NOTES & COMMENTS

THE ACT FOR COLLABORATIVE LAW

by
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Collaborative law is an alternative dispute resolution method that helps families across the world divorce cooperatively and amicably, but it faces critiques for its unique practices, such as automatic, mandatory disqualification of attorneys for failure to reach settlement agreements. To withstand critiques and remain a successful alternative dispute resolution method, collaborative law should be codified. Hence, all states should adopt the Uniform Collaborative Law Act (UCLA). The UCLA demystifies the practice of collaborative law and establishes a reliable framework that sets critiques of collaborative law to rest. This Comment explains the key provisions of the UCLA and discusses how the UCLA protects collaborative law lawyers, benefits parties, and helps courts.

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INTRODUCTION

A dissolution of a marriage can involve volatile disputes. With intense emotions, each party has their own idea of what they should get from the separation. Not thinking about anything but their own interests, parties duel each other through litigation, using the legal system as their weapons and shields. Attorneys on the frontlines fight the clients' battles, becoming burnt out. Stuart Webb, the founder of collaborative law, was one such attorney.[1] After 17 years of practicing family law, Webb set out to retire from his practice and become a psychologist. Upon realizing almost immediately that he did not, in fact, want to become a psychologist, he brainstormed ways to continue practicing family law by retaining the aspects of it he enjoyed—helping divorcing families—and eliminating the aspects of it he did not—adversarial litigation. After experimenting with different ways to represent clients, he found settlement to be most effective.[2] Accordingly, he created the role of a collaborative law lawyer who represents clients for settlement only and withdraws if the case turns adversarial and the client wants to litigate. He dubbed this process "collaborative law" and declared himself a collaborative lawyer.[3]

Since then, collaborative law has expanded across the world.[4] The Uniform Law Commission (ULC) defines collaborative law as "a voluntary, contractually based alternative dispute resolution process for parties who seek to negotiate a resolution of their matter rather than having a ruling imposed upon them by a court or arbitrator."[5] Due to the rise of collaborative law, the ULC created the Uniform Collaborative Law Rules and Act (UCLA) in an effort to provide states with guidance and "to encourage the continued development and growth of collaborative law as a voluntary dispute resolution option."[6] Like other uniform model acts, the UCLA standardizes best practices and provides a comprehensive framework that states can adopt.[7]

Hence, all states should adopt the UCLA as it is necessary for the continued growth and success of collaborative law. The UCLA is necessary because it establishes crucial minimum standards to guide the practice of collaborative law.[8] Without the UCLA, collaborative law lawyers and parties, and courts all experience negative effects. First, collaborative law lawyers receive inconsistent training and advice on how to practice collaborative law, which increases the risk of committing malpractice.[9] Second, parties do not have a guideline they can rely on to direct them

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[1] Stu Webb, *Collaborative Law: A Practitioner's Perspective on Its History & Current Practice*, 21 J. AM. ACAD. MATRIM. LAWS. 155, 156 (2008).

[2] *Id.*

[3] *Id.* at 157.

[4] UNIF. COLLABORATIVE L. RULES & UNIF. COLLABORATIVE L. ACT prefatory note at 4–6 (UNIF. L. COMM'N 2010).

[5] *Id.* at 1.

[6] *Id.* at 16. *See* Patrick Foran, *Adoption of the Uniform Collaborative Law Act in Oregon: The Right Time & the Right Reasons*, 13 LEWIS & CLARK L. REV. 787, 814–15 (2009).

[7] *See generally* UNIF. COLLABORATIVE L. RULES & UNIF. COLLABORATIVE L. ACT (UNIF. L. COMM'N 2010).

[8] *Id.* at 17, 19.

[9] *See generally* Barbara Glesner Fines, *Ethical Issues in Collaborative Lawyering*, 21 J. AM. ACAD.

through collaborative law, which leads to confusion and inconsistent experiences.[10] Third, courts struggle to interpret collaborative law because no statutory framework or precedent exists.[11] With enactment of the UCLA, states can protect collaborative law lawyers by defining the boundaries of collaborative law, particularly surrounding the model rules of professional conduct for proper termination of representation, informed consent, and conflict of interest due to material limitation of the lawyer's responsibilities.[12] Further, states can offer parties confidence and security in an efficient and reliable alternative dispute resolution method.[13] And finally, states can provide courts with a framework that they can trust and use to interpret collaborative law.[14]

Part I explains the practice of collaborative law, including its benefits, and provides the background information necessary to understand the UCLA. Part II discusses the motivations behind drafting the UCLA and some of its key provisions. With this context, Part III asserts that the UCLA is necessary for the practice of collaborative law and delves in to how the UCLA protects collaborative law lawyers and parties, and helps courts.

I. COLLABORATIVE LAW

Stuart Webb created collaborative law out of a desire to improve his practice of family law.[15] He declared himself a collaborative lawyer in 1990 and encouraged a group of family law lawyers in his community to begin practicing it with him.[16] Within the first two years, Webb settled all but 4 out of 99 cases.[17] From there, collaborative law gained traction; by 2008, Webb estimated that the practice had grown to include 8,000 to 9,000 collaborative law practitioners.[18] In 2018, there were approximately 20,000 collaborative lawyers in the United States.[19] Though

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MATRIM. LAWS. 141 (2008) (discussing the impact of inconsistent collaborative law standards on the likelihood of ethics violations).

10 Foran, *supra* note 6, at 789–90, 814.

11 *See, e.g.*, H.K. v. A.K., No. 10-14008, 2012 WL 1232970, at *4–6 (N.Y. Sup. Ct. Feb. 22, 2012).

12 *See* Foran, *supra* note 6, at 808–09, 811–12, 817–18.

13 *See id.* at 820.

14 *The Uniform Collaborative Law Rules/Act: Frequently Asked Questions*, UNIF. L. COMM'N (Oct. 21, 2019, 2:41 PM), https://www.uniformlaws.org/HigherLogic/System/DownloadDocumentFile.ashx?DocumentFileKey=011ed91a-18f4-fb1d-099d-5b841808b870&forceDialog=1.

15 Webb, *supra* note 1, at 156–57.

16 *Id.* at 157.

17 William H. Schwab, *Collaborative Lawyering: A Closer Look at an Emerging Practice*, 4 PEPP. DISP. RESOL. L.J. 351, 355 (2004).

18 Webb, *supra* note 1, at 157.

19 *Judges Love Collaborative Law—Here's Why*, AM. BAR ASS'N (July 2018), https://www.americanbar.org/news/abanews/publications/youraba/2018/july-2018/neither-mediators-nor-negotiators—collaborative-lawyers-emphasi/; John Lande, *An Empirical Analysis of Collaborative Practice*, 49 FAM. CT. REV. 257, 257 (2011) [hereinafter Lande, *An Empirical Analysis*]. *See generally Collaborative Practice Groups*, INT'L ACAD. COLLABORATIVE PROS., https://www.collaborativepractice.com/collaborative-practice-groups (last visited Aug. 4, 2024) (listing numerous collaborative law practice groups around the world).

collaborative lawyers made up roughly 1% of all lawyers in the United States in 2018, the number of collaborative lawyers had grown by 150% since 2008 whereas the total number of lawyers in the United States had grown by only 15%.[20]

Collaborative law is an alternative dispute resolution method that requires divorcing parties (or other disputants) to settle their case using cooperative, interest-based negotiations outside of the court system.[21] The process begins when the parties mutually agree to resolve their issue through collaborative law by each hiring a collaborative law lawyer and entering into a participation agreement.[22] The participation agreement "lays out a number of ground rules designed to provide a safe and effective environment for settlement"[23] and defines "the scope and *sole* purpose of the lawyers' representation: to help the parties engage in creative problem solving aimed at reaching a negotiated agreement that meets the legitimate needs of both parties."[24] Simply put, the participation agreement memorializes the parties' commitment to the collaborative process and lays out rules to follow, including the mandatory disqualification of lawyers.[25] The mandatory disqualification provision of collaborative law requires the lawyers to withdraw from representing their clients if they cannot reach a settlement.[26]

The mandatory disqualification provision "is the engine that drives collaborative law."[27] It is an essential component of collaborative law that mandates both lawyers to withdraw from representing their clients if the case needs to progress to litigation.[28] The disqualification provision keeps parties in negotiations in two ways. First, it keeps the lawyers and parties focused on settlement.[29] Knowing that failure to reach a settlement results in disqualification of the lawyers motivates the parties to work together to resolve their issues.[30] Rather than start negotiations

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[20] *See ABA National Lawyer Population Survey: Historical Trend in Total National Lawyer Population 1878–2022*, AM. BAR ASS'N, https://www.americanbar.org/content/dam/aba/administrative/market_research/total-national-lawyer-population-1878-2022.pdf (last visited Aug. 4, 2024).

[21] PAULINE H. TESLER, COLLABORATIVE LAW: ACHIEVING EFFECTIVE RESOLUTION IN DIVORCE WITHOUT LITIGATION 3 (3d ed. 2016).

[22] *Id.* at 17; STUART G. WEBB & RONALD D. OUSKY, THE COLLABORATIVE WAY TO DIVORCE: THE REVOLUTIONARY METHOD THAT RESULTS IN LESS STRESS, LOWER COSTS, AND HAPPIER KIDS—WITHOUT GOING TO COURT 6 (2006).

[23] WEBB & OUSKY, *supra* note 22, at 12.

[24] Tesler, *supra* note 21, at 11 (emphasis added).

[25] *Id.* at 175.

[26] Bobette Wolski, *Collaborative Law: An (Un)ethical Process for Lawyers?*, 20 LEGAL ETHICS 224, 237 (2017).

[27] Webb, *supra* note 1, at 168. *See* Pauline H. Tesler, *Collaborative Family Law*, 4 PEPP. DISP. RESOL. L.J. 317, 319 (2004) ("[I]n collaborative law, the representation begins with the clients and lawyers signing a binding agreement . . . that prohibits those lawyers from ever participating in contested court proceedings on behalf of those clients. With that core element, the case is a collaborative law case, and without it, no matter how cordial or cooperative the lawyers and parties may be in their behavior, attitudes and intention to reach agreement, the case is not a collaborative law case.").

[28] Lande, *An Empirical Analysis*, *supra* note 19, at 257.

[29] Elizabeth K. Strickland, *Putting "Counselor" Back in the Lawyer's Job Description: Why More States Should Adopt Collaborative Law Statutes*, 84 N.C. L. REV. 979, 983–84 (2006).

[30] *Id.* at 998 (The disqualification "provision encourages settlement because the risk of

with an undertone of litigation, the lawyers and parties embark on the process with a "positive settlement tone and a check on the lawyers' mind-set [sic] and activities."[31] With the disqualification provision in place, the lawyers "don't have to be concerned about trial strategies. [But] [w]ithout [it] . . . , the behavior of the lawyer is likely to be influenced by . . . trial[] instincts."[32] Thus, the disqualification provision reminds the lawyers and parties of the sole goal to settle and keeps them in negotiations in the collaborative process.[33] Second, the disqualification provision financially incentivizes the parties to stay in negotiations until they reach a settlement because if the parties are unable to reach a settlement, they will have to hire new lawyers and essentially restart the process.[34] After already expending resources on the collaborative process, the parties will not want to spend more time, energy, and money to hire new lawyers and start over.[35] Further, the lawyers are financially driven to settle because if they are disqualified for failure to reach a settlement, they will not be paid for further work.[36]

Powered by the disqualification provision, the lawyers and parties negotiate through "four-way settlement meetings."[37] The first four-way meeting is critical because it sets the tone for the rest of the proceedings.[38] During the first four-way meeting, the lawyers "help the clients understand the emotional stages of the divorce process. They lay a foundation for managing strong emotions and conflict by normalizing their occurrence, predicting their emergence, and eliciting agreement about how such events will be handled."[39] They also explain the collaborative process, discuss the clients' goals, review and execute the participation agreement, and schedule future four-way meetings.[40] The rest of the four-way meetings consist of the parties and their lawyers working together to "share information, clarify and communicate goals and priorities, brainstorm possible resolutions, devise and evaluate proposals, and . . . reach agreements."[41] Four-way meetings are effective because they harness the "problem-solving aspect of mediation" with the addition of a "strong advocate" for each party "to promote their interest in the collaborative process."[42] Four-way meetings are also effective because they enable the parties to

failure is great for both lawyers and clients, in that if the collaborative procedures failed, the lawyers would lose their clients and the parties would have to hire new lawyers and begin litigation.").

31 Webb, *supra* note 1, at 168.

32 *Id.*

33 Strickland, *supra* note 29, at 883–84.

34 *Id.*

35 Kristen M. Blankley, *Agreeing to Collaborate in Advance?*, 32 OHIO STATE J. ON DISP. RESOL. 559, 565, 567–68 (2017).

36 *Id.* at 565.

37 TESLER, *supra* note 21, at 13.

38 *Id.* at 66 ("The most important purpose of this meeting is to confirm face-to-face the formal ground rules and informal understandings for the process.").

39 *Id.* at 69.

40 *Id.* at 66.

41 *Id.* at 70.

42 Elizabeth Kruse, *ADR, Technology, and New Court Rules—Family Trends for the Twenty-First Century*, 21 J. AM. ACAD. MATRIM. LAWS 207, 211 (2008).

openly communicate with each other.[43] With open communication, the parties can discuss both of their interests, find common ground, and focus on settling.[44] If an argument arises, the lawyers for both parties are there to redirect the conversation to help the parties resolve the disagreement and refocus their attention on the ultimate goal—settlement.[45]

Collaborative law benefits lawyers and parties because it results in: (1) successful settlement agreements and (2) positive experiences. A 2006–2010 study conducted by the International Academy of Collaborative Professionals (IACP) found that 86% of 933 reported collaborative law cases settled with an agreement on *all* issues.[46] In 2015, the IACP conducted a similar study to understand the various experiences with different divorce processes.[47] The 2015 study collected data from 222 responders who used collaborative law, 337 responders who used the traditional court process, and 165 responders who used other settlement processes, like mediation and arbitration.[48] The study results showed that 94% of the collaborative law cases settled whereas 82% of the traditional court cases and 82% of the other settlement method cases came to a resolution.[49] Further, the study revealed that only 2.26% of responders who used collaborative law went to court to resolve a post-decree matter and only 14.48% needed other professional intervention with post-decree issues.[50] In comparison, 20% of responders who used the traditional court process went back to court to resolve a post-decree matter and 19% needed other professional intervention with post-decree issues.[51] Though less than the traditional court route, still more responders who used other settlement methods than collaborative law went back to court to resolve a post-decree matter (10%) and needed other professional intervention with post-decree issues (6%).[52] Based on these results, collaborative law cases are more likely to settle or come to a resolution than the traditional court route and other settlement methods, and result in less cases needing post-decree attention.

Collaborative law also benefits parties because it "cost[s] less in time and money than conventional, adversarial representation."[53] Because the parties have agreed to settle the matter outside of the court system, they do not have to expend resources on court costs. Collaborative law lawyers "report that collaborative law

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43 WEBB & OUSKY, *supra* note 22, at 154.

44 *Id.* at 21.

45 *Id.* at 21, 155.

46 Linda K. Wray, *Research Regarding Collaborative Practice (Basic Findings)*, 12 INT'L ACAD. OF COLLAB. PROS., 6, 7 (2011).

47 LINDA K. WRAY, ET. AL., 2015 DIVORCE EXPERIENCE STUDY, INT'L ACAD. COLLABORATIVE PROS. 3 (2015) [hereinafter WRAY ET. AL., 2015 DIVORCE EXPERIENCE STUDY].

48 *Id.* at 6.

49 *Id.* at 10, 20, 43 (because the sub-categories for "traditional court process" and "other processes" together represent approximately half of their respective groups, the author arrives at 82% for each process by averaging the sub-category percentages).

50 *Id.* at 10.

51 *Id.* at 23.

52 *Id.* at 40.

53 Schwab, *supra* note 17, at 355–56.

typically costs clients only one-tenth to one-twentieth of what a normal in-court case costs" because it requires "less paperwork, no filing fees, no extensive discovery costs, no evidence to prepare, nor hours spent preparing for hearings and trials."[54]

In addition to financial benefits, collaborative law parties report a higher satisfaction rate than parties who use the traditional court process or other settlement methods.[55] The 2015 IACP study indicated that 77% of responders who used collaborative law were satisfied with the process, and 81% said that they were satisfied with their post-divorce wellbeing.[56] In comparison, 70% of responders who used the traditional court process were satisfied with the traditional court process; 71% said that they were satisfied with their post-divorce wellbeing.[57] Responders who used other settlement methods report similar yet lower satisfaction rates than those who used collaborative law: 73% were satisfied with the settlement process, and 64% were satisfied with their post-divorce wellbeing.[58]

The higher satisfaction rates of parties who use collaborative law could be attributed to the nature of the collaborative law process, which focuses on the best interests of both parties.[59] Clients participate fully in the process during four-way meetings, asking for what they need and devising creative solutions together.[60] Collaborative law lawyers use their training in interest-based conflict resolution to assist the clients in identifying main goals and finding common ground while avoiding arguments and accusations.[61] By using a conflict-free, teamwork approach, parties are able to resolve their issues and maintain a cordial relationship.[62]

Children, if involved, also benefit from collaborative law. Through honest negotiations in four-way meetings, the parties "feel more in control of the decision process and have the ability to create a parenting plan together."[63] Because the parents create and agree upon a parenting plan, the court system does not need to get involved to dictate the resolution.[64] Thus, instead of focusing on their own individual interests to appeal to a judge, mediator, or arbitrator, the parents focus on the best interests of their children and new family dynamic.[65] The children, in turn, benefit because the parents set a foundation of wellbeing for the entire family.[66] Through these actions, the parents show the children that they are safe,

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54 Strickland, *supra* note 29, at 998.

55 WRAY ET. AL., 2015 DIVORCE EXPERIENCE STUDY, *supra* note 47, at 11, 29, 42.

56 *Id.* at 11, 13.

57 *Id.* at 25, 29.

58 *Id.* at 42, 45.

59 Strickland, *supra* note 29, at 996.

60 *Id.*

61 WEBB & OUSKY, *supra* note 22, at 21.

62 Blankley, *supra* note 35, at 566.

63 Michelle M. Tetreault, *The Benefits for Children in Choosing a Collaborative Divorce Process*, *in* COLLABORATIVE LAW: PRACTICES AND PROCEDURES § 11.2 (Amy C. Connolly ed., 2014).

64 *Id.*

65 *Id.*

66 *Id.*

secure, and supported.[67] When parents resolve issues amicably and respectfully, children benefit from the positive effects.[68]

II. THE UNIFORM COLLABORATIVE LAW ACT

The Uniform Collaborative Law Act encourages the growth and widespread practice of collaborative law by providing a "necessary comprehensive statutory framework which guarantees the benefits of the collaborative process."[69] The UCLA also "standardize[s] the most important features of collaborative law participation agreements, both to protect consumers and to facilitate party entry into a collaborative law process."[70] By standardizing the practice and providing uniform guidance, the UCLA "help[s] bring order and understanding of the collaborative law process across state lines and encourage[s] the growth and development of collaborative law."[71]

The Uniform Law Commission created the UCLA because it recognized "that the wave of collaborative law practice was cresting and . . . it was time to catch it."[72] As the Honorable Chief Justice Martha Lee Walters,[73] President of the ULC during the drafting of the UCLA,[74] stated, "[I]f the ULC could draft a well thought out act, it was possible that states would ride the wave to widespread enactment."[75] Indeed, since its creation, 25 jurisdictions have adopted the UCLA and two have introduced it in the legislature to be adopted.[76]

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67 *Id.*

68 *See id.* § 11.2; WRAY ET. AL., 2015 DIVORCE EXPERIENCE STUDY, *supra* note 47, at 13, 28–29, 45 (finding that "(73%) [of survey respondents who used collaborative law] felt satisfied with the emotional well-being of their children after the divorce" whereas only 67% of respondents who used the traditional court process and 63% of respondents who used other settlement methods were satisfied with the emotional wellbeing of their children).

69 *The Uniform Collaborative Law Rules/Act: A Summary*, UNIF. L. COMM'N (Oct. 21, 2019), https://www.uniformlaws.org/HigherLogic/System/DownloadDocumentFile.ashx?DocumentFileKey=e25fab01-d751-656a-d755-daefe16a1291&forceDialog=0.

70 UNIF. COLLABORATIVE L. RULES & UNIF. COLLABORATIVE L. ACT prefatory note at 16 (UNIF. L. COMM'N 2010).

71 *Id.* at 38.

72 Martha L. Walters, Foreword, *Uniform Collaborative Law Act*, 38 HOFSTRA L. REV. 411, 414 (2009).

73 The Honorable Chief Justice Martha Lee Walters was the first woman to serve on the Oregon Supreme Court. Her tenure as an Oregon Supreme Court Justice began in 2006; she served as the chief justice from 2018 to 2022, when she retired. Press Release, Oregon Judicial Department, Oregon Supreme Court Chief Justice Martha L. Walters Will Retire, Supreme Court Elects Justice Meagan A. Flynn as Next Chief Justice (Oct. 18, 2022), https://www.courts.oregon.gov/news/Lists/ArticleNews/Attachments/1761/acd3fb79befadf4982b20ceba127ffd0-CJ%20NR%20FINAL%2010-18-2022.pdf.

74 Walters, *supra* note 72, at 411 n. preceding n.1.

75 *Id.* at 415.

76 *Collaborative Law Act*, *Enactment Map*, UNIF. L. COMM'N, https://www.uniformlaws.org/committees/community-home?communitykey=fdd1de2f-baea-42d3-bc16-a33d74438eaf (last visited Aug. 4, 2024).

A. Key Provisions of the UCLA

Unsurprisingly, the UCLA includes a provision (Section 4) mandating requirements of the participation agreement.[77] By setting minimum requirements, the UCLA ensures that the participation agreement is "fundamentally fair, but simple and thus . . . make[s] collaborative law more accessible to potential parties with matters in a wide variety of areas."[78] Section 4(a) of the UCLA requires participation agreements to:

> (1) be in a record; (2) be signed by the parties; (3) state the parties' intention to [use the collaborative law process to resolve their matter]; (4) describe the nature and scope of their matter [such as the scope of the disqualification provision and a description of the parties' matter to indicate that the case involves a dissolution, annulment, or other domestic relations or civil dispute]; (5) identify [each party's lawyer]; and (6) [state the lawyers' confirmation of] representation of a party in the collaborative law process.[79]

At minimum, Section 4 memorializes the parties' commitment to the collaborative law process; the parties' informed consent; what the process addresses and how it will do so; and acknowledges the lawyers' roles as advocates and non-parties to the agreement. Parties may, and often do, include more within their own participation agreements, especially to address specific needs and circumstances.[80]

The UCLA also mandates the disqualification of collaborative law lawyers from further representing their clients if the process breaks down, and validates that the case is not a collaborative law case without it.[81] It sets in stone the "core element and the fundamental defining characteristic of the collaborative law process"—the disqualification provision.[82] The disqualification provision is a key element of collaborative law because it keeps parties in negotiations.[83] The UCLA codifies the disqualification requirement in Section 9. Section 9 states that "a collaborative lawyer is disqualified from appearing before a tribunal to represent a party in a proceeding related to the collaborative matter."[84]

The UCLA also specifies how the collaborative process works, including how to begin and end the process, disclosure of information, confidentiality, privilege, and lawyers' standards of professional responsibility.[85] First, Section 5 of the UCLA makes it easy for parties to understand when the process begins and ends, and emphasizes the voluntary nature of the process.[86] Section 5(a) instructs that the collaborative law process begins once the parties have voluntarily signed a

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[77] UNIF. COLLABORATIVE L. RULES & UNIF. COLLABORATIVE L. ACT § 4(a) (UNIF. L. COMM'N 2010).

[78] *Id.* § 4 cmt. at 79.

[79] *Id.* § 4(a).

[80] *Id.* § 4 cmt. at 80.

[81] *Id.* §§ 5(d)(2)(A)–(B), 9 cmt. at 88.

[82] *The Uniform Collaborative Law Rules/Act: A Summary*, *supra* note 69.

[83] *The Uniform Collaborative Law Rules/Act: Frequently Asked Questions*, *supra* note 14.

[84] UNIF. COLLABORATIVE L. RULES & UNIF. COLLABORATIVE L. ACT, § 9(a) (UNIF. L. COMM'N 2010).

[85] *Id.* §§ 5, 12, 13, 16, 17.

[86] *Id.* § 5.

participation agreement.[87] It also instructs that the process ends when the parties have reached a resolution or have decided to terminate the process.[88] Either party may terminate the "process with or without cause."[89]

Next, Section 12 confirms the necessity of voluntary informal disclosure of information by stating that parties "shall make timely, full, candid, and informal disclosure of information related to the collaborative matter without formal discovery."[90] Voluntary informal disclosure of information in collaborative law is crucial because it builds trust between the parties and reveals all information necessary to make effective decisions together and eventually reach a fair and durable settlement agreement.[91] Because the court is not involved, the parties in a collaborative process are not bound by orders to produce discovery so they must make a good faith effort to share all relevant information with each other. Without all the relevant information, the parties are more likely to reach an impasse and the process fails.[92]

Further, Sections 16 and 17 protects the confidentiality and privilege of collaborative law cases.[93] Protecting the confidentiality and privilege of the communication that takes place during the collaborative law process encourages "candor by the parties," which results in the parties communicating openly and honestly with each other and their lawyers.[94] Open and honest communication drives negotiations and leads the parties to reach a settlement agreement.[95] Thus, Section 16 affirms that "collaborative law communication is confidential to the extent agreed by the parties in a signed record."[96] And Section 17 affirms that "collaborative law communication is privileged . . . , is not subject to discovery, and is not admissible in evidence."[97]

Finally, Section 13 assures collaborative law lawyers and parties that collaborative law is ethically sound.[98] It confirms that the practice of collaborative law is in line with the rules of professional conduct and does not alter lawyers' existing obligations and standards by explicitly stating that the UCLA "does not affect: (1) the professional responsibility obligations and standards applicable to a

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87 *Id.* § 5(a).

88 *Id.* §§ 5(c)–(d).

89 *Id.* § 5(f).

90 *Id.* § 12.

91 *See* David A. Hoffman & Andrew Schepard, *To Disclose or Not to Disclose? That Is the Question in Collaborative Law*, 58 FAM. CT. REV. 83, 84 (2020).

92 *See id.* at 95.

93 UNIF. COLLABORATIVE L. RULES & UNIF. COLLABORATIVE L. ACT §§ 16–17 (UNIF. L. COMM'N 2010).

94 *Id.* § 17 cmt. at 63.

95 *See supra* text accompanying notes 22–26.

96 UNIF. COLLABORATIVE L. RULES & UNIF. COLLABORATIVE L. ACT § 16 (UNIF. L. COMM'N 2010).

97 *Id.* § 17.

98 *Id.* § 13 cmt. at 91.

lawyer . . . ; or (2) the obligation of a person to report abuse or neglect, abandonment, or exploitation of a child or adult under the law of this state."[99]

Other important provisions of the UCLA include: "Section 14. Appropriateness of Collaborative Law Process"; and "Section 15. Coercive or Violent Relationship."[100] Sections 14 and 15 lay out collaborative law lawyers' duty to properly screen and educate potential clients.[101] Lawyers must screen potential clients and confirm that the collaborative process is appropriate for the client. For example, parties in coercive or violent relationships should not use the collaborative process. The collaborative process does not work for parties in coercive or violent relationships because of unequal power dynamics and potential for further manipulation by the abuser.[102] By screening out such clients, lawyers protect victims of coercive or violent relationships from entering into a situation fraught with power imbalances and abuse.[103] Further, Section 14 requires collaborative lawyers to advise potential clients of the benefits, risks, and unique features of the collaborative process so that clients can confidently give informed consent to participate in the process.[104]

III. COLLABORATIVE LAW NEEDS THE UCLA

All states should adopt the UCLA as it is necessary for the successful practice of collaborative law. Collaborative law needs the UCLA because the UCLA standardizes the practice of collaborative law and establishes a reliable framework for collaborative law lawyers and parties, and the court system. First, the UCLA protects lawyers by defining the boundaries of collaborative law and instructing lawyers how to practice it. Second, the UCLA helps parties by informing them about the collaborative law process. Third, the UCLA helps courts by providing them with a reliable statutory framework to interpret collaborative law.

A. The UCLA Protects Lawyers

The UCLA protects lawyers by specifying a lawyer's role and obligations during the collaborative law process. It includes provisions that address each area of concern critics of collaborative law have raised, such as whether collaborative law is consistent with lawyers' duty in regard to proper disqualification, limited scope representation, and conflict of interest.[105] The UCLA makes certain that

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[99] *Id.* § 13.

[100] *Id.* §§ 14, 15.

[101] *Id.* §§ 14(1)–(2). S*ee id.* § 15.

[102] Margaret Drew, *Collaboration and Intention: Making the Collaborative Family Law Process Safer*, 32 OHIO STATE J. ON DISP. RESOL., 373, 376 (2017).

[103] *Id.* at 407.

[104] UNIF. COLLABORATIVE L. RULES & UNIF. COLLABORATIVE L. ACT §§ 14(2)–(3) (UNIF. L. COMM'N 2010).

[105] John Lande, *Possibilities for Collaborative Law: Ethics and Practice of Lawyer Disqualification and Process Control in a New Model of Lawyering*, 64 OHIO STATE L.J. 1315, 1330–31 (2003) [hereinafter Lande, *Possibilities for Collaborative Law*].

collaborative lawyers comply with rules of professional conduct and fulfill their duties.[106]

First, the mandatory disqualification of collaborative lawyers if the process fails raises concerns. Model Rule of Professional Conduct (MRPC) 1.16(b) "permits lawyers to withdraw *only* under certain conditions."[107] According to MRPC 1.16(b), a lawyer may withdraw from representation if: (1) the lawyer can do so without material adverse effect on the client's interests; (2) the client uses the lawyer's services in what the lawyer reasonably believes is criminal or fraudulent activity; (3) the client uses the lawyer's services to commit a crime or fraud; (4) the lawyer finds repugnant or fundamentally disagrees with the client's insisted-upon action; (5) the client fails to fulfill an obligation in regards to the lawyer's services; (6) the lawyer's services will lead to unreasonable financial burden on the lawyer or unreasonable difficulty for the client; or (7) for other good cause.[108] Further, MRPC 1.2(a) mandates lawyers to "abide by a client's decision whether to settle a matter."[109] MRPC 1.2(a) and 1.16(b) together prohibit lawyers from withdrawing from representation simply because the client refuses to settle.[110] However, lawyers may withdraw from representation by limiting the scope of their representation. MRPC 1.2(c) permits lawyers to "limit the scope of the representation if the limitation is reasonable under the circumstances and the client gives informed consent."[111] Limitation is reasonable when the "client has limited objectives for the representation."[112]

In collaborative law, a client's sole (limited) objective for representation is settlement.[113] Thus, collaborative law lawyers represent clients for the client's sole objective to settle and "limit the scope of their representation by excluding the possibility of representing CL [collaborative law] clients in litigation."[114] The UCLA affirms collaborative lawyers' limited scope of representation through the participation agreement in which the lawyers' scope is explicitly stated and the clients give informed consent by signing it. Because the UCLA guarantees that clients give informed consent to the limited scope of the lawyer's representation by signing the participation agreement, the disqualification of collaborative lawyers is proper and in line with MRPC 1.16(b), 1.2(a), and 1.2(c).

The participation agreement marks the beginning of the collaborative law process and indicates that the case is a collaborative law case. Parties who enter into a collaborative law arrangement do so knowing that they are bound and protected

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106 *Id.* at 1381.

107 *Id.* at 1345 (emphasis added).

108 MODEL RULES OF PRO. CONDUCT r. 1.16(b) (AM. BAR ASS'N 1983).

109 *Id.* at r. 1.2(a).

110 Lande, *Possibilities for Collaborative Law*, *supra* note 105, at 1345 n.1.

111 MODEL RULES OF PRO. CONDUCT r. 1.2(c) (AM. BAR ASS'N 1983).

112 *Id.* at r. 1.2(c) cmt. [6].

113 Kirk Stange, *A Fair Settlement Should Be the Goal*, J.D. SUPRA (Dec. 4, 2019), https://www.jdsupra.com/legalnews/a-fair-settlement-should-be-the-goal-43783/.

114 John Lande & Forrest S. Mosten, *Before You Take a Collaborative Law Case: What the Ethical Rules Say About Conflicts of Interest, Client Screening, and Informed Consent*, FAM. ADVOC., Fall 2010, at 32, 32.

by the contours of the participation agreement.[115] Section 2(3)(A) of the UCLA defines the collaborative law process as one that resolves a matter outside of the court system "in which persons . . . sign a collaborative law participation agreement."[116] The comment to Section 2 specifies that "[a] collaborative law process is created by written contract, a collaborative law participation agreement."[117] The Act goes on to emphasize that the protections of the Act only apply to collaborative law arrangements that have been documented and fully executed in a participation agreement.[118]

The Texas Court of Appeals, for example, refused to disqualify one of the parties' lawyers in a dissolution case because the parties had not entered into a participation agreement. The Texas Court of Appeals held: "In order to obtain these benefits [of collaborative law], the parties must enter into an agreement."[119] In its analysis, the court relied on Texas Family Code Section 6.603, which codified the practice of collaborative law. Section 6.603(a) stated that "[o]n a written agreement of the parties and their attorneys, a dissolution of marriage proceeding may be conducted under collaborative law procedures."[120] Upon amending Texas Family Code to repeal Section 6.603 and enact the UCLA, Texas Family Code Section 15.052(4) defines collaborative law as "a procedure intended to resolve a collaborative family law matter without intervention by a tribunal in which parties . . . sign a collaborative family law participation agreement."[121] Thus, the collaborative law process does not start until the parties sign a participation agreement.[122]

> A participation agreement in a collaborative law case must:
>
> (1) be in a record;
> (2) be signed by the parties;
> (3) state the parties' intention to resolve a collaborative matter through a collaborative law process under [the UCLA];
> (4) describe the nature and scope of the matter;
> (5) identify the collaborative lawyer who represents each party in the process; and
> (6) contain a statement by each collaborative lawyer confirming the lawyer's representation of a party in the collaborative law process.[123]

To fully abide by MRPC 1.2(c), however, collaborative lawyers must clearly communicate the scope of their representation and receive the client's informed

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115 UNIF. COLLABORATIVE L. RULES & UNIF. COLLABORATIVE L. ACT §§ 2(3), 3 (UNIF. L. COMM'N 2010).

116 *Id.* § 2(3)(A).

117 *Id.* § 2 cmt. at 73.

118 *Id.* § 3.

119 *In re* Mabray, 355 S.W.3d 16, 26 (Tex. App. 2010).

120 *Id.* (quoting TEX. FAM. CODE ANN. § 6.603(a) (2006), *repealed by* TEX. FAM. CODE ch. 15 (2011)).

121 TEX. FAM. CODE ANN. § 15.052(4) (2011).

122 *Id.* § 15.102(a).

123 UNIF. COLLABORATIVE L. RULES & UNIF. COLLABORATIVE L. ACT §§ 4(a)(1)–(6) (UNIF. L. COMM'N 2010).

consent.[124] Subsection 4(4) of the UCLA enforces MRPC 1.2(c) by requiring the participation agreement to "describe the nature and scope of the matter."[125] Describing in writing the nature and scope of the matter safeguards collaborative lawyers because it provides written evidence that a client was made aware of what the collaborative process entails, including the lawyer's limited scope of representation. Further, subsection 4(a)(2) provides evidence of the parties' informed consent through their signature.[126]

However, critics argue that a signature on the participation agreement "is not proof that the client has given informed consent."[127] Though the signature indicates that the client is aware of the collaborative process, critics question whether they truly give informed consent. For example, one critic questions whether someone going through a divorce is even capable of giving informed consent because the divorce has likely caused the parties to be in a "transient state[] of impaired capacity."[128] Another critic questions whether the parties "fully understand what is at stake in [collaborative law] if the process is terminated."[129]

Thus, Section 14 of the UCLA ensures that collaborative lawyers will explain everything the client needs to know, and that the client's consent is truly informed.[130] Section 14 states that collaborative lawyers shall:

> (1) assess with the prospective party factors the lawyer reasonably believes relate to whether a collaborative law process is appropriate for the prospective party's matter;
> (2) provide the prospective party with information that the lawyer reasonably believes is sufficient for the party to make an *informed decision* about the material benefits and risks of a collaborative law process as compared to the material benefits and risks of other reasonably available alternatives . . . ; and
> (3) advise the prospective party that: (A) after signing an agreement if a party initiates a proceeding or seeks tribunal intervention in a pending proceeding related to the collaborative matter, the collaborative law process terminates; (B) participation in a collaborative law process is voluntary and any party has the right to terminate unilaterally a collaborative law process with or without cause; and (C) the collaborative lawyer . . . may not appear before a tribunal to represent a party in a proceeding related to the collaborative matter . . . .[131]

Through Section 14, the UCLA ensures that collaborative lawyers will "disclose and discuss the material risks and benefits of a collaborative law process

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124 Fines, *supra* note 9, at 144–45.

125 UNIF. COLLABORATIVE L. RULES & UNIF. COLLABORATIVE L. ACT § 4(a)(4) (UNIF. L. COMM'N 2010).

126 *Id.* § 4(a)(2).

127 Fines, *supra* note 9, at 145.

128 Larry R. Spain, *Collaborative Law: A Critical Reflection on Whether a Collaborative Orientation Can Be Ethically Incorporated Into the Practice of Collaborative Law*, 56 BAYLOR L. REV. 141, 161 (2004).

129 Wolski, *supra* note 26, at 238.

130 UNIF. COLLABORATIVE L. RULES & UNIF. COLLABORATIVE L. ACT § 14 (UNIF. L. COMM'N 2010).

131 *Id.* (emphasis added).

as compared to other dispute resolution processes" and confirm that the client understands how the process differs from litigation or mediation, and that the outcomes and goals of the representation may differ as well.[132] Further, collaborative lawyers will confirm that the client understands that collaborative agreements create pressure to settle, as well as opportunities to abuse the process by refusing to settle.[133] And finally, collaborative lawyers will confirm that the client understands "that if an agreement is not reached, they will effectively have to start from scratch and pay for another lawyer to take over the case."[134]

Some critics question whether collaborative law creates a conflict of interest because it diverts the lawyers' responsibilities from their client's best interest to that of the opposing party and the collaborative process in general.[135] For instance, in 2007, the Colorado Bar Association issued an ethics opinion in which it declared that when collaborative lawyers sign the participation agreement, even with the client's consent, they violate Colorado Rule of Professional Conduct 1.7(b) (Colorado's equivalent to MRPC 1.7(a)). MRPC 1.7(a) prohibits lawyers from representing a client if a concurrent conflict of interest exists.[136] A concurrent conflict of interest exists if "there is a significant risk that the representation of . . . clients will be materially limited by the lawyer's responsibilities to . . . a third person or by a personal interest of the lawyer."[137] A lawyer should critically assess if there is a "likelihood that a difference in interests will eventuate and, if it does, whether it will materially interfere with the lawyer's independent professional judgment in considering alternatives or foreclose courses of action that reasonably should be pursued on behalf of the client."[138] When a conflict exists, a lawyer may still represent a client if: (1) the lawyer reasonably believes they can do so competently and diligently; (2) no law prohibits it; (3) the client is not asserting a claim against another client who the lawyer represents in the same litigation or in another proceeding; and (4) the clients give informed consent.[139]

The Colorado Bar Association asserted that the participation agreement creates a significant risk that a collaborative lawyer's representation of a client will be materially limited because the lawyer "agrees to discontinue the representation in the event that the Collaborative Law process is unsuccessful and the client wishes to litigate the matter."[140] The ethics opinion goes on to say that a client's consent is not effective because collaborative lawyers cannot be sure that their responsibilities to the opposing party and the process in general will not adversely affect the client's interest because there is always a possibility for the process to fail, disqualifying

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132 *Id.* at prefatory note at 18. *See generally* Wolski, *supra* note 26.

133 Wolski, *supra* note 26, at 229, 239.

134 *Id.* at 239.

135 *Id.* at 233–35.

136 Colo. Bar Ass'n Ethics Comm., Formal Ethics Op. 115 (2007); COLO. RULES OF PRO. CONDUCT, r. 1.7(b) (COLO. S. CT. 1992); MODEL RULES OF PRO. CONDUCT r. 1.7(a) (AM. BAR ASS'N 1983).

137 MODEL RULES OF PRO. CONDUCT r. 1.7(a)(2) (AM. BAR ASS'N 1983).

138 *Id.* at r. 1.7 cmt. [8].

139 *Id.* at r. 1.7(b)(1)–(4).

140 Colo. Bar Ass'n Ethics Comm., Formal Ethics Op. 115, 392 (2007).

lawyers from further representing the client.[141] Thus, there is a "likelihood that a difference in interests will eventuate"; and when it does, "it will materially interfere with the lawyer's independent judgment" to consider or even to pursue litigation.[142] In conclusion, the Colorado Bar Association declared that because the participation agreement "interferes with such independent professional judgment in considering alternatives and forecloses courses of action for the client and the collaborative law practitioner," it does not comply with Colorado Rule 1.7(b) and MRPC 1.7(a).[143]

The UCLA ensures that collaborative law lawyers comply with Colorado Rule 1.7(b) and MRPC 1.7(a) and protects them from conflicts of interest. As discussed above, Sections 4 and 14 of the UCLA require collaborative lawyers to obtain a client's informed consent to limited scope representation.[144] Further, Section 4 requires lawyers to identify themselves as representatives of their respective parties and to confirm in writing that they represent the parties so that the lawyers are not contractually obligated to the other party.[145]

The American Bar Association (ABA) issued its own ethics opinion on the matter and rejected Colorado's opinion that the participation agreement "creates a non-waivable conflict of interest under Rule 1.7(a)(2)" because Colorado's opinion "turns on a faulty premise."[146] Colorado's opinion turns on the premise that a collaborative "lawyer's agreement to withdraw is essentially an agreement by the lawyer to impair her ability to represent the client," which the ABA disagreed with stating that "there is no basis to conclude that the lawyer's representation of the client will be materially limited by the lawyer's obligation to withdraw if settlement cannot be accomplished."[147] The ABA rejected Colorado's opinion because the collaborative process is a form of limited scope of representation. It stated that when clients give "informed consent to a representation limited to collaborative negotiation toward settlement, the lawyer's agreement to withdraw if the collaboration fails is not an agreement that impairs [their] ability to represent the client, but rather is consistent with the client's limited goals for the representation."[148] In other words, clients give informed consent to limit the scope of their collaborative lawyer's representation for settlement purposes only. Their one goal is to settle using the collaborative law process. If the process happens to fail, the collaborative lawyer's duties to the client ends; the client's interest will not be materially limited by the lawyer's withdrawal because they have already agreed to it.

Interestingly, Colorado adopted the UCLA in 2021 with an almost unanimous vote from the House and unanimous vote from the Senate.[149] One of the sponsors

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141 *Id.*

142 MODEL RULES OF PRO. CONDUCT r. 1.7 cmt. [8] (Am. Bar Ass'n 1983).

143 Colo. Bar Ass'n Ethics Comm., Formal Ethics Op. 115, 392 (2007).

144 UNIF. COLLABORATIVE L. RULES & UNIF. COLLABORATIVE. L. ACT §§ 4, 14 (UNIF. L. COMM'N 2010).

145 *Id.* § 4.

146 ABA Comm. on Ethics & Pro. Resp., Formal Op. 07-447 (2007).

147 *Id.*

148 *Id.*

149 S.B. 21-143, 73d Gen. Assemb., 1st Reg. Sess. (Colo. 2021); House Vote Document,

of the bill, Representative Marc Snyder, explained that the UCLA affirms that collaborative law is a voluntary process that requires the consent of the parties to commence.[150] He went on to explain that the UCLA affords collaborative lawyers other protections, like proper client screening, as well.[151] Another sponsor of the bill, Representative Kerry Tipper, explained that the UCLA would bring uniformity to the practice of collaborative law in Colorado and across state lines, particularly with regard to the participation agreement containing a client's informed consent to the limited scope nature of collaborative law.[152] In interpreting the sponsors' statements, it is clear that the UCLA provides collaborative lawyers with a statutory safeguard when practicing collaborative law. Section 2 of the UCLA confirms the contractual basis of collaborative law through the participation agreement; Section 4 mandates what the participation agreement must include (limited scope representation and informed consent); and Section 14 requires lawyers to provide clients with adequate information to provide informed consent.[153] Thus, the UCLA protects collaborative lawyers, so much so that a state that once declared collaborative law unethical adopted it to protect its collaborative lawyers and encourage the uniform and ethical practice of collaborative law.

B. The UCLA Benefits Parties

The UCLA benefits parties because it properly informs them about the practice of collaborative law. Collaborative law is a relatively novel area of law so parties may not know how it works. The UCLA fills that gap by teaching parties how collaborative law works and offering them the stability of an established process. It is a solid guide that informs parties and provides them with a trusty safety net. As Justice Walters stated, the UCLA "meets the needs of people with legal disputes by enabling them to understand [collaborative] law and to craft a result that is best for them."[154] Because the UCLA enables parties to understand collaborative law, half of the states (including Florida) have already adopted it.[155]

Florida adopted the UCLA in 2017 to guarantee "uniformity in the practice of collaborative law" by governing "how attorneys must act when the process is used to help families resolve their differences."[156] Before adopting the UCLA, the absence of a reliable guideline for collaborative law led to misuse and potential harm to parties. For instance, the Florida Bar discovered that "numerous attorneys in

S.B. 21-143 (Colo. 2021), https://leg.colorado.gov/content/sb21-143vote54c756; Senate Vote Document, S.B. 21-143 (Colo. 2021), https://leg.colorado.gov/content/sb21-143vote5363d4.

150 Audio Recording: Colorado House Judiciary Committee Hearing on S.B. 21-143: Uniform Collaborative Law Act, at 2:31:01–2:31:19 PM (Apr. 27, 2021), https://sg001-harmony.sliq.net/00327/Harmony/en/PowerBrowser/PowerBrowserV2/20210427/-1/11579.

151 *See id.* at 2:31:19–2:31:36 PM.

152 *Id.* at 2:33:48–2:34:57 PM, 2:38:36–2:39:30 PM.

153 UNIF. COLLABORATIVE L. RULES & UNIF. COLLABORATIVE L. ACT §§ 2, 4, 14 (UNIF. L. COMM'N 2010).

154 Walters, *supra* note 72, at 418.

155 *Collaborative Law Act*, *Enactment Map*, *supra* note 76.

156 Robert Joseph Merlin, *The Collaborative Law Process Rules: This Is How We Do It*, FL. BAR J., Apr. 2018, at 36, 40.

Florida . . . held themselves out to the public as providing the collaborative process without even knowing how to use that process."[157] Now with the UCLA in place, attorneys in Florida must explain the collaborative process to a potential client to receive the client's informed consent before the attorney can represent the client in a collaborative law case.[158]

The UCLA also benefits parties who are in coercive or violent relationships by emphasizing that the collaborative law process will not work for them and putting the responsibility on the lawyers to prevent them from using the collaborative law process.[159] Without the UCLA, vulnerable parties may not know that the collaborative law process could result in further harm and manipulation from the perpetrator; or the perpetrator may be pressuring the vulnerable party to use the collaborative law process.[160] Thus, Section 15 of the UCLA requires collaborative lawyers to "make reasonable inquiry whether the prospective party has a history of coercive or violent relationship with another prospective party."[161] Even after parties enter into an agreement and the process begins, collaborative lawyers must continue to make reasonable assessments whether a coercive or violent relationship existed or does exist.[162] If a lawyer reasonably believes at any point that the parties are in a coercive or violent relationship, the lawyer cannot represent the party unless the party so requests *and* the lawyer reasonably believes that it will not compromise the party's safety.[163] Section 15 thus requires the lawyers properly screen and protect vulnerable parties while putting all parties on notice of the process so that one party may not attempt to manipulate the situation.

C. The UCLA Helps Courts

The UCLA helps the court system by providing courts with a reliable framework for collaborative law that they can trust. Courts can turn to the UCLA to help them understand and interpret the practice of collaborative law when disputes come before them, as did the Ohio Court of Appeals in 2021.

In 2021, the Ohio Court of Appeals resolved a dispute that arose between parties who had entered into a collaborative law participation agreement.[164] Luckily for the Ohio Court of Appeals, Ohio adopted the UCLA in 2013 and provided the court with a statutory framework that it could rely on to resolve the dispute.[165] Pursuant to Ohio Code Section 3105.43[166]—modeled after Section 4 of the

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157 *Id.* at 38.

158 *Id.*

159 UNIF. COLLABORATIVE L. RULES & UNIF. COLLABORATIVE L. ACT §§ 15(a)–(b) (UNIF. L. COMM'N 2010).

160 *Id.* prefatory note at 33.

161 *Id.* § 15(a).

162 *Id.* § 15(b).

163 *Id.* § 15(c)(1)–(2).

164 Lakeside Produce Distrib., Inc. v. Wirtz, No. 109460, 2021 WL 736091, at *1 (Ohio Ct. App. Feb. 25, 2021).

165 Am. Sub. H.B. 461, 129th Gen. Assemb. (Ohio 2013); OHIO REV. CODE ANN. § 3105.41–3105.54 (2024).

166 OHIO REV. CODE ANN. § 3105.43 (2024).

UCLA—the parties in *Lakeside Produce Distribution v. Amy Wirtz* entered into a participation agreement.[167] In addition to the minimal requirements of Ohio Code Section 3105.43, the parties' agreement contained the clause: "We will work to protect the privacy, respect and dignity of all involved, including parties, attorneys and consultants."[168] The collaborative law process broke down when the husband allegedly shared information about the divorce to other people. In response, the wife filed a breach-of-contract claim.[169]

The trial court dismissed the complaint.[170] The wife appealed, asserting that the participation agreement contained an enforceable confidentiality provision.[171] The appeals court affirmed the trial court's judgment, holding that "[t]he Agreement in this case provides that the parties and their lawyers 'will work to protect the privacy, respect and dignity of all involved.' . . . [T]his language is aspirational in nature and does not create any specific contractual terms regarding confidentiality."[172] Despite the wife's attempt to argue that "the agreement is ambiguous and that parol evidence should have been considered to clarify the Agreement," the appeals court held that "the parties' Agreement is not ambiguous; it simply lacks a specific confidentiality provision."[173] Because Ohio Code Section 3105.43 did not require a confidentiality provision and the parties did not include it, the court held that the husband did not breach the parties' agreement and dismissed the claim.[174] In reaching its conclusion, the Ohio Court of Appeals relied on Ohio's version of the UCLA.[175] Had the act not existed, the court may have struggled with the decision.

Unlike the Ohio Court of Appeals, the New York Supreme Court of Monroe County did struggle with a case in which the wife asserted that the husband breached the disclosure provisions of the parties' collaborative law participation agreement. New York has not adopted the UCLA, so the New York Supreme Court of Monroe County had to turn to persuasive authority to help them reach the right conclusion.[176] Though they reached the right conclusion, the court had to look outside of the state to do so.[177] Had New York adopted the UCLA, the court could have relied on it to resolve the parties' dispute in *H.K. v. A.K.*. In *H.K. v. A.K.*, the wife moved to vacate the separation agreement that the parties had reached using the collaborative law process, alleging that the husband overreached by breaching the disclosure provisions of their participation agreement.[178] The parties signed the

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167 *Lakeside Produce Distrib., Inc.*, 2021 WL 736091, at *1.

168 *Id.*

169 *Id.*

170 *Id.* at *2.

171 *Id.*

172 *Id.* at *5.

173 *Id.*

174 *Id.* at *5–6.

175 *Id.* at *5.

176 *Collaborative Law Act*, *Enactment Map*, *supra* note 76; H.K. v. A.K., No. 10-14008, 2012 WL 1232970, at *1, *4 (N.Y. Sup. Ct. Feb. 22, 2012).

177 *H.K.*, 2012 WL 1232970, at *4–5.

178 *Id.* at *1.

participation agreement on September 8, 2009, and engaged in the collaborative law process for approximately nine months.[179] On June 10, 2010, the parties entered into a separation agreement.[180] After the parties signed the separation agreement, the wife discovered that "the husband had a girlfriend and [he] allegedly used marital funds to finance that relationship during the time he was negotiating the separation agreement."[181] When the wife questioned the husband about it, he refused to disclose any information so the wife changed counsel, allegedly terminated the collaborative law process, and filed suit to vacate the separation agreement.[182]

The court noted that "New York courts have never considered [the collaborative law] application."[183] As such, it analyzed the issue through a Texas court decision and law review articles discussing the standards of collaborative law.[184] It ultimately found that the collaborative law process ended when the parties executed a separation agreement.[185] Had New York adopted the UCLA, the court would have been able to rely on Section 5, which clearly outlines when the collaborative law process begins and ends.[186] Section 5(c)(2) of the UCLA states, "A collaborative law process is concluded by a . . . resolution of a collaborative matter as evidenced by a signed record."[187] In this case, the process concluded when the parties signed a separation agreement—a signed record of a resolution of the parties' dissolution of marriage.[188]

The UCLA may also help courts by decreasing the number of court filings. For example, in 2013, Michigan reported 85,642 domestic relations filings.[189] Michigan adopted the UCLA in 2014. In 2016, Michigan reported 80,711 domestic relations filings.[190] The trend continued downward in 2018 with 78,866 domestic relations filings and again in 2019 with 74,797 domestic relations filings.[191] The latest report

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179 *Id.* at *1–2.

180 *Id.* at *3.

181 *Id.*

182 *Id.*

183 *Id.* at *4.

184 *See id.* at *3–4.

185 *Id.* at *4.

186 UNIF. COLLABORATIVE L. RULES & UNIF. COLLABORATIVE L. ACT § 5 (UNIF. L. COMM'N 2010).

187 *Id.* § 5(c)(1).

188 *H.K.*, 2012 WL 1232970, at *6.

189 *Statewide Circuit Court Summary: 2013 Court Caseload Report*, MICH. CTS. (2013), https://www.courts.michigan.gov/497b6a/siteassets/reports/statistics/caseload/2013/statewide.pdf (last visited Aug. 4, 2024).

190 *Statewide Circuit Court Summary: 2016 Court Caseload Report*, MICH. CTS. (2016), https://www.courts.michigan.gov/49edef/siteassets/reports/statistics/caseload/2016/statewide.pdf (last visited Aug. 4, 2024).

191 *Statewide Circuit Court Summary: 2018 Court Caseload Report*, MICH. CTS. (2018), https://www.courts.michigan.gov/49b9c7/siteassets/reports/statistics/caseload/2018/statewide.pdf (last visited Aug. 4, 2024); *Statewide Circuit Court Summary: 2019 Court Caseload Report*, MICH. CTS. (2019), https://www.courts.michigan.gov/49f191/siteassets/reports/statistics/caseload/2019/2019statewide.pdf (last visited Aug. 4, 2024).

(in 2021) reported yet another decrease—62,691 domestic relations filings.[192] Though other factors may contribute to the decrease of domestic relations filings, it is curious that the filings decreased after adoption of the UCLA and can lead one to infer that it played a role.

CONCLUSION

To conclude, collaborative law needs the UCLA to help lawyers, parties, and courts, and to encourage the widespread use of collaborative law. Collaborative law is a revolutionary alternative dispute resolution method that offers collaborative lawyers and parties a high likelihood of settlement success and satisfaction.[193] Many parties have found success using collaborative law and it only continues to grow.[194]

The UCLA codifies the practice of collaborative law and provides lawyers, parties, and courts with a reliable framework. It protects lawyers by laying out ground rules to follow so that lawyers stay compliant with rules of professional conduct. Parties also benefit from the UCLA because it serves as a guide that they can use to help them better understand the process. Finally, it helps courts by providing them with a framework that they can rely on to interpret collaborative law. Half of the United States has already taken advantage of the benefits of adopting the UCLA; the remaining half should follow suit and adopt the UCLA so that collaborative law can continue to grow.

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192 Statewide Circuit Court Summary: 2021 Court Caseload Report, MICH. CTS. (2021), https://www.courts.michigan.gov/4a8ef2/siteassets/reports/statistics/caseload/2021/statewide.pdf (last visited Aug. 4, 2024).

193 Mary Juetten, *Why Are Only Family Lawyers Using Collaborative Law?*, AM. BAR ASS'N J. (Mar. 22, 2021, 9:06 AM), https://www.abajournal.com/columns/article/evaluating-collaborative-law-outside-of-matrimonial-matters.

194 *Id.*