

MINUTES
Collaborative Law Legislation Subcommittee Meeting
Meeting Date: 8-28-09
Meeting Time: Noon

Attendees: Scott Rubin, Chair (votes to break tie vote)
Voting Members:
- Steve Berzner
- Judge Paul Kanarek
- Rosemarie Roth
- Frank Zilaitis
Non-Voting Attendees:
- Robert Merlin
Absent Voting Members:
- Ben Hodas
- Richard Hujber
- GM Robert Jones
- Jeffrey Weissman
- Dr. Debra Carter
- David Hirschberg

CALL TO ORDER

The meeting was called to order by Scott Rubin at 12:04 p.m.

OPENING DISCUSSION

Mr. Rubin opened the telecon by stating he expected to vote on each amendment (proposed by Mr. Berzner) of the UCLA as previously amended by Mr. Merlin, entertain additional amendments and/or proposals and then on the entire UCLA with all amendments.

GENERAL DISCUSSION

Mr. Rubin began with Item 2 of Mr. Berzner's e-mail dated August 27, 2009, to wit:

2. Section 5: Beginning and Concluding a Collaborative Law Process. Add the following as the new (b):

In connection with proceedings arising under chapter 61 and chapter 742, all time periods during which a person must enforce or exercise his or her legal rights are tolled as between the parties to "a" (friendly amendment from "the") collaborative participation agreement while such agreement remains in effect. This subsection applies to statutes of limitation, filing deadlines, any other time limits imposed by law and deadlines to exercise contractual rights as between the parties.

Motion for Vote by Mr. Berzner, Second by Ms. Roth.

Vote: To add to Section 5 of the UCLA, as amended by Mr. Merlin, Subparagraph (b).

Tally: YES – Berzner, Kanarek, Roth and Zilaitis. NO – none. UNANIMOUS.

Mr. Rubin then requested a vote on Item 1 of Mr. Berzner's e-mail dated August 27, 2009, to wit:

1. Section 19: Limits of Privilege. Add the following as subsections under (a):

(5) A communication or document in existence that was in existence prior to the parties entering into collaborative participation agreement.

(6) A communication or document that was otherwise known or disclosed publicly (Editor's note: fixed typo – was "publically") outside the collaborative process.

Motion for Vote by Mr. Berzner, Second by Ms. Roth.

Vote: To add to Section 5 of the UCLA, as amended by Mr. Merlin, Sub-subparagraphs (5) and (6) of Subpragraph (b).

Tally: YES – Berzner, Kanarek, Roth and Zilaitis. NO – none. UNANIMOUS.

Mr. Rubin inquired as to whether there were any additional proposals for amending the UCLA as amended by Mr. Merlin and, hearing no comments, proceeded to end the meeting.

CLOSING REMARK

Mr. Rubin thanked the members of the Subcommittee for their work and noted that our work-product will be delivered to Elisha Roy, FLABAR FLS Legislative Committee Co-Chair.

Per **Mr. Rubin's** request, a copy of the UCLA with the Merlin and Berzner Amendments as voted on by this Subcommittee (File Name: **UCLA-FL 2009_08_28.doc**) is incorporated into these minutes.

The meeting adjourned at 1:12 p.m.

Respectfully submitted,

Frank Zilaitis
Counselor and Attorney at Law

UNIFORM COLLABORATIVE LAW ACT

Drafted by the

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

and by it

APPROVED AND RECOMMENDED FOR ENACTMENT
IN ALL THE STATES

at its

ANNUAL CONFERENCE
MEETING IN ITS ONE-HUNDRED-AND-EIGHTEENTH YEAR
SANTA FE, NEW MEXICO
JULY 9 - JULY 16, 2009

WITHOUT PREFATORY NOTE OR COMMENTS

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By

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

July 15, 2009

UNIFORM COLLABORATIVE LAW ACT

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

SECTION 2. DEFINITIONS. In this [act]:

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

(A) occurs after the parties sign a collaborative law participation agreement and before the collaborative law process is concluded; and

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

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

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

(A) sign a collaborative law participation agreement; and

(B) are represented by collaborative lawyers.

(4) “Collaborative lawyer” means a lawyer who represents a party in a collaborative law process who has met the education and training requirements established by the Supreme Court. ~~who has met the education and training requirements established by the Supreme Court.~~

(5) “Collaborative matter” or “matter” means a dispute, transaction, claim, problem, or issue for resolution described in a collaborative law participation agreement. The term includes, but is not limited to, ~~but, not limited to,~~ a dispute, claim, or issue in a proceeding.

(6) “Law firm” means lawyers who practice law together in a partnership, professional corporation, sole proprietorship, limited liability company, or other association, ~~or~~ lawyers employed in a legal services organization, ~~or~~ the legal department of a corporation or other organization, or the legal department of a government or governmental subdivision, agency, or instrumentality.

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

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

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

(10) “Proceeding” means:

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

(B) a legislative hearing or similar process.

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

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

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

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

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

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

(15) "Tribunal" means

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

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

SECTION 3. APPLICABILITY; SCOPE.

(a) 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}].

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

SECTION 4. COLLABORATIVE LAW PARTICIPATION AGREEMENT; REQUIREMENTS.

(a) A collaborative law participation agreement must:

(1) be in a record;

(2) be signed by the parties;

(3) state the parties' intention to resolve a matter through a collaborative law process under this {act};

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

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

(6) contain a statement by each collaborative lawyer confirming the lawyer's representation of a party in the collaborative law process.

(b) Parties to a collaborative law participation agreement may agree to include additional provisions not inconsistent with this {act}.

SECTION 5. BEGINNING AND CONCLUDING A COLLABORATIVE LAW PROCESS.

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

(b) In connection with proceedings arising under chapter 61 and chapter 742, all time periods during which a person must enforce or exercise his or her legal rights are tolled as between the parties to a collaborative participation agreement while such agreement remains in effect. This subsection applies to statutes of limitation, filing deadlines, any other time limits imposed by law and deadlines to exercise contractual rights as between the parties.

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

- (1) negotiated resolution of the matter as evidenced by a signed record;
- (2) negotiated resolution of a portion of the matter as evidenced by a signed

record where the parties agree that the remaining portions of the matter will not be resolved in the collaborative law process; or

(3) termination of the process.

(d) A collaborative law process terminates:

(1) when a party gives notice in a record that the collaborative law process is ended; or

(2) when a party:

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

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

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

(ii) requests that the proceeding be put on the {tribunal's active calendar}; or

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

(3) except as otherwise provided by subsection (e), when a party discharges a collaborative lawyer or a collaborative lawyer withdraws from further representation of a party. The party's collaborative lawyer shall give prompt notice in a record of such discharge or withdrawal to all other parties.

(de) A party may terminate a collaborative law process with or without cause. A notice of termination need not specify a reason for terminating the process.

(ef) Notwithstanding the discharge or withdrawal of a collaborative lawyer, a collaborative law process continues if not later than 30 days after the date that the notice of the discharge or withdrawal of a collaborative lawyer required by subsection (c)(3) is sent to the parties:

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

(2) in a signed record:

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

(B) the collaborative law participation agreement is amended to identify the successor collaborative lawyer; and

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

(fg) A collaborative law process does not terminate if, with the consent of all parties, a party requests a tribunal to approve a negotiated resolution of the matter or any portion thereof as evidenced by a signed record.

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

SECTION 6. PROCEEDINGS PENDING BEFORE TRIBUNAL; STATUS

REPORT.

(a) Parties to a proceeding pending before a tribunal may sign a collaborative law participation agreement to seek to resolve a matter related to the proceeding. Parties shall ~~promptly file~~ ~~promptly~~ file a notice of the agreement with the tribunal after the collaborative law participation agreement is signed. Subject to subsection (c) and Section 7 and 8, the filing operates as a stay of the proceeding.

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

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

(d) Except as authorized by subsection (e), a status report may not include a report, assessment, evaluation, recommendation, finding, or other communication regarding a collaborative law process.

(e) A tribunal may require the parties and lawyers to disclose in a status report whether the process is ongoing or concluded.

(f) A communication made in violation of subsection (d) may not be considered by a tribunal.

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

SECTION 7. EMERGENCY ORDER. During the collaborative law process a tribunal may issue emergency orders to protect the health, safety, welfare, or interests of a party or [insert term for family or household member as defined in [state civil protection order statute]]. The collaborative lawyer is authorized to seek or defend an emergency order under section 9(c)(2).

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

Legislative Note: In states where judicial procedures for management of proceedings may be prescribed only by court rule or administrative guideline and not by legislative act, the duties of courts and other tribunals listed in Sections 6 through 8 should be adopted by the appropriate measure.

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

(a) Except as otherwise provided in subsection (c), a collaborative lawyer may not appear before a tribunal to represent a party in a proceeding related to the collaborative matter.

(b) Except as otherwise provided in subsection (c) and Sections 10 and 11, a lawyer in a law firm with which the collaborative lawyer is associated may not appear before a tribunal to represent a party in a proceeding related to the collaborative matter if the collaborative lawyer is disqualified from doing so under subsection (a).

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

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

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

SECTION 10. LOW INCOME PARTIES.

(a) The disqualification of Section 9(a) applies to a collaborative lawyer representing a party without fee.

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

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

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

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

SECTION 11. GOVERNMENTAL ENTITIES AS PARTIES.

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

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

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

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

SECTION 12. DISCLOSURE OF INFORMATION. Upon the request of another party During the collaborative law process, ~~on the request of another party~~, a party shall make timely, full, candid, and informal disclosure of information related to the collaborative matter without the necessity of formal discovery procedures, and shall ~~update promptly~~ promptly update information that has materially changed. Parties may define the scope of disclosure, except as provided by law other than this {act}.

SECTION 13. STANDARDS OF PROFESSIONAL RESPONSIBILITY AND MANDATORY REPORTING. This {act} does not affect:

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

(b) the obligation of a person to report abuse or neglect of a child or adult under the law of this state.

SECTION 14. APPROPRIATENESS OF THE COLLABORATIVE LAW PROCESS.

(a) Before a prospective party signs a collaborative law participation agreement, a prospective collaborative lawyer shall:

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

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

(3) advise the party that:

(A) after signing an collaborative law participation agreement:

(i) if a party initiates a proceeding or seeks tribunal intervention in a pending proceeding related to the collaborative matter, the collaborative law process terminates; and

(ii) the collaborative lawyer and any lawyer in a law firm with which the collaborative lawyer is associated may not represent a party before a tribunal in such a proceeding except as authorized by Section 9(c), 10(b), or 11(b);

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

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

SECTION 15. COERCIVE OR VIOLENT RELATIONSHIP.

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

(b) A collaborative lawyer shall, throughout the collaborative law process, continue to reasonably assess whether the party the collaborative lawyer represents has a history of a coercive or violent relationship with another party.

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

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

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

SECTION 16. CONFIDENTIALITY OF COLLABORATIVE LAW

COMMUNICATIONS. A collaborative law communication is confidential to the extent agreed to by the parties in a signed record or as provided by the laws of this state other than this {act}.

SECTION 17. PRIVILEGE AGAINST DISCLOSURE ~~OFFOR~~

COLLABORATIVE LAW COMMUNICATIONS; ADMISSIBILITY; DISCOVERY.

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

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

(1) A party may refuse to disclose, and may prevent any other person from disclosing, a collaborative law communication; and/or

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

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

SECTION 18. WAIVER AND PRECLUSION OF PRIVILEGE.

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

(b) A person that discloses or makes a representation about a collaborative law communication which prejudices another person in a proceeding may not assert a privilege under

Section 17, but only to the extent necessary for the person prejudiced to respond to the disclosure or representation.

SECTION 19. LIMITS OF PRIVILEGE.

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

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

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

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

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

(5) A communication or document in existence that was in existence prior to the parties entering into collaborative participation agreement.

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(6) A communication or document that was otherwise known or disclosed publicly outside the collaborative process.

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

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

(2) sought or offered to prove or disprove abuse, neglect, abandonment, or exploitation of a child, unless the [child protective services agency or adult protective services

agency Department of Children and Families is a party to or otherwise participates in the collaborative law process.

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

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

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

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

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

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

SECTION 20. COLLABORATIVE LAW PARTICIPATION AGREEMENT NOT MEETING REQUIREMENTS.

(a) Although a collaborative law participation agreement fails to meet the requirements of Section 4 or a lawyer fails to comply with the disclosure requirement of Section 14, a tribunal may find that the parties intended to enter into a collaborative law participation agreement if they:

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

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

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

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

(2) apply the disqualification provisions of Section 6, 9, 10, and 11; and/or

(3) apply the evidentiary privilege of Section 17.

SECTION 21. UNIFORMITY OF APPLICATION AND CONSTRUCTION. In applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

SECTION 22. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT. This {act} modifies, limits, and supersedes the federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Section 7001, et seq., but does not modify, limit, or supersede Section 101-(c) of that act, 15 U.S.C. Section 7001(c), or authorize electronic delivery of any of the notices described in Section 103(b) of that act, 15 U.S.C. Section 7003(b).

SECTION 23. SEVERABILITY CLAUSE. If any provision of this {act} or its application to any person or circumstance is held invalid, the invalidity does not affect other

provisions or applications of this {act} which can be given effect without the invalid provision or application, and to this end the provisions of this {act} are severable.

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

SECTION 24. EFFECTIVE DATE. This {act shall} takes effect on-.....

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

Executive Summary of the Uniform Collaborative Law Act

The Uniform Law Commission (formerly the National Conference of Commissioners on Uniform State Laws) has drafted more than 250 uniform laws on numerous subjects and in various fields of law where uniformity is desirable and practicable. The signature product of the Commission, the Uniform Commercial Code, is a prime example of how the work of the Uniform Law Commission has simplified the legal life of businesses and individuals by providing rules and procedures that are consistent from state to state.

The collaborative dispute resolution process (commonly known as “Collaborative Law”) is a voluntary, non-adversarial dispute resolution process for parties represented by counsel. As is the case with mediation, collaborative law has its roots in the area of family law, and the process is rapidly expanding for resolving disputes in many areas of civil law. A number of states have enacted statutes of varying length and complexity that recognize collaborative law, and a number of courts have taken similar action through the enactment of court rules.

Collaborative Law agreements are crossing state lines as individuals and businesses are utilizing the collaborative process. As the use of the process continues to grow, the Uniform Collaborative Law Act (the “Act”) will provide consistency from state to state regarding enforceability of collaborative law agreements, confidentiality of communications in the process, an automatic stay of court proceedings and the privilege against disclosure should the process not result in settlement.

Beginning in February, 2007 a Drafting Committee of the Uniform Law Commission has conducted a series of conferences for the purpose of drafting an act to codify collaborative law procedures into a uniform act. In July, 2009, meeting in its one-hundred and eighteenth year, the Commission unanimously approved a Uniform Collaborative Law Act. This paper provides a section-by-section summary of the Act, as approved by the Commission.

Section 1 sets forth the title: Uniform Collaborative Law Act.

Section 2 sets forth definitions of terms used in the Act.

Section 3 makes the Act applicable to a collaborative law participation agreement signed after the effective date of the Act and emphasizes that a tribunal cannot order a party to participate in the collaborative law process over that party’s objection.

Section 4 establishes minimum requirements for a collaborative law participation agreement, which is the agreement that parties sign to initiate the collaborative law process. The agreement must be in writing, state the parties intention to resolve the matter (issue for resolution) through collaborative law, contain a description of the matter and identify and confirm engagement of the collaborative lawyers. The Section further provides that the parties may include other provisions not inconsistent with the Act.

Section 5 specifies when and how the collaborative law process begins, and how the process is concluded or terminated. The process begins when parties sign a participation agreement, and any party may unilaterally terminate the process at any time without specifying a reason. The process is

concluded by a negotiated, signed agreement resolving the matter, or a portion of the matter and the parties' agreement that the remaining portions of the matter will not be resolved in the process.

Several actions will terminate the process, such as a party giving notice that the process is terminated, beginning a proceeding, or filing of motions or pleadings, or requesting a hearing in an adjudicatory proceeding without the agreement of all parties, or the discharge or withdrawal of a collaborative lawyer. The Section further provides that under certain conditions the collaborative process may continue with a successor collaborative lawyer in the event of the withdrawal or discharge of a collaborative lawyer. The party's participation agreement may provide additional methods of terminating the process.

Section 6 creates a stay of proceedings before a tribunal (court, arbitrator, legislative body, administrative agency, or other body acting in an adjudicative capacity) once the parties file a notice of collaborative law with the tribunal. A tribunal may require status reports while the proceeding is stayed; however, the scope of the information that can be requested is limited to insure confidentiality of the collaborative law process.

Section 7 creates an exception to the stay of proceedings by authorizing a tribunal to issue emergency orders to protect the health, safety, welfare or interests of a party or family or household member; or, to protect financial or other interests of a party in any critical area in any civil dispute.

Section 8 authorizes a tribunal to approve an agreement resulting from a collaborative law process.

Section 9 sets forth a core element and the fundamental defining characteristic of the collaborative law process. Should the collaborative law process terminate without the matter being settled, the collaborative lawyer and lawyers in a law firm with which the collaborative lawyer is associated, are disqualified from representing a party in a proceeding before a tribunal in the collaborative matter, except to seek emergency orders (*Section 7*) or to approve an agreement resulting from the collaborative law process (*Section 8*). The disqualification requirement is further modified regarding collaborative lawyers representing low-income parties (*Section 10*) and governmental entities as parties (*Section 11*).

Sections 10 creates an exception to the disqualification for lawyers representing low income parties in a legal aid office, law school clinic or a law firm providing free legal services to low income parties. If the process terminates without settlement, a lawyer in the organization or law firm with which the collaborative lawyer is associated may represent the low income party in an adjudicatory proceeding involving the matter in the collaborative law process, provided that the participation agreement so provides, and the representation is without fee, and the individual collaborative lawyer is appropriately isolated from any participation in the collaborative matter before a tribunal.

Section 11 creates a similar exception to the disqualification requirement for lawyers representing a party that is a government or governmental subdivision, agency or instrumentality.

Section 12 sets forth another core element of collaborative law. Parties in the process must, upon request of a party make timely, full, candid, and informal disclosure of information substantially related to the collaborative matter without formal discovery, and promptly update information that has materially changed. Parties are free to define the scope of disclosure in the collaborative process, so long as they do not violate another other law, such as an Open Records Act.

Section 13 acknowledges that standards of professional responsibility of lawyers and abuse reporting obligations of lawyers and all licensed professionals are not changed by their participation in the collaborative law process.

Section 14 deals with appropriateness of the collaborative law process. Prior to the parties signing a participation agreement, a collaborative lawyer is required to discuss with a prospective client factors which the collaborative lawyer reasonably believes relate to the appropriateness of the prospective client's matter for the collaborative process, and provide sufficient information for a prospective client to make an informed decision about the material benefits and risks of the process as compared to the material benefit and risks of other reasonably available processes, such as litigation, arbitration, mediation or expert evaluation. Further, a prospective party must be informed of the events that will terminate the process and the effect of the disqualification requirement.

Section 15 obligates a collaborative lawyer to make a reasonable effort to determine if a prospective client has a history of a coercive or violent relationship with another prospective party, and if such circumstances exist, establishes criteria for beginning and continuing the process and providing safeguards.

Section 16 provides that oral and written communications developed in the collaborative process are confidential to the extent agreed by the parties or as provided by state law, other than the Act.

Section 17 creates a broad privilege prohibiting disclosure of communications developed in the process in legal proceedings. The provisions are similar to the provisions in the Uniform Mediation Act and apply to party and non-party participants in the process.

Sections 18 and 19 provide for the possibility of waiver of privilege by all parties, and certain exceptions to the privilege based on important countervailing public policies such as preventing threats to commit bodily harm or a crime, abuse or neglect of a child or adult, or information available under an open records act, or to prove or disprove professional misconduct or malpractice. Parties may agree that all or part of the process is not privileged.

Section 20 deals with enforcement of an agreement made in a collaborative process that fails to meet the mandatory requirement for a participation agreement (Section 4), or a collaborative lawyer has not fully complied with the disclosure requirements (Section 14). When the interests of justice so require, a tribunal is given discretion to enforce an agreement resulting from a flawed agreement, if the tribunal finds that the parties intended to enter into a participation agreement, and reasonably believed that they were participating in the collaborative process.

Section 21 emphasizes the need to promote uniformity in applying and construing the Act among states that adopt it. **Section 22** provides that the Act may modify, limit or supersede certain provisions the Federal Electronic Signatures in Global and National Commerce Act. **Section 23** is a severability clause; and **Section 24** establishes an effective date for the Act.

The ABA Section of Dispute Resolution has endorsed the Uniform Collaborative Law Act and other Sections and entities of the ABA are encouraged to do so. The Act will be presented to the ABA House of Delegates in the February 2010, and should be available for consideration by state legislatures in mid-2010. ABA members and all collaborative practitioners are encouraged to contact their state

delegates to the House of Delegates and encourage their support of the Uniform Collaborative Law Act. The Act will be available for consideration by state legislatures in mid-2010.

Collaborative Law is a rapidly developing process for managing conflicts and resolving disputes outside of the courthouse. Voluntary early settlement increases party satisfaction, reduces unnecessary expenditure of personal and business resources for dispute resolution, and promotes a more civil society. The future growth and development of Collaborative Law has significant benefits for clients and the legal profession.

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Revised: July 16, 2009

PART III

COLLABORATIVE PROCESS

61.601 Short Title. - - This part may be cited as the “Collaborative Process Act.”

61.602 Purposes of Part. - - It is the policy of the State of Florida to encourage the peaceful resolution of disputes and the early settlement of pending litigation through voluntary settlement procedures. The collaborative process is a unique non-adversarial method which preserves a working relationship between the parties and reduces the emotional and financial toll of litigation.

61.603 Definitions. - - As used in this part, the term:

(1) “Collaborative attorney” means an attorney licensed to practice law in the State of Florida by the Florida Supreme Court who satisfies any training and other requirements mandated by the Florida Supreme Court to enable the attorney to represent clients in the collaborative process.

(2) “Collaborative communication” means any oral or written statement or a non-verbal act, that is made:

(a) following the execution by the parties’ of a collaborative participation agreement until the time the collaborative process terminates or final agreement is reached; and

(b) for the purposes of conducting, participating in, continuing or otherwise furthering the collaborative process.

(3) “Collaborative participant” means the parties, collaborative attorneys, and nonparty participants in the collaborative process.

(4) “Collaborative participation agreement” means a written contract entered into pursuant to this Act and the requirements promulgated by the Florida Supreme Court pertaining to the collaborative process.

(5) “Collaborative process” means a process in which parties, represented by collaborative attorneys, attempt to resolve a matter pursuant to a collaborative participation agreement without court intervention.

(6) “Court” means a tribunal of competent jurisdiction acting in an adjudicative capacity in which a judicial officer, after presentation of evidence, testimony and legal argument, renders a binding decision affecting a party’s interests in a matter.

(7) “Matter” means a dispute, transaction, claim, problem or issue for resolution described in a collaborative participation agreement.

(8) “Nonparty participant” means a person, other than a party or collaborative attorney, who is retained or serves as an advisor to a party in the collaborative process.

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

(10) “Person” means an individual, corporation, partnership, association, governmental subdivision, agency, or any other legal or commercial entity.

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

61.604 Commencement of Collaborative Process. - - The collaborative process shall commence, whether or not a proceeding is pending, when the parties enter into a collaborative participation agreement.

61.605 Tolling of Statutes of Limitations. - - The execution of a collaborative participation agreement shall toll all legal time periods applicable to legal rights and issues under law between the parties for the amount of time the collaborative participation agreement remains in effect. This section applies to all applicable statutes of limitations, filing deadlines, and other time limitations imposed by law.

61.606 Confidentiality; privilege; exceptions.--

(1) Except as provided in this section and unless the parties agree other otherwise in writing, all collaborative communications shall be confidential. A collaborative participant shall not disclose a collaborative communication to a person other than another collaborative participant. A violation of this section during the collaborative process may be sanctioned as agreed in writing to by the parties or a party may terminate the collaborative process. A violation of this section once the collaborative process has terminated may be sanctioned as provided by s. 61.607.

(2) A collaborative party has a privilege to refuse to testify and to prevent any other person from testifying in a subsequent proceeding regarding collaborative process communications.

(3) (a) Notwithstanding subsections (1) and (2), there shall be no confidentiality or privilege attached to a signed written agreement reached during a collaborative process, unless the parties agree otherwise in writing, or for any collaborative communication:

1. That is willfully used to plan a crime, commit or attempt to commit a crime, conceal

ongoing criminal activity, or threaten violence;

2. That requires a mandatory report pursuant to chapter 39 or chapter 415 solely for the purpose of making the mandatory report to the entity requiring the report;

3. Offered to report, prove, or disprove professional malpractice or misconduct occurring during the collaborative process, solely for the purpose of the professional malpractice, misconduct or ethics proceeding; or

4. Offered for the limited purpose of establishing or refuting enforce ability of an agreement reached during the collaborative process.

(b) A collaborative process communication disclosed under any provision of subparagraph (3)(a)2., subparagraph (a)3., subparagraph (a)4., remains confidential and is not discoverable or admissible for any other purpose, unless otherwise permitted by this section.

(4) Information that is otherwise admissible or subject to discovery does not become inadmissible or protected from discovery by reason of its disclosure or use in a collaborative process.

(5) A party that discloses or makes a representation about a privileged collaborative communication waives that privilege, but only to the extent necessary for the other party to respond to the disclosure or representation.

61.607 Confidentiality; sanctions.--

(1) Once the collaborative process has terminated, if a collaborative participant that knowingly and willfully disclose a collaborative communication in violation of s. 61.606, such person shall be subject to the following:

(a) Equitable relief.

(b) Compensatory damages.

(c) Attorney's fees and costs incurred during the collaborative process

(d) Reasonable attorney's fees and costs incurred by the application for remedies under this section.

(2) Notwithstanding any other law, an application for relief filed under this section may not be commenced later than 2 years after the date on which the party had a reasonable opportunity to discover the breach of confidentiality, but in no case more than 4 years after the date of the breach.

(3) Any collaborative participant shall not be subject to a civil action under this section for lawful compliance with the provisions of s. 119.07.

UNIFORM COLLABORATIVE LAW ACT

Drafted by the

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

and by it

APPROVED AND RECOMMENDED FOR ENACTMENT
IN ALL THE STATES

at its

ANNUAL CONFERENCE
MEETING IN ITS ONE-HUNDRED-AND-EIGHTEENTH YEAR
SANTA FE, NEW MEXICO
JULY 9 - JULY 16, 2009

WITHOUT PREFATORY NOTE OR COMMENTS

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By

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

July 15, 2009

UNIFORM COLLABORATIVE LAW ACT

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

SECTION 2. DEFINITIONS. In this [act]:

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

(A) occurs after the parties sign a collaborative law participation agreement and before the collaborative law process is concluded; and

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

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

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

(A) sign a collaborative law participation agreement; and

(B) are represented by collaborative lawyers.

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

(5) “Collaborative matter” or “matter” means a dispute, transaction, claim, problem, or issue for resolution described in a collaborative law participation agreement. The term includes a dispute, claim, or issue in a proceeding.

(6) “Law firm” means lawyers who practice law together in a partnership, professional corporation, sole proprietorship, limited liability company, or other association, or lawyers

employed in a legal services organization, or the legal department of a corporation or other organization, or the legal department of a government or governmental subdivision, agency, or instrumentality.

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

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

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

(10) “Proceeding” means:

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

(B) a legislative hearing or similar process.

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

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

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

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

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

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

or process.

(15) “Tribunal” means

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

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

SECTION 3. APPLICABILITY; SCOPE.

(a) 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]].

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

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

(a) A collaborative law participation agreement must:

(1) be in a record;

(2) be signed by the parties;

(3) state the parties’ intention to resolve a matter through a collaborative law process under this [act];

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

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

(6) contain a statement by each collaborative lawyer confirming the lawyer’s representation of a party in the collaborative law process.

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

provisions not inconsistent with this [act].

SECTION 5. BEGINNING AND CONCLUDING A COLLABORATIVE LAW PROCESS.

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

(b) A collaborative law process is concluded by a:

(1) negotiated resolution of the matter as evidenced by a signed record;

(2) negotiated resolution of a portion of the matter as evidenced by a signed record where the parties agree that the remaining portions of the matter will not be resolved in the collaborative law process; or

(3) termination of the process.

(c) A collaborative law process terminates:

(1) when a party gives notice in a record that the collaborative law process is ended; or

(2) when a party:

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

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

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

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

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

or

(3) except as otherwise provided by subsection (e), when a party discharges a collaborative lawyer or a collaborative lawyer withdraws from further representation of a party. The party's collaborative lawyer shall give prompt notice in a record of such discharge or withdrawal to all other parties.

(d) A party may terminate a collaborative law process with or without cause. A notice of termination need not specify a reason for terminating the process.

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

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

(2) in a signed record:

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

(B) the collaborative law participation agreement is amended to identify the successor collaborative lawyer; and

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

(f) A collaborative law process does not terminate if, with the consent of all parties, a party requests a tribunal to approve a negotiated resolution of the matter or any portion thereof as evidenced by a signed record.

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

SECTION 6. PROCEEDINGS PENDING BEFORE TRIBUNAL; STATUS

REPORT.

(a) Parties to a proceeding pending before a tribunal may sign a collaborative law participation agreement to seek to resolve a matter related to the proceeding. Parties shall file promptly a notice of the agreement with the tribunal after the collaborative law participation agreement is signed. Subject to subsection (c) and Section 7 and 8, the filing operates as a stay of the proceeding.

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

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

(d) Except as authorized by subsection (e), a status report may not include a report, assessment, evaluation, recommendation, finding, or other communication regarding a collaborative law process.

(e) A tribunal may require parties and lawyers to disclose in a status report whether the process is ongoing or concluded.

(f) A communication made in violation of subsection (d) may not be considered by a tribunal.

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

SECTION 7. EMERGENCY ORDER. During the collaborative law process a tribunal may issue emergency orders to protect the health, safety, welfare, or interests of a party or [insert

term for family or household member as defined in [state civil protection order statute]]. The collaborative lawyer is authorized to seek or defend an emergency order under section 9(c)(2).

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

Legislative Note: In states where judicial procedures for management of proceedings may be prescribed only by court rule or administrative guideline and not by legislative act, the duties of courts and other tribunals listed in Sections 6 through 8 should be adopted by the appropriate measure.

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

(a) Except as otherwise provided in subsection (c), a collaborative lawyer may not appear before a tribunal to represent a party in a proceeding related to the collaborative matter.

(b) Except as otherwise provided in subsection (c) and Sections 10 and 11, a lawyer in a law firm with which the collaborative lawyer is associated may not appear before a tribunal to represent a party in a proceeding related to the collaborative matter if the collaborative lawyer is disqualified from doing so under subsection (a).

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

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

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

protect the health, safety, welfare, or interests of that person.

SECTION 10. LOW INCOME PARTIES.

(a) The disqualification of Section 9(a) applies to a collaborative lawyer representing a party without fee.

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

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

SECTION 11. GOVERNMENTAL ENTITIES AS PARTIES.

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

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

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

SECTION 12. DISCLOSURE OF INFORMATION. During the collaborative law process on the request of another party, a party shall make timely, full, candid, and informal disclosure of information related to the collaborative matter without formal discovery, and shall update promptly information that has materially changed. Parties may define the scope of disclosure, except as provided by law other than this [act].

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

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

(b) the obligation of a person to report abuse or neglect of a child or adult under the law of this state.

SECTION 14. APPROPRIATENESS OF THE COLLABORATIVE LAW PROCESS.

(a) Before a prospective party signs a collaborative law participation agreement, a prospective collaborative lawyer shall:

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

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

(3) advise the party that:

(A) after signing an agreement:

(i) if a party initiates a proceeding or seeks tribunal intervention in a pending proceeding related to the collaborative matter, the collaborative law process terminates; and

(ii) the collaborative lawyer and any lawyer in a law firm with which the collaborative lawyer is associated may not represent a party before a tribunal in such a proceeding except as authorized by Section 9(c), 10(b), or 11(b);

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

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

SECTION 15. COERCIVE OR VIOLENT RELATIONSHIP.

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

(b) A collaborative lawyer shall throughout the collaborative law process continue to reasonably assess whether the party the collaborative lawyer represents has a history of a coercive or violent relationship with another party.

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

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

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

SECTION 16. CONFIDENTIALITY OF COLLABORATIVE LAW

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

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

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

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

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

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

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

SECTION 18. WAIVER AND PRECLUSION OF PRIVILEGE.

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

(b) A person that discloses or makes a representation about a collaborative law

communication which prejudices another person in a proceeding may not assert a privilege under Section 17, but only to the extent necessary for the person prejudiced to respond to the disclosure or representation.

SECTION 19. LIMITS OF PRIVILEGE.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SECTION 20. COLLABORATIVE LAW PARTICIPATION AGREEMENT NOT MEETING REQUIREMENTS.

(a) Although a collaborative law participation agreement fails to meet the requirements of Section 4 or a lawyer fails to comply with the disclosure requirement of Section 14, a tribunal may find that the parties intended to enter into a collaborative law participation agreement if they:

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

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

(b) If a tribunal makes the findings specified in subsection (a), and the interests of justice

require, the tribunal may:

- (1) enforce an agreement evidenced by a record resulting from the process in which the parties participated;
- (2) apply the disqualification provisions of Section 6, 9, 10, and 11; or
- (3) apply the evidentiary privilege of Section 17.

SECTION 21. UNIFORMITY OF APPLICATION AND CONSTRUCTION. In applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

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

SECTION 23. SEVERABILITY CLAUSE. If any provision of this [act] or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this [act] which can be given effect without the invalid provision or application, and to this end the provisions of this [act] are severable.

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

SECTION 24. EFFECTIVE DATE. This [act] takes effect.....

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