

# THE UNIFORM COLLABORATIVE LAW ACT AS A TEACHING TOOL

*Harry L. Tindall\**

*Jennie R. Smith\*\**

## I. INTRODUCTION: A PERSONAL PERSPECTIVE ON LEGISLATION AS A TEACHING TOOL

While attending the University of Texas School of Law, I had the privilege to work as Legislative Assistant for a member of the Texas House of Representatives. I was energized by the fast-paced negotiations among legislators and the process of passing legislation. Likewise, I was awakened to how powerful a tool for teaching change to a slow-moving society a clearly drafted statute could be as opposed to convoluted case law.

The year was 1965, and as our country was experiencing social upheaval, Texas was slow to respond. It became very apparent to me that legislation was a far more efficient and responsive instrument than the common law for meeting these changes. During that legislative session, Texas enacted the Uniform Commercial Code,<sup>1</sup> and it was amazing to see the workings of the business community in rallying behind its passage. Of course the Commercial Code with its extensive commentary became the medium for teaching commercial law not only in Texas, but

---

\* Harry L. Tindall is a founding partner of Tindall & England, P.C., a practice devoted to matrimonial law. Among his many professional commitments and associations, Mr. Tindall serves as a Commissioner for the Uniform Law Commission, and was Vice-Chair of the drafting committee for the Uniform Collaborative Law Act. He serves as a member of the Board of Directors for the International Academy of Collaborative Professionals and is a founding member of the Collaborative Law Institute of Texas.

\*\* Jennie R. Smith, a recent graduate of South Texas College of Law, is an associate attorney with Tindall & England, P.C., and is a member of the International Academy of Collaborative Professionals.

1. Millard H. Ruud, *The Texas Legislative History of the Uniform Commercial Code*, 44 TEX. L. REV. 597, 600 & n.24 (1966).

nationwide. Since my law school experience with the Texas Legislature, I have continued to witness and embrace legislation as a teaching tool.

Similar to the instructive capacity of actual legislation, uniform acts recommended to the states by the Uniform Law Commission are also an important teaching tool. In family law, the Uniform Child Custody Jurisdiction Enforcement Act (“UCCJEA”) and the Uniform Interstate Family Support Act (“UIFSA”) have taught states to give full faith and credit to rulings from other states in regards to custody and child support.<sup>2</sup> I am honored to serve as a Texas Commissioner to the Uniform Law Commission, and particularly honored to have participated in the drafting of the new Uniform Collaborative Law Act (“UCLA”). The purpose of this Article is to explore the instructive qualities of legislation and more specifically, to explore the potential of the UCLA to be an important teaching tool for the practice of law and to society as a whole.

## II. LESSONS FROM ALTERNATIVE DISPUTE RESOLUTION

### A. *A Brief History of Alternative Dispute Resolution*

The impact of alternative dispute resolution (“ADR”) provides an interesting study on the instructive qualities of law. The American legal system has come a long way since Roscoe Pound’s 1906 call for change in *The Causes of Popular Dissatisfaction with the Administration of Justice*.<sup>3</sup> Pound’s postulations, which are frequently cited as the inception of current ADR,<sup>4</sup> were not quickly embraced by the legal community. Subsequent movement away from courts became apparent in the late 1960s and early 1970s with the emergence of the “community justice movement” that resulted in community and neighborhood justice centers where volunteers worked to resolve neighborhood disputes.<sup>5</sup> While this was truly a societal movement and not one driven by the legal community, and while ultimately these justice centers were transitory, lawyers did play important roles in their initial formation.<sup>6</sup> Within the legal community, significant movement away from the traditional

---

2. UNIF. INTERSTATE FAMILY SUPPORT ACT § 207 (2001); UNIF. CHILD CUSTODY JURISDICTION AND ENFORCEMENT ACT § 313 (1997).

3. See generally Roscoe Pound, *The Causes of Popular Dissatisfaction with the Administration of Justice*, 40 AM. L. REV. 729 (1906) (asserting the need for a more effective court administration and criticizing the contentious nature of the legal system).

4. See, e.g., Jacqueline M. Nolan-Haley, *The Merger of Law and Mediation: Lessons from Equity Jurisprudence and Roscoe Pound*, 6 CARDOZO J. CONFLICT RESOL. 57, 58 (2004).

5. Deborah R. Hensler, *Our Courts, Ourselves: How the Alternative Dispute Resolution Movement Is Re-Shaping Our Legal System*, 108 PENN ST. L. REV. 165, 170-72 (2003).

6. See *id.*

litigation process began at the 1976 Pound Conference, which sparked sincere interest in finding alternatives to going to court.<sup>7</sup> At this conference, Professor Frank Sander gave an address, now very familiar to proponents of ADR, opposing a “one-size-fits-all”<sup>8</sup> court system. This later gave rise to his vision of a “multi-door courthouse”<sup>9</sup> offering various means of dispute resolution.<sup>10</sup>

In the past three-and-a-half decades, the quest for a multi-door courthouse has resulted in remarkable growth in ADR.<sup>11</sup> In the 1970s, the courts adopted use of arbitration, and this was referred to as “‘mandatory non-binding arbitration,’ ‘court-annexed arbitration,’ and . . . judicial arbitration” with the purpose being to cut the time and cost of resolution.<sup>12</sup> In the 1980s, mediation became popular first in child custody cases.<sup>13</sup> By the 1990s, the use of mediation expanded to many kinds of other civil disputes as a means of expediting the disposition of cases and reducing courts’ caseloads.<sup>14</sup>

### B. ADR Legislation Emerges as a Teaching Tool

Although it is not entirely clear why arbitration was the first alternative dispute resolution of choice employed by courts, it is not unlikely that the Federal Arbitration Act of 1925 was influential.<sup>15</sup> As arbitration was already being used by American businesses,<sup>16</sup> by turning to arbitration to provide more efficient and economical justice, courts were not re-creating the wheel. In fact, because the Federal Arbitration Act specifically recognized arbitration as a means for reaching legal resolution, use of arbitration was a safe choice for district courts, not one that would be questioned as to legitimacy and fairness, nor one that would result in reversal on appeal.<sup>17</sup> Inasmuch, the federal law served as a teaching tool for state courts, instructing those courts how to manage their dockets and how to promote resolution away from the courthouse.<sup>18</sup>

---

7. *See id.* at 165, 174-75, 178.

8. *Id.* at 174.

9. *Id.* at 175.

10. *Id.* at 174-75.

11. *See id.* at 165 & n.3, 166-67, 175, 178.

12. *Id.* at 178 (quoting E. ALLAN LIND & JOHN E. SHAPARD, EVALUATION OF COURT-ANNEXED ARBITRATION IN THREE FEDERAL DISTRICT COURTS 1 (2d ed. 1983)).

13. *Id.* at 180.

14. *Id.* at 185.

15. *See, e.g.*, 9 U.S.C. § 1 (2006).

16. *See* Hensler, *supra* note 5, at 181.

17. *See* Thomas J. Stipanowich, *Arbitration: The “New Litigation,”* 2010 U. ILL. L. REV. 1, 5, 16 (2010).

18. *See* Hensler, *supra* note 5, at 167.

As courts increasingly implemented arbitration, state legislatures passed laws recognizing and sometimes mandating the use of non-binding arbitration, thus demonstrating how the Federal Arbitration Act served as a teaching tool to the states.<sup>19</sup>

Although the Federal Arbitration Act only provided arbitration as an alternative to the courthouse, it can be viewed more broadly as a teaching tool instructing the legal community that there are indeed multiple doors to the courthouse. With broad acceptance of such instruction, in the 1980s, mediation began to emerge as the ADR of choice in child custody cases.<sup>20</sup> American businesses that had before used arbitration began to employ mediation, and lawyers inserted mediation clauses either in addition to, or replacing, arbitration clauses in business contracts.<sup>21</sup> Another visible example of the growth of mediation in the business world was the American Arbitration Association's offering of mediation as an alternative to arbitration.<sup>22</sup> By the 1990s, the courts in turn began to implement mediation not just in child custody suits, but in a wide variety of other civil suits in order to promote judicial efficiency.<sup>23</sup>

Mediation is no longer just a device of the courts, but it is recognized and mandated by statutes. At the federal level, Congress has required all federal courts to institute ADR initiatives, which largely include mediation.<sup>24</sup> Likewise, individual states passed extensive legislation recognizing and or mandating the use of mediation,<sup>25</sup> and by 2001, it was estimated that some 2500 such state laws existed.<sup>26</sup> With the increase of state laws regarding mediation, wide variation among those laws created a conflict of laws among states.<sup>27</sup> In response to these conflicts, the National Conference of Commissioners on Uniform State Laws, now known as the Uniform Law Commission, and the Dispute Resolution Section of the American Bar Association ("ABA") joined efforts to draft the Uniform Mediation Act ("UMA").<sup>28</sup>

---

19. *Id.* at 178.

20. *See id.* at 180.

21. *Id.* at 183.

22. *Id.*

23. *Id.* at 185.

24. 28 U.S.C. § 651(a)–(b) (Supp. V 2000); Nancy A. Welsh, *Stepping Back Through the Looking Glass: Real Conversations with Real Disputants About Institutionalized Mediation and Its Value*, 19 OHIO ST. J. ON DISP. RESOL. 573, 583 (2004).

25. *See, e.g.*, WIS. STAT. ANN. § 904.085 (West 2000); WYO. STAT. ANN. § 1-43-101 (2009).

26. Scott H. Hughes, *The Uniform Mediation Act: To the Spoiled Go the Privileges*, 85 MARQ. L. REV. 9, 17 (2001).

27. *Id.* at 18-20.

28. *Id.* at 21.

Mediation has been traditionally described in terms of its “capacity to reorient the parties towards [sic] each other, not by imposing rules on them, but by helping them to achieve a new and shared perception of their relationship, a perception that will redirect their attitudes and dispositions toward one another.”<sup>29</sup> This relationship-based approach has been touted for its ability to decrease acrimony in divorce and custody cases and for its ability to preserve business relationships for the future.<sup>30</sup> The core of mediation is guiding parties to a compromise, which simultaneously promotes civility and keeps relationships, domestic or business, intact.<sup>31</sup>

Mediation law can truly be seen as a teaching tool for society as the focus on compromise has become a common approach to dispute resolution outside of the court system.<sup>32</sup> Both business schools and law schools have embraced the need to settle disputes through compromise, as is evidenced through the many course offerings regarding negotiation and ADR.<sup>33</sup> Businesses and communities regularly implement programs for internal dispute resolution.<sup>34</sup> Even grade school curriculum promotes the civility of compromise. Public agencies too have embraced this focus on compromise. The U.S. Postal Service routinely solves disputes through its REDRESS mediation program.<sup>35</sup> Similarly, the Equal Employment Opportunity Commission, the Department of Health and Human Services, the U.S. Air Force, and the Environmental Protection Agency have all used mediation to resolve disputes ranging from contracts to environmental cleanup.<sup>36</sup> Thus, throughout the United States, concern for effective dispute resolution reveals that ADR legislation has taught the value of compromise.<sup>37</sup> This widespread interest in compromise and continuance of relationships reflects that ADR law has also taught that justice can occur outside of a courthouse.<sup>38</sup>

---

29. Nolan-Haley, *supra* note 4, at 64 (quoting Lon L. Fuller, *Mediation—Its Forms and Functions*, 44 S. CAL. L. REV. 305, 325 (1971)).

30. John Lande, *Getting the Faith: Why Business Lawyers and Executives Believe in Mediation*, 5 HARV. NEGOT. L. REV. 137, 186 (2000).

31. *See e.g., id.* at 174-75 (quoting a lawyer who explained the benefits of mediation over the traditional court system, which often creates “animosity and ill will”).

32. *See* Hensler, *supra* note 5, at 165-66, 175.

33. *Id.* at 166.

34. *See id.* at 172; Lande, *supra* note 30, at 144, 219.

35. Welsh, *supra* note 24, at 584.

36. *Id.*

37. *See, e.g.,* N.C. GEN. STAT. § 50-71(1) (2007); TEX. FAM. CODE ANN. § 6.603(b) (Vernon 2006) (stating that collaborative law is a procedure where the parties agree “to use their best efforts and make a good faith attempt” to resolve the dispute without judicial intervention).

38. *See supra* notes 28-30 and accompanying text.

Quite importantly, ADR law is a teaching tool for lawyers. It teaches that an adversarial trial is not the only way to come to a solution. This lesson is particularly important because, as commentators on the American legal system have postulated, “lawyers may be particularly well suited . . . not only to make laws, but to ensure smooth functioning of the ever diverse polity and the myriad interests that need to be reconciled to achieve social harmony and effective government.”<sup>39</sup> Worth noting, law students continue to be taught to focus on only what is relevant to the rule of law, which typically excludes consideration of interpersonal matters.<sup>40</sup> Law students are left to come to their own understanding of interpersonal matters and how they intersect with the law. In addition to teaching that litigation is not the only way, ADR legislation teaches attorneys to value interpersonal relationships. Furthermore, the law teaches that the adversarial system is limited in the issues it can address and the outcomes it can achieve.<sup>41</sup> ADR teaches concern for preservation of relationship and promotes the civility required for such preservation.<sup>42</sup>

### III. NEW HORIZONS FOR ADR: COLLABORATIVE LAW AND THE UNIFORM COLLABORATIVE LAW ACT

#### *A. Mediation as a Teaching Tool Resulting in Collaborative Law*

Emerging in the 1990s, collaborative law is the newest innovation in ADR, described most simply as “advocacy without litigation.”<sup>43</sup> Collaborative law is a unique interest-based approach for solving disputes, which allows much control by the client while still providing the client with strong advocacy.<sup>44</sup> The process begins with lawyers and clients on opposite sides of a case entering into a formal participation agreement to work together for resolution.<sup>45</sup> This agreement includes a pledge to make a good faith effort to settle the case out of court and

---

39. Carrie Menkel-Meadow, *The Lawyer's Role(s) in Deliberative Democracy*, 5 NEV. L.J. 347, 350 (2004-2005).

40. Susan Daicoff, *Law as a Healing Profession: The “Comprehensive Law Movement,”* 6 PEPP. DISP. RESOL. L.J. 1, 5 (2006).

41. *See id.* at 10.

42. *Id.* at 7.

43. James K. L. Lawrence, *Collaborative Lawyering: A New Development in Conflict Resolution*, 17 OHIO ST. J. ON DISP. RESOL. 431, 432 (2002); *see* Forrest S. Mosten, *Collaborative Law Practice: An Unbundled Approach to Informed Client Decision Making*, 2008 J. DISP. RESOL. 163, 168.

44. *See* PAULINE H. TESLER, *COLLABORATIVE LAW: ACHIEVING EFFECTIVE RESOLUTION IN DIVORCE WITHOUT LITIGATION* 9-10 (2d ed. 2008).

45. *Id.* at 9, 14.

provides that if a collaborative settlement is not reached, the attorneys will withdraw from the case and the parties must use different attorneys for litigation.<sup>46</sup> Once this agreement is in place, the parties convene in multiple joint meetings to discuss issues and goals, gather information, and eventually, hammer out an agreement.<sup>47</sup>

With a focus on avoiding long-term destruction of relationships and with the goals of candor, good faith participation, and self-determination, the genesis of collaborative law from mediation is readily apparent.<sup>48</sup> Commentators have recognized that, “[s]pecifically, collaborative law owes a debt to mediation.”<sup>49</sup> The mediation approach of parties working together for resolution is enhanced in collaborative law by the dismissal of the intermediary, and in the intermediary’s stead, face-to-face meetings.<sup>50</sup> With collaborative law’s roots in mediation, it is apparent that mediation legislation has been a teaching tool in guiding the evolution of ADR. Mediation statutes clearly indicate the legal system’s acceptance of ADR as means for solving a dispute.<sup>51</sup> Such acceptance in turn has taught that the pursuit and expansion of alternatives within ADR is worthwhile.

The ABA has given specific acceptance of the expansion of ADR in the form collaborative law, recognizing it to be a legitimate and ethical means of ADR.<sup>52</sup> In response to questions raised about the ethical nature of collaborative law, the ABA has issued a formal opinion stating that collaborative law practice “represent[s] a permissible limited scope [of] representation” so long as a client gives informed consent to proceed collaboratively.<sup>53</sup> The same opinion addressed issues of conflict of interest arising in collaborative law and found that a non-waivable conflict does not arise as a result of the contractual obligation to withdraw if resolution is not achieved nor does it arise from the participation agreement.<sup>54</sup>

---

46. *Id.* at 14.

47. *See id.* at 54-55, 63-65.

48. *See* Patrick Foran, *Adoption of the Uniform Collaborative Law Act in Oregon: The Right Time and the Right Reasons*, 13 LEWIS & CLARK L. REV. 787, 802 (2009); Mosten, *supra* note 43, at 164.

49. Foran, *supra* note 48, at 802.

50. *Id.* at 800-01.

51. *See supra* notes 18-25 and accompanying text.

52. ABA Comm. on Ethics and Prof'l Responsibility, Formal Op. 07-447 (2007).

53. *Id.*

54. *Id.*

### B. *The Uniform Collaborative Law Act*

In July 2009, the Uniform Law Commission (formerly known as the National Conference of Commissioners on Uniform State Laws) approved the UCLA.<sup>55</sup> Preceding the UCLA were a series of individual state statutes recognizing collaborative law as a legally permissible way to arrive at resolution.<sup>56</sup> In 2001, Texas passed the first of such statutes incorporating collaborative law procedures into the Texas Family Code as means for resolution of divorce and child custody and support matters.<sup>57</sup> California, North Carolina, and Utah followed with the enactment of their own collaborative law statutes.<sup>58</sup> In Texas, the collaborative law statutes have been a teaching tool providing instruction regarding procedure as well as teaching the legitimacy of practicing collaborative law and of settlement outside of litigation.<sup>59</sup> Perhaps, in addition to serving as a teaching tool within their respective states, the collaborative law state statutes have instructed on the importance of creating the UCLA.

The UCLA itself has great promise as a new teaching tool within the legal community and society. With dual goals of “standardiz[ing] the most important features” of collaborative law and of “encourag[ing] the continued . . . growth of collaborative law as a voluntary dispute resolution option,” the UCLA is poised to instruct on both procedure and policy.<sup>60</sup> The remainder of this paper focuses on the UCLA as a teaching tool of both.

#### 1. Procedure Taught by the UCLA

The UCLA is straightforwardly educational in its instruction on collaborative law procedure and was drafted for application of collaborative law in all areas of civil law, not just family law.<sup>61</sup> By providing a comprehensive list of definitions of terms in the Act, the

---

55. Lawrence R. Maxwell, Jr., *The Uniform Collaborative Law Act: It's Here*, ALTERNATIVE RESOLUTIONS, Fall 2009, at 29 & n.2, available at [http://www.collaborativelaw.us/articles/UCLA\\_It's\\_Here.pdf](http://www.collaborativelaw.us/articles/UCLA_It's_Here.pdf).

56. See, e.g., CAL. FAM. CODE § 2013 (West 2010); N.C. GEN. STAT. §§ 50-70 to -79 (2007); TEX. FAM. CODE ANN. § 6.603(b) (Vernon 2006); TEX. FAM. CODE ANN. § 153.0072(a) (Vernon 2008); UTAH R. JUD. ADMIN. 4-510(1)(D), (6)(A) (2009).

57. Christopher M. Fairman, *A Proposed Model Rule for Collaborative Law*, 21 OHIO ST. J. ON DISP. RESOL. 73, 103 (2005).

58. CAL. FAM. CODE § 2013; N.C. GEN. STAT. § 50-70 to -79; UTAH R. JUD. ADMIN. 4-510(1)(D), (6)(A); Foran, *supra* note 48, at 789.

59. Pauline H. Tesler, *Collaborative Family Law, the New Lawyer, and Deep Resolution of Divorce-Related Conflicts*, 2008 J. DISP. RESOL. 83, 125-26 n.62.

60. UNIF. COLLABORATIVE LAW ACT, prefatory note (2009), in 38 HOFSTRA L. REV. 421, 443 (2010) [hereinafter UCLA].

61. *Id.* at 434.



UCLA clearly teaches how the Act is to be understood and implemented.<sup>62</sup> Furthermore, it gives practitioners a common vocabulary. The substantive procedural instruction begins in section 4 of the Act, which lists six discrete and minimum requirements for a Collaborative Law participation agreement.<sup>63</sup> The participation agreement must be a record containing the signature of the parties and a statement that the parties intend to proceed collaboratively under that Act and the scope of the matter being resolved.<sup>64</sup> Furthermore, it must identify the lawyers involved and contain a statement by each lawyer confirming their representation in the process.<sup>65</sup> By such requirements, the UCLA reinforces the benefits of protocols in practice.

By instruction on these procedural requirements, the UCLA teaches that the process must be entered into voluntarily and that there must be a sincere commitment to the process by all participants, including the attorneys. The lesson that participation in collaborative law must be voluntary is further taught in section 5 of the UCLA which specifically disallows a court from ordering such participation.<sup>66</sup>

The UCLA instructs as to the start and conclusion of the collaborative law process.<sup>67</sup> It makes clear that the only way to begin the process is to sign a participation agreement.<sup>68</sup> In regard to the conclusion of the process, the UCLA sets forth several methods including: actual resolution evidenced by a signed record, resolution of only part and an agreement that any unsettled issues will be resolved in a separate process, or termination of the process.<sup>69</sup> Termination is distinguishable from conclusion in that termination involves an adversarial event, including: one party giving notice that the process has ended, one party beginning a related proceeding without consent of all parties, one party initiating a pleading or requesting a court hearing, or one party discharging a collaborative lawyer or the withdrawal by a collaborative lawyer.<sup>70</sup> Conclusion of a collaborative case, however, does not happen if one party consents to the other party seeking court approval of a proposed resolution or partial resolution.<sup>71</sup> Also, withdrawal or dismissal of an attorney may not result in termination if the party engages a new

---

62. *Id.* § 2, at 467-68.

63. *Id.* § 4, at 474.

64. *Id.* § 4(a)(1)-(4), at 474.

65. *Id.* § 4(a)(5)-(6), at 474.

66. *Id.* § 5(b), at 476.

67. *Id.* § 5(a), (c), at 476-77.

68. *Id.* § 5(a), at 476.

69. *Id.* § 5(c), at 476-77.

70. *Id.* § 5(d), at 477.

71. *Id.* § 5(h), at 477.

attorney and creates a signed record of intent to continue in the process and documents the engagement and agreement of the new lawyer to participate in the process.<sup>72</sup>

By setting forth clear instructions for how to begin and end collaboration, the UCLA again teaches that the process must be intentional and voluntary. It further teaches that the parties must work together throughout the process and that the process will be destroyed if one party instigates litigation. Additionally, it teaches that client self-determination is of the utmost importance.

The UCLA explicitly teaches about the role of courts in collaborative law.<sup>73</sup> In recognition that courts retain ultimate control over filed cases, the UCLA provides for appropriate intervention by a presiding court.<sup>74</sup> Despite the stay a participation agreement provides to a pending case, a presiding court may require parties and lawyers to provide a status report on the proceedings.<sup>75</sup> Such status reports, however, are limited so as not to reveal confidential information such as assessments, evaluations, recommendations, or findings; but rather to include only basic information regarding the process, such as whether the process has occurred, has been terminated, who attended, and whether an agreement was reached.<sup>76</sup> Importantly, the Act specifically provides for court intervention to issue emergency orders to protect the health, safety, and welfare of a party or family or household member as set forth by protective statutes.<sup>77</sup> In these provisions, the UCLA teaches that although collaborative law is a process of self-determination, courts retain ultimate control in the interest of justice. The limitation of the information a court can require in a status report teaches that confidentiality must be maintained during the ADR process and that a court must respect this requirement of the process.

The UCLA teaches about what has been called the “sine qua non of collaborative law,” which is the disqualification of a collaborative lawyer from representing a client in litigation regarding the same matter or a substantially related matter formerly pursued by a failed attempt at collaborative law.<sup>78</sup> Furthermore, the firm of the disqualified lawyer is also disqualified from participation in a substantially related matter or

---

72. *Id.* § 5(g), at 477.

73. *Id.* § 6 & cmt., at 478-80.

74. *Id.* § 6(c), at 478-79.

75. *Id.*

76. *Id.* § 6(c) & cmt., at 478-80.

77. *Id.* § 7, at 480.

78. Stu Webb, *Collaborative Law: An Alternative for Attorneys Suffering 'Family Law Burnout,'* THE MATRIMONIAL STRATEGIST, July 2000, at 7.

litigation.<sup>79</sup> The UCLA does however make two exceptions to the disqualification of a collaborative lawyer's firm. First, if the collaborative lawyer was serving a low income party without receiving a fee, then that lawyer's firm may not be disqualified from participation in related litigation if the collaborative law participation agreement so provides and if the collaborative lawyer is isolated from any participation in the litigation.<sup>80</sup> A similar provision applies when one of the parties to a collaborative law participation agreement is a government entity.<sup>81</sup> Although a collaborative lawyer in the matter is disqualified upon termination of collaborative law, the lawyer's firm may participate in a substantially related matter if the collaborative law participation agreement so provides and if the collaborative lawyer is isolated from any participation in the litigation.<sup>82</sup>

In its disqualification provision, the UCLA teaches attorneys that they, as well as their clients, must be committed to the collaborative process. It also teaches that full candor is possible, as what one party reveals to another cannot be used against them by the opposing attorney in litigation. By providing exceptions from disqualification for attorneys of low income clients and of government entities, the UCLA teaches that collaborative law can and should be widely available and applicable to the entire population. Thus, the UCLA legitimizes the use of collaborative law by government entities and parties of varying socio-economic status.

The UCLA further teaches broad application of collaborative law by its provision for use of collaborative law despite a party's history of domestic violence with another party.<sup>83</sup> Such an instance requires that the party requests the use of collaborative law, that the lawyer reasonably believes a party's safety can be adequately protected during the process, and that the lawyer is familiar with the ABA's *Standards of Practice for Representing Victims of Domestic Violence, Sexual Assault and Stalking in Civil Protection Order Cases; Standards of Practice for Lawyers Who Represent Children in Abuse and Neglect Cases; and Standards of Practice for Lawyers Who Represent Parents in Abuse and Neglect Cases*.<sup>84</sup> By these provisions, the UCLA urges caution in the use of collaborative law when there have been instances of domestic violence or abuse. Simultaneously, the UCLA teaches that domestic

---

79. UCLA § 9(b), at 481-82.

80. *Id.* § 10(b), at 482.

81. *Id.* § 11(a), at 483.

82. *Id.* § 11(b), at 483.

83. *See id.* § 15, at 484-85; *see also id.* prefatory note, at 459-63.

84. *Id.* § 15(c), at 485; *see also id.* prefatory note, at 459-63.

violence victims can be served by use of collaborative law with appropriate counsel and screening. Furthermore, these provisions instruct the importance of comprehensively interviewing clients with such distinct issues.

In regard to ethics, the UCLA teaches that the same professional responsibility and obligations apply to lawyers engaged in the collaborative law process as in any other legal setting.<sup>85</sup> Specific to collaborative law, the UCLA teaches observance of confidentiality and privilege. As previously set forth, the Act protects the confidentiality of collaborative proceedings by prohibiting a court from requiring that a status report include information such as assessments, evaluations, recommendations, reports, or findings.<sup>86</sup> The scope of confidentiality may also be extended or limited by agreement of the parties.<sup>87</sup> However, excluded from confidentiality is any communication during the collaborative process indicating abuse, neglect, abandonment, or exploitation of an individual.<sup>88</sup> Likewise, the reporting of abuse or neglect of a child is mandatory even in the collaborative law process.<sup>89</sup>

The UCLA goes beyond providing for mere confidentiality and teaches that collaborative law communication is privileged and not subject to discovery.<sup>90</sup> Notwithstanding, evidence or information otherwise admissible does not become protected simply because of its disclosure in the collaborative process.<sup>91</sup> The UCLA stipulates that privilege may be waived either expressly by all parties or to the extent necessary that a representation made about a communication would prejudice another party.<sup>92</sup> Additionally, assertion of privilege may be precluded if a person intentionally uses a collaborative law process to engage in criminal activity.<sup>93</sup> Exceptions to privilege are enumerated by UCLA and include threats of violence, proof of abuse or neglect, proof of malpractice, and evidence that is not otherwise available when the need for the evidence substantially outweighs the interest in protection of confidentiality.<sup>94</sup>

The ethical provisions of the UCLA teach that a lawyer participating in collaborative law is held to the same standards of

---

85. *Id.* § 13(1), at 483.

86. *See supra* note 74 and accompanying text.

87. UCLA § 16, at 488.

88. *Id.* § 19(b)(2), at 488; *see id.* prefatory note, at 463.

89. *Id.* § 13(2), at 484; *see id.* prefatory note, at 435.

90. *Id.* § 17(a), at 485.

91. *Id.* § 17(c), at 486.

92. *Id.* § 18(a), at 488.

93. *Id.* § 19(a)(3), at 488.

94. *Id.* § 19(a)–(d), at 488–89.

professional responsibility applicable in any other legal proceeding. With additional provisions for confidentiality and privilege, the UCLA teaches lawyers and parties to be forthcoming and candid in their meetings. Furthermore, these provisions teach that there can be an honest exchange of information so as to foster productive negotiation.

## 2. Policy Taught by the UCLA

In general, the UCLA provides a paradigmatic lesson in approaching the resolution of conflict. This lesson is implicit as the UCLA sets forth, more strongly than any other ADR legislation before, the policy of non-adversarial resolution as it codifies the benefits of interest-based negotiations. Integral to the instruction provided by the UCLA are the extensive reporter's notes that accompany the Act.<sup>95</sup> Clearly explaining the goals and reasoning behind the collaborative law approach, these notes are an invaluable guide to the policy underlying the provisions of the UCLA.<sup>96</sup> Collaborative law teaches the policy of a relational approach, which acknowledges the emotional and human dynamic involved in conflict.<sup>97</sup> The UCLA teaches maintaining relationships by building a bridge to compromise, rather than destroying a relationship in order to prevail in litigation.<sup>98</sup> Additionally, the UCLA instructs an unbundled approach to legal services and promotes limited scope representation.<sup>99</sup>

More specifically to parties, the UCLA promotes the policy of self-determination.<sup>100</sup> To lawyers, the UCLA teaches that they can zealously advocate for their client while still promoting compromise and the continuation of interpersonal relationships.<sup>101</sup> Furthermore, to both parties and attorneys, the UCLA teaches the policy that resolution does not have to be a win-lose outcome, but rather can and should be something that all parties can embrace.<sup>102</sup> This lesson is implicit in the UCLA's requirement of confidentiality by non-parties aimed at promoting uses of jointly retained experts who advise parties together.<sup>103</sup> Rather than having an arms-length approach, the UCLA promotes

---

95. *Id.* §§ 2-17 cmts., at 467-88; *see id.* §§ 19-20 cmts., at 488-92.

96. *See, e.g., id.* § 2 cmt., at 467-74; *id.* § 4 cmt., at 474-76; *id.* § 5 cmt., at 476-78; *id.* § 7 cmt., at 480-81; *id.* § 11 cmt., at 485; *id.* § 16 cmt., at 488; *id.* § 20 cmt., at 491-92.

97. *See* Lawrence, *supra* note 43, at 432-34.

98. UCLA, prefatory note, at 426-27.

99. *See id.* § 9(a)-(b), at 481-82; *see also id.* prefatory note, at 425, 438, 440-41, 450.

100. *See id.* prefatory note, at 426-27, 434.

101. *See id.* prefatory note, at 425, 427, 438-39.

102. *Id.* prefatory note, at 426-27.

103. *Id.* § 17(b)(2) & cmt., at 486-88.

personal negotiation and face-to-face compromise.<sup>104</sup> Further, the provisions of the UCLA also teach honesty, good faith, open communication, and respect in a negotiation process.<sup>105</sup> Implicit in these qualities is a policy for civility.

#### IV. CONCLUSION

Hopes are high that the UCLA can be successfully used as a teaching tool in its capacity to further the success of ADR processes. Law students, lawyers, and judges can benefit from learning the provisions of the UCLA and from learning new skills in resolving societal conflict. Adoption of the UCLA by the states will provide the initial opportunity for teaching the Act to legislative bodies. This educational effort will be in the great tradition of successful enactment of other uniform acts, and following enactment, the teaching of the UCLA to law students and collaborative professionals.

---

104. *See id.* prefatory note, at 426-27.

105. *Id.* prefatory note, at 426-27, 436.