drafting Committee has considered your comments and endeavored to produce an Act that offers uniformity and clarity to parties and their attorneys who may elect to consider or opt for collaborative resolution of a civil dispute. Substantial numbers of clients are exercising, with the benefit of legal counsel, collaborative resolution of their disputes. Clients and their attorneys have established collaborative law as a useful addition to dispute resolution and several States have enacted legislation or Court Rules recognizing collaborative law.

Collaborative law is clearly not for all cases or clients but, for some, it may be an appropriate elective method of dispute resolution. We believe the UCLA flags important considerations that attorneys should reconcile in service of their client's preference and agenda.

Your letter asserts the UCLA violates provisions of the Model Rules of professional responsibility. We have considered your concerns and respectfully disagree. Our decision is

supported by the ABA Standing Committee on Ethics and Professional Responsibility Formal Opinion 07-447 issued on August 9, 2007 which has approved the collaborative law process with its established fundamental characteristic, the disqualification provision, now found in Section 9. Model Rule 1.2 permits a lawyer to limit the scope of representation as long as the limitation is reasonable and the client provides informed consent. Model Rule 1.2 further states, "Limited representation may be appropriate because the client has limited objectives for the representation" and "Terms upon which representation is undertaken may exclude specific means that might otherwise be used to accomplish the client's objectives". ABA Ethics Counsel George Kuhlman recently stated in an e-mail that "the Ethics Committee finds nothing to object to in the Model Act" [referring to the UCLA] .

The UCLA requires a lawyer discuss all aspects of collaborative law with a client before participating in a collaborative agreement (Section 14(a)). Collaborative practice relieves no professional duty of an attorney to his client (Section 13).

Before executing a participation agreement, the lawyer is directed to inquire into the circumstances of the dispute and help determine the suitability of the collaborative process for attempting to resolve the particular dispute between the specific parties. As part of this process, the lawyer must provide adequate information to the client about the terms and procedures of the collaborative law process. The UCLA sources its language on this subject directly from the 2007 Formal Opinion. The Act stresses the need for attorneys to provide clear and impartial descriptions of the options available to the party prior to deciding upon a course of action. The UCLA ensures that clients will be properly informed before entering into a participation agreement. The UCLA fully comports with any and all requirements concerning ensuring informed consent.

You present concerns about policy choices which the UCLA reflects and about which reasonable differences may exist but I assure you that all the points raised have received exhaustive consideration by the Drafting Committee which has received the benefit of ongoing participation and support of ABA advisors including the Litigation Section advisor as well as other knowledgeable attorneys. Ultimately, appropriate consideration of the collaborative process and its election rests with the participating client and their chosen conscientious legal counsel.

The attached Final Reading Draft will be presented for consideration at the Uniform Laws Annual Meeting in July where the draft may see further revision before submission to the ABA House of Delegates in February 2010. Be assured the drafting efforts of NCCUSL in this product are representative of its legacy of thoughtful and well crafted drafting providing states substantial advances in the law. We believe the UCLA will merit broad endorsement by the ABA House of Delegates and the Practice Sections.

Thank you for your comments. We look forward to the continued discussion with all interested ABA sections in anticipation of the UCLA's presentation for February 2010 House of Delegates approval.

Sincerely

Peter Munson Chairman

Drafting Committee on the Uniform Collaborative Law Act

Cc: Drafting Committee, Advisors and Observers

Martha Walters, NCCUSL President

Robert Stein, Chair of the NCCUSL Executive Committee

John Sebert, NCCUSL Executive Director Michael Kerr, NCCUSL Legislative Director

Eric Fish, NCCUSL Legislative Counsel