

DRAFT
FOR DISCUSSION ONLY

UNIFORM COLLABORATIVE LAW COURT RULES

or

UNIFORM COLLABORATIVE LAW ACT

NATIONAL CONFERENCE OF COMMISSIONERS

ON UNIFORM STATE LAWS

Draft of Proposed Amendments to Uniform Collaborative Law Act, April 2010

*Without Prefatory Note but With Proposed Additional Comments
Changes Shown in Underscore*

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ON UNIFORM STATE LAWS

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April 27, 2010

DRAFTING COMMITTEE ON UNIFORM COLLABORATIVE LAW ACT

The Committee appointed by and representing the National Conference of Commissioners on Uniform State Laws in drafting this Act consists of the following individuals:

PETER K. MUNSON, 123 S. Travis St., Sherman, TX 75090, *Chair*

ROBERT G. BAILEY, University of Missouri-Columbia, 217 Hulston Hall, Columbia, MO 65211

MICHAEL A. FERRY, 200 N. Broadway, Suite 950, St. Louis, MO 63102

ELIZABETH KENT, Center for Alternative Dispute Resolution, 417 S. King St., Room 207, Honolulu, HI 96813

BYRON D. SHER, 1000 Fruitridge Rd., Placerville, CA 95667

HARRY L. TINDALL, 1300 Post Oak Blvd., Suite 1550, Houston, TX 77056-3081

CAM WARD, 124 Newgate Rd., Alabaster, AL 35007

ANDREW SCHEPARD, Hofstra University School of Law, 121 Hofstra University, Hempstead, NY 11549-1210, *Reporter**

EX OFFICIO

MARTHA LEE WALTERS, Oregon Supreme Court, 1163 State St., Salem, OR 97301-2563, *President*

JACK DAVIES, 1201 Yale Place, Unit #2004, Minneapolis, MN 55403-1961, *Division Chair*

AMERICAN BAR ASSOCIATION ADVISOR

CARLTON D. STANSBURY, 10850 W. Park Pl., Suite 530, Milwaukee, WI 53224-3636, *ABA Advisor*

LAWRENCE R. MAXWELL, JR., Douglas Plaza, 8226 Douglas Ave., Suite 550, Dallas, TX 75225-5945, *ABA Section Advisor*

CHARLA BIZIOS STEVENS, 900 Elm St., P.O. Box 326, Manchester, NH, 03105-0326, *ABA Section Advisor*

GRETCHEN WALTHER, 6501 Americas Pkwy. NE, Suite 620, Albuquerque, NM 87110-8166, *ABA Section Advisor*

EXECUTIVE DIRECTOR

JOHN A. SEBERT, 111 N. Wabash Ave., Suite 1010, Chicago, IL 60602, *Executive Director*

Copies of this Act may be obtained from:
NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS
111 N. Wabash Ave., Suite 1010
Chicago, Illinois 60602
312/450-6600
www.nccusl.org

*Professor Schepard thanks Yishai Boyarin, Hofstra Law School LL.M 2009, Elizabeth Bruzzo and Rebecca Miller, Hofstra Law School J.D. 2007, Laura Daly, Hofstra Law School J.D. 2008, Angela Burton, Jesse Lubin, Joshua Reiger, and Brittany Shrader, Hofstra Law School J.D. 2009, and Mary Ann Harvey, Ashley Lorange, Beyza Killeen, Jessie Fillingim, Hofstra Law School class of 2010, and Stephanie Conti, Hofstra Law School class of 2011 for their invaluable research assistance.

UNIFORM COLLABORATIVE LAW COURT RULES

OR

UNIFORM COLLABORATIVE LAW ACT

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1 *Note for enacting states: The provisions for regulation of collaborative law are presented in*
2 *two formats for enactment- by court rules or legislation. The substantive provisions of each*
3 *format are identical with the exception of several standard form clauses typically found in*
4 *legislation. Each state considering adopting the Uniform Collaborative Law Court Rules*
5 *(UCLR) or the Uniform Collaborative Law Act (UCLA) should review its practices and*
6 *precedent to first determine whether the substantive provisions are best adopted by court rule or*
7 *statute. The decision may vary from state to state depending on the allocation of authority*
8 *between the legislature and the judiciary for regulation of contracts, alternative dispute*
9 *resolution, and the legal profession. States may also decide to enact part of the substantive*
10 *provisions by court rule and part by legislation. Specific comments following some particular*
11 *rules or sections indicate whether the drafting committee believes enactment by court rule or*
12 *legislation is preferable. Drafting agencies may need to renumber sections and cross references*
13 *depending on their decision concerning the appropriate method of enactment.*

14 **UNIFORM COLLABORATIVE LAW COURT RULES**

15
16
17 **RULE 1. SHORT TITLE.** These rules may be cited as the Uniform Collaborative Law
18 Court Rules.

19 **RULE 2. DEFINITIONS.** In these rules:

20 (1) “Collaborative law communication” means a statement, whether oral or in a record, or
21 verbal or nonverbal, that:

22 (A) is made to conduct, participate in, continue, or reconvene a collaborative law
23 process; and

24 (B) occurs after the parties sign a collaborative law participation agreement and
25 before the collaborative law process is concluded.

26 (2) “Collaborative law participation agreement” means an agreement by persons to
27 participate in a collaborative law process.

28 (3) “Collaborative law process” means a procedure intended to resolve a collaborative
29 matter without intervention by a tribunal in which persons:

30 (A) sign a collaborative law participation agreement; and

31 (B) are represented by collaborative lawyers.

32 (4) “Collaborative lawyer” means a lawyer who represents a party in a collaborative law

1 process.

2 (5) “Collaborative matter” means a dispute, transaction, claim, problem, or issue for
3 resolution including a dispute, claim, or issue in a proceeding which

4 **Alternative A**

5 is described in a collaborative law participation agreement and arises under the family or
6 domestic relations law of this state, including but not limited to:

7 (A) marriage, divorce, dissolution, annulment, and property distribution;

8 (B) child custody, visitation, and parenting time;

9 (C) alimony, maintenance, and child support;

10 (D) adoption;

11 (E) parentage;

12 (F) premarital, marital, and post-marital agreements; and

13 (G) guardianship of a minor or individual with a disability.

14 **Alternative B**

15 is described in a collaborative law participation agreement.

16 **End of Alternatives**

17 (6) “Law firm” means:

18 (A) lawyers who practice law together in a partnership, professional corporation,
19 sole proprietorship, limited liability company, or association; and

20 (B) lawyers employed in a legal services organization, or the legal department of
21 a corporation or other organization, or the legal department of a government or governmental
22 subdivision, agency, or instrumentality.

23 (7) “Nonparty participant” means a person, other than a party and the party’s
24 collaborative lawyer, that participates in a collaborative law process.
25

1 (8) "Party" means a person that signs a collaborative law participation agreement and
2 whose consent is necessary to resolve a collaborative matter.

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

6 (10) "Proceeding" means:

7 (A) a judicial, administrative, arbitral, or other adjudicative process before a
8 tribunal, including related prehearing and post-hearing motions, conferences, and discovery; or

9 (B) a legislative hearing or similar process.

10 (11) "Prospective party" means a person that discusses with a prospective collaborative
11 lawyer the possibility of signing a collaborative law participation agreement.

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

14 (13) "Related to a collaborative matter" means involving the same parties, transaction or
15 occurrence, nucleus of operative fact, dispute, claim, or issue as the collaborative matter.

16 (14) "Sign" means, with present intent to authenticate or adopt a record:

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

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

20 (15) "Tribunal" means

21 (A) a court, arbitrator, administrative agency, or other body acting in an
22 adjudicative capacity which, after presentation of evidence or legal argument, has jurisdiction to
23 render a decision affecting a party's interests in a matter; or

24 (B) a legislative body conducting a hearing or similar process.
25

1 **Comment**

2
3 **“Collaborative matter.”** The act uses the term “matter” rather the narrower term
4 “dispute” to describe what the parties may attempt to resolve through a collaborative law
5 process. Matter can include some or all of the issues in litigation or potential litigation, or can
6 include issues between the parties that have not or may never ripen into litigation. The broader
7 term emphasizes that parties have great autonomy to decide what to submit to a collaborative law
8 process and encourages them to use the process creatively and broadly.

9 The drafting committee provides two alternatives for enacting states to define
10 “collaborative matter” and thus the scope of matters that can be submitted to the collaborative
11 law process. Alternative A limits “collaborative matter” to those which arise under the family or
12 domestic relations law of a state. States which choose to include this language will thus limit the
13 collaborative law process to those substantive areas where it has so far achieved the greatest
14 acceptance and growth and in which collaborative lawyers have the greatest experience. They
15 will, however, exclude matters which do not arise under the family or domestic relations law of
16 a state from the collaborative law process.

17
18 Alternative B, in contrast, places no substantive limitation on matters that can be
19 submitted to a collaborative law process, relying instead on the informed consent of parties based
20 on the information provided by their counsel under the standards for informed consent specified
21 in Rules 12 and 13. Under Alternative B collaborative law participation agreements can be
22 entered into to attempt to resolve everything from contractor-subcontractor disagreements, estate
23 disputes, employer-employee rights, statutory based claims, customer-vendor disagreements, or
24 any other matter.

25
26 Under either Alternative A or B, the parties must describe the matter that they seek to
27 resolve through a collaborative law process in their collaborative law participation agreement.
28 See Rule 4(a)(4). That requirement is essential to determining the scope of the disqualification
29 requirement for collaborative lawyers under Rule 9, which is applicable to the collaborative
30 matter and matters “related to the collaborative matter,” and the application of the evidentiary
31 privilege under Rule 17.

32
33 **RULE 3. APPLICABILITY.** These rules apply to a collaborative law participation
34 agreement that meets the requirements of Rule 4 signed [on or] after [the effective date of the
35 rules].

36 **RULE 4. COLLABORATIVE LAW PARTICIPATION AGREEMENT;**
37 **REQUIREMENTS.**

38 (a) A collaborative law participation agreement must:

- 39 (1) be in a record;
40 (2) be signed by the parties;

- 1 (3) state the parties' intention to resolve a collaborative matter through a
2 collaborative law process under these rules;
- 3 (4) describe the nature and scope of the matter;
- 4 (5) identify the collaborative lawyer who represents each party in the process; and
- 5 (6) contain a statement by each collaborative lawyer confirming the lawyer's
6 representation of a party in the collaborative law process.

7 (b) Parties may agree to include in a collaborative law participation agreement additional
8 provisions not inconsistent with these rules.

9 **RULE 5. BEGINNING AND CONCLUDING A COLLABORATIVE LAW**
10 **PROCESS.**

11 (a) A collaborative law process begins when the parties sign a collaborative law
12 participation agreement.

13 (b) A tribunal may not order a party to participate in a collaborative law process over that
14 party's objection.

15 (c) A collaborative law process is concluded by a:

16 (1) resolution of a collaborative matter as evidenced by a signed record;

17 (2) resolution of a part of the collaborative matter, evidenced by a signed record,
18 in which the parties agree that the remaining parts of the matter will not be resolved in the
19 process; or

20 (3) termination of the process.

21 (d) A collaborative law process terminates:

22 (1) when a party gives notice to other parties in a record that the process is ended;

23 or

24 (2) when a party:

1 (A) begins a proceeding related to a collaborative matter without the
2 agreement of all parties; or

3 (B) in a pending proceeding related to the matter:

4 (i) initiates a pleading, motion, order to show cause, or request for
5 a conference with the tribunal;

6 (ii) requests that the proceeding be put on the [tribunal's active
7 calendar]; or

8 (iii) takes similar action requiring notice to be sent to the parties; or

9 (3) except as otherwise provided by subsection (g), when a party discharges a
10 collaborative lawyer or a collaborative lawyer withdraws from further representation of a party.

11 (e) A party's collaborative lawyer shall give prompt notice to all other parties in a record
12 of a discharge or withdrawal.

13 (f) A party may terminate a collaborative law process with or without cause.

14 (g) Notwithstanding the discharge or withdrawal of a collaborative lawyer, a
15 collaborative law process continues, if not later than 30 days after the date that the notice of the
16 discharge or withdrawal of a collaborative lawyer required by subsection (e) is sent to the
17 parties:

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

19 (2) in a signed record:

20 (A) the parties consent to continue the process by reaffirming the
21 collaborative law participation agreement;

22 (B) the agreement is amended to identify the successor collaborative
23 lawyer; and

24 (C) the successor collaborative lawyer confirms the lawyer's

1 representation of a party in the collaborative process.

2 (h) A collaborative law process does not conclude if, with the consent of the parties, a
3 party requests a tribunal to approve a resolution of the collaborative matter or any part thereof as
4 evidenced by a signed record.

5 (i) A collaborative law participation agreement may provide additional methods of
6 concluding a collaborative law process.

7 **RULE 6. PROCEEDINGS PENDING BEFORE TRIBUNAL; STATUS REPORT.**

8 (a) Persons in a proceeding pending before a tribunal may sign a collaborative law
9 participation agreement to seek to resolve a collaborative matter related to the proceeding.
10 Parties shall file promptly with the tribunal a notice of the agreement after it is signed. Subject to
11 subsection (c) and Rules 7 and 8, the filing operates as an application for a stay of the
12 proceeding.

13 (b) Parties shall file promptly with the tribunal notice in a record when a collaborative
14 law process concludes. The stay of the proceeding under subsection (a) is lifted when the notice
15 is filed. The notice may not specify any reason for termination of the process.

16 (c) A tribunal in which a proceeding is stayed under subsection (a) may require parties
17 and collaborative lawyers to provide a status report on the collaborative law process and the
18 proceeding. A status report may include only information on whether the process is ongoing or
19 concluded. It may not include a report, assessment, evaluation, recommendation, finding, or
20 other communication regarding a collaborative law process or collaborative law matter.

21 (d) A tribunal may not consider a communication made in violation of subsection (c).

22 (e) A tribunal shall provide parties notice and an opportunity to be heard before
23 dismissing a proceeding in which a notice of collaborative process is filed based on delay or
24 failure to prosecute.

1 **Comment**

2 Rule 6 regulates the relationship between the collaborative law process and the judicial
3 process. The drafting committee thus believes Rule 6 might best be enacted by judicial rule
4 rather than legislation.
5

6 This rule authorizes parties to enter into a collaborative law participation agreement to
7 attempt to resolve matters in pending proceedings, a subject discussed in the Prefatory Note. *See*
8 *supra*. To give the collaborative law process time and breathing space to operate, it creates an
9 application for a stay of proceedings upon the filing of a collaborative law participation
10 agreement. The stay should normally be granted from the time the tribunal receives written
11 notice that the parties have executed a collaborative law participation agreement until it receives
12 written notice that the collaborative law process is concluded. The stay of proceedings is
13 qualified by Rule 7, which authorizes a tribunal to issue emergency orders notwithstanding the
14 stay and Rule 8, which authorizes a tribunal to approve an agreement resulting from a
15 collaborative law process.
16

17 **RULE 7. EMERGENCY ORDER.** During a collaborative law process, a tribunal may
18 issue emergency orders to protect the health, safety, welfare, or interest of a party or [insert term
19 for family or household member as defined in [state civil protection order statute]].

20 **Comment**

21
22 Rule 7 regulates the relationship between the collaborative law process and the judicial
23 process. The drafting committee thus believe that Rule 7 might best be enacted by judicial rule
24 rather than legislation.
25

26
27 **RULE 8. APPROVAL OF AGREEMENT BY TRIBUNAL.** A tribunal may approve
28 an agreement resulting from a collaborative law process.

29 **Comment**

30
31 Rule 8 regulates the relationship between the collaborative law process and the judicial
32 process. The drafting committee thus believes that Rule 8 might best be enacted by judicial rule
33 rather than legislation.
34

35 **RULE 9. DISQUALIFICATION OF COLLABORATIVE LAWYER AND**
36 **LAWYERS IN ASSOCIATED LAW FIRM.**

37 (a) Except as otherwise provided in subsection (c), a collaborative lawyer is disqualified
38 from appearing before a tribunal to represent a party in a proceeding related to the collaborative

1 matter.

2 (b) Except as otherwise provided in subsection (c) and Rule 10 and 11, a lawyer in a law
3 firm with which the collaborative lawyer is associated is disqualified from appearing before a
4 tribunal to represent a party in a proceeding related to the collaborative matter if the
5 collaborative lawyer is disqualified from doing so under subsection (a).

6 (c) A collaborative lawyer or a lawyer in a law firm with which the collaborative lawyer
7 is associated may represent a party:

8 (1) to ask a tribunal to approve an agreement resulting from the collaborative law
9 process; or

10 (2) to seek or defend an emergency order to protect the health, safety, welfare, or
11 interest of a party, or [insert term for family or household member as defined in [state civil
12 protection order statute]] if a successor lawyer is not immediately available to represent that
13 person. In that event, subsections (a) and (b) apply when the party, or [insert term for family or
14 household member] is represented by a successor lawyer or reasonable measures are taken to
15 protect the health, safety, welfare, or interest of that person.

16 **Comment**

17
18 Rule 9 regulates who can appear before a court (tribunal) to represent a party after a
19 collaborative law process terminates. The drafting committee thus believes that Rule 9 might
20 best be enacted by judicial rule rather than legislation.

21
22
23 **RULE 10. LOW INCOME PARTIES.**

24 (a) The disqualification of Rule 9(a) applies to a collaborative lawyer representing a party
25 with or without fee.

26 (b) After a collaborative law process concludes, another lawyer in a law firm with which
27 a collaborative lawyer disqualified under Rule 9(a) is associated may represent a party without
28 fee in the collaborative matter or a matter related to the collaborative matter if:

- 1 (1) the party has an annual income that qualifies the party for free legal
2 representation under the criteria established by the law firm for free legal representation;
- 3 (2) the collaborative law participation agreement so provides; and
- 4 (3) the collaborative lawyer is isolated from any participation in the collaborative
5 matter or a matter related to the collaborative matter through procedures within the law firm
6 which are reasonably calculated to isolate the collaborative lawyer from such participation.

7 **Comment**
8

9 Rule 10 regulates who can appear before a court (tribunal) to represent a party after a
10 collaborative law process terminates. The drafting committee thus believes that Rule 10 might
11 best be enacted by judicial rule rather than legislation.
12
13

14 **RULE 11. GOVERNMENTAL ENTITY AS PARTY.**

15 (a) The disqualification of Rule 9(a) applies to a collaborative lawyer representing a party
16 that is a government or governmental subdivision, agency, or instrumentality.

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

- 21 (1) the collaborative law participation agreement so provides; and
- 22 (2) the collaborative lawyer is isolated from any participation in the collaborative
23 matter or a matter related to the collaborative matter through procedures within the law firm
24 which are reasonably calculated to isolate the collaborative lawyer from such participation.

25 **Comment**
26

27 Rule 11 regulates who can appear before a court (tribunal) to represent a party after a
28 collaborative law process terminates. The drafting committee thus believes that Rule 11 might
29 best be enacted by judicial rule rather than legislation.
30

31 **RULE 12. DISCLOSURE OF INFORMATION.** Except as provided by law other

1 than these rules, during the collaborative law process, on the request of another party, a party
2 shall make timely, full, candid, and informal disclosure of information related to the
3 collaborative matter without formal discovery. A party also shall update promptly previously
4 disclosed information that has materially changed. Parties may define the scope of disclosure
5 during the collaborative law process.

6 **RULE 13. STANDARDS OF PROFESSIONAL RESPONSIBILITY AND**
7 **MANDATORY REPORTING NOT AFFECTED.** These rules do not affect:

8 (1) the professional responsibility obligations and standards applicable to a lawyer or
9 other licensed professional; or

10 (2) the obligation of a person to report abuse or neglect, abandonment, or exploitation of
11 a child or adult under the law of this state.

12 **RULE 14. APPROPRIATENESS OF COLLABORATIVE LAW PROCESS.**

13 Before a prospective party signs a collaborative law participation agreement, a prospective
14 collaborative lawyer shall:

15 (1) assess with the prospective party factors the lawyer reasonably believes relate to
16 whether a collaborative law process is appropriate for the prospective party's matter;

17 (2) provide the prospective party with information that the lawyer reasonably believes is
18 sufficient for the party to make an informed decision about the material benefits and risks of a
19 collaborative law process as compared to the material benefits and risks of other reasonably
20 available alternatives for resolving the proposed collaborative matter, such as litigation,
21 mediation, arbitration, or expert evaluation; and

22 (3) advise the prospective party that:

23 (A) after signing an agreement if a party initiates a proceeding or seeks tribunal
24 intervention in a pending proceeding related to the collaborative matter, the collaborative law

1 process terminates;

2 (B) participation in a collaborative law process is voluntary and any party has the
3 right to terminate unilaterally a collaborative law process with or without cause; and

4 (C) the collaborative lawyer and any lawyer in a law firm with which the
5 collaborative lawyer is associated may not appear before a tribunal to represent a party in a
6 proceeding related to the collaborative matter, except as authorized by Rule 9(c), 10(b), or 11(b).

7 **RULE 15. COERCIVE OR VIOLENT RELATIONSHIP.**

8 (a) Before a prospective party signs a collaborative law participation agreement, a
9 prospective collaborative lawyer must make reasonable inquiry whether the prospective party
10 has a history of a coercive or violent relationship with another prospective party.

11 (b) Throughout a collaborative law process, a collaborative lawyer reasonably and
12 continuously shall assess whether the party the collaborative lawyer represents has a history of a
13 coercive or violent relationship with another party.

14 (c) If a collaborative lawyer reasonably believes that the party the lawyer represents or
15 the prospective party who consults the lawyer has a history of a coercive or violent relationship
16 with another party or prospective party, the lawyer may not begin or continue a collaborative law
17 process unless:

18 (1) the party or the prospective party requests beginning or continuing a process;
19 and

20 (2) the collaborative lawyer reasonably believes that the safety of the party or
21 prospective party can be protected adequately during a process.

22 **RULE 16. CONFIDENTIALITY OF COLLABORATIVE LAW**

23 **COMMUNICATION.** A collaborative law communication is confidential to the extent agreed
24 by the parties in a signed record or as provided by law of this state other than these rules.

1 respond to the disclosure or representation.

2 **Comment**

3 The drafting committee recommends that Rule 18 might best be enacted by legislation. See
4 comment to Rule 17 *supra*.
5

6 **RULE 19. LIMITS OF PRIVILEGE.**

7 (a) There is no privilege under Rule 17 for a collaborative law communication that is:

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

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

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

14 (4) in an agreement resulting from the collaborative law process, evidenced by a
15 record signed by all parties to the agreement.

16 (b) The privileges under Rule 17 for a collaborative law communication do not apply to
17 the extent that a communication is:

18 (1) sought or offered to prove or disprove a claim or complaint of professional
19 misconduct or malpractice arising from or related to a collaborative law process; or

20 (2) sought or offered to prove or disprove abuse, neglect, abandonment, or
21 exploitation of a child or adult, unless the [child protective services agency or adult protective
22 services agency] is a party to or otherwise participates in the process.

23 (c) There is no privilege under Rule 17 if a tribunal finds, after a hearing in camera, that
24 the party seeking discovery or the proponent of the evidence has shown the evidence is not
25 otherwise available, the need for the evidence substantially outweighs the interest in protecting

1 confidentiality, and the collaborative law communication is sought or offered in:

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

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

5 (d) If a collaborative law communication is subject to an exception under subsection (b)
6 or (c), only the part of the communication necessary for the application of the exception may be
7 disclosed or admitted.

8 (e) Disclosure or admission of evidence excepted from the privilege under subsection (b)
9 or (c) does not make the evidence or any other collaborative law communication discoverable or
10 admissible for any other purpose.

11 (f) The privileges under Rule 17 do not apply if the parties agree in advance in a signed
12 record, or if a record of a proceeding reflects agreement by the parties, that all or part of a
13 collaborative law process is not privileged. This subsection does not apply to a collaborative law
14 communication made by a person that did not receive actual notice of the agreement before the
15 communication was made.

16 **Comment**

17
18 The drafting committee recommends that Rule 19 might best be enacted by legislation. See
19 comment to Rule 17 *supra*.

20
21 **RULE 20. AUTHORITY OF TRIBUNAL IN CASE OF NONCOMPLIANCE.**

22 (a) If an agreement fails to meet the requirements of Rule 4, or a lawyer fails to comply
23 with Rule 14 or 15, a tribunal may nonetheless find that the parties intended to enter into a
24 collaborative law participation agreement if they:

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

1 (2) reasonably believed they were participating in a collaborative law process.

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

4 (1) enforce an agreement evidenced by a record resulting from the process in
5 which the parties participated;

6 (2) apply the disqualification provisions of Rules 5, 6, 9, 10, and 11; and

7 (3) apply the privileges under Rule 17.

8 **RULE 21. EFFECTIVE DATE.** These rules takes effect.....

9 **Comment**

10 States should choose an effective date for the rules that allows substantial time for notice
11 to the bar and the public of its provisions and for the training of collaborative lawyers.
12
13

1 *Note for enacting states: The provisions for regulation of collaborative law are presented in*
2 *two formats for enactment- by court rules or legislation. The substantive provisions of each*
3 *format are identical with the exception of several standard form clauses typically found in*
4 *legislation. Each state considering adopting the Uniform Collaborative Law Court Rules*
5 *(UCLR) or the Uniform Collaborative Law Act (UCLA) should review its practices and*
6 *precedent to first determine whether the substantive provisions are best adopted by court rule or*
7 *statute. The decision may vary from state to state depending on the allocation of authority*
8 *between the legislature and the judiciary for regulation of contracts, alternative dispute*
9 *resolution and the legal profession. States may also decide to enact part of the substantive*
10 *provisions by court rule and part by legislation. Specific comments following some particular*
11 *rules or sections indicate whether the drafting committee believes enactment by court rule or*
12 *legislation is preferable. Drafting agencies may need to renumber sections and cross references*
13 *depending on their decision concerning the appropriate method of enactment.*
14
15

UNIFORM COLLABORATIVE LAW ACT

16
17 **SECTION 1. SHORT TITLE.** This [act] may be cited as the Uniform Collaborative
18 Law Act.

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

20 (1) “Collaborative law communication” means a statement, whether oral or in a record, or
21 verbal or nonverbal, that:

22 (A) is made to conduct, participate in, continue, or reconvene a collaborative law
23 process; and

24 (B) occurs after the parties sign a collaborative law participation agreement and
25 before the collaborative law process is concluded.

26 (2) “Collaborative law participation agreement” means an agreement by persons to
27 participate in a collaborative law process.

28 (3) “Collaborative law process” means a procedure intended to resolve a collaborative
29 matter without intervention by a tribunal in which persons:

30 (A) sign a collaborative law participation agreement; and

31 (B) are represented by collaborative lawyers.

1 (4) “Collaborative lawyer” means a lawyer who represents a party in a collaborative law
2 process.

3 (5) “Collaborative matter” means a dispute, transaction, claim, problem, or issue for
4 resolution including a dispute, claim, or issue in a proceeding which

5 **Alternative A**

6 is described in a collaborative law participation agreement and arises under the family or
7 domestic relations law of this state, including but not limited to:

8 (A) marriage, divorce, dissolution, annulment, and property distribution;

9 (B) child custody, visitation, and parenting time;

10 (C) alimony, maintenance, and child support;

11 (D) adoption;

12 (E) parentage;

13 (F) premarital, marital, and post-marital agreements; and

14 (G) guardianship of a minor or individual with a disability.

15 **Alternative B**

16 is described in a collaborative law participation agreement.

17 **End of Alternatives**

18 (6) “Law firm” means:

19 (A) lawyers who practice law together in a partnership, professional corporation,
20 sole proprietorship, limited liability company, or association; and

21 (B) lawyers employed in a legal services organization, or the legal department of
22 a corporation or other organization, or the legal department of a government or governmental
23 subdivision, agency, or instrumentality.

24 (7) “Nonparty participant” means a person, other than a party and the party’s

1 collaborative lawyer, that participates in a collaborative law process.

2 (8) “Party” means a person that signs a collaborative law participation agreement and
3 whose consent is necessary to resolve a collaborative matter.

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

7 (10) “Proceeding” means:

8 (A) a judicial, administrative, arbitral, or other adjudicative process before a
9 tribunal, including related prehearing and post-hearing motions, conferences, and discovery; or

10 (B) a legislative hearing or similar process.

11 (11) “Prospective party” means a person that discusses with a prospective collaborative
12 lawyer the possibility of signing a collaborative law participation agreement

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

15 (13) “Related to a collaborative matter” means involving the same parties, transaction or
16 occurrence, nucleus of operative fact, dispute, claim, or issue as the collaborative matter.

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

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

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

21 (15) “Tribunal” means

22 (A) a court, arbitrator, administrative agency, or other body acting in an
23 adjudicative capacity which, after presentation of evidence or legal argument, has jurisdiction to
24 render a decision affecting a party’s interests in a matter; or

1 (B) a legislative body conducting a hearing or similar process.

2 **Comment**

3 **“Collaborative matter.”** The act uses the term “matter” rather the narrower term
4 “dispute” to describe what the parties may attempt to resolve through a collaborative law
5 process. Matter can include some or all of the issues in litigation or potential litigation, or can
6 include issues between the parties that have not or may never ripen into litigation. The broader
7 term emphasizes that parties have great autonomy to decide what to submit to a collaborative law
8 process and encourages them to use the process creatively and broadly.
9

10 The drafting committee provides two alternatives for enacting states to define
11 “collaborative matter” and thus the scope of matters that can be submitted to the collaborative
12 law process. Alternative A limits “collaborative matter” to those which arise under the family or
13 domestic relations law of a state. States which choose to include this language will thus limit the
14 collaborative law process to those substantive areas where it has so far achieved the greatest
15 acceptance and growth and in which collaborative lawyers have the greatest experience. They
16 will, however, exclude matters which do not arise under the family or domestic relations law of
17 a state from the collaborative law process.
18

19 Alternative B, in contrast, places no substantive limitation on matters that can be
20 submitted to a collaborative law process, relying instead on the informed consent of parties based
21 on the information provided by their counsel under the standards for informed consent specified
22 in Rules 12 and 13. Under Alternative B collaborative law participation agreements can be
23 entered into to attempt to resolve everything from contractor-subcontractor disagreements, estate
24 disputes, employer-employee rights, statutory based claims, customer-vendor disagreements, or
25 any other matter.
26

27 Under either Alternative A or B, the parties must describe the matter that they seek to
28 resolve through a collaborative law process in their collaborative law participation agreement.
29 See Section 4(a)(4). That requirement is essential to determining the scope of the disqualification
30 requirement for collaborative lawyers under Section 9, which is applicable to the collaborative
31 matter and matters “related to the collaborative matter,” and the application of the evidentiary
32 privilege under Section 17.
33

34 **SECTION 3. APPLICABILITY.** This [act] applies to a collaborative law participation
35 agreement that meets the requirements of Section 4 signed [on or] after [the effective date of this
36 [act]].

37 **SECTION 4. COLLABORATIVE LAW PARTICIPATION AGREEMENT;**
38 **REQUIREMENTS.**

39 (a) A collaborative law participation agreement must:

- 1 (1) be in a record;
- 2 (2) be signed by the parties;
- 3 (3) state the parties' intention to resolve a collaborative matter through a
- 4 collaborative law process under this [act];
- 5 (4) describe the nature and scope of the matter;
- 6 (5) identify the collaborative lawyer who represents each party in the process; and
- 7 (6) contain a statement by each collaborative lawyer confirming the lawyer's
- 8 representation of a party in the collaborative law process.

9 (b) Parties may agree to include in a collaborative law participation agreement additional
10 provisions not inconsistent with this [act].

11 **SECTION 5. BEGINNING AND CONCLUDING A COLLABORATIVE LAW**
12 **PROCESS.**

13 (a) A collaborative law process begins when the parties sign a collaborative law
14 participation agreement.

15 (b) A tribunal may not order a party to participate in a collaborative law process over that
16 party's objection.

17 (c) A collaborative law process is concluded by a:

- 18 (1) resolution of a collaborative matter as evidenced by a signed record;
- 19 (2) resolution of a part of the collaborative matter, evidenced by a signed record,
- 20 in which the parties agree that the remaining parts of the matter will not be resolved in the
- 21 process; or
- 22 (3) termination of the process.

23 (d) A collaborative law process terminates:

- 24 (1) when a party gives notice to other parties in a record that the process is ended;

1 or

2 (2) when a party:

3 (A) begins a proceeding related to a collaborative matter without the
4 agreement of all parties; or

5 (B) in a pending proceeding related to the matter:

6 (i) initiates a pleading, motion, order to show cause, or request for
7 a conference with the tribunal;

8 (ii) requests that the proceeding be put on the [tribunal's active
9 calendar]; or

10 (iii) takes similar action requiring notice to be sent to the parties; or

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

13 (e) A party's collaborative lawyer shall give prompt notice to all other parties in a record
14 of a discharge or withdrawal.

15 (f) A party may terminate a collaborative law process with or without cause.

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

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

21 (2) in a signed record:

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

24 (B) the agreement is amended to identify the successor collaborative

1 lawyer; and

2 (C) the successor collaborative lawyer confirms the lawyer's
3 representation of a party in the collaborative process.

4 (h) A collaborative law process does not conclude if, with the consent of the parties, a
5 party requests a tribunal to approve a resolution of the collaborative matter or any part thereof as
6 evidenced by a signed record.

7 (i) A collaborative law participation agreement may provide additional methods of
8 concluding a collaborative law process.

9 **SECTION 6. PROCEEDINGS PENDING BEFORE TRIBUNAL; STATUS**
10 **REPORT.**

11 (a) Persons in a proceeding pending before a tribunal may sign a collaborative law
12 participation agreement to seek to resolve a collaborative matter related to the proceeding.
13 Parties shall file promptly with the tribunal a notice of the agreement after it is signed. Subject to
14 subsection (c) and Sections 7 and 8, the filing operates as an application for a stay of the
15 proceeding.

16 (b) Parties shall file promptly with the tribunal notice in a record when a collaborative
17 law process concludes. The stay of the proceeding under subsection (a) is lifted when the notice
18 is filed. The notice may not specify any reason for termination of the process.

19 (c) A tribunal in which a proceeding is stayed under subsection (a) may require parties
20 and collaborative lawyers to provide a status report on the collaborative law process and the
21 proceeding. A status report may include only information on whether the process is ongoing or
22 concluded. It may not include a report, assessment, evaluation, recommendation, finding, or
23 other communication regarding a collaborative law process or collaborative law matter.

24 (d) A tribunal may not consider a communication made in violation of subsection (c).

1 (e) A tribunal shall provide parties notice and an opportunity to be heard before
2 dismissing a proceeding in which a notice of collaborative process is filed based on delay or
3 failure to prosecute.

4 **Comment**

5
6 Section 6 regulates the relationship between the collaborative law process and the judicial
7 process. The drafting committee thus believes section 6 might best be enacted by judicial rule
8 rather than legislation.
9

10 This section authorizes parties to enter into a collaborative law participation agreement to
11 attempt to resolve matters in pending proceedings, a subject discussed in the Prefatory Note. *See*
12 *supra*. To give the collaborative law process time and breathing space to operate, it creates an
13 application for a stay of proceedings upon the filing of a collaborative law participation
14 agreement. The stay should normally be granted from the time the tribunal receives written
15 notice that the parties have executed a collaborative law participation agreement until it receives
16 written notice that the collaborative law process is concluded. The stay of proceedings is
17 qualified by Rule 7, which authorizes a tribunal to issue emergency orders notwithstanding the
18 stay and Rule 8, which authorizes a tribunal to approve an agreement resulting from a
19 collaborative law process.
20

21 **SECTION 7. EMERGENCY ORDER.** During a collaborative law process, a tribunal
22 may issue emergency orders to protect the health, safety, welfare, or interest of a party or [insert
23 term for family or household member as defined in [state civil protection order statute]].

24 **Comment**

25
26 Section 7 regulates the relationship between the collaborative law process and the judicial
27 process. The drafting committee thus believe that Section 7 might best be enacted by judicial rule
28 rather than legislation.
29

30 **SECTION 8. APPROVAL OF AGREEMENT BY TRIBUNAL.** A tribunal may
31 approve an agreement resulting from a collaborative law process.

32 **Comment**

33
34 Section 8 regulates the relationship between the collaborative law process and the judicial
35 process. The drafting committee thus believe that Section 8 might best be enacted by judicial rule
36 rather than legislation.
37
38

1 party with or without fee.

2 (b) After a collaborative law process concludes, another lawyer in a law firm with which
3 a collaborative lawyer disqualified under Section 9(a) is associated may represent a party without
4 fee in the collaborative matter or a matter related to the collaborative matter if:

5 (1) the party has an annual income that qualifies the party for free legal
6 representation under the criteria established by the law firm for free legal representation;

7 (2) the collaborative law participation agreement so provides; and

8 (3) the collaborative lawyer is isolated from any participation in the collaborative
9 matter or a matter related to the collaborative matter through procedures within the law firm
10 which are reasonably calculated to isolate the collaborative lawyer from such participation.

11 **Comment**

12
13 Section 10 regulates who can appear before a court (tribunal) to represent a party after a
14 collaborative law process terminates. The drafting committee thus believes that Section 10 might
15 best be enacted by judicial rule rather than legislation.
16

17 **SECTION 11. GOVERNMENTAL ENTITY AS PARTY.**

18 (a) The disqualification of Section 9(a) applies to a collaborative lawyer representing a
19 party that is a government or governmental subdivision, agency, or instrumentality.

20 (b) After a collaborative law process concludes, another lawyer in a law firm with which
21 the collaborative lawyer is associated may represent a government or governmental subdivision,
22 agency, or instrumentality in the collaborative matter or a matter related to the collaborative
23 matter if:

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

25 (2) the collaborative lawyer is isolated from any participation in the collaborative
26 matter or a matter related to the collaborative matter through procedures within the law firm
27 which are reasonably calculated to isolate the collaborative lawyer from such participation.

1 **Comment**

2
3 Section 11 regulates who can appear before a court (tribunal) to represent a party after a
4 collaborative law process terminates. The drafting committee thus believes that Section 11 might
5 best be enacted by judicial rule rather than legislation.
6

7 **SECTION 12. DISCLOSURE OF INFORMATION.** Except as provided by law other
8 than this [act], during the collaborative law process, on the request of another party, a party shall
9 make timely, full, candid, and informal disclosure of information related to the collaborative
10 matter without formal discovery. A party also shall update promptly previously disclosed
11 information that has materially changed. Parties may define the scope of disclosure during the
12 collaborative law process.

13 **SECTION 13. STANDARDS OF PROFESSIONAL RESPONSIBILITY AND**
14 **MANDATORY REPORTING NOT AFFECTED.** This [act] does not affect:

15 (1) the professional responsibility obligations and standards applicable to a lawyer or
16 other licensed professional; or

17 (2) the obligation of a person to report abuse or neglect, abandonment, or exploitation of
18 a child or adult under the law of this state.

19 **SECTION 14. APPROPRIATENESS OF COLLABORATIVE LAW PROCESS.**

20 Before a prospective party signs a collaborative law participation agreement, a prospective
21 collaborative lawyer shall:

22 (1) assess with the prospective party factors the lawyer reasonably believes relate to
23 whether a collaborative law process is appropriate for the prospective party's matter;

24 (2) provide the prospective party with information that the lawyer reasonably believes is
25 sufficient for the party to make an informed decision about the material benefits and risks of a
26 collaborative law process as compared to the material benefits and risks of other reasonably
27 available alternatives for resolving the proposed collaborative matter, such as litigation,

1 mediation, arbitration, or expert evaluation; and

2 (3) advise the prospective party that:

3 (A) after signing an agreement if a party initiates a proceeding or seeks tribunal
4 intervention in a pending proceeding related to the collaborative matter, the collaborative law
5 process terminates;

6 (B) participation in a collaborative law process is voluntary and any party has the
7 right to terminate unilaterally a collaborative law process with or without cause; and

8 (C) the collaborative lawyer and any lawyer in a law firm with which the
9 collaborative lawyer is associated may not appear before a tribunal to represent a party in a
10 proceeding related to the collaborative matter, except as authorized by Section 9(c), 10(b), or
11 11(b).

12 **SECTION 15. COERCIVE OR VIOLENT RELATIONSHIP.**

13 (a) Before a prospective party signs a collaborative law participation agreement, a
14 prospective collaborative lawyer must make reasonable inquiry whether the prospective party
15 has a history of a coercive or violent relationship with another prospective party.

16 (b) Throughout a collaborative law process, a collaborative lawyer reasonably and
17 continuously shall assess whether the party the collaborative lawyer represents has a history of a
18 coercive or violent relationship with another party.

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

23 (1) the party or the prospective party requests beginning or continuing a process;

24 and

1 (2) the collaborative lawyer reasonably believes that the safety of the party or
2 prospective party can be protected adequately during a process.

3
4 **SECTION 16. 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 17. PRIVILEGE AGAINST DISCLOSURE FOR COLLABORATIVE**
8 **LAW COMMUNICATION; ADMISSIBILITY; DISCOVERY.**

9 (a) Subject to Sections 18 and 19, a collaborative law communication is privileged under
10 subsection (b), is not subject to discovery, and is not admissible in evidence.

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

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

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

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

19 **Comment**

20
21 In many states legislation is required to create a privileged communication. While the
22 earliest recognized privileges were judicially created, this practice stopped over a century ago.
23 See KENNETH S. BROUN ET AL., MCCORMICK ON EVIDENCE § 75 (6th ed. 2006). Today,
24 evidentiary privileges are rooted within legislative action; some state legislatures have even
25 passed statutes which bar court-created privileges. See, e.g., CAL. EVID. CODE § 911 (West
26 2009); WIS. STAT. ANN. § 905.01 (West 2000). The drafting committee thus recommends that
27 Section 17 might best be enacted by legislation.
28

29 **SECTION 18. WAIVER AND PRECLUSION OF PRIVILEGE.**

1 (a) A privilege under Section 17 may be waived in a record or orally during a proceeding
2 if it is expressly waived by all parties and, in the case of the privilege of a nonparty participant, it
3 is also expressly waived by the nonparty participant.

4 (b) A person that makes a disclosure or representation about a collaborative law
5 communication which prejudices another person in a proceeding may not assert a privilege under
6 Section 17, but this preclusion applies only to the extent necessary for the person prejudiced to
7 respond to the disclosure or representation.

8 **Comment**

9 The drafting committee recommends that Section 18 might best be enacted by legislation.
10 See comment to Section 17 *supra*.
11

12 **SECTION 19. LIMITS OF PRIVILEGE.**

13 (a) There is no privilege under Section 17 for a collaborative law communication that is:

14 (1) available to the public under [state open records act] or made during a session
15 of a collaborative law process that is open, or is required by law to be open, to the public;

16 (2) a threat or statement of a plan to inflict bodily injury or commit a crime of
17 violence;

18 (3) intentionally used to plan a crime, commit or attempt to commit a crime, or
19 conceal an ongoing crime or ongoing criminal activity; or

20 (4) in an agreement resulting from the collaborative law process, evidenced by a
21 record signed by all parties to the agreement.

22 (b) The privileges under Section 17 for a collaborative law communication do not apply
23 to the extent that a communication is:

24 (1) sought or offered to prove or disprove a claim or complaint of professional
25 misconduct or malpractice arising from or related to a collaborative law process; or

1 (2) sought or offered to prove or disprove abuse, neglect, abandonment, or
2 exploitation of a child or adult, unless the [child protective services agency or adult protective
3 services agency] is a party to or otherwise participates in the process.

4 (c) There is no privilege under Section 17 if a tribunal finds, after a hearing in camera,
5 that the party seeking discovery or the proponent of the evidence has shown the evidence is not
6 otherwise available, the need for the evidence substantially outweighs the interest in protecting
7 confidentiality, and the collaborative law communication is sought or offered in:

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

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

11 (d) If a collaborative law communication is subject to an exception under subsection (b)
12 or (c), only the part of the communication necessary for the application of the exception may be
13 disclosed or admitted.

14 (e) Disclosure or admission of evidence excepted from the privilege under subsection (b)
15 or (c) does not make the evidence or any other collaborative law communication discoverable or
16 admissible for any other purpose.

17 (f) The privileges under Section 17 do not apply if the parties agree in advance in a
18 signed record, or if a record of a proceeding reflects agreement by the parties, that all or part of a
19 collaborative law process is not privileged. This subsection does not apply to a collaborative law
20 communication made by a person that did not receive actual notice of the agreement before the
21 communication was made.

22 **Comment**

23 The drafting committee recommends that Section 19 might best be enacted by legislation.
24 See comment to Section 17 *supra*.

25

1 **SECTION 20. AUTHORITY OF TRIBUNAL IN CASE OF NONCOMPLIANCE.**

2 (a) If an agreement fails to meet the requirements of Section 4, or a lawyer fails to
3 comply with Section 14 or 15, a tribunal may nonetheless find that the parties intended to enter
4 into a collaborative law participation agreement if they:

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

7 (2) reasonably believed they were participating in a collaborative law process.

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

10 (1) enforce an agreement evidenced by a record resulting from the process in
11 which the parties participated;

12 (2) apply the disqualification provisions of Sections 5, 6, 9, 10, and 11; and

13 (3) apply the privileges under Section 17.

14 **SECTION 21. UNIFORMITY OF APPLICATION AND CONSTRUCTION.** In

15 applying and construing this uniform act, consideration must be given to the need to promote
16 uniformity of the law with respect to its subject matter among states that enact it.

17 **SECTION 22. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND**

18 **NATIONAL COMMERCE ACT.** This [act] modifies, limits, and supersedes the federal
19 Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Section 7001 et seq., but
20 does not modify, limit, or supersede Section 101(c) of that act, 15 U.S.C. Section 7001(c), or
21 authorize electronic delivery of any of the notices described in Section 103(b) of that act, 15
22 U.S.C. Section 7003(b).

23 **[SECTION 23. SEVERABILITY.** If any provision of this [act] or its application to
24 any person or circumstance is held invalid, the invalidity does not affect other provisions or

1 applications of this [act] which can be given effect without the invalid provision or application,
2 and to this end the provisions of this [act] are severable.]

3 *Legislative Note: Include this section only if the state lacks a general severability statute or a*
4 *decision by the highest court of this state stating a general rule of severability.*

5
6 **SECTION 24. EFFECTIVE DATE.** This [act] takes effect.....

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