MINUTES OF THE MEETING
OF THE
ASSEMBLY COMMITTEE ON JUDICIARY

Seventy-Sixth Session
March 7, 2011

The Committee on Judiciary was called to order by Chairman William C. Horne at 9:06 a.m. on Monday, March 7, 2011, in Room 3138 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 4401 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. Copies of the minutes, including the Agenda (Exhibit A), the Attendance Roster (Exhibit B), and other substantive exhibits, are available and on file in the Research Library of the Legislative Counsel Bureau and on the Nevada Legislature's website at www.leg.state.nv.us/76th2011/committees/. In addition, copies of the audio record may be purchased through the Legislative Counsel Bureau's Publications Office (email: publications@lcb.state.nv.us; telephone: 775-684-6835).

COMMITTEE MEMBERS PRESENT:

Assemblyman William C. Horne, Chairman
Assemblyman James Ohrenschall, Vice Chair
Assemblyman Steven Brooks
Assemblyman Richard Carrillo
Assemblyman Richard (Skip) Daly
Assemblywoman Olivia Diaz
Assemblywoman Marilyn Dondero Loop
Assemblyman Jason Frierson
Assemblyman Scott Hammond
Assemblyman Ira Hansen
Assemblyman Kelly Kite
Assemblyman Richard McArthur
Assemblyman Tick Segerblom
Assemblyman Mark Sherwood

COMMITTEE MEMBERS ABSENT:

None

GUEST LEGISLATORS PRESENT:

None

STAFF MEMBERS PRESENT:

Dave Ziegler, Committee Policy Analyst
Nick Anthony, Committee Counsel
Lenore Carfora-Nye, Committee Secretary
Jeff Eck, Committee Secretary

OTHERS PRESENT:

Terry J. Care, representing Uniform Law Commission
Kimberly M. Surratt, Attorney, Surratt Law Practice
Robert W. Lueck, Attorney and Counselor at Law
Terry Miller-Newcomb, Licensed Marriage and Family Therapist
Deborah J. Ribnick, Licensed Psychologist
Bill Uffelman, President and CEO, Nevada Bankers Association
Scott Anderson, Deputy Secretary for Commercial Recordings, Office of the Secretary of State

Chairman Horne:
[The roll was called.] Today we have two bills on the agenda. The first is Assembly Bill 91 followed by Assembly Bill 109. Mr. Segerblom, we will begin with A.B. 91.

Assembly Bill 91: Enacts the Uniform Collaborative Law Act. (BDR 3-60)

Assemblyman Tick Segerblom, Clark County Assembly District No. 9:
Thank you, Mr. Chairman and members of the Committee. I am Assemblyman Tick Segerblom representing District 9. I previously told you that the last uniform bills were the most important that you would hear, but actually these are the most important uniform bills you will hear. Former Senator Terry J. Care is here to present them.

Terry J. Care, representing Uniform Law Commission:
I will discuss the collaborative law process, which I do not personally practice. This presentation is on behalf of the Uniform Law Commission. The Judicial System is generally where adverse parties appear in court for resolution of disputes or mutual claims. You have heard the expressions "I am going to sue them," or "I am going to take this to the Supreme Court." When you attend your joint session, you will hear Chief Justice Douglas give his State of the Judiciary speech. He will speak about the number of cases that Nevada courts face and the backlog Nevada courts have. This is true of federal courts, state trial courts, and appellate courts. Litigation is a very lengthy process. It is expensive and anguishing, especially for people who have never been through it

before. In the United States, there is a concept currently known as alternative dispute resolution (ADR). Alternative dispute resolution may consist of mediation or arbitration and may be binding or nonbinding. The premise of ADR is to avoid the uncertainty of trial. Unfortunately, the traditional judicial system is not always about justice.

Now, I will address the collaborative law process. This movement is roughly 20 years old. To some degree, it is probably practiced in all 50 states. It is practiced here in Nevada. The most common ADR cases are family law cases. Recently, it has been utilized in insurance matters and is starting to be used in other types of civil litigation as well. The Uniform Law Commission has determined that now is the time to design a uniform statute that will hopefully be adopted by the majority of states. Ideally, it will be adopted in all 50 states, so that collaborative law attorneys and other parties who are involved with this process will recognize that the rules are the same in all states. I would like to highlight a few things about this process. The process is strictly voluntary, and is client driven. The lawyers and the clients agree that the lawyers will represent clients solely for the purposes of settlement, which is the very core of the ADR practice. The clients will obtain new attorneys if the matter is not resolved. In other words, attorneys will initially be engaged, and the parties are allowed to request all types of information. All relative information will be disclosed on the table to all parties involved. There will be frank, honest conversation about everything. If ADR is not successful, the parties can file a new lawsuit or continue with a previous lawsuit. The parties will be unable to use the same attorneys because the attorneys involved in the ADR process will be focused strictly on attempting to resolve the matter and will not be planning on a trial. Alternative dispute resolution is intended to be a nonadversarial dispute resolution process.

Regarding the bill, sections 4 through 19 provide the definitions. The definitions in sections 4, 5, and 6 are important definitions. Section 6 states that "'collaborative law process' means a procedure intended to resolve a collaborative matter without intervention by a tribunal. . . ." The courts are not involved in this process. The process requires a signed participation agreement and representation by collaborative lawyers. The "collaborative law communication," as defined in section 4, occurs after the process starts and is made before the process concludes or terminates. All of this will be set forth in an agreement. Section 19 covers the contents of a collaborative law participation agreement. The agreement must be in a record, must be signed by the parties, must state the intention of the parties to resolve a collaborative matter through a collaborative law process, and must describe the state, the nature, and the scope of the collaborative law process. Section 20 relates to the beginning and the termination of the collaborative law process.

Section 20, subsection 2, states, "A tribunal may not order a party to participate in a collaborative law process over the objection of that party." The courts cannot require participation in ADR. Participation is strictly voluntary by all parties involved. Basically, the matter is concluded if it is resolved. The ADR proceeding can also terminate if one of the parties decides not to participate further in the ADR process. The ADR process will also terminate if one of the parties decides to proceed with a court action. Section 21 relates to proceedings pending before a tribunal. This means a lawsuit has been filed but the parties have decided to try the ADR process rather than continuing with the litigation process. The court will not proceed with litigation while the ADR is in process. The court may require the parties to provide a status report regarding the ADR proceeding.

Chairman Horne:
If I may interrupt, in that instance, you say that matters are "stayed." If you already have a lawsuit in process, to what degree have the judges been cooperating?

Terry J. Care:
That is true, Mr. Chairman. The Uniform Act simply stated that if the parties enter into an ADR process, there is a stay. Obviously, the courts have something to say regarding a stay. That is the primary purpose of the amendment. The amendment will state that entering into the ADR process operates as an application for a stay. The court will still have the discretion to say yes or no. It is difficult to imagine that a court would not agree to this process, but we have left it to the discretion of the court.

Section 22 allows a court to issue emergency orders. Former family court Judge Robert Lueck will explain the emergency order process. Section 23 simply states that the court may approve the agreement resulting from a collaborative law process. Section 24 relates to the disqualification of the collaborative lawyer and an associated firm. As discussed previously, if the matter is not resolved, the lawyers will be removed from the case. This section simply means that if the attorney can no longer represent a party in a collaborative law process, the party cannot be represented by another attorney in the same firm. There are two exceptions to this rule. The exceptions are referenced in sections 25 and 26. Section 25 indicates that if an attorney charges no attorney fees for representing a low income party and is not able to resolve the collaborative law issue, it is acceptable for another attorney from the same organization to represent that party on a "no fees basis." However, it must be an attorney who has no prior knowledge of the case. Section 27 is another core element of the process and relates to disclosure of information. Each party is allowed to ask the other party for pertinent information.

Section 28 relates to the standards of professional responsibility and mandatory reporting. Current law in this state is not affected. Cases of child abuse, neglect, or abandonment will be handled accordingly. The duties to report such cases are still effective. Section 29 discusses the appropriateness of the collaborative law process. This section sets forth some obligations that attorneys have in this process. Section 30 is significant and relates to coercive or violent relationships. There is a due diligence requirement for attorneys. Section 30, subsection 1 states that "Before a prospective party signs a collaborative law participation agreement, a prospective collaborative lawyer must make reasonable inquiry into whether the prospective party has a history of a coercive or violent relationship with another prospective party." This section pertains to family law matters which can be very volatile. Section 33 discusses the confidentiality provision. A collaborative law communication is confidential to the extent agreed upon by the parties. Section 32 provides a privilege against disclosure for collaborative law communications. If one of the parties discloses a communication, the other party may also disclose the communication to the extent necessary to remove any prejudice. Sections 33 and 34 relate to waiver and preclusion of the privilege. Section 34 also relates to the limits of the privilege. Section 35 relates to the authority of the court in the case of noncompliance. It may be possible that the parties enter into one of the agreements but have not met all of the formal requirements. The parties may be under the impression that they have done everything they should have. This section simply gives the court the discretion to make a determination in those cases that there actually is a collaborative law agreement in process.

Regarding my exhibits, I have already explained one of the amendments that I have previously submitted (Exhibit C). Additionally, you should have a letter from Professor Mootz, Boyd School of Law. Professor Mootz is a Uniform Law Commissioner. He had hoped to testify here today but could not; therefore, he has submitted his written testimony in the form of a letter (Exhibit D). You may note that he has been kind enough to share with you his personal experience with the process. That will conclude my testimony. Judge Lueck may have one other minor amendment to the bill. I agree with the amendment. My colleagues should be able to answer the more detailed questions you may have.

Chairman Horne:
Are there any questions for Senator Care?

Assemblyman Frierson:
I apologize if I missed this, but can you tell me how many other states have adopted this Uniform Act?

Terry J. Care:
It is a brand new act. There have been several introductions this legislative session. However, the collaborative law process is recognized in approximately 12 states by state bars or by statute. These states just do not have the Uniform Collaborative Law Act.

Assemblyman Frierson:
I have discussed uniform acts with you before. In this particular instance, what is it that this will allow us to do more efficiently that we are currently unable to do?

Terry J. Care:
If we do not adopt the Uniform Collaborative Law Act, states will just continue doing what they are doing. The difficulty is that collaborative law is not done the same way in every state. The Uniform Law Commission tries to enforce uniformity so that if parties move from state to state, the rules will remain the same, absent federal legislation.

Assemblyman Daly:
I believe you already answered one of my questions regarding a judge not being allowed to force a party to participate in a collaborative process, but a judge can potentially deny it. I would like to hear additional information in that regard. My second question is relating to the disclosure provision referenced in section 27. Would it be better to include that provision as part of section 19? Additionally, section 29, subsection 3, paragraph (a) states "After a collaborative law participation agreement is signed, the collaborative law process terminates if a party initiates a proceeding or seeks the intervention of a tribunal in a pending proceeding related to the collaborative matter." I believe you need to clarify that language so that there is no confusion as to what those proceedings might be.

Terry J. Care:
Regarding section 19, if a party is going to enter into one of these agreements, obviously it is understood that the party is going to do so in good faith. As I understand, your question is why not simply say there will be full disclosure, as set forth in section 27, and combine this with section 19? I think section 19 relates to the contents of the provisions. I believe there is an assumption there that it is based on "good faith." Section 27 just provides additional language. I would say that the collaborative law process attorney must explain all of this. He has a duty to do that to all who participate. I appreciate your question, but this is the way the draft committee submitted it. I am not sure I answered your other question. Can you repeat it?

Assemblyman Daly:
Regarding section 29, in my opinion, there should be a reference back to the emergency provisions, or that when a conclusion is reached, it would be approved by the court. I will appreciate a little clarification on that.

Terry J. Care:
Chairman Horne, I understand that and it makes sense. If Mr. Daly would like to come up with language to clarify that, I am okay with it. I will note that in sections 22 and 23, it does say "may." I am open to any clarifying language that Mr. Daly may have.

Chairman Horne:
Thank you. Perhaps our legal staff can help Mr. Daly with the proper language for that.

Assemblywoman Dondero Loop:
It is no secret that this is a very deep and convoluted bill. Can you give some examples of where this will work other than family court? I understand the need for uniformity throughout the states, but if individual states passed legislation, that legislation would supersede this. Is that correct?

Terry J. Care:
As I understand it, the states are perfectly free to do whatever they wish. States are not required to adopt the Uniform Act, although we hope they will. Sometimes states have particular statutory language that requires amendments to a Uniform Act. We certainly are not in a position to tell the states that they must participate.

Assemblywoman Dondero Loop:
With that being said, if the states choose the Uniform Collaborative Law Act, it means that their legislation would always supersede the Uniform Collaborative Law Act?

Terry J. Care:
If states adopt the Uniform Collaborative Law Act, it then becomes the state law. I believe what you may hear from Ms. Surratt is that we currently do not have state law that governs this. The whole purpose of this bill is to give some statutory guidance to everyone, uniformly.

Chairman Horne:
Perhaps Ms. Surratt's testimony will clear up some questions you may have.

Kimberly M. Surratt, Attorney, Surratt Law Practice:
Thank you, Mr. Chairman. I am a family law practitioner in Reno, Nevada. I am one of the founding members of Collaborative Professionals of Nevada. I am also an unpaid lobbyist for the Nevada Justice Association. I do practice in collaborative law, and I was instrumental in achieving training for a significant number of professionals regarding the collaborative law process. When I say professionals, I am not only referring to lawyers. In the family law arena, we train mental health professionals, attorneys, and financial professionals together. It is part of the approach of collaborative training to provide a holistic approach to individuals who are divorcing and have custody disputes. Previously, someone asked, "What will this bill assist us in doing?" Right now, we draft these agreements. We are under a contractual obligation. If the parties do not comply, it is considered a breach of contract. There is nothing in the statutes that will assist us to enforce some of the provisions that keep us out of court proceedings or to enforce the confidentiality of the process. We can borrow from other current mediation principles and statutes. However, the statutes are not specific to collaborative law. It is questionable whether this process will be enforceable. The parties sign an agreement and file a lawsuit for breach of contract, which would be our best option presently. In addition, when a party can refer to a statute, it legitimizes the process. It creates some sound belief that the parties need to participate in good faith, because the evidence will not make it into court. There are domestic violence provisions and other clarifications in the statute.

There are many countries around the world currently utilizing this system. The International Academy of Collaborative Professionals (IACP) has assigned committees and a task force to streamline and provide guidelines for how to practice in this area. The IACP has participated in the drafting of this bill. The consensus among professionals is that this bill will provide this field with a basic guidance for behavior. If these basic guidelines are complied with, there will be some overall uniformity from state to state. As far as I know, there are currently no states that have their own collaborative statutes. Louisiana was considering enacting some statutes regarding the collaborative process and may have some small provisions, but there is nothing currently comprehensive. The states that have small provisions within their own legislatures will be adopting the Uniform Collaborative Law Act in place of the current statute provisions. The Uniform Collaborative Law Act is widely accepted among collaborative professionals as the accepted guidelines for compliance.

Chairman Horne, you asked about the cooperation of the courts relative to the stay process. Based upon discussion with judges at the recent Nevada State Bar Family Law Conference in Ely, the judges did not foresee any problems in allowing us to use this process. When two parties inform the court that they

both agree to participate in an ADR process, a judge should not deny this. I do not know of any judge that would. Judges are more than happy to allow the parties to utilize ADR procedures in settling the case. The Uniform Act gives us the ability to maintain a current pending action with the court, stay the proceedings, and yet utilize the court when necessary. This is standard practice in family law. This practice may be seen in civil litigation to some degree. A good example is the issuance of temporary child custody and temporary child support orders when both parties mutually agree. These temporary orders are issued because until the parties divorce, we need to know how custody will be handled. We can reach that agreement within the collaborative process. This bill allows us to approach the court and have the agreement memorialized into an order that is enforceable. Right now, we do not technically have the authority to start an action in court, stay it, receive temporary orders, and continue with the ADR process. This bill will give the judges the authority and ability to comply with statutes.

Chairman Horne:
Since this is primarily practiced in family court, what about the situation where you have more than two interested parties? Let us say you have both parents and the children with their own representatives. Does this work in that regard as well? You may possibly have three competing interests in addition to the professionals.

Kimberly M. Surratt:
Yes, collaborative law works wonderfully in that regard. The joy of the collaborative process is often it is approached holistically. We bring in third parties that may be required to assist in the process. If the children are represented by an attorney, all that would be required is that the attorney be compliant with the process. Judges cannot force people to cooperate in the collaborative process. The parties must believe in the process and put forth their own best efforts, in good faith, in order for this process to work. If someone is hesitant or does not intend to cooperate, the process just will not work. The matter will be right back in litigation. To answer your question, as long as all parties are on board and are in favor of the process, it will absolutely work. In an interdisciplinary collaborative case, we will often retain a child specialist to represent the children. We have learned that utilizing mental health professionals as coaches for the spouses, having a child specialist available to represent the children, and having a financial professional available to give neutral advice is usually the most productive and best way to help the family through this process with the least amount of damage.

Assemblyman Frierson:
In your experience, has this process of avoiding litigation produced a savings for clients? How successful is this process? For example, how often does this result in a resolution as opposed to allowing further litigation, while incurring additional costs?

Kimberly M. Surratt:
The research has demonstrated that there is a significant amount of savings. I have witnessed this savings in my own personal experiences. The trend shows a little bit more cost up front, while the long-term savings are significant. Theoretically, the resources needed are utilized immediately in lieu of realizing long into the process that a child specialist was required initially. As an example, I just completed very difficult divorce litigation, where the attorneys' fees and costs in the case totalled $250,000. The most expensive collaborative case I have represented included a tremendous amount of mental health issues, major asset disputes, property disputes, and many contested issues. The case continued for a significant amount of time and totalled between $50,000 and $60,000 in fees and costs. The majority of the costs involved searching for documents and determining the value of the businesses. These two cases were very similar with regard to the issues that were involved. The professionals in a collaborative case are trained to keep emotions under control and to maintain a professional atmosphere. Attorneys cannot threaten to take the matter to court if all parties do not agree. Participation is measured at a whole new level. The savings are significant.

With regards to the success level, I have only had one case fail. The case failed because there were some significant mental health problems, which were not evident in the beginning. There is not a lot that can be done about such issues in that circumstance. Collaborative professionals around the country will say that collaborative cases do not fail. The reason is the collaborative professionals work harder to keep the parties at the table. If one of the parties involved gets off track and indicates that he or she wishes to litigate, we use our team of mental health specialists to keep the parties negotiating. The success rate is extremely high.

Assemblyman Sherwood:
Can you explain the process as referenced in section 13 regarding proceedings? The concern that I have is home court advantage. For instance, if we are handling this outside of the courtroom, where does the adjudication occur? How does this become agreed upon, and who gets paid to be the judge?

Kimberly M. Surratt:
We have provisions in this act regarding the proceedings, and when the collaborative process is completed there will be an agreement. Typically, it will be a marital settlement agreement if the case is within the family law context. There still must be a proceeding in order to finalize the divorce. The provisions in this bill will allow us to obtain the divorce decree through the court. Nevada is one of the states that utilize a joint petition for divorce. The parties can mutually request an uncontested divorce from the court. We are allowed to seek a joint petition, as attorneys within the collaborative process, under this bill.

Section 13 defines what a proceeding is. The collaborative process may terminate due to an act of domestic violence. The victim's lawyer, in the collaborative process, can obtain an emergency restraining order on behalf of the victim that will be effective until the victim is able to retain another lawyer. It is preferred that the party immediately obtains another lawyer, since the current lawyer has participated in the collaborative process. However, this provision is a safeguard for domestic violence issues.

Chairman Horne:
Thank you. I see no further questions.

Robert W. Lueck, Attorney and Counselor at Law:
Good morning, Mr. Chairman and members of the Committee. I have submitted written testimony (Exhibit E). I am not going to repeat my written testimony, but I will speak from the heart. I will also add some statistics and answer questions. I first heard about the collaborative process approximately 11 years ago, while serving the public as a family court judge in Clark County. After reading a lengthy article about the subject, I immediately saw the benefit. In my work as a lawyer and as a family court judge, I have seen so many families ruined by the adversary process of divorce. I saw them ruined both financially and emotionally. I also saw the emotional cost to the children of divorce. There are plenty of studies on that subject. We have two mental health professionals here today who may talk more about that. The collaborative process is now mainstream. The IACP is the worldwide umbrella organization and has been in existence for 12 years. Through the IACP, we have developed training manuals for this process. We have also developed ethical standards, practice standards, and a whole host of research materials.

This collaborative process has been studied by law professors and academic professionals. They have all positively indicated that this process is a good model for domestic-related work. There have been many law review articles published on the process of collaborative law. This practice has spread

throughout all 50 states, all Canadian provinces, the entire country of Australia, and several European countries. Europe holds a major conference on collaborative law each year. The last European conference was held in Ireland. The Prime Minister of Ireland spoke at the conference, promoting the collaborative process. In other countries, this process has been promoted by people representing the highest levels of government, such as presidents, prime ministers, chief justices, attorneys general, et cetera. It is constantly growing as there are many articles in the public press, newspapers, and magazines, regarding the collaborative law process.

I would like to address the question that Mr. Frierson had previously asked. The Uniform Collaborative Law Act was enacted in the State of Utah in 2009. It is scheduled now for introduction into 11 state legislatures. This information is disclosed on the Uniform Law Commission's website. It is planned for introduction into 11 states, including Nevada. The Act is being reviewed under bar study in Colorado and Florida. Florida introduced collaborative law legislation in 2009. The Florida legislature decided to defer enacting legislation until it completes further studies. The Act is pending in Oklahoma, Tennessee, and Ohio. Three states, prior to this, had collaborative statutes. Texas was the first state to include collaborative statutes in 2001, which resulted as an aftermath to a vicious divorce. Now the collaborative process is at the point of taking off due to academic and practical research. There is a great deal of data that supports this process.

Another question that came up previously was regarding the savings in using this process. There have been at least three studies done comparing the costs. Pauline Tesler, who practices exclusively in collaborative divorce in San Francisco, is one of the founders of the IACP. She wrote the first book which was published by the Family Law Section of the American Bar Association. Ms. Tesler estimated that her fees for a collaborative divorce are 5 percent to 10 percent of the costs for the traditional adversary divorce. David Hoffman, who runs the Boston Law Collaborative, LLC, wrote an article indicating that out of 119 cases, the average cost for an adversary case was $77,000. In comparison, for the collaborative cases, the cost was approximately $19,700. Mediation accounted for approximately $6,600. An economist named William Schwab published a study that indicated the average cost of a collaborative case was approximately $8,707. An Oregon attorney published an article promoting the Uniform Act in Oregon and estimated that her cases were approximately $3,500 to $7,500 per attorney. Compared to the adversary litigation costs, the savings are huge for all parties involved. Collaborative law has not become common in Nevada, but I can express to you my personal experiences. Of the collaborative cases that I have represented, the largest fee that I have incurred in a collaborative case was

approximately $6,000. That was for a divorce case consisting of a $4 million net asset estate value. My client also utilized the services of a certified public accountant and Merrill Lynch staff advisors. I do not know the total costs incurred. We save people enormous amounts of money. You also inquired about settlement rates. The good news is that the published statistics vary from 78 percent to 94 percent. The conclusion I have reached, after talking with other attorneys, is about 90 percent settle out of court using the collaborative process. The success rates are enormous, and these are not easy cases. We work hard at settling the case. My personal success rate in collaborative cases is 100 percent. I had only one failure, although it was not a true failure because the parties reconciled. Part of the reason for the reconciliation was because we did not take a hostile or adversarial approach. We are saving people enormous amounts of money, time, and expense. People have a vested interest in working with each other after the divorce, especially if there are children involved. That is the reason this process works.

One of the other questions raised was whether a judge can deny the collaborative process. Many attorneys have indicated that they have started cases in court and subsequently have decided to proceed collaboratively. Those attorneys reported that there was no problem in having a judge sign a stipulation to stop the litigation. From the court's perspective, anytime the case load declines, it is a good thing. Mr. Sherwood asked previously "Who is the judge in a collaborative case?" The judges are the husband and the wife. They are their own decision makers. There is nobody telling them what to do, and there are no decisions made for them. That is the beauty of this process. The divorce is settled by making their own decisions. What we do as professionals, through teamwork, is work with the parties to develop the information and options. We point out the pros and cons, talk through the difficulties, and help the parties make their decisions. It works very well because they have all the power in their hands. We do know from experience that if things break down subsequent to the divorce, the parties are much more willing to work things out again in collaborative negotiations. There are many reasons to recommend this process.

Chairman Horne:
Judge Lueck, I would like to wrap this up and move on to other testimony.

Robert W. Lueck:
In closing, I would like to say that I have been practicing law in Nevada for 36 years as an attorney and as a family court judge. I have handled thousands of divorces, including contested matters and cases all the way up to the Nevada Supreme Court. From my personal experience, this is the best model for handling divorces. It is the only formal model that uses three professions,

which are mental health, financial advisors, and legal counsel. This process makes it enjoyable to be a lawyer. We can work with people to solve problems instead of going through the stress and frustration of fighting it out in court. If I could have my way, I would practice only mediation and collaborative law. I would do it all in my office, without having to go to court other than for the formal process required for the final divorce. I will answer any questions you may have.

Assemblyman Hansen:
What is the difference between arbitration, mediation, and collaboration?

Robert W. Lueck:
Arbitration is nothing more than a trial which includes a private decision maker that the parties agree on. It is covered under the Uniform Arbitration Act. Mediation is conducted by a neutral third party who does not represent either party. The mediator will work with the parties to try to resolve the issues. We often say that collaborative law and mediation are cousins. In the collaborative model, each side is represented by a divorce lawyer. In addition, we use a mental health professional and neutral financial specialist working as a team. The best analogy I can provide is a medical example. When you have a medical issue, a doctor is seen, and he refers you to a specialist. Subsequently, lab tests, x-rays, other consultations, et cetera, may be required. Just like collaborative law, it is handled with a teamwork approach.

Assemblyman Hansen:
This will enhance the ability to solve problems. I want to clarify whether this is necessary since there are already arbitration and mediation options available. Why would we add another layer of service?

Robert W. Lueck:
It is not another layer. It is a different choice. Every time a party goes to court for arbitration, the decisions are passed to a third party, who may have no stake involved. Another factor is the time and expense to proceed. Collaborative law attorneys proceed directly into problem solving. Once the people agree to the divorce, we meet as a team and sign the participation agreement. We talk about what we are going to be doing in terms of the case. There may be temporary issues to resolve such as who will be paying certain bills, or who will have temporary custody of the children. These issues can be resolved in one meeting in lieu of several weeks in court. It is direct and it is to the point. Our process is much more efficient. We are helping people work through some of the most difficult times of their lives.

Chairman Horne:
I see no further questions. We will move on to further testimony.

Terry Miller-Newcomb, Licensed Marriage and Family Therapist:
Thank you, Chairman Horne and Committee members for allowing us to speak today. I am here to enlist your support for A.B. 91. Over the past 22 years as a licensed therapist, I have treated thousands of adults and children who have been negatively impacted by traditional adversarial style divorces. I treat divorcing couples. I also treat children as minors, and as adults, years later, who have been children of divorce and are now experiencing marital problems as a result of unresolved issues from their childhood. I became trained as a collaborative professional initially because of my concern for the children, while treating all of the generations that were involved in divorcing families.

All collaborative professionals including lawyers, mental health professionals, or financial specialists become trained mediators. I knew there had to be a process that was healthier, saner, and smarter than the traditional divorce process. There are three key components that speak of the benefits of the collaborative model. There is a significant reduction in the amount of conflict between the parents. Collaborative process actually teaches and enables the parties to listen and to better understand the true underlying interests, rather than being focused on winning or prevailing in the divorce process. In many cases, children will often be the biggest losers in the divorce process, and that is the larger issue to focus on. Families are better supported by the collaborative team from the very beginning. They will have a team of specialists around them. The mental health professionals can serve as the coaches for the parents, or in a different collaborative case, we may serve as the child specialist. We can interview the children to find out what their needs are. We understand their developmental needs. We will actually advise the parents about custody matters, and the children have a voice with the custody issues. The children can express some of their needs. Finally, the children whose parents choose a collaborative divorce are better assessed, cared for, and supported throughout the process. The children understand that there is an adult that is listening to them and helping them through this family transition. Some of the youngest children, ages 3 or 4, were able to say to me, “Thank you for listening to me”; or “Thank you for helping my parents not fight”; or “I was afraid of all of the changes that would happen to my family, but now I understand.” The children are supported from a very early point in the process, and adjust more quickly. They tell me that they do not feel caught in the middle between their parents. They really express a lot of thankfulness and are free from worry. Many children in the middle of a divorce begin to feel as though they have to take sides. This process eliminates that. Another thing we know is that custodial agreements that are reached when children have a voice

have proven to be more durable, less damaging, and eventually healthier for the family during the transition.

Finally, I think Nevadans have an opportunity to enact legislation that will benefit children, families, and our communities for future generations. Thank you.

Chairman Horne:
Are there any questions? I see none. Dr. Ribnick, do you have remarks?

Deborah J. Ribnick, Licensed Psychologist:
I speak to you today based on my experience as a licensed psychologist in private practice. In this role, I provide psychotherapy to children, adults, couples, and families. [Dr. Ribnick continues reading from prepared written testimony (Exhibit F).] I have also provided endorsement letters by email as well as by hard copy (Exhibit G) and (Exhibit H).

Chairman Horne:
The exhibits are posted on our Nevada Electronic Legislative Information System (NELIS) and will be part of the record. Are there any questions for Dr. Ribnick? I see none. Thank you very much. Is there anyone else here or in Las Vegas wishing to testify? We will close the hearing on A.B. 91.

[The additional exhibits for A.B. 91 are as follows: Amendment by Robert W. Lueck (Exhibit I), Letters of Support from Richard Z. Schatz, Schatz Financial Group and the International Academy of Collaborative Professionals (Exhibit J), and Collaborative Law Act Summary (Exhibit K).]

There are some recommended amendments to be drawn up and will be brought to a work session document. We will now open the hearing on Assembly Bill 109.

Assembly Bill 109: Enacts the amendments to Article 9 of the Uniform Commercial Code. (BDR 8-330)

Assemblyman Tick Segerblom, Clark County Assembly District No. 9:
Assembly Bill 109 is another uniform law bill resulting from the Uniform Law Commission. Former Senator Terry J. Care is here to make the presentation.

Terry J. Care, representing Uniform Law Commission:
Assembly Bill 109 consists of amendments to Article 9 of the Uniform Commercial Code. I mentioned earlier that the best known product of the Uniform Law Commission is the Uniform Commercial Code (UCC).

There were amendments promulgated to Article 9 in 1998, which have been adopted by all 50 states.

Chairman Horne:
Can you briefly explain to the Committee what UCC Article 9 is?

Terry J. Care:
The UCC is like a rule book in the world of commerce. If you look at *Nevada Revised Statutes* (NRS) Chapter 104, there are several hundred pages which cover sales, negotiable instruments, letters of credit, et cetera. *Nevada Revised Statutes* Chapter 104, Article 9, governs secured transactions and covers seven parts. Secured transactions can be explained by the following example. A business will borrow money, but the lender is not going to be satisfied with just a personal guaranty. The lender is going to want a secured position in personal property or collateral of the borrower. Acceptable collateral can be inventory, equipment, accounts receivable, et cetera. In other words, the bank is saying, "I will let you have this money, but I hold a secured position in one or more of your assets." In the event the borrower defaults, the bank has collateral. The document used in this transaction is known as a UCC1 Financing Statement (Form UCC1). The debtor will complete and sign this statement and it must be filed. That is called "perfection." The general rule is the more senior perfected security interest takes priority over subsequent security interests. If the borrower defaults, there may be competing interests trying to attach to the same collateral. That is where this general rule comes into play. Article 9 basically governs those transactions. Every once in a while, because of evolving case law or changes in technology, the Uniform Commercial Code drafting committee decides it may be time to seek additional amendments, which is the reason for A.B. 109.

Sections 2 through 9 are transitory provisions. You will notice that the effective date of this bill is not until July 1, 2013. The reason is because the Uniform Law Commission hopes that the 50 states will adopt this, although they may not all do it at once. The UCC expects that by July 1, 2013, all states will have complied. All of the language in sections 3 through 9 making reference to July 1, 2013, is there for that reason.

There are some other things I should point out to you. In section 10, there is a small change in some definitions for clarification purposes. There are three provisions regarding definitions. We have a new definition "public organic record." To give you an example, if I visit the Secretary of State's website, I can view the articles of incorporation. However, I will not be able to view the certificate of good standing. Therefore, the articles of incorporation are

considered a public organic record as opposed to the statement of good standing, which is not.

Section 11 pertains to a term called "electronic chattel paper." Chattel paper is a term used extensively in law school. What it basically means is that there may be a document that demonstrates a monetary obligation and a financing statement, or a similar document, which are stapled together. This is known as chattel paper. In the world today, there are ways to do this electronically. The change in section 11 is simply there for the transfer of electronic chattel paper.

Section 14 makes further additions in subsection 8 and subsection 9. If a debtor who is given a secured position moves from one state to another, the debtor is still protected as a secured party for four months. There is nothing currently governing the situation where there may be collateral acquired after this debtor moves to another state. This section is intended to address that issue. Additionally, there may be a merger where the debt is assumed by the surviving entity located in a different state. This section also addresses that type of situation.

The big debate over this bill is contained within section 19. The way the bill is drafted, it contains some language the UCC provided (Exhibit L). This language is called "Alternative B," which is known as the "safe harbor" rule. This is opposed to "Alternative A," which is known as the "only-if" rule. I will explain this further. Section 19 covers the name of the debtor and the secured party. Obviously, the name of the debtor is an important part of this entire process. Following discussions, the UCC allowed each state to choose what form of identification it would accept. An acceptable form of identification may be the information on a valid driver's license. Alternatively, a debtor may use the "safe harbor." The bankers could not agree with the language that Nevada business law wanted to use. The Uniform Law Commission does not have a preference as to whether "Alternative A" or "Alternative B" is used. Currently, the bill is using "Alternative B." I was told this morning that the Business Law Section, in further discussion with the bankers, have agreed that "Alternative A" is acceptable. That change is the basis for Mr. Uffelman's amendment (Exhibit M). It all comes down to properly identifying the name of the debtor. It sounds confusing but I assure you that Mr. Uffelman will answer any questions you have on that issue.

Section 23 currently provides that if a debtor believes that the claim is inaccurate or has been wrongfully filed, the debtor can file a "correction statement." The UCC would like to change that terminology to "information statement." The new language will allow the secured party to file a statement indicating that there has not been an amended financing statement

properly filed. I know it sounds confusing, but that is it. If you would like more details, Mr. Uffelman can best answer those questions.

Chairman Horne:
Thank you, Senator Care. Can you explain briefly if these are changes to the existing UCC provisions? Have some jurisdictions already adopted this? Also, what if we choose not to adopt the changes?

Terry J. Care:
We are never obligated to proceed with what the Uniform Law Commission recommends. These amendments were adopted in 2010, at the annual conference in Chicago. This is the first year for individual states to entertain the proposed amendments. My notes do not indicate there have been any enactments yet. The amendments have been introduced in 10 states, so far. Normally, amendments are adopted by the states. This does not preclude anyone from asking questions, because there may be reservations.

Chairman Horne:
I see no further questions. We will move on to testimony by Mr. Uffelman.

Bill Uffelman, President and CEO, Nevada Bankers Association:
I am President and CEO of the Nevada Bankers Association. I truly appreciate Senator Care for providing me with the opportunity to review the UCC. This is something I forgot about 35 years ago, after taking the Indiana State Bar exam. Commencing with section 19, subsection1, paragraph (d) of the bill on page 28, line 30, and continuing through line 37, it states that there are three ways to identify or provide the name of an individual debtor on a financing statement, which is "Alternative B." The banking community prefers subsection (3), lines 35 through 37, which is "Alternative A." The amendment that I provided removes the other two options and narrows it down to the information on a driver's license or government identification card.

Additionally, after review, I realized that the bill refers to "this state," which implies that everyone who may be the subject to a financing statement would be required to have a Nevada driver's license. I noticed that section 10, page 15, lines 10 through 26 say that "a state or the United States" is the source of the identification document. In this area, a person can live in South Lake Tahoe, have a California driver's license, but have a business entity here in Nevada. The person may need to borrow money for the business, and use the California driver's license as their source of identification. I would, therefore, suggest an additional amendment that would change "this state" to "a state" or "the United States." Someone may use a military card or some other form of government issued identification, in lieu of a Nevada identification. With that

further suggestion, we would urge you to adopt "Alternative A" because it provides clarity and a readily identifiable source of identification. In banking today, when a potential client comes in to conduct business, the first thing that must be provided is identification. This suggestion is consistent with banking practices in the world today. Are there any questions?

Chairman Horne:
Are there any questions for Mr. Uffelman? There are none. Thank you very much. Is there anyone else wishing to testify for A.B. 109?

Scott Anderson, Deputy Secretary for Commercial Recordings, Office of the Secretary of State:
I would like to make certain that you received my email correspondence of last week with regard to one small change to the bill (Exhibit N). It is my understanding that you may want this on the record.

Chairman Horne:
Yes, that is correct. Would you state your name for the record and continue?

Scott Anderson:
I am Deputy Secretary of State for Commercial Recordings, and I am here on behalf of Secretary of State Ross Miller. We have no objection to this bill. There is one minor item of concern which was brought to my attention late Friday. The concern is regarding the name of the form to be put into statute in section 22 and section 23. The Office of the Secretary of State uses the national forms as promulgated by the International Association of Commercial Administrators. The form used is called a "statement of claim." This name should be used in place of "information statement," as stated in the bill. The change was made in the middle of 2009, after the last session. Since we could not make the change during the last session, we feel it prudent to make the change for this bill in sections 22 and 23.

Chairman Horne:
Are there any questions for Mr. Anderson? We will add your request as part of the record, for a work session document with possible amendments. We will close the hearing on A.B. 109. We will bring this back to Committee.

All of the documents and exhibits for A.B. 91 and A.B. 109, which are on the Nevada Electronic Legislative Information System (NELIS), will be made part of today's record and will be brought into a work session. Also, this coming Friday, we will have a work session. There are some outstanding amendments to some bills that are being considered. If you have amendments that you are working on, please make sure you provide them to Mr. Ziegler in a timely

fashion, preferably by the end of business on Wednesday. If there is no other business to come before the Committee, we are adjourned. [The meeting adjourned at 10:24 a.m.]

RESPECTFULLY SUBMITTED:

_____
Lenore Carfora-Nye
Committee Secretary

APPROVED BY:

_____
Assemblyman William C. Horne, Chairman

DATE: _____

EXHIBITS

Committee Name: Committee on Judiciary

Date: March 7, 2011 Time of Meeting: 9:06 a.m.

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
A.B. 91	C	Terry J. Care	Amendment to A.B. 91
A.B. 91	D	Francis J. Mootz III	Testimony
A.B. 91	E	Robert W. Lueck, Esq.	Testimony
A.B. 91	F	Deborah J. Ribnick, Ph.D	Testimony
A.B. 91	G	Collaborative Professionals of Nevada	Resolution and Testimony
A.B. 91	H	Michelle G. Carro, Ph.D.	Testimony
A.B. 91	I	Robert W. Lueck, Esq.	Amendment to A.B. 91
A.B. 91	J	Richard Z. Schatz, Schatz Financial Group and Nancy Cameron, IACP	Testimony
A.B. 91	K	Uniform Law Commission	Collaborative Law Act Summary
A.B. 109	L	Uniform Law Commission	UCC 9 Amendments 2010 Summary
A.B. 109	M	William R. Uffelman	Amendment to A.B. 109
A.B. 109	N	Scott W. Anderson, Deputy Secretary, Office of Secretary of State	Amendment to A.B. 109