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Memorandum

To: Drafting Committee for the Uniform Collaborative Law Act

CC: Observers and Dennis Cooper, Style Committee liaison

From: Andrew Schepard

Re: Draft of the UCLA Submitted to Committee on Style

Date: April 6, 2009

Introduction

Enclosed you will find the Draft of the UCLA I today submitted to the Committee on Style (Draft for Style). I want to thank everyone for their positive reactions to the April 2009 Interim Draft and the helpful suggestions for improvement.

My plan is to wait until I hear from the Committee on Style to make additional revisions to the text of the statute. The final version of the UCLA and the Preface and Commentary is due to Chicago on June 1st to be circulated for Second Read. I will try to circulate a final draft between the one sent to Style in April and the final text for Second Read.

**Changes between the April 2009 Interim Draft and the
Enclosed Draft for Style**

What follows is a list of the major changes in Draft for Style, compared to the April 2009 Interim Draft. I have not included very minor word changes, or correction of typos.

1. Section 2(1) and Section 3(c) (“Voluntary” nature of collaborative law)

Per extensive e mail discussion, a new section 3 (c) has been added to emphasize the voluntary nature of collaborative law. It prohibits tribunals from ordering persons to participate in collaborative law over that person’s objection. The word “voluntary” does not appear in the definition of collaborative law in Section 2(1).

2. Section 2(1)

Elizabeth and Jack had a discussion about whether to use a “procedure which attempts to resolve a matter” or a “procedure intended to resolve a matter” in the definition of collaborative law. I opted for “intended to” (Jack’s suggestion).

3. Section 2(11)

I made the change suggested in Jack in the following comment:

“The word “potential” bothers me. On page 9, line 12 the word “prospective” is used. I like that better. And we should be consistent.”

4. Section 3(a)

I made the change suggested by Jack in the following comment:

“P. 3, lines 9-10. As I read these mandatory items it occurred to me that (4) is the kind of busy-work that is easily overlooked. It would be better to combine (3) and (4) so it is less likely to be left out by oversight. Say: “(3) state the parties’ intention to resolve a the matter through collaborative law and describe the nature and scope of the matter;”

5. Section 4(d)

I modified Section 4(d) based on the following comment by Linda Wray:

"A party and that party's collaborative lawyer that terminates a collaborative law process." should be "A party that terminates a collaborative law process and that party's collaborative lawyer" since collaborative lawyers cannot terminate a process (they can only withdraw).

6. Section 18(a)

I revised Section 18(a) as per the following comment by Elizabeth:

“I think that something is missing. I believe this is intended to address the situation that the parties didn't enter into an agreement that meets the requirements for a collab participation agreement, but they should not be penalized for that. If so, then shouldn't subsection (2) be moved into (a)? Then it would read "Although a collaborative law participation agreement fails to meet the requirements of Section 3, or a lawyer fails to comply with the disclosure requirement of Section 13, a tribunal may find that the parties intended to enter into a collaborative law participation agreement if they :

(1) signed a record indicating an intention to enter into a collaborative law participation agreement; and
(2) reasonably believed they were participation in a collaborative law process.”

7. Section 18 (b)

I revised Section 18(b) based on the following comments by Elizabeth and Linda, echoing suggestions first made by Larry Maxwell to which I detected no dissent:

“I see Larry's point and am sympathetic. Shouldn't it mirror Section 17(a)(1) and say "enforce an agreement evidenced by a record resulting from the process in which the parties participated;"? [Elizabeth]

“Section 18(b) (1) - I think Larry Maxwell's suggestion that enforcement of collaborative agreements be only of written collaborative agreements is a good one. Without this qualification, it can be argued that communications during the collaborative process will need to be disclosed, contrary to the rule of privilege, to determine what oral agreements were made.” [Linda]

Again, thank you all for your review and comments. We are, I think, close to the end of what I hope has been a productive process.

For those of you who celebrate, best wishes for the holiday season.

I look forward to seeing everyone in Santa Fe.