

DRAFT
FOR DISCUSSION ONLY

UNIFORM COLLABORATIVE LAW ACT

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

For April 30 – May 3, 2009 Committee on Style Meeting

Without Prefatory Notes or Comments

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ON UNIFORM STATE LAWS

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April 6, 2009

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UNIFORM COLLABORATIVE LAW ACT

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1 (6) “Matter” means a dispute, transaction, claim, problem, or issue for resolution
2 described in a collaborative law participation agreement. The term includes a dispute, claim, or
3 issue in a proceeding.

4 (7) “Nonparty participant” means a person, other than a party and the party’s
5 collaborative lawyer, that participates in a collaborative law process.

6 (8) “Party” means a person that enters into a collaborative law participation agreement
7 and whose consent is necessary to resolve a matter.

8 (9) “Person” means an individual, corporation, business trust, estate, trust, partnership,
9 limited liability company, association, joint venture, public corporation, government or
10 governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

11 (10) “Proceeding” means a judicial, administrative, arbitral, legislative, or other
12 adjudicative process before a tribunal, including related pre hearing and post hearing motions,
13 conferences, and discovery.

14 (11) “Prospective party” means a person that discusses the possibility of entering into a
15 collaborative law participation agreement with a prospective collaborative lawyer.

16 (12) “Record” means information that is inscribed on a tangible medium or that is stored
17 in an electronic or other medium and is retrievable in perceivable form.

18 (13) “Sign” means, with present intent to authenticate or adopt a record:

19 (A) to execute or adopt a tangible symbol; or

20 (B) to attach to or logically associate with the record an electronic symbol, sound,
21 or process.

22 (14) “Substantially related” means involving the same transaction or occurrence, nucleus
23 of operative fact, claim, issue, or dispute as a matter.

1 (15) “Tribunal” means a court, arbitrator, legislative body, administrative agency, or
2 other body acting in an adjudicative capacity that, after presentation of evidence or legal
3 argument, has jurisdiction to render a decision affecting a party’s interests in a matter.

4 **SECTION 3. COLLABORATIVE LAW PARTICIPATION AGREEMENT;**
5 **REQUIREMENTS.**

6 (a) A collaborative law participation agreement must:

7 (1) be in a record;

8 (2) be signed by the parties;

9 (3) state the parties’ intention to resolve the matter through collaborative law and
10 describe the nature and scope of the matter;

11 (4) identify the collaborative lawyer who represents each party in the
12 collaborative law process; and

13 (5) contain a signed acknowledgment by each party’s lawyer confirming the
14 lawyer’s representation.

15 (b) Parties to a collaborative law participation agreement:

16 (1) may agree to include additional provisions not inconsistent with this [act];
17 and

18 (2) may not agree to waive or vary subsection (a) and Sections 8, 11, and 13.

19 (c) A tribunal may not order a person to be a party to a collaborative law process over
20 that person’s objection.

21 **SECTION 4. BEGINNING AND TERMINATING COLLABORATIVE LAW.**

22 (a) A collaborative law process begins when parties sign a collaborative law
23 participation agreement.

1 (b) A party may terminate a collaborative law process with or without cause.

2 (c) A collaborative law process terminates when all parties have or should have a
3 reasonable belief that the process is over because:

4 (1) a party:

5 (A) terminates the process; or

6 (B) without the agreement of all other parties:

7 (i) begins a proceeding substantially related to the matter; or

8 (ii) initiates a pleading, motion, order to show cause, request for a
9 conference with the tribunal, requests that the proceeding be put on a tribunal's active calendar
10 or takes similar action in a pending proceeding substantially related to the matter; or

11 (2) except as otherwise provided by subsection (e), a party discharges a
12 collaborative lawyer or a collaborative lawyer withdraws from further representation of a party.

13 (d) A party that terminates a collaborative law process and a party's collaborative
14 lawyer who withdraws from further representation of a party shall provide prompt written notice
15 of the termination to all other parties and collaborative lawyers. The notice need not specify a
16 reason for terminating the process.

17 (e) Notwithstanding the discharge or withdrawal of a collaborative lawyer, a
18 collaborative law process continues if not later than 30 days after the date that the written notice
19 required by subsection (d) is received by the parties:

20 (1) the unrepresented party engages a successor collaborative lawyer; and

21 (2) in a signed record:

22 (A) all parties consent to continue the process by reaffirming the
23 collaborative law participation agreement;

1 (B) the agreement is amended to identify the successor collaborative
2 lawyer; and

3 (C) the successor collaborative lawyer accepts the representation.

4 (f) A collaborative law process does not terminate if, with the consent of all parties, a
5 party asks a tribunal through appropriate procedures such as commencing a proceeding or filing
6 a motion in a pending proceeding to approve an agreement or sign orders to carry out an
7 agreement that results from the process.

8 (g) A collaborative law participation agreement may provide additional methods of
9 terminating a collaborative law process.

10 **SECTION 5. COLLABORATIVE LAW AND PROCEEDINGS PENDING**
11 **BEFORE TRIBUNAL; STATUS REPORTS.**

12 (a) Parties to a proceeding pending before a tribunal may sign a collaborative law
13 participation agreement to negotiate about a matter substantially related to the proceeding.
14 Parties shall promptly file a notice of collaborative law with the tribunal after the collaborative
15 law participation agreement is signed. Subject to subsection (c) and Section 6, the filing shall
16 operate as a stay of the proceeding.

17 (b) Parties shall file promptly a written notice of termination with the tribunal when a
18 collaborative law process terminates. The stay of the proceeding created by subsection (a) is
19 lifted when the notice is filed with the tribunal. The notice must not specify any reason for the
20 termination.

21 (c) A tribunal may require parties and collaborative lawyers to provide status reports on
22 the proceeding.

1 (1) Except as authorized by paragraph (2), a status report may not include a
2 report, assessment, evaluation, recommendation, finding, or other communication regarding a
3 collaborative law process.

4 (2) A status report to a tribunal may require parties and lawyers to disclose:

5 (A) whether the process is occurring or has terminated and whether an
6 agreement was reached; or

7 (B) a collaborative law communication as permitted under Section 17.

8 (3) A communication made in violation of subsection (c)(1) may not be
9 considered by a tribunal.

10 (d) If a notice of collaborative law is filed in a pending proceeding, a tribunal shall not
11 dismiss the proceeding based on delay or failure to prosecute without providing parties and their
12 collaborative lawyers appropriate notice and an opportunity to be heard.

13 **SECTION 6. EMERGENCY ORDERS.** During a collaborative law process a tribunal
14 may issue emergency orders to protect the health, safety, welfare or interests of a party or family
15 or household member as defined in [state civil protection order statute].

16 **SECTION 7. TRIBUNAL APPROVAL OF AGREEMENT.** If requested by all
17 parties, a tribunal may carry out an agreement and sign orders to effectuate an agreement
18 resulting from a collaborative law process.

19 *Legislative Note: In states where judicial procedures for management of proceedings can be*
20 *prescribed only by court rule or administrative guideline and not by legislative act, the duties of*
21 *courts and other tribunals listed in Sections 5-7 should be adopted by the appropriate measure.*
22

23 **SECTION 8. DISQUALIFICATION OF COLLABORATIVE LAWYER AND**
24 **LAWYERS IN ASSOCIATED LAW FIRM.**

25 (a) Except as otherwise provided in subsection (c), a collaborative lawyer may not:

1 (1) appear before a tribunal to represent a party in a proceeding substantially
2 related to the matter; or

3 (2) represent the party in the matter or substantially related matter after a
4 collaborative law process terminates.

5 (b) Except as otherwise provided in subsection (c) and Sections 9 and 10, a lawyer in a
6 law firm with which the collaborative lawyer is associated may not knowingly represent a party
7 in a matter or substantially related matter and may not appear before a tribunal to represent a
8 party in a proceeding substantially related to a matter if the collaborative lawyer is disqualified
9 from doing so by subsection (a).

10 (c) A collaborative lawyer or a lawyer in a law firm with which a collaborative lawyer is
11 associated may represent a party:

12 (1) if agreed to by all parties, to ask a tribunal to approve an agreement or sign
13 orders to carry out an agreement resulting from a collaborative law process; or

14 (2) to seek an emergency order to protect the health, safety, welfare, or interests
15 of a party or family or household member as defined in [state civil protection order statute] if a
16 successor lawyer is not immediately available to represent that person. In that event, the
17 provisions of subsections (a) and (b) apply when the party, family or household member is
18 represented by a successor lawyer or reasonable measures are taken to adequately protect the
19 health, safety, welfare, or interests of that person.

20 **SECTION 9. LOW INCOME PARTIES.**

21 (a) The disqualification requirements of Section 8(a) apply to a collaborative lawyer
22 representing a party without fee if the party has an annual income which does not exceed one
23 hundred and twenty-five percent (125%) of the current Federal Poverty Guidelines amounts.

1 (b) After a collaborative law process terminates a lawyer in a law firm with which the
2 collaborative lawyer is associated may represent a party who has an annual income which does
3 not exceed one hundred and twenty-five percent (125%) of the current Federal Poverty
4 Guidelines amounts without fee in the matter or a substantially related matter if:

5 (1) the collaborative law participation agreement so provides; and

6 (2) the collaborative lawyer is isolated from any participation in the matter or
7 substantially related matter through procedures within the law firm which are reasonably
8 calculated to isolate the collaborative lawyer from such participation.

9 *Legislative Note: States may modify the income limitation stated in this Section higher or lower*
10 *than the illustrative figure chosen. They should do so as appropriate in light of their own*
11 *definition of low income clients who are eligible for free legal representation by legal aid*
12 *societies in civil matters*

13
14 **SECTION 10. GOVERNMENT ENTITIES AS PARTIES.**

15 (a) The disqualification requirements of Section 8(a) apply to a collaborative lawyer
16 representing a party that is a government or governmental subdivision, agency, or
17 instrumentality.

18 (b) After a collaborative law process terminates, a lawyer in a law firm with which the
19 collaborative lawyer is associated may represent the government or governmental subdivision,
20 agency or instrumentality in the matter or a substantially related matter if:

21 (1) the collaborative law participation agreement so provides; and

22 (2) the collaborative lawyer is isolated from any participation in the matter or
23 substantially related matter through procedures within the law firm which are reasonably
24 calculated to isolate the collaborative lawyer from such participation.

25 **SECTION 11. DISCLOSURE OF INFORMATION IN COLLABORATIVE LAW.**

26 During a collaborative law process upon the request of another party a party shall make timely,

1 full, candid, and informal disclosure of information substantially related to a matter without
2 formal discovery, and shall update promptly information which has materially changed.

3 **SECTION 12. STANDARDS OF PROFESSIONAL RESPONSIBILITY AND**
4 **MANDATORY REPORTING.**

5 (a) The professional responsibility obligations and standards of a lawyer are not changed
6 because of the lawyer's representation of a party in a collaborative law process.

7 (b) The professional responsibility obligations and standards applicable to any licensed
8 professional who participates in collaborative law as a nonparty participant are not changed
9 because of that participation.

10 (c) The obligation of a person to report abuse or neglect of a child or adult under the
11 laws of this state is not changed by the person's participation in collaborative law.

12 **SECTION 13. REQUIRED DISCLOSURES CONCERNING COLLABORATIVE**
13 **LAW; COERCIVE OR VIOLENT RELATIONSHIPS.**

14 (a) Before a prospective party executes a collaborative law participation agreement, a
15 prospective collaborative lawyer shall:

16 (1) provide the party with sufficient information to make an informed decision
17 about the material benefits and risks of collaborative law as compared to the material benefits
18 and risks of other reasonably available alternatives for resolving the matter such as litigation,
19 mediation, arbitration, or expert evaluation;

20 (2) advise the party that:

21 (A) after signing an agreement:

22 (i) if a party initiates a proceeding or seeks tribunal intervention in
23 a pending proceeding substantially related to the matter, the collaborative law process

1 terminates; and

2 (ii) the collaborative lawyer and a lawyer in a law firm with which
3 the collaborative lawyer is associated may not represent a party before a tribunal in such a
4 proceeding except as authorized by Section 8(c), 9(b), or 10(b);

5 (B) any party has the right to unilaterally terminate a collaborative law
6 process with or without cause;

7 (C) if the process terminates, a collaborative lawyer and a lawyer in a law
8 firm with which the collaborative lawyer is associated are disqualified from further
9 representation of a party in the matter or substantially related matter except as authorized by
10 Section 8(c), 9(b), or 10(b).

11 (3) inquire about and discuss with the prospective party factors relevant to
12 whether collaborative law is appropriate for the prospective party's matter.

13 (b) A collaborative lawyer shall make reasonable efforts to determine whether a
14 prospective party has a history of a coercive or violent relationship with another prospective
15 party before a prospective party signs a collaborative law participation agreement and shall
16 continue throughout the collaborative law process to assess for the presence of coercion,
17 manipulation or violence.

18 (c) If a collaborative lawyer reasonably believes that a prospective party or party has a
19 history of a coercive or violent relationship with another party or prospective party, the lawyer
20 may not begin or continue a collaborative law process unless:

21 (1) the prospective party or party requests beginning or continuing a collaborative
22 law process;

23 (2) the collaborative lawyer reasonably believes that the safety of the all

1 prospective parties or parties can be adequately protected during a collaborative law process; and

2 (3) the collaborative lawyer is familiar with nationally-accepted standards of
3 practice for representing victims of coercion, manipulation and violence.

4 **SECTION 14. CONFIDENTIALITY OF COLLABORATIVE LAW**

5 **COMMUNICATION.** A collaborative law communication is confidential to the extent agreed
6 by the parties in a signed record or as provided by law of this state other than this [act].

7 **SECTION 15. PRIVILEGE AGAINST DISCLOSURE FOR COLLABORATIVE**
8 **LAW COMMUNICATION; ADMISSIBILITY; DISCOVERY.**

9 (a) Subject to Section 16 or 17, a collaborative law communication is privileged as
10 provided in subsection (b) and is not subject to discovery and admissible in evidence in a
11 proceeding.

12 (b) In a proceeding, the following privileges apply:

13 (1) A party may refuse to disclose, and may prevent any other person from
14 disclosing, a collaborative law communication.

15 (2) A nonparty participant may refuse to disclose, and may prevent any other
16 person from disclosing, a collaborative law communication of the nonparty participant.

17 (c) Evidence or information that is otherwise admissible or subject to discovery does not
18 become inadmissible or protected from discovery solely by reason of its disclosure or use in a
19 collaborative law process.

20 **SECTION 16. WAIVER AND PRECLUSION OF PRIVILEGE.**

21 (a) A privilege under Section 15 may be waived in a record or orally during a proceeding
22 if it is expressly waived by all parties and, in the case of the privilege of a nonparty participant, it
23 is also expressly waived by the nonparty participant.

1 (b) A person that discloses or makes a representation about a collaborative law
2 communication that prejudices another person in a proceeding may not assert a privilege under
3 Section 15, but only to the extent necessary for the person prejudiced to respond to the disclosure
4 or representation.

5 **SECTION 17. EXCEPTION TO PRIVILEGE.**

6 (a) There is no privilege under Section 15 for a collaborative law communication that is:

7 (1) in an agreement evidenced by a record signed by all parties;

8 (2) available to the public under [state open records act] or made during a session
9 of a collaborative law process which is open, or is required by law to be open, to the public;

10 (3) a threat or statement of a plan to inflict bodily injury or commit a crime of
11 violence;

12 (4) intentionally used to plan a crime, attempt to commit or commit a crime, or
13 conceal an ongoing crime or ongoing criminal activity;

14 (5) sought or offered to prove or disprove a claim or complaint of professional
15 misconduct or malpractice arising from or related to a collaborative law process; or

16 (6) sought or offered to prove or disprove abuse, neglect, abandonment, or
17 exploitation of a child unless the [child or adult protective services agency] is a party to or
18 otherwise participates in a collaborative law process.

19 (b) There is no privilege under Section 15 if a tribunal finds, after a hearing in camera,
20 that the party seeking discovery or the proponent of the evidence has shown the evidence is not
21 otherwise available, the need for the evidence substantially outweighs the interest in protecting
22 confidentiality, and the collaborative law communication is sought or offered in:

23 (1) a court proceeding involving a felony [or misdemeanor]; or

1 (2) a proceeding seeking rescission or reformation of a contract arising out of the
2 collaborative law process or on which a defense to avoid liability on a contract is asserted.

3 (c) If a collaborative law communication is not privileged under subsection (a) or (b),
4 only the portion of the communication necessary for the application of the exception from
5 nondisclosure may be admitted.

6 (d) Admission of evidence under subsection (a) or (b) does not render the evidence, or
7 any other collaborative law communication, discoverable or admissible for any other purpose.

8 (e) The privileges under Section 15 do not apply if the parties agree in advance in a
9 signed record, or if a record of a proceeding reflects agreement by the parties, that all or part of a
10 collaborative law process is not privileged. Section 15 applies to a collaborative law
11 communication made by a person that has not received actual notice of the agreement before the
12 communication is made.

13 **SECTION 18. COLLABORATIVE LAW PARTICIPATION AGREEMENT NOT**
14 **MEETING REQUIREMENTS.**

15 (a) Although a collaborative law participation agreement fails to meet the requirements
16 of Section 3, or a lawyer fails to comply with the disclosure requirement of Section 13, a tribunal
17 may find that the parties intended to enter into a collaborative law participation agreement if
18 they:

19 (1) signed a record indicating an intention to enter into a collaborative law
20 participation agreement; and

21 (2) reasonably believed they were participation in a collaborative law process.

22 (b) If a tribunal makes the findings specified in subsection (a), and the interests of justice
23 require, the tribunal may:

- 1 (1) enforce an agreement evidenced by a record resulting from the process in
- 2 which the parties participated;
- 3 (2) apply the disqualification provisions of Section 8, 9 and 10; or
- 4 (3) apply the evidentiary privilege of Section 15.

5 **SECTION 19. UNIFORMITY OF APPLICATION AND CONSTRUCTION.** In
6 applying and construing this uniform act, consideration must be given to the need to promote
7 uniformity of the law with respect to its subject matter among states that enact it.

8 **SECTION 20. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND**
9 **NATIONAL COMMERCE ACT.** This [act] modifies, limits, and supersedes the federal
10 Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Section 7001, et. seq,
11 but does not modify, limit, or supersede Section 101 (c) of that act, 15 U.S.C. Section 7001(c), or
12 authorize electronic delivery of any of the notices described in Section 103(b) of that act, 15
13 U.S.C. Section 7003(b).

14 **SECTION 21. SEVERABILITY CLAUSE.** If any provision of this [act] or its
15 application to any person or circumstance is held invalid, the invalidity does not affect other
16 provisions or applications of this [act] which can be given effect without the invalid provision or
17 application, and to this end the provisions of this [act] are severable.

18 *Legislative Note: Include this Section only if the state lacks a general severability statute or a*
19 *decision by the highest court of this state stating a general rule of severability.*
20

21 **SECTION 22. APPLICATION TO EXISTING AGREEMENTS.** This [act] applies
22 to a collaborative law participation agreement signed after [the effective date of this [act]].

23 **SECTION 23. EFFECTIVE DATE.** This [act] takes effect.....

24
25 *Legislative Note: States should choose an effective date for the act that allows substantial time*
26 *for notice to the bar and the public of its provisions and for the training of collaborative lawyers.*