

DRAFT
FOR DISCUSSION ONLY

UNIFORM COLLABORATIVE LAW ACT

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

For January 29 – February 1, 2009 Style Committee Meeting

Without Prefatory Notes or Comments

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ON UNIFORM STATE LAWS

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January 16, 2009

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• Professor Schepard thanks Yishai Boyarkin, Hofstra Law School LL.M. candidate class of 2010, Elizabeth Bruzzo and Rebecca Miller, Hofstra Law School class of 2007, Laura Daly, Hofstra Law School class of 2008, Angela Burton, Jesse Lubin, Joshua Reiger, and Brittany Shrader, Hofstra Law School class of 2009, and Mary Ann Harvey and Ashley Lorange, Hofstra Law School class of 2010, for their invaluable and ongoing research assistance.

COLLABORATIVE LAW ACT

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1 **UNIFORM COLLABORATIVE LAW ACT**

2 **SECTION 1. SHORT TITLE.** This [act] may be cited as the Uniform Collaborative
3 Law Act.

4 **SECTION 2. DEFINITIONS.** In this [act]:

5 (1) “Collaborative law” or a “collaborative law process” means parties:

6 (A) voluntarily enter into a collaborative law participation agreement to attempt
7 to resolve a matter without the intervention of a tribunal; and

8 (B) are represented by collaborative lawyers.

9 (2) “Collaborative law communication” means a statement, whether oral or in a record or
10 verbal or nonverbal, that:

11 (A) occurs between the time the parties enter into a collaborative law
12 participation agreement and the time when the parties have or should have a reasonable belief
13 that a collaborative law process is terminated or is concluded by negotiated resolution of a
14 matter; and

15 (B) is made for the purposes of conducting, participating in, continuing, or
16 reconvening a collaborative law process.

17 (3) “Collaborative law participation agreement” means an agreement by persons to
18 participate in collaborative law to resolve a matter.

19 (4) “Collaborative lawyer” means a lawyer identified in a collaborative law participation
20 agreement as engaged to represent a party in collaborative law and who is subject to the
21 disqualification requirements of section 8.

22 (5) “Law firm” means lawyers who practice together in a partnership, professional
23 corporation, sole proprietorship, limited liability corporation, or other association authorized to

1 practice law, or lawyers employed in a legal services organization or the legal department of a
2 corporation or other organization.

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

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

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

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

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

16 (11) “Prospective party” means a person who discusses the possibility of entering into a
17 collaborative law participation agreement with a potential collaborative lawyer.

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

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

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

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

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

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

7 **SECTION 3. COLLABORATIVE LAW PARTICIPATION AGREEMENT**
8 **REQUIREMENTS.**

9 (a) A collaborative law participation agreement must:

- 10 (1) be in a record;
- 11 (2) be signed by the parties;
- 12 (3) describe the nature and scope of a matter;
- 13 (4) state the parties’ intention to resolve the matter through collaborative law;
- 14 (5) identify the collaborative lawyer engaged by each party to represent the party
15 in the collaborative law process; and
- 16 (6) contain a signed acknowledgment by each party’s collaborative lawyer
17 confirming the lawyer’s engagement.

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

- 19 (1) may agree to include additional provisions not inconsistent with the
20 provisions of this act; and
- 21 (2) may not agree to waive or vary the provisions of sections 8, 11 and 12.

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

23 (a) A collaborative law process begins when parties sign a collaborative law

1 participation agreement.

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

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

5 (1) a party:

6 (A) terminates the process;

7 (B) begins a proceeding substantially related to the matter without the
8 agreement of all other parties;

9 (C) initiates a pleading, motion, order to show cause, request for a
10 conference with the tribunal, request that the proceeding be put on a tribunal's active calendar or
11 takes similar action in a pending proceeding substantially related to the matter without the
12 agreement of all other parties; or

13 (2) except as qualified by subsection (e), a party discharges a collaborative
14 lawyer or a collaborative lawyer withdraws from further representation of a party.

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

19 (e) Notwithstanding the discharge or withdrawal of a collaborative lawyer, a
20 collaborative law process continues without termination if within 30 days of the date that the
21 written notice required by subsection (d) of the discharge or withdrawal is received by the
22 parties:

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

1 (2) all parties consent to continuation of process by reaffirming the collaborative
2 law participation agreement in a signed record;

3 (3) the collaborative law participation agreement is amended to identify the
4 successor collaborative lawyer in a signed record; and

5 (4) the successor collaborative lawyer acknowledges the engagement in a signed
6 record.

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

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

13 **SECTION 5. COLLABORATIVE LAW AND PROCEEDINGS PENDING**
14 **BEFORE A TRIBUNAL; STATUS REPORTS.**

15 (a) Parties to a proceeding pending before a tribunal may sign a collaborative law
16 participation agreement to negotiate about a matter substantially related to the proceeding.

17 (1) Parties and their collaborative lawyers must promptly file a notice of
18 collaborative law with the tribunal after the collaborative law participation agreement is signed.

19 (2) The filing of a notice of collaborative law shall operate as a stay of the
20 proceeding.

21 (b) Parties and collaborative lawyers shall promptly file a written notice of termination
22 with the tribunal when a collaborative law process terminates.

23 (1) The stay of the proceeding created by subsection (a)(2) is lifted when the

1 notice of termination of a collaborative law process is filed with the tribunal.

2 (2) The notice of termination shall not specify any reason for the termination of
3 the collaborative law process.

4 (c) Notwithstanding the filing of a notice of collaborative law, a tribunal may require
5 parties and collaborative lawyers to provide status reports on the proceeding.

6 (1) Except as authorized by subsection (2), a status report to a tribunal may not
7 include a report, assessment, evaluation, recommendation, finding, or other communication
8 regarding a collaborative law process.

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

11 (A) whether the collaborative law process is occurring or has terminated
12 and whether an agreement was reached; or

13 (B) a collaborative law communication as permitted under Section 16.

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

16 (d) A tribunal shall not dismiss a pending proceeding in which a notice of a collaborative
17 law is filed based on failure to prosecute or delay without providing parties and their
18 collaborative lawyers appropriate notice and an opportunity to be heard.

19 **SECTION 6. COLLABORATIVE LAW AND EMERGENCY ORDERS.**

20 Notwithstanding the stay of proceedings created by section 5(a)(2), a tribunal may issue
21 emergency orders to protect the health, safety, welfare or interests of a party or family or
22 household member as defined in [the state civil protection order statute].

23 **SECTION 7. COLLABORATIVE LAW AND TRIBUNAL APPROVAL OF**

1 **AGREEMENTS.** If requested by all parties through appropriate procedure, a tribunal may
2 approve an agreement and sign orders to effectuate an agreement resulting from a collaborative
3 law process.

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

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

10 (a) Except as otherwise provided in subsection (c), a collaborative lawyer shall not

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

13 (2) represent the party in the matter or substantially related matters after a
14 collaborative law process terminates.

15 (b) A lawyer in a law firm with which the collaborative lawyer is associated shall not
16 knowingly represent a party in the matter or a substantially related matter and may not appear
17 before a tribunal to represent a party in a proceeding substantially related to the matter if the
18 collaborative lawyer is disqualified from doing so by subsection (a).

19 (c) Notwithstanding subsections (a) and (b), a collaborative lawyer or a lawyer in a law
20 firm with which a collaborative lawyer is associated may represent a party:

21 (1) if agreed to by all parties, to ask a tribunal to approve an agreement or sign
22 orders to effectuate an agreement resulting from a collaborative law process through appropriate
23 procedures such as commencing a proceeding or filing a motion in a pending proceeding; or

24 (2) to seek emergency orders to protect the health, safety, welfare or interests of a
25 party or family or household member as defined in [the state civil protection order statute] if

1 successor counsel is not immediately available to represent the threatened party. In that event,
2 the provisions of subsections (a) and (b) take effect when the party engages a successor lawyer or
3 reasonable measures are taken to adequately protect the health, safety, welfare or interests of a
4 party or family or household member.

5 **SECTION 9. COLLABORATIVE LAW AND LOW INCOME PARTIES.**

6 (a) The disqualification requirements of subsection 8 (a) are applicable to a collaborative
7 lawyer engaged to represent a party who has an annual income which does not exceed one
8 hundred and fifty percent (150%) of the current Federal Poverty Guidelines amounts without fee.

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 (b) Notwithstanding section 8 (b), after a collaborative law process terminates a lawyer
15 in a law firm with which the collaborative lawyer is associated may represent a party defined in
16 subsection (a) in the matter or a substantially related matter and may appear before a tribunal to
17 represent such a party in a proceeding substantially related to a matter if:

- 18 (1) the collaborative law participation agreement so provides; and
19 (2) the collaborative lawyer is isolated from any participation in the matter or
20 substantially related matters through the timely imposition of procedures within the law firm that
21 are reasonably adequate under the circumstances for the intended purpose of isolating the
22 collaborative lawyer from such participation.

23 **SECTION 10. COLLABORATIVE LAW AND GOVERNMENT ENTITIES AS**
24 **PARTIES.**

25 (a) The disqualification requirements of section 8 (a) is applicable to a collaborative
26 lawyer engaged to represent a party that is a government or governmental subdivision, agency, or

1 instrumentality.

2 (b) Notwithstanding section 8 (b), after a collaborative law process terminates, a lawyer
3 in a law firm with which the collaborative lawyer is associated may represent a party defined in
4 subsection (a) in the matter or a substantially related matter and may appear before a tribunal to
5 represent such a party in a proceeding substantially related to a matter if:

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

7 (2) the collaborative lawyer is isolated from any participation in the matter or
8 substantially related matters through the timely imposition of procedures within the law firm that
9 are reasonably adequate under the circumstances for the intended purpose of isolating the
10 collaborative lawyer from such participation.

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

12 During a collaborative law process a party shall make timely, full, candid, and informal
13 disclosure of information substantially related to the matter upon request of a party, but without
14 formal discovery, and shall promptly update information which has materially changed.

15 **SECTION 12. REQUIRED DISCLOSURES CONCERNING COLLABORATIVE**
16 **LAW; DOMESTIC VIOLENCE.**

17 (a) Before a prospective party executes a collaborative law participation agreement, a
18 prospective collaborative lawyer must:

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

23 (2) advise the prospective party that:

1 (A) upon the signing of a collaborative law participation agreement:

2 (i) a party may not initiate a proceeding or seek tribunal
3 intervention in a pending proceeding substantially related to the matter until the collaborative
4 law process terminates; and

5 (ii) the collaborative lawyer and a lawyer in a law firm with which
6 the collaborative lawyer is associated may not represent a party before a tribunal in such a
7 proceeding except as authorized by section 8(c);

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

10 (C) if a collaborative law process terminates, a collaborative lawyer and a
11 lawyer in a law firm with which the collaborative lawyer is associated are disqualified from
12 further representation of a party in the matter or substantially related matters except as authorized
13 by section 8(c); and

14 (D) if appropriate for the prospective party, the exceptions to the
15 disqualification requirement described in sections 9 and 10 allowing representation by a lawyer
16 in a law firm with which a collaborative lawyer is associated.

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

19 (b) A collaborative lawyer shall make reasonable efforts to determine whether a
20 prospective party has a history of domestic violence with another prospective party before a
21 prospective party signs a collaborative law participation agreement and shall continue throughout
22 the collaborative law process to assess for the presence of domestic violence.

23 (c) If a collaborative lawyer reasonably believes that a prospective party or party has a

1 history of domestic violence with another party or prospective party, the collaborative lawyer
2 shall not begin or continue a collaborative law process unless:

3 (1) the prospective party or party requests beginning or continuing a collaborative
4 law process;

5 (2) the lawyer reasonably believes that the prospective party or party's safety can
6 be adequately protected during a collaborative law process; and

7 (3) the lawyer is familiar with the American Bar Association's Standards of
8 Practice for Representing Victims of Domestic Violence, Sexual Assault and Stalking in Civil
9 Protection Order Cases; Standards of Practice for Lawyers Who Represent Children in Abuse
10 and Neglect Cases; and Standards of Practice for Lawyers Who Represent Parents in Abuse and
11 Neglect Cases.

12 **SECTION 13. CONFIDENTIALITY OF COLLABORATIVE LAW**

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

15 **SECTION 14. PRIVILEGE AGAINST DISCLOSURE FOR COLLABORATIVE**
16 **LAW COMMUNICATIONS; ADMISSIBILITY; DISCOVERY.**

17 (a) Except as otherwise provided in section 16, a collaborative law communication is
18 privileged as provided in subsection (b) and is not subject to discovery or admissible in evidence
19 in a proceeding unless the privilege is waived or precluded as provided by section 15.

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

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

23 (2) A nonparty participant may refuse to disclose, and may prevent any other

1 person from disclosing, a collaborative law communication of the nonparty participant.

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

5 **SECTION 15. WAIVER AND PRECLUSION OF PRIVILEGE.**

6 (a) A privilege under section 14 may be waived in a record or orally during a proceeding
7 if it is expressly waived by all parties and, in the case of the privilege of a nonparty participant, it
8 is also expressly waived by the nonparty participant.

9 (b) A person that discloses or makes a representation about a collaborative law
10 communication that prejudices another person in a proceeding is precluded from asserting a
11 privilege under section 14, but only to the extent necessary for the person prejudiced to respond
12 to the representation or disclosure.

13 (c) A person that intentionally uses a collaborative law process to commit, or attempt to
14 commit, or to plan a crime, or to conceal an ongoing crime or ongoing criminal activity is
15 precluded from asserting a privilege under section 14.

16 **SECTION 16. EXCEPTIONS TO PRIVILEGE.**

17 (a) There is no privilege under section 14 for a collaborative law communication that is:

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

19 (2) available to the public under [insert statutory reference to open records act] or
20 made during a session of a collaborative law process which is open, or is required by law to be
21 open, to the public;

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

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

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

5 (6) sought or offered to prove or disprove abuse, neglect, abandonment, or
6 exploitation of a child unless the [State to insert, for example, child or adult protective services
7 agency] is a party to or otherwise participates in a collaborative law process.

8 (b) There is no privilege under section 14 if a tribunal finds, after a hearing in camera,
9 that: the party seeking discovery or the proponent of the evidence has shown the evidence is not
10 otherwise available, the need for the evidence substantially outweighs the interest in protecting
11 confidentiality, and the collaborative law communication is sought or offered in:

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

13 (2) a proceeding to prove a claim to rescind or reform or a defense to avoid
14 liability on a contract arising out of the collaborative law process.

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

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

20 (e) If the parties agree in advance in a signed record, or if a record of a proceeding
21 reflects agreement by the parties, that all or part of a collaborative law process is not privileged,
22 the privileges under section 14 do not apply to the collaborative law process or the part thereof to
23 which the agreement to waive the privilege applies. However, section 14 applies to a

1 collaborative law communication made by a person that has not received actual notice of the
2 agreement before the communication is made.

3 **SECTION 17. COLLABORATIVE LAW PARTICIPATION AGREEMENTS**
4 **NOT MEETING REQUIREMENTS.**

5 (a) Notwithstanding the failure of a collaborative law participation agreement to meet the
6 requirements of section 3, or a lawyer’s failure to comply with the disclosure requirements of
7 section 12, a tribunal may find that the parties:

8 (1) signed a record indicating an intention to enter into a collaborative law
9 participation agreement;

10 (2) intended to enter into a collaborative law participation agreement; and

11 (3) reasonably believed they were participating in a collaborative law process.

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

14 (1) enforce an agreement resulting from the process in which the parties
15 participated;

16 (2) apply the disqualification provisions of sections 8, 9 or 10; or

17 (3) apply the evidentiary privilege of section 14.

18 **SECTION 18. STANDARDS OF PROFESSIONAL RESPONSIBILITY AND**
19 **MANDATORY REPORTING AND COLLABORATIVE LAW.**

20 (a) The professional responsibility obligations and standards of a collaborative lawyer
21 are not changed because of the lawyer’s engagement to represent a party in a collaborative law
22 process.

23 (b) The professional responsibility obligations and standards applicable to any licensed

1 professional who participates in collaborative law as a nonparty participant are not changed
2 because of that participation.

3 (c) The obligations of any person to report abuse or neglect of a child under the laws of
4 this state are not changed by a person’s participation in collaborative law.

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

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

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