

Mississippi Collaborative Law Rules

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Mississippi Collaborative Law Rules

Rule 1: Short Title. These Rules are the Mississippi Collaborative Law Rules and may be cited as MCLR.

Rule 2: Definitions. In these Rules:

- (a) “Collaborative law communication” means a statement, whether oral or in a record, or verbal or nonverbal, that:
 - (1) is made to conduct, participate in, continue, or reconvene a collaborative law process; and
 - (2) occurs after the parties sign a collaborative law participation agreement and before the collaborative law process is concluded.
- (b) “Collaborative law participation agreement” means an agreement by persons to participate in a collaborative law process.
- (c) “Collaborative law process” means a procedure intended to resolve a collaborative matter without intervention by a tribunal in which persons:
 - (1) sign a collaborative law participation agreement; and
 - (2) are represented by collaborative lawyers.
- (d) “Collaborative lawyer” means a lawyer who represents a party in a collaborative law process.
- (e) “Collaborative matter” means a dispute, transaction, claim, problem, or issue for resolution, including a dispute, claim, or issue in a proceeding, which is described in a collaborative law participation agreement and arises under the family or domestic relations law of this state, including:
 - (1) marriage, divorce, dissolution, annulment, and property distribution;
 - (2) child custody, visitation, and parenting time;
 - (3) alimony, maintenance, and child support;
 - (4) adoption;

- (5) parentage;
 - (6) premarital, marital, and post-marital agreements; and
 - (7) post Order actions such as modifications, enforcements, and contempts.
- (f) “Law firm” means:
- (1) lawyers who practice law together in a partnership, professional corporation, sole proprietorship, limited liability company, or association; and
 - (2) 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.
- (g) “Nonparty participant” means a person, other than a party and the party’s collaborative lawyer, that participates in a collaborative law process.
- (h) “Party” means a person that signs a collaborative law participation agreement and whose consent is necessary to resolve a collaborative matter.
- (i) “Prospective party” means a person that discusses with a prospective collaborative lawyer the possibility of signing a collaborative law participation agreement.
- (j) “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.
- (k) “Related to a collaborative matter” means involving the same parties, transaction or occurrence, nucleus of operative fact, dispute, claim, or issue as the collaborative matter.

Rule 3: 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 collaborative matter through a collaborative law process under these Rules;

- (4) describe the nature and scope of the matter;
 - (5) identify the collaborative lawyer who represents each party in the process;
 - (6) contain a statement by each collaborative lawyer confirming the lawyer's representation of a party in the collaborative law process; and
 - (7) contain a statement that the parties will forego court intervention while using the collaborative family law process; a statement that they will jointly engage any professionals, experts, etc. in a neutral capacity; and a statement about mandatory disqualification of the collaborative lawyer.
- (b) Parties may agree to include in a collaborative law participation agreement additional provisions not inconsistent with these Rules.
 - (c) Participation of Collaborative Law attorneys is limited in scope as permitted by Rule 1.2(c) of the Mississippi Rules of Professional Conduct.

Rule 4: Beginning and Concluding Collaborative Law Process.

- (a) A collaborative law process begins when the parties sign a collaborative law participation agreement.
- (b) Collaborative law is voluntary and a tribunal may not order a party to participate in a collaborative law process over that party's objection.
- (c) A collaborative law process is concluded by a:
 - (1) resolution of a collaborative matter as evidenced by a signed record;
 - (2) resolution of a part of the collaborative matter, evidenced by a signed record, in which the parties agree that the remaining parts of the matter will not be resolved in the process; or
 - (3) termination of the process.
- (d) A collaborative law process terminates:
 - (1) when a party gives notice to other parties in a record that the process is ended;
 - (2) when a party:

- (A) begins a proceeding related to a collaborative matter without the agreement of all parties; or
- (B) in a pending proceeding related to the 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 (g), when a party discharges a collaborative lawyer or a collaborative lawyer withdraws from further representation of a party.
- (e) A party's collaborative lawyer shall give prompt notice to all other parties in a record of a discharge or withdrawal.
- (f) A party may terminate a collaborative law process with or without cause.
- (g) 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 (e) is sent to the parties:
 - (1) the unrepresented party engages a successor collaborative lawyer; and
 - (2) in a signed record:
 - (A) the parties consent to continue the process by reaffirming the collaborative law participation agreement;
 - (B) the 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.

- (h) A collaborative law process does not conclude if, with the consent of the parties, a party requests a tribunal to approve a resolution of the collaborative matter or any part thereof as evidenced by a signed record.
- (i) A collaborative law participation agreement may provide additional methods of concluding a collaborative law process.

Rule 5: Emergency Order. During a collaborative law process, a tribunal may issue emergency orders to protect the health, safety, welfare, or interest of a party or other individuals related by consanguinity or affinity who reside with a party or who formerly resided with a party. If the emergency order is granted without the agreement of all parties, the granting of the order terminates the collaborative process.

Rule 6: Approval of Agreement by Tribunal. A tribunal may approve an agreement resulting from a collaborative law process.

Rule 7: Disqualification of Collaborative Lawyer and Lawyers in Associated Law Firm.

- (a) Except as otherwise provided in subsection (c), a collaborative lawyer is disqualified from appearing before a tribunal to represent a party in a proceeding related to the collaborative matter.
- (b) Except as otherwise provided in subsection (c), a lawyer in a law firm with which the collaborative lawyer is associated is disqualified from appearing 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 interest of a party, or other individuals related by consanguinity or affinity who reside with a party or who formerly resided with a party if a successor lawyer is not immediately available to represent that person.
- (d) If subsection (c)(2) applies, a collaborative lawyer, or lawyer in a law firm with which the collaborative lawyer is associated, may represent a party or other individuals related by consanguinity or affinity who reside with a party or who

formerly resided with a party only until the person is represented by a successor lawyer or reasonable measures are taken to protect the health, safety, welfare, or interest of the person.

Rule 8: Disclosure of Information. Except as provided by law other than these Rules, 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. A party also shall update promptly previously disclosed information that has materially changed. The parties may define the scope of disclosure during the collaborative law process.

Rule 9: Standards of Professional Responsibility and Mandatory Reporting Not Affected.

- (a) These Rules do not affect the professional responsibility obligations and standards applicable to a lawyer or other licensed professional. If a conflict arises between these Rules and the Mississippi Rules of Professional Conduct, the Mississippi Rules of Professional Conduct shall control.
- (b) These Rules do not affect the obligation of a person to report abuse or neglect, abandonment, or exploitation of a child or adult under the law of this state.

Rule 10: Appropriateness of Collaborative Law Process. Before a prospective party signs a collaborative law participation agreement, a prospective collaborative lawyer shall:

- (a) assess with the prospective party factors the lawyer reasonably believes relate to whether a collaborative law process is appropriate for the prospective party's matter;
- (b) provide the prospective 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
- (c) advise the prospective party that:
 - (1) after signing an agreement if a party initiates a proceeding or seeks tribunal intervention in a pending proceeding related to the collaborative matter, the collaborative law process terminates;

- (2) 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
- (3) 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 Rule 7(c).

Rule 11: Coercive or Violent Relationship. A collaborative lawyer should be aware of the dynamics of domestic violence and take into consideration, in assessing whether to begin or continue a collaborative process, whether the parties have a history of a coercive or violent relationship and whether the safety of the parties can be protected adequately during a collaborative process.

Rule 12: 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 these Rules.

Rule 13: Privilege Against Disclosure for Collaborative Law Communication; Admissibility; Discovery.

- (a) Subject to Rules 14 and 15, 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.
 - (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 because of its disclosure or use in a collaborative law process.

Rule 14: Waiver and Preclusion of Privilege.

- (a) A privilege under Rule 13 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 makes a disclosure or representation about a collaborative law communication which prejudices another person in a proceeding may not assert a privilege under Rule 13, but this preclusion applies only to the extent necessary for the person prejudiced to respond to the disclosure or representation.

Rule 15: Limits of Privilege.

- (a) There is no privilege under Rule 13 for a collaborative law communication that is:
 - (1) available to the public under the 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.
- (b) The privileges under Rule 13 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 or adult, unless the child protective services agency or adult protective services agency is a party to or otherwise participates in the process.
- (c) There is no privilege under Rule 13 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 in 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 part 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 make the evidence or any other collaborative law communication discoverable or admissible for any other purpose.
- (f) The privileges under Rule 13 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.

Rule 16: Authority of Tribunal in Case of Noncompliance.

- (a) If an agreement fails to meet the requirements of Rule 3, or a lawyer fails to comply with Rule 10 or 11, a tribunal may nonetheless 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 Rules 4 and 7; and apply a privilege under Rule 13.

Rule 17: Relation to Electronic Signatures in Global and National Commerce Act.

This Rule 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).

Rule 18: Severability. If any provision of these Rules or their application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of these Rules which can be given effect without the invalid provision or application, and to this end the provisions of these Rules are severable.