After years of work, collaborative law may finally get uniform standards

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It's been 20 years since Minnesota family lawyer Stuart Webb created collaborative law, and family-law-related associations have since been formed in all 50 states.

That rapid growth led the National Conference of Commissioners for Uniform State Laws to decide in 2007 that it's time to bring some uniformity to the practice of collaborative law. Thus a drafting committee set forth on the task.

Well over a dozen drafts since the commissioners began their work, it appears that the Uniform Collaborative Law Act, otherwise known as the UCLA, will go before the American Bar Association's House of Delegates next February at the ABA's 2011 Midyear meeting, said Milwaukee attorney Carlton D. Stansbury.

With collaborative law, the parties agree to work together to settle the case, using jointly-retained experts and voluntarily disclosing all evidence. What differentiates collaborative law from other ADR processes is its withdrawal requirement: The participants agree that their lawyers will be disqualified from representing them in any future, related litigation if the process fails.

Stansbury, of Burbach & Stansbury SC, was among the state's first collaborative family-law practitioners. After 10 years of representing divorce clients using the process, he recalls only two cases where it wasn't successful.

Stansbury serves as one of two ABA advisers to the drafting committee, and is a nonvoting participant in the drafting process. If the delegates approve it, states may consider enacting it legislatively.

CARLTON D. STANSBURY
Burbach & Stansbury SC

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'Good Public Policy'

Stansbury said the UCLA "sets a minimum standard and minimum procedures, so everyone will be operating under the same basic tenets and safeguards."

The UCLA requires parties to have a signed participation agreement stating their intention to resolve the matter through the collaborative-law process. It also must state the nature and scope of the matter, identify the collaborative lawyers, and indicate the lawyers' consent to participate in the process.

It has a consumer-protection element to it, in the sense that it requires informed consent under Sec. 14, Appropriateness of Collaborative Law Process, said Stansbury. That section requires collaborative lawyers to assess the individual factors of the case that may make it appropriate for the process, along with the material risks and benefits of the process, along with other ADR processes and litigation.

It also requires screening for domestic violence in Sec. 15. However, cases involving domestic violence are not necessarily precluded from the process if the victim consents and his or her lawyer believes the party's safety can be protected.

In addition, in Secs. 17-19, it establishes that communications within the process are privileged, which is critical for states where the statutes or caselaw haven't addressed that yet, said Stansbury.

"It's been well-thought out, debated and challenged," he said. "It contains very good public policy, and there's no reason why every state shouldn't have it."

Will it Pass?

Marta T. Meyers of the Boardman Law Firm in Madison, chair of the Wisconsin Collaborative Family Law Council, has been following the model law's development and said her organization's board wholly supports it in concept. If there are details that are ultimately deemed undesirable for Wisconsin, those can be ironed out when the state considers adopting it.

Meyers said the council has considered authoring legislation itself, but doesn't have the resources to see that through. So it welcomes the efforts of the national uniform laws group.

The biggest benefit she said the law would bring is wider recognition and usage of the process. Collaborative family law is very popular in Dane County and southeastern Wisconsin, but is not as readily available in other areas of the state.

Moreover, a law would ensure the judiciary understands the role and benefits of collaborative law. While most judges and court commissioners currently approve stipulations reached via the process, there are a few who don't, said Meyers.

An appealing aspect of the uniform law, per Stansbury, is that does not spell out a "type" or "model" of collaborative law that must be followed. In Wisconsin, for example, practitioners use a "two-coach" system, where each party has his or her own coach, typically a nonlawyer. In contrast, some states use a single coach for both parties. Moreover, some states have educational or training requirements for collaborative law practitioners, but the model act doesn't address that.

Stansbury added that studies have shown that attorneys who settle more cases rather than litigating them have more time for pro bono. "A lawyer might be hesitant to take on a pro bono divorce where there's the possibility of going to court and it will eat up two-months' time. But I might be more likely to take that pro bono case if I know there's no likelihood I'll be in court on it."

The ABA's Family Law Section, along with many other entities within the ABA, has already approved the UCLA.

Milwaukee lawyer Diane S. Diel, president-elect of the International Academy of Collaborative Professionals (IACP), said that group, likewise, "enthusiastically supports" the UCLA.

"The Uniform Laws Commission tells us that the numbers of introductions of this act in state legislatures is extraordinary, especially coming even before approval of the act by the ABA," said Diel, of Diane S. Diel SC. "Thus far, Utah has enacted the UCLA and it has been introduced in Ohio, Tennessee and Oklahoma, where it has passed the House and is pending in the Senate. The states of Texas, California and North Carolina had enacted statutes approving collaborative practice before the Uniform Laws Commission took up the drafting of this act."

She said the IACP looks forward to helping its members introduce and enact the act in many states, adding, "I would love to see a Wisconsin enactment."

Moreover, the Family Law and Alternative Dispute Resolution Sections of the State Bar of Wisconsin have expressed preliminary support, said Stansbury. He expects that ultimately Wisconsin will pass its own version of the UCLA, but can't make a prediction on the timeframe.

Diel noted that the quicker route to making the model act law would be to adopt it in the form of court rules, rather than statutorily – the model act has provisions for either version.