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The Time Has Come for the Uniform Collaborative Law Act

David A. Hoffman // March 2, 2024

For 14 years, a bill has languished in the Legislature that would help divorcing couples part ways peaceably and help resolve other conflicts as well.

The Uniform Collaborative Law Act, or UCLA — recently endorsed unanimously by the American Bar Association House of Delegates — would support the use of collaborative negotiations in divorce and other legal matters.

Collaborative law, a process in which parties agree to negotiate cooperatively, exchange relevant information voluntarily, and have their lawyers focus on negotiation instead of litigation, is no stranger to Massachusetts. It has been used here since 2000, when the Massachusetts Collaborative Law Council was formed.

However, without supporting legislation, clients cannot be assured that the arrangements for the collaborative process — such as confidential negotiations — will be enforced.

The UCLA was created in 2010 by the Uniform Law Commission, which has been promulgating uniform laws in the U.S. since 1892, on subjects ranging from commercial transactions to inheritance law. Thirty-three of these uniform acts (such as the Uniform Arbitration Act) have been enacted by Massachusetts, and the time is long overdue for the UCLA to be added to the list.

When the UCLA was first introduced in Massachusetts in 2011, collaborative law was not well known as an area of legal practice. But today hundreds of Massachusetts lawyers, financial professionals, child specialists and mental health professionals have been trained in how to use the collaborative law model, in which a multi-disciplinary team of professionals is often involved.

The UCLA would support collaborative negotiation in three ways.

First, it creates a legal privilege (like the mediation privilege) for such negotiations if they take place in connection with a collaborative law participation agreement. For example, the privilege would allow divorcing couples and their lawyers to negotiate confidentially, without fear that their settlement discussions could become part of a court case if their negotiations fail.

Second, it provides legal enforceability for collaborative law participation agreements, in which the lawyers for each party agree that they will represent their clients solely for the purpose of negotiation, and, if litigation is needed, new lawyers will be hired. This provision aligns the economic incentives of the lawyers with those of clients who want a negotiated resolution of their case.

Third, it requires the parties and counsel to make a candid disclosure of relevant information, rather than forcing each side to use expensive depositions and adversarial proceedings. This provision can dramatically reduce the amount of time needed to resolve a conflict and reduce acrimony as well.

Are there any reasons not to enact the UCLA?

When the UCLA was first debated by the Uniform Law Commission, some women's rights advocates expressed concern about whether the widespread problem of intimate partner violence would be exacerbated by promoting non-court divorce resolutions. Accordingly, the commission added a provision obligating lawyers to screen for domestic violence and barring attorneys from using the collaborative law process unless the safety of the participants can be protected.

Another objection, voiced by some litigators, was whether the UCLA violates principles of legal ethics by limiting each party's right to counsel of their choice. However, an ethics opinion from the ABA in 2007 established that there is nothing unethical about lawyers agreeing with their clients to limit the scope of their representation to collaborative negotiation.

Finally, some lawyers expressed concern about whether the UCLA usurps the court's role in regulating the legal profession by creating legislative management of lawyers. In response to this concern, the commission amended the UCLA to permit its enactment as a set of court rules instead of legislation, or a hybrid of the two.

The bottom-line reason for enacting the UCLA is that it provides a legal structure for an additional, and much-needed, method of conflict resolution. Like mediation, collaborative law is a voluntary process; no one can be compelled to use it.

But even without such compulsion, many thousands of people in Massachusetts and around the world have used the collaborative law model with a high rate of settlement success. Some of the data indicate that 80 to 90 percent of collaborative cases settle.

Without the UCLA, lawyers and clients can enter into the collaborative process, but they do so without the assurance that the confidentiality of their negotiations will be enforced and that their agreements for limiting their collaborative lawyers' representation to negotiation will be honored.

To be sure, not every divorce or other dispute is appropriate for a collaborative negotiation. However, with the ever-present backlog of court cases awaiting trial dates, Massachusetts should join the other 22 states and the District of Columbia that have already enacted the UCLA and provide legal support for an additional tool — along with mediation — for amicably resolving conflict.

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