

DRAFT
FOR DISCUSSION ONLY

UNIFORM COLLABORATIVE LAW ACT
and
UNIFORM COLLABORATIVE LAW RULES

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

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

*Changes Shown in Strike and Score
Without Prefatory Notes or Comments*

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NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

The ideas and conclusions set forth in this draft, including the proposed statutory language and any comments or reporter's notes, have not been passed upon by the National Conference of Commissioners on Uniform State Laws. They do not necessarily reflect the views of the Conference and its Commissioners and the Drafting Committee and its Members and Reporter. Proposed statutory language may not be used to ascertain the intent or meaning of any promulgated final statutory proposal.

March 5, 2010

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UNIFORM COLLABORATIVE LAW ACT

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1 *Legislative Note: Each state adopting the Uniform Collaborative Law Act and associated*
2 *Uniform Collaborative Law Rules should review its practices and precedent to first determine*
3 *whether each provision is best adopted by court rule or statute. While state preferences may*
4 *vary in this regard, the drafters of the UCLA broadly recognize that sections 4 through 14 might*
5 *best be adopted by court rule where practical, while the rest of the act (especially the provisions*
6 *regarding privilege) be adopted in statute. Legislative drafting agencies may need to renumber*
7 *sections and crossreferences depending on these placement decisions.*

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9
10 **UNIFORM COLLABORATIVE LAW ACT**

11
12 **SECTION 1. SHORT TITLE.** This [act] may be cited as the Uniform Collaborative
13 Law Act.

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

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

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

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

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

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

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

26 (B) are represented by collaborative lawyers.

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

29 (5) “Collaborative matter” means a dispute, transaction, claim, problem, or issue for

1 resolution described in a collaborative law participation agreement. The term includes a dispute,
2 claim, or issue in a proceeding which:

3 (A) is described in a collaborative law participation agreement; and

4 **Alternative A**

5 (B) [which involves or is related to disputes between or among current or former

6 family members, including marriage, divorce, annulment, and property distribution; child

7 custody and visitation; alimony and child support; paternity, adoption, and termination of

8 parental rights; juvenile delinquency, child abuse, and child neglect; domestic violence; criminal

9 nonsupport; name change; guardianship of minors and disabled persons; and withholding or

10 withdrawal of life-sustaining medical procedures, involuntary admissions, and emergency

11 evaluations.]

12 **Alternative B**

13 (B) [arising among parties with continuing familial, personal, or business

14 relationships which will extend beyond the term of the dispute, claim, or issue at issue.]

15 **Alternative C**

16 (B) [arising under the Family Code of this State.]

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

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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

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

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Comment

We will need to describe the benefits and limitations of any changes made to the definitional scope of “Collaborative Matter”. The Committee should also consider adding additional commentary to describe how parties could contract to use collaborative processes in matters arising outside the scope of the chosen definition(s).

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Alternative A

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

Comment [MK1]: Moved to Section 24

(a) The [judicial rule making body] shall prescribe rules for the collaborative law process which shall address:

(1) The effect of parties entering into a collaborative law process on pending proceedings, including stays of proceeding, status reports, and emergency orders;

(2) How parties may seek tribunal approval, where necessary, of agreements entered into by parties through a collaborative law process;

(3) How collaborative lawyers may obtain informed consent by parties and prospective parties before entering into a collaborative law participation agreement;

(4) The requirements for collaborative law participation agreements;

(5) Screening and methods of assuring safety if prospective parties or parties in a collaborative law process have a history of a coercive and violent relationship;

(6) How a collaborative law process begins and ends;

(7) How tribunals shall enforce the disqualification provisions of Rule 6, 7, and 8;

(8) Education and training requirements for collaborative lawyers and other professionals who participate in the collaborative law process; and

1 (9) Any other subject that promotes growth and development of collaborative law
2 as an effective alternative dispute resolution process, including the promulgation of standard
3 forms for the collaborative law process.

4 (B) Rules promulgated by [judicial rule making body] shall not be inconsistent with the
5 provisions of this [act].]

6 **Alternative B**

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7 **[SECTION 3 PROCEEDINGS PENDING BEFORE TRIBUNAL; STATUS**
8 **REPORT.**

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9 (a) Persons in a proceeding pending before a tribunal may sign a collaborative law
10 participation agreement to seek to resolve a collaborative matter related to the proceeding.
11 Parties shall file promptly with the tribunal a notice of the agreement after it is signed. Subject to
12 subsection (c) and Sections 7 and 8, the filing operates as a stay of the 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 | *Legislative Note: States wishing to adopt the subject matter of this legislation by court rule,*
2 | *should enact Alternative A, while states wishing to adopt this subject matter by statute should*
3 | *enact Alternative B.*

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5 | **[SECTION 4. RULE 1 COLLABORATIVE LAW PARTICIPATION**

6 | **AGREEMENT; REQUIREMENTS.**

7 | (a) A collaborative law participation agreement must:

8 | (1) be in a record;

9 | (2) be signed by the parties;

10 | (3) state the parties' intention to resolve a collaborative matter through a

11 | collaborative law process under this [act]Rule;

12 | (4) describe the nature and scope of the matter;

13 | (5) identify the collaborative lawyer who represents each party in the process; and

14 | (6) contain a statement by each collaborative lawyer confirming the lawyer's

15 | representation of a party in the collaborative law process.

16 | (b) Parties may agree to include in a collaborative law participation agreement additional

17 | provisions not inconsistent with this [act]rule.

18 | **[SECTION 5. RULE 2 BEGINNING AND CONCLUDING A**

19 | **COLLABORATIVE LAW PROCESS.**

20 | (a) A collaborative law process begins when the parties sign a collaborative law
21 | participation agreement.

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

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

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

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

5 (d) A collaborative law process terminates:

6 (1) when a party gives notice to other parties in a record that the process is ended;
7 or
8 (2) when a party:

9 (A) begins a proceeding related to a collaborative matter without the
10 agreement of all parties; or
11 (B) in a pending proceeding related to the matter:

12 (i) initiates a pleading, motion, order to show cause, or request for
13 a conference with the tribunal;
14 (ii) requests that the proceeding be put on the [tribunal's active
15 calendar]; or
16 (iii) takes similar action requiring notice to be sent to the parties; or
17 (3) except as otherwise provided by subsection (e), when a party discharges a
18 collaborative lawyer or a collaborative lawyer withdraws from further representation of a party.

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

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

22 (g) Notwithstanding the discharge or withdrawal of a collaborative lawyer, a
23 collaborative law process continues, if not later than 30 days after the date that the notice of the
24 discharge or withdrawal of a collaborative lawyer required by subsection (e)(3) is sent to the

1 parties:

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

3 (2) in a signed record:

4 (A) the parties consent to continue the process by reaffirming the

5 collaborative law participation agreement;

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

7 lawyer; and

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

9 representation of a party in the collaborative process.

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

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

15 | **[SECTION 6. RULE 3 PROCEEDINGS PENDING BEFORE TRIBUNAL;**
16 **STATUS REPORT.**

17 (a) Persons in a proceeding pending before a tribunal may sign a collaborative law
18 participation agreement to seek to resolve a collaborative matter related to the proceeding.

19 Parties shall file promptly with the tribunal a notice of the agreement after it is signed. Subject to
20 subsection (c) and [Sections 7 and 8][Rules 4 and 5], the filing operates as a stay of the
21 proceeding.

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

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

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

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

10 | **[SECTION 7. RULE 4 EMERGENCY ORDER.** During a collaborative law
11 | process, a tribunal may issue emergency orders to protect the health, safety, welfare, or interest
12 | of a party or [insert term for family or household member as defined in [state civil protection
13 | order statute]].

14 | **[SECTION 8. RULE 5 APPROVAL OF AGREEMENT BY TRIBUNAL.** A
15 | tribunal may approve an agreement resulting from a collaborative law process.

16 | **SECTION 9. RULE 6 DISQUALIFICATION OF COLLABORATIVE LAWYER
17 | AND LAWYERS IN ASSOCIATED LAW FIRM.**

18 (a) Except as otherwise provided in subsection (c), a collaborative lawyer is disqualified
19 from appearing before a tribunal to represent a party in a proceeding related to the collaborative
20 matter.

21 (b) Except as otherwise provided in subsection (c) and [Sections 10 and 11] Rules 7 and
22 8, a lawyer in a law firm with which the collaborative lawyer is associated is disqualified from
23 appearing before a tribunal to represent a party in a proceeding related to the collaborative matter
24 if the collaborative lawyer is disqualified from doing so under subsection (a).

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

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

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

11 **[SECTION 10][RULE 7] LOW INCOME PARTIES.**

12 (a) The disqualification of [Section 9(a)][Rule 6(a)] applies to a collaborative lawyer
13 representing a party with or without fee.

14 (b) After a collaborative law process concludes, another lawyer in a law firm with which
15 a collaborative lawyer disqualified under [section 9(a)][Rule 6(a)] is associated may represent a
16 party without fee in the collaborative matter or a matter related to the collaborative matter if:

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

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

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

23 **[SECTION 11][RULE 8]. GOVERNMENTAL ENTITY AS PARTY.**

24 (a) The disqualification of [Section 9(a)][Rule 6(a)] applies to a collaborative lawyer

1 representing a party that is a government or governmental subdivision, agency, or
2 instrumentality.

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

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

8 (2) 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 **[SECTION 12][RULE 9]. APPROPRIATENESS OF COLLABORATIVE LAW**

12 **PROCESS. Before a prospective party signs a collaborative law participation agreement, a**
13 **prospective collaborative lawyer shall:**

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

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

21 **(3) advise the prospective party that:**

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

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

3 (C) the collaborative lawyer and any lawyer in a law firm with which the
4 collaborative lawyer is associated may not appear before a tribunal to represent a party in a
5 proceeding related to the collaborative matter, except as authorized by [Section 9(c), 10(b), or
6 11(b)][Rule 6(c), 7(b) or 8(b)].

7 **[SECTION 13][RULE 10]. COERCIVE OR VIOLENT RELATIONSHIP.**

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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 **[SECTION 14][RULE 11]. AUTHORITY OF TRIBUNAL IN CASE OF**
23 **NONCOMPLIANCE.**

24 (a) If an agreement fails to meet the requirements of Section 4, or a lawyer fails to

1 comply with [Section 12 or 13][Rule 9 or 10], a tribunal may nonetheless find that the parties
2 intended to enter into a collaborative law participation agreement if they:

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

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

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

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

10 (2) apply the disqualification provisions of [Sections 5, 6, 9, 10, and 11][Rules 2,
11 3, 6, and 7]; and

12 (3) apply the privileges under Section 18.

13 **[SECTION ~~12~~15][RULE 12]. DISCLOSURE OF INFORMATION.** Except as
14 provided by law other than this [act], during the collaborative law process, on the request of
15 another party, a party shall make timely, full, candid, and informal disclosure of information
16 related to the collaborative matter without formal discovery. A party also shall update promptly
17 previously disclosed information that has materially changed. Parties may define the scope of
18 disclosure during the collaborative law process.

19 **[SECTION ~~13~~16][RULE 13]. STANDARDS OF PROFESSIONAL**
20 **RESPONSIBILITY AND MANDATORY REPORTING NOT AFFECTED.** This [act] does
21 not affect:

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

24 (2) the obligation of a person to report abuse or neglect, abandonment, or exploitation of

1 a child or adult under the law of this state.

2 **SECTION 14. ~~APPROPRIATENESS OF COLLABORATIVE LAW PROCESS.~~**

3 ~~Before a prospective party signs a collaborative law participation agreement, a prospective~~
4 ~~collaborative lawyer shall:~~

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

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

12 ~~(3) advise the prospective party that:~~

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

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

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

21 ~~11(b).~~

Comment [MK2]: Moved to sec 12/rule 9

22 **SECTION 15. ~~COERCIVE OR VIOLENT RELATIONSHIP.~~**

23 ~~(a) Before a prospective party signs a collaborative law participation agreement, a~~
24 ~~prospective collaborative lawyer must make reasonable inquiry whether the prospective party~~
25

1 ~~has a history of a coercive or violent relationship with another prospective party.~~

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

5 ~~(c) If a collaborative lawyer reasonably believes that the party the lawyer represents or~~
6 ~~the prospective party who consults the lawyer has a history of a coercive or violent relationship~~
7 ~~with another party or prospective party, the lawyer may not begin or continue a collaborative law~~
8 ~~process unless:~~

9 ~~(1) the party or the prospective party requests beginning or continuing a process;~~
10 ~~and~~

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

Comment [MK3]: Moved to Section 13/Rule 10

13 **[SECTION 1617][RULE 14]. CONFIDENTIALITY OF COLLABORATIVE LAW**

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

16 **SECTION 1718. PRIVILEGE AGAINST DISCLOSURE FOR**
17 **COLLABORATIVE LAW COMMUNICATION; ADMISSIBILITY; DISCOVERY.**

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

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

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

4 **SECTION 1819. WAIVER AND PRECLUSION OF PRIVILEGE.**

5 (a) A privilege under Section 1718 may be waived in a record or orally during a
6 proceeding if it is expressly waived by all parties and, in the case of the privilege of a nonparty
7 participant, it is also expressly waived by the nonparty participant.

8 (b) A person that makes a disclosure or representation about a collaborative law
9 communication which prejudices another person in a proceeding may not assert a privilege under
10 Section 1718, but this preclusion applies only to the extent necessary for the person prejudiced to
11 respond to the disclosure or representation.

12 **SECTION 1920. LIMITS OF PRIVILEGE.**

13 (a) There is no privilege under Section 1718 for a collaborative law communication that
14 is:

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

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

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

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

23 (b) The privileges under Section 1718 for a collaborative law communication do not
24 apply to the extent that a communication is:

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

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

6 (c) There is no privilege under Section ~~47-18~~ if a tribunal finds, after a hearing in camera,
7 that the party seeking discovery or the proponent of the evidence has shown the evidence is not
8 otherwise available, the need for the evidence substantially outweighs the interest in protecting
9 confidentiality, and the collaborative law communication is sought or offered in:

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

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

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

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

19 (f) The privileges under Section ~~47-18~~ do not apply if the parties agree in advance in a
20 signed record, or if a record of a proceeding reflects agreement by the parties, that all or part of a
21 collaborative law process is not privileged. This subsection does not apply to a collaborative law
22 communication made by a person that did not receive actual notice of the agreement before the
23 communication was made.

24

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.A. § 7001 et seq. (2009),
20 but does not modify, limit, or supersede section 101(c) of that act, 15 U.S.C.A. § 7001(c), or
21 authorize electronic delivery of any of the notices described in § 103(b) of that act, 15 U.S.C.A.
22 § 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 **SECTION 24. APPLICABILITY.** This [act] applies to a collaborative law
4 participation agreement that meets the requirements of [Section 4][Rule1] signed [on or] after
5 [the effective date of this [act]].

6 **SECTION 25. EFFECTIVE DATE.** This [act] takes effect.....

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