

**FILED**

**AUG 23 2022**

IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI

OFFICE OF THE CLERK  
SUPREME COURT  
COURT OF APPEALS

IN THE MATTER OF:  
CREATING RULES FOR COLLABORATIVE LAW

MISC. NO. 89-R-99044

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**PETITION TO CREATE RULES FOR COLLABORATIVE LAW**

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**I. INTRODUCTION & BACKGROUND**

The Mississippi Bar (“the Bar”), by and through its Board of Bar Commissioners (“the Board”), petitions the Mississippi Supreme Court to approve a set of comprehensive rules for Collaborative Law. The recommendations are the result of a two-year study of collaborative law by the Ad Hoc Committee on Collaborative Law of the Mississippi Bar authorized by the Board and appointed by the Bar President.

The charge of the Committee was:

“To research the concept of Collaborative Law and study its implementation and effectiveness in states that have adopted The Uniform Collaborative Law Act as an alternative to litigation in domestic relations and other civil litigation matters (i.e. Utah, Nevada, Texas, Hawaii, Ohio, District of Columbia, and Washington State), and to make recommendations to the Commissioners no later than the April 2021 Commissioners meeting as to whether Collaborative Law is a viable, desirable option for Mississippi to implement. In the process of researching the issue, it may be desirable to consult with the Family Law and Alternative Dispute Resolution Sections of the Bar. The ABA also has resources that may be informative on the issue.”

Bar Presidents Johnson and Gibbs appointed Mark A. Chinn chair of the committee with the following committee members from differing legal backgrounds: Deborah Bell

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of Oxford, Donald Campbell of Jackson, Randy Day of Jackson, Representative Debra Gibbs of Jackson, Reggie Blackledge of Collins, and Susan Steffey of Jackson, Judge Debra Giles, and Judge Willie Perkins. Bar President Johnson also attended meetings along with Bar Counsel.

The committee conducted an introductory meeting on September 8, 2020 via zoom. The committee sought input from collaborative law experts from around the country. On October 26, 2020 via Zoom, the committee heard from Jennifer Tull of Austin, TX, Michelle Lawless of Chicago, IL and Adam Cordover of Tampa, FL - all experts in the field. During this session, it was determined that legislation and/or supreme court rule were essential to getting collaborative law off the ground. The committee felt that collaborative law could be an immense help in access to justice and other legal practice areas. Education on this concept was deemed essential.

The committee was given the opportunity to submit articles on the subject for the Mississippi Lawyer, written by Committee Chair Chinn and Jennifer Tull of Austin, TX, published in the Winter 2021 edition of The Mississippi Lawyer. Chinn also presented on the topic at the 2021 Summer School for Lawyers. Finally, Professor Debbie Bell included a presentation on collaborative law during her annual seminar on Family Law in 2022.

The committee conducted meetings from 2020 through to 2022. The first determination was to work with the Uniform Collaborative Law Rules. The Committee determined that the best vehicle for promulgating rules was to request the Supreme Court to promulgate rules. After several working meetings, which included examining the rules and legislation from other states, the Committee agreed upon a set of rules based upon the Uniform Collaborative Laws with changes and additions which the Committee believed

suited the Mississippi perspective. In addition, the Committee determined that the Rules should be limited to family law for the time being with the option of adding other areas after the concept gets off the ground. On April 7, 2022, Chairman Chinn presented a petition to the Board of Bar Commissioners to authorize presentation of the proposed rules to the Supreme Court. The Board unanimously adopted the petition and authorized Bar Counsel to draft a petition to this Court.

## II. WHAT IS COLLABORATIVE LAW AND WHERE DID IT COME FROM?

Collaborative law is a voluntary, contractually based alternative dispute resolution process for parties who seek to negotiate a resolution of their matter rather than having a ruling imposed upon them by a court or arbitrator. The parties agree that their lawyer's representation is limited to representing them solely for the purposes of negotiation, and that if the matter is not settled, new lawyers will be retained if the matter proceeds to litigation or arbitration. The lawyers and the clients agree to engage in good faith negotiation, share relevant information, the use of joint experts (if experts are needed), client participation in the negotiations, respectful communications, and the confidentiality of the negotiation process.<sup>1</sup>

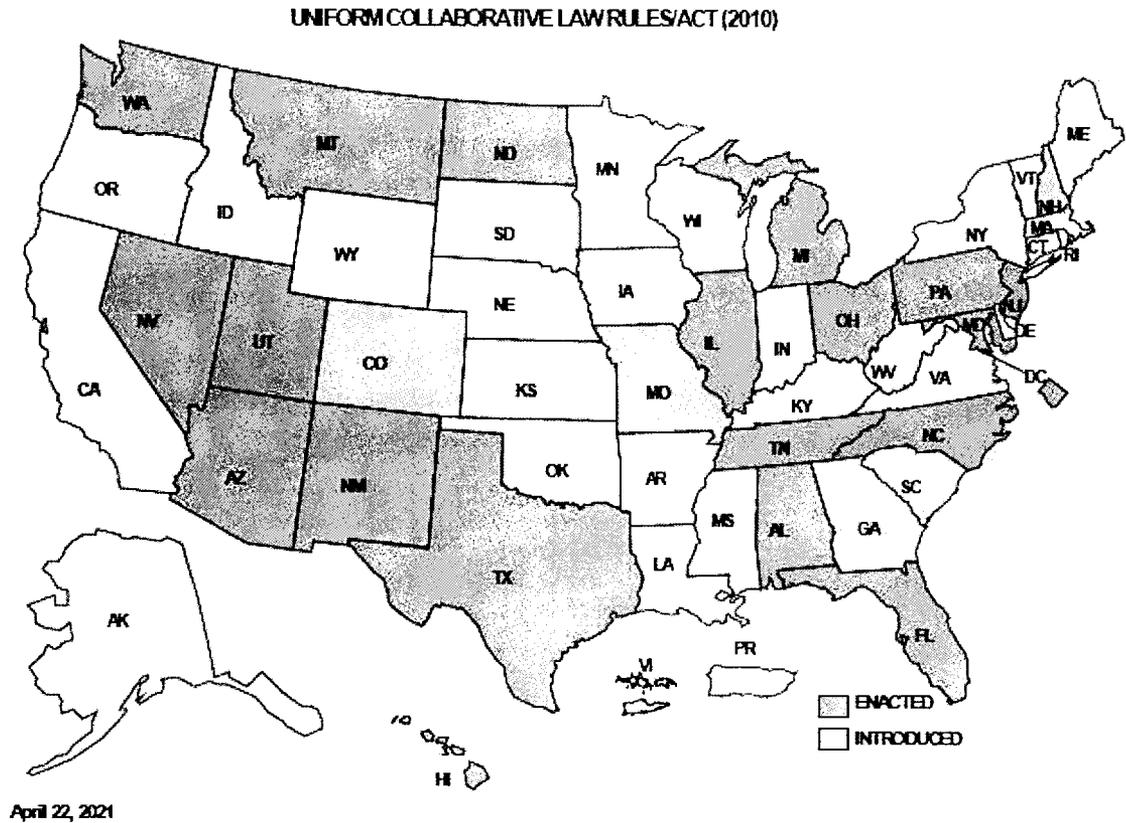
- a. **How did Collaborative Law start?** It is said that Stuart Webb, a family lawyer in Minneapolis, MN, originated the idea in 1990. It spread so rapidly that by the end of a decade, few family law conferences failed to emphasize Collaborative Law as an important new tool for resolving divorce issues. The American Bar Association, The Association of Family and Conciliation Courts, and the American Academy of Matrimonial Lawyers, to name a few, offer workshops and continuing education presentations to introduce a model to the family law bar.<sup>2</sup>
- b. **How has Collaborative Law grown?** One of the biggest agents of growth is the Uniform Law Commission. Uniform laws standardize the most important features of a process. The Uniform Collaborative Law was completed by the Uniform Law Commission in 2009 and amended in 2010. It has been approved by the American Bar Association and has been enacted by 20 states and the District of Columbia. These states include the southern states of Texas, Alabama, Tennessee, North Carolina, and Florida. It is also practiced in every Canadian Province,

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<sup>1</sup> Collaborative Law Committee of the ABA Section of Dispute Resolution: Fact Sheet on the Uniform Collaborative Law Rules/Act

<sup>2</sup> Pauline H. Tesler, Collaborative Law: Achieving Effective Resolution in Divorce Without Litigation xix (2001).

Australia, England, France, Germany, and at least 10 other countries.<sup>3</sup>



- c. **What are the essential characteristics of Collaborative Law?** The hallmarks of the process are:
- Full, voluntary, early discovery disclosures.
  - Acceptance by the parties of the highest fiduciary duties toward one another, whether imposed by state law or not.
  - Voluntary acceptance of a priori of settlement as the goal and respectful, fully participatory process as the means.
  - Transparency of process.

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<sup>3</sup> Uniform Law Commission, <http://www.uniformlaws.org>

- Joint retention of neutral experts.
  - Commitment to meeting the legitimate goals of both parties if at all possible.
  - Avoidance of even the threat of litigation.
  - Disqualification of all lawyers and experts from participation in any legal proceedings between the parties outside the collaborative law process.
  - Four-way settlement meetings as the principal means by which negotiations and communications take place.<sup>4</sup>
- d. **How is “success” defined?** Lawyers traditionally think of success as being a zealous advocate who is trying to achieve the best results for their client without regard for the impact of result on the other client. In a Collaborative Process, succeeding takes on a new definition: you work toward an outcome that is best not only for your client but for all concerned. Your goal is a workable, durable agreement with which all clients can live. One author has stated that goal is not even “win-win,” but a set of decisions that “work-work.”<sup>5</sup>

### III. WHAT ARE THE REASONS WE SHOULD DO COLLABORATIVE LAW?

- a. **Divorce is common.** Currently, one of every two marriages in the United States ends in divorce. “Divorce, in other words, is a predictable life passage for marrying couples to anticipate, not a rare catastrophe that happens only to the unlucky or undeserving few.”<sup>6</sup>
- b. **The typical divorce process is damaging.** “Our litigation system incentivizes the harshest of attacks on the opposing party.”<sup>7</sup> Even though all of us litigators know that 95% of cases settle before they go to court, cases often do not settle until after the litigation damage is done to the parties and their children, including massive legal expenses. Clients who engage in a “demolition approach” to divorce soon realize that once their divorce is completed there is no one to help them put their lives back together.<sup>8</sup>
- c. **Litigation hurts lawyers.** Family lawyers occupy a unique position in the legal world. They may be the only group of lawyers that litigate against their competitors. Personal injury lawyers litigate against defense lawyers. Criminal

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<sup>4</sup> Tesler, *supra* at 8.

<sup>5</sup> Forrest S. Mosten & Adam B. Cordover, Building a Successful Collaborative Family Law Practice 29 (2018).

<sup>6</sup> Tesler, *supra* at 1.

<sup>7</sup> Mosten & Cordover, *supra* at 3.

<sup>8</sup> Jennifer Tull, *Collaborative Law: A New Alternative to Family Law Litigation*, The Mississippi Lawyer, Winter 2021 at 12.

defense lawyers litigate against prosecutors. Family lawyers also represent both husbands and wives, so they litigate against literally everyone. There is no doubt that litigation often creates personal conflict between the lawyers.<sup>9</sup>

d. **Lawyers should be peacemakers.**

Abe Lincoln wrote: “Discourage litigation. Persuade neighbors to compromise whenever you can . . . As a peacemaker, the lawyer has a superior opportunity of becoming a good [person].”<sup>10</sup>

The late Supreme Court Chief Justice Warren Burger made the same point: “The entire legal profession . . . has become so mesmerized with the stimulation of the courtroom contest that we tend to forget that we ought to be healers of conflict.”<sup>11</sup>

The Bible commands us to settle with our neighbor on the way to court. Matthew 5:25.

#### IV. THE KEY INGREDIENT

The key ingredient is the commitment of the parties, but more importantly, the lawyers to avoid litigation.<sup>12</sup> Everyone signs an agreement that if there is going to be litigation, the lawyers will not be involved. This puts the responsibility for the outcome of the case on the parties.<sup>13</sup> This means that each lawyer takes on the responsibility for moving each client from artificial bargaining positions to the articulation of real needs and interests.<sup>14</sup> The model simply does not work without the lawyer disqualification provision.<sup>15</sup>

- a. **The Lawyer must change his mindset.** Tesler writes on page 16: “Collaborative lawyers have discovered that because resort to the courts means the termination of the collaborative process, their very thinking about dispute resolution changes in important ways compared to how they think when not involved in collaborative law representation. Litigation for a collaborative lawyer is not merely another item on a menu of dispute-resolution options, as it necessarily must be for even the most collegial of traditional family lawyers. In the collaborative law process, litigation represents a failure of both intention and imagination. Where lawyers think differently, they behave differently and counsel their clients differently.” The lawyer must not include “court-based”

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<sup>9</sup> Mosten & Cordover, *supra* at xxxii.

<sup>10</sup> *Id.* at 3.

<sup>11</sup> *Id.*

<sup>12</sup> Tesler, *supra* at 6.

<sup>13</sup> Tull, *supra* at 13.

<sup>14</sup> Tesler, *supra* at xxi.

<sup>15</sup> *Id.* at 17.

resolution as a part of the range of solutions.<sup>16</sup>

TABLE 1. Retooling Yourself<sup>16</sup>

Adversarial	Collaborative
The goal is to win	The goal is completing the divorce transition with integrity and mutual satisfaction
"Win Big" is the best outcome	"Win-Win" is the best outcome
Focus on bottom-line outcome limits openness to creative problem-solving	Detachment from outcome permits creative process to occur
Magnitude of immediately quantifiable, measurable outcomes is the benchmark of attorney's success	How well the client's larger life goals are served by the collaborative process is the benchmark of attorney's success
Believes one must be aggressive to win	Understands the difference between aggression and assertion
Views emotions and feelings as distractions from the real work	Views emotions and feelings as important elements of collaborative process that need to be acknowledged and appropriately managed
Hides self	Reveals self
Sees self as gladiator	Sees self as specialist in conflict management and guided negotiations
Believes life experiences happen to us	Believes life experiences are reflections of who we are
Sees forgiveness as weakness	Sees forgiveness as strength
Regards litigation process as template for resolving disputes	Regards litigation as last resort for resolving disputes

- b. **"Interest based negotiation."** Tesler writes the following about interest-based negotiation on page 83 of her book: "Interest-based (or needs-based) bargaining is the preferred mode of bargaining employed in collaborative practice. Unlike the bargaining styles commonly used in adversarial legal negotiations, interest-based bargaining requires considerable groundwork between collaborative lawyer and client before any issue is brought to the four-way table for discussion. In this mode of bargaining, lawyer and client examine every one of the client's identified goals and priorities under a microscope, 'peeling the onion' down from what the client initially states as goals and priorities, to examine why the client wants each goal, what benefits achieving the goal would bring to the client, whether there might be other ways of achieving the same benefits that are as good or better than the means the client has identified, and whether the goal can be described at the four-way table in terms that any reasonable person of good faith would recognize as legitimate. Since no

<sup>16</sup> Tesler, *supra* at xx.

collaborative agreement will result unless both parties can agree, it follows that presenting goals in the most reasonable manner possible and finding modes of reaching the identified goals that are consistent with the other party's legitimate interests will provide the best chance for win-win settlement – the overriding goal in service of which all collaborative lawyers are retained. Peeling the onion is a kind of work that conventional civil litigators, steeped in the dance of Mediterranean marketplace bargaining, rarely engage in. It is the gateway to lateral thinking, and the key to identifying win-win solutions that expand the settlement pie beyond what is available in court.”

**TABLE 4. Retooling Negotiations**

<b>Adversarial</b>	<b>Collaborative</b>
Assumes litigation paradigm from first meeting with client	Presents the alternate dispute-resolution continuum and offers a variety of options for professional help
Prepares for court battle from very beginning of representation	Considers court as last resort; collaboration first
Strategy is to devise and communicate credible threats	Strategy is to collaborate toward mutually beneficial outcome
Prefers positional bargaining	Prefers interest-based bargaining
Focuses on obstacles in the way of agreement	Challenges reality of obstacles in the way of agreement
Controls process to achieve efficient, task-oriented meetings	Appreciates need for: <ul style="list-style-type: none"> <li>-allowing everyone to be heard and acknowledged</li> <li>-creating an environment of honesty and good faith</li> <li>-encouraging each party to develop comfort with the other party's lawyer</li> <li>-forging process commitments that will be honored</li> <li>-incorporating ceremonial elements at start and finish of collaborative process</li> </ul>
Sees impasse as gateway to trial	Sees impasse as gateway to enhanced creative process
Resorts to compromise late, as escape from ongoing strains of legal action	Aims always for agreement as first and best resolution of dispute

## V. WHAT IS THE ROLE OF MEDIATION?

- a. Collaborative law adopts some of the principles of mediation, but it is regarded

as a more powerful and friendly process. Mediation is typically a process that occurs at the end of a discovery process and lasts for a day or so. But, during the mediation, the lawyers and clients often play their traditional adversarial negotiation tactics which often lead to discord, even though the case is settled. Moreover, mediation often contains a pressure component where clients feel they must reach agreement on a given day.<sup>17</sup> In the collaborative process, the lawyers' interest-based negotiation takes place from the very beginning and throughout the process. "Hardball tactics, threats, tactical delays, hidden agendas, and "hide-the-ball" are barred from the process . . ." "If anyone acts in bad faith, uses threats, or resorts to the courts, the process must terminate . . ."<sup>18</sup>

b. Mediators can certainly play a role in the process, as can arbitrators.

## **VI. IS THERE A ROLE FOR COLLABORATIVE LAW IN DELIVERING SERVICE TO UNDERSERVED POPULATIONS?**

Yes, collaborative law can be an excellent tool for assisting legal services and pro bono lawyers in bringing about resolution without conflict or court. For further discussion, see Adam B. Cordover, "Pro Bono Collaborative Divorce: Helping Others While Helping Yourself." Blog post August 26, 2014.

## **VII. RECOMMENDED AMENDMENTS TO THE RULES**

The Bar recommends the adoption of the attached Rules. Mississippi proposed Collaborative Law Rules is attached as "**Exhibit 1**". A chart of the proposed rule as compared to the Uniform Collaborative Law Rules is attached as "**Exhibit 2**". A chart of the Uniform Collaborative Law Rules as they compare to other jurisdictions is attached as "**Exhibit 3**".

## **VIII. THIS COURT'S POWER TO AMEND THE RULES**

This Court has the statutory power to promulgate the rules governing the practice of law in the state of Mississippi as granted to it by the Legislature. Additionally, and most importantly, this Court has the unilateral power to promulgate rules as granted to it by the Constitution of the State of Mississippi, independent of any statutory power given to it by the Legislature.

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<sup>17</sup> Tull, *supra* at 16.

<sup>18</sup> Tesler, *supra* at 11.

**A. Power Granted by the Legislature**

The Legislature has codified this Court’s power to promulgate the rules that govern the practice of law by giving it exclusive power and jurisdiction over the admission and discipline of attorneys in this state, as well as the power to make rules governing evidence, practice, and procedure. As such, this Court can unilaterally enact the Bar’s requested rule into law without any legislative action.

In Mississippi Code Section 73-3-2, the Legislature vested this Court with the exclusive “power to admit persons to practice as attorneys in the courts of this state . . . .” Miss. Code Ann. § 73-3-2 (West). Further, the Court has the exclusive and inherent authority to regulate the practice of law through disciplinary actions of any attorney who practices law in this state. Miss. Code. Ann. § 73-3-301 (West).

In addition to the exclusive power granted to this Court by the Legislature over admission and discipline, the Legislature has granted the Supreme Court “the power to prescribe from time to time by general rules the forms of process, writs, pleadings, motions, rules of evidence and the practice and procedure for trials and appeals in the Court of Appeals and in the circuit, chancery and county courts of this state....” Miss. Code Ann. § 9-3-61 (West).

Because this Court has statutory authority to promulgate rules governing evidence, practice, and procedure, these statutes grant this Court the power to promulgate the rules as requested to better define the practice of law.

**B. Power Granted by the Constitution of the State of Mississippi**

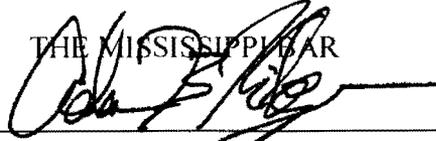
Aside from the power granted to it by the Legislature, this Court has the power – independent of any statute – to regulate the practice of law in the courts of this state. Article

6 § 144 of the Constitution of the State of Mississippi provides that “[t]he judicial power of the state shall be vested in a Supreme Court and such other courts as are provided for in this constitution.” MS Const. Art. 6 § 144. “The phrase ‘judicial power’ in section 144 of the Constitution includes the power to make rules of practice and procedure, not inconsistent with the Constitution, for the efficient disposition of judicial business.” *Newell*, 308 So. 2d at 76 (quoting *S. Pac. Lumber Co. v. Reynolds*, 206 So. 2d 334, 335 (Miss. 1968)). This Court has repeatedly held that the Supreme Court of Mississippi has the inherent constitutional power to promulgate rules of practice and procedure. *See e.g., Matthews v. State*, 288 So.2d 714 (1974) (“The inherent power of the Supreme Court to promulgate procedural rules for the efficient disposition of its case load stems from the fundamental constitutional precepts of separation of powers and the vesting of judicial powers in the Courts.”); *Newell v. State*, 308 So. 2d 71 (1975).

#### XI. RECOMMENDATION & REQUEST

The Mississippi Bar respectfully recommends and requests that the Supreme Court of the State of Mississippi adopt the attached rules for the practice of Collaborative Law.

Submitted this the 23<sup>rd</sup> day of August 2022.

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## Mississippi Collaborative Law Rule

*as proposed by the Mississippi Bar Collaborative Law Study Committee*

**Rule 1: Short Title.** This Rule may be cited as the Uniform Collaborative Law Rule.

**Rule 2: Definitions.** In this Rule:

- 1) "Collaborative law communication" means a statement, whether oral or in a record, or verbal or nonverbal, that:
  - A. is made to conduct, participate in, continue, or reconvene a collaborative law process; and
  - B. occurs after the parties sign a collaborative law participation agreement and before the collaborative law process is concluded.
- 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 collaborative matter without intervention by a tribunal in which persons:
  - 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" 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:
  - A. marriage, divorce, dissolution, annulment, and property distribution;
  - B. child custody, visitation, and parenting time;
  - C. alimony, maintenance, and child support;
  - D. adoption;
  - E. parentage;
  - F. premarital, marital, and post-marital agreements; and
  - G. post Order actions such as modifications, enforcements and contempts.
- 6) "Law firm" means:
  - A. lawyers who practice law together in a partnership, professional corporation, sole proprietorship, limited liability company, or association; and

**EXHIBIT "1"**

B. 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 collaborative matter.
- 9) "Prospective party" means a person that discusses with a prospective collaborative lawyer the possibility of signing a collaborative law participation agreement.
- 10) "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.
- 11) "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: Applicability. ["Omitted."]**

**Rule 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 collaborative matter through a collaborative law process under this Rule;
  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 this Rule.
- 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 5: 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 6: Proceedings Pending Before Tribunal; Status Report. ["Omitted"]**

**Rule 7: 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 8: Approval of Agreement by Tribunal.** A tribunal may approve an agreement resulting from a collaborative law process.

**Rule 9: 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 10: Low Income Parties. ["Omitted."].**

**Rule 11: Governmental Entity as Party. [“Omitted.”].**

**Rule 12: Disclosure of Information.** Except as provided by law other than this Rule, 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 13: Standards of Professional Responsibility and Mandatory Reporting Not Affected.** This Rule does not affect:

1. the professional responsibility obligations and standards applicable to a lawyer or other licensed professional; or
2. 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 14: Appropriateness of Collaborative Law Process.** Before a prospective party signs a collaborative law participation agreement, a prospective collaborative lawyer shall:

1. 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;
2. 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
3. advise the prospective party that:
  - A. 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;
  - 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. 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 9(c).

**Rule 15: 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 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 Rule.

**Rule 17: Privilege Against Disclosure for Collaborative Law Communication; Admissibility; Discovery.**

- a. Subject to Rules 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.
  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 18: Waiver and Preclusion of Privilege.**

- a. A privilege under Rule 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 makes a disclosure or representation about a collaborative law communication which prejudices another person in a proceeding may not assert a privilege under Rule 17, but this preclusion applies only to the extent necessary for the person prejudiced to respond to the disclosure or representation.

**Rule 19: Limits of Privilege.**

- a. There is no privilege under Rule 17 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 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 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 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 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 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.

**Rule 20: Authority of Tribunal in Case of Noncompliance.**

- a. If an agreement fails to meet the requirements of Rule 4, or a lawyer fails to comply with Rule 14 or 15, 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 5 and 9; and apply a privilege under Rule 17.

**Rule 21: Uniformity of Application and Construction.** In applying and construing this uniform rule, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

**Rule 22: 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 23: Severability.** If any provision of this Rule or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this Rule which can be given effect without the invalid provision or application, and to this end the provisions of this Rule are severable.

**Rule 24: Effective Date.** This Rule takes effect \_\_\_\_\_.

<u>Rule</u>	<u>UCLA</u>	<u>MS Committee Proposal</u>
<b>RULE 1. SHORT TITLE</b>	This [rule] may be cited as the Uniform Collaborative Law Rule.	
<b>RULE 2. DEFINITIONS.</b>	<p>In this [rule]:</p> <ol style="list-style-type: none"> <li>1) “Collaborative law communication” means a statement, whether oral or in a record, or verbal or nonverbal, that: <ol style="list-style-type: none"> <li>A. is made to conduct, participate in, continue, or reconvene a collaborative law process; and</li> <li>B. occurs after the parties sign a collaborative law participation agreement and before the collaborative law process is concluded.</li> </ol> </li> <li>2) “Collaborative law participation agreement” means an agreement by persons to participate in a collaborative law process.</li> <li>3) “Collaborative law process” means a procedure intended to resolve a collaborative matter without intervention by a tribunal in which persons: <ol style="list-style-type: none"> <li>A. sign a collaborative law participation agreement; and</li> <li>B. are represented by collaborative lawyers.</li> </ol> </li> <li>4) “Collaborative lawyer” means a lawyer who represents a party in a collaborative law process.</li> <li>5) “Collaborative matter” means a dispute, transgression, claim, problem, or issue for resolution, including a dispute, claim, or issue in a proceeding, which is <p style="text-align: center;"><b>Alternative A</b></p> <p>is described in a collaborative law participation</p> </li> </ol>	<p>The Members propose to adopt Alternative 5A and add:</p> <p>G. post Order actions such as modifications, enforcements and contempts.</p> <p>Delete (9) “Person”, (10) “Proceeding”, (14) “Sign” and (15) “Tribunal”.</p>

**EXHIBIT "2"**

agreement and arises under the family or domestic relations law of this state, including:

- A. marriage, divorce, dissolution, annulment, and property distribution;
- B. child custody, visitation, and parenting time;
- C. alimony, maintenance, and child support;
- D. adoption;
- E. parentage; and
- F. premarital, marital, and post-marital agreements.

**Alternative B**

described in a collaborative law participation agreement.

6) "Law firm" means:

- A. lawyers who practice law together in a partnership, professional corporation, sole proprietorship, limited liability company, or association; and
- B. 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 collaborative matter.

9) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited

	<p>liability company, association, joint venture, public corporation, government or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.</p> <p>10) "Proceeding" means:</p> <ul style="list-style-type: none"><li>A. a judicial, administrative, arbitral, or other adjudicative process before a tribunal, including related prehearing and post-hearing motions, conferences, and discovery; or</li><li>B. a legislative hearing or similar process.</li></ul> <p>11) "Prospective party" means a person that discusses with a prospective collaborative lawyer the possibility of signing a collaborative law participation agreement.</p> <p>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.</p> <p>13) "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.</p> <p>14) "Sign" means, with present intent to authenticate or adopt a record:</p> <ul style="list-style-type: none"><li>A. to execute or adopt a tangible symbol; or</li><li>B. to attach to or logically associate with the record an electronic symbol, sound, or process.</li></ul> <p>15) "Tribunal" means:</p> <ul style="list-style-type: none"><li>A. a court, arbitrator, administrative agency, or other body acting in an adjudicative</li></ul>	
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	<p>capacity which, after presentation of evidence or legal argument, has jurisdiction to render a decision affecting a party's interests in a matter; or</p> <p>B. a legislative body conducting a hearing or similar process.</p>	
<b>RULE 3. APPLICABILITY</b>	This [rule] applies to a collaborative law participation agreement that meets the requirements of Rule 4 signed [on or] after [the effective date of this [rule]].	The Committee proposes to omit.
<b>RULE 4. COLLABORATIVE LAW PARTICIPATION AGREEMENT; REQUIREMENTS</b>	<p>a. A collaborative law participation agreement must:</p> <ol style="list-style-type: none"> <li>1. be in a record;</li> <li>2. be signed by the parties;</li> <li>3. state the parties' intention to resolve a collaborative matter through a collaborative law process under this [rule];</li> <li>4. describe the nature and scope of the matter;</li> <li>5. identify the collaborative lawyer who represents each party in the process; and</li> <li>6. contain a statement by each collaborative lawyer confirming the lawyer's representation of a party in the collaborative law process.</li> </ol> <p>b. Parties may agree to include in a collaborative law participation agreement additional provisions not inconsistent with this [rule].</p>	<p>The Committee proposes to add:</p> <p>[Tennessee's language as]</p> <p>a.</p> <p>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.</p> <p>c. Participation of Collaborative Law attorneys is limited in scope as permitted by Rule 1.2(c) of the Mississippi Rules of Professional Conduct.</p>
<b>RULE 5. BEGINNING AND CONCLUDING COLLABORATIVE LAW PROCESS</b>	<p>a. A collaborative law process begins when the parties sign a collaborative law participation agreement.</p> <p>b. A tribunal may not order a party to participate in a collaborative law process over that party's objection.</p> <p>c. A collaborative law process is concluded by a:</p>	<p>The Committee proposes to change b to read as follows:</p> <p>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.</p>

	<ol style="list-style-type: none"><li>1. resolution of a collaborative matter as evidenced by a signed record;</li><li>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</li><li>3. termination of the process.</li></ol> <p>d. A collaborative law process terminates:</p> <ol style="list-style-type: none"><li>1. when a party gives notice to other parties in a record that the process is ended;</li><li>2. when a party:<ol style="list-style-type: none"><li>A. begins a proceeding related to a collaborative matter without the agreement of all parties; or</li><li>B. in a pending proceeding related to the matter:<ol style="list-style-type: none"><li>i. initiates a pleading, motion, order to show cause, or request for a conference with the tribunal;</li><li>ii. requests that the proceeding be put on the [tribunal's active calendar]; or</li><li>iii. takes similar action requiring notice to be sent to the parties; or</li></ol></li></ol></li><li>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.</li></ol>	
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	<ul style="list-style-type: none"><li>e. A party's collaborative lawyer shall give prompt notice to all other parties in a record of a discharge or withdrawal.</li><li>f. A party may terminate a collaborative law process with or without cause.</li><li>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:<ul style="list-style-type: none"><li>1. the unrepresented party engages a successor collaborative lawyer; and</li><li>2. in a signed record:<ul style="list-style-type: none"><li>A. the parties consent to continue the process by reaffirming the collaborative law participation agreement;</li><li>B. the agreement is amended to identify the successor collaborative lawyer; and</li><li>C. the successor collaborative lawyer confirms the lawyer's representation of a party in the collaborative process.</li></ul></li></ul></li><li>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.</li><li>i. A collaborative law participation agreement may provide additional methods of concluding a collaborative law process.</li></ul>	
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<p><b>RULE 6. PROCEEDINGS PENDING BEFORE TRIBUNAL; STATUS REPORT</b></p>	<ul style="list-style-type: none"> <li>a. Persons in a proceeding pending before a tribunal may sign a collaborative law participation agreement to seek to resolve a collaborative matter related to the proceeding. The parties shall file promptly with the tribunal a notice of the agreement after it is signed. Subject to subsection (c) and Rules 7 and 8, the filing operates as an application for a stay of the proceeding.</li> <li>b. The parties shall file promptly with the tribunal notice in a record when a collaborative law process concludes. The stay of the proceeding under subsection (a) is lifted when the notice is filed. The notice may not specify any reason for termination of the process.</li> <li>c. A tribunal in which a proceeding is stayed under subsection (a) may require the parties and collaborative lawyers to provide a status report on the collaborative law process and the proceeding. A status report may include only information on whether the process is ongoing or concluded. It may not include a report, assessment, evaluation, recommendation, finding, or other communication regarding a collaborative law process or collaborative law matter.</li> <li>d. A tribunal may not consider a communication made in violation of subsection (c).</li> <li>e. A tribunal shall provide parties notice and an opportunity to be heard before dismissing a proceeding in which a notice of collaborative process is filed based on delay or failure to prosecute.</li> </ul>	<p>The Committee proposes to omit Rule 6.</p>
<p><b>RULE 7. EMERGENCY ORDER</b></p>	<p>During a collaborative law process, a tribunal may issue emergency orders to protect the health, safety, welfare, or interest of a party or [insert term for family or household</p>	<p>The Committee proposes to add the following language for term for family or household member:</p>

	member as defined in [state civil protection order statute]].	<p>“other individuals related by consanguinity or affinity who reside with a party or who formerly resided with a party.”</p> <p>And to add the following language adopted by Texas to the end:</p> <p>“[i]f the emergency order is granted without the agreement of all parties, the granting of the order terminates the collaborative process.”</p>
<b>RULE 8. APPROVAL OF AGREEMENT BY TRIBUNAL</b>	A tribunal may approve an agreement resulting from a collaborative law process.	The Committee proposes to adopt.
<b>RULE 9. DISQUALIFICATION OF COLLABORATIVE LAWYER AND LAWYERS IN ASSOCIATED LAW FIRM</b>	<p>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.</p> <p>b. Except as otherwise provided in subsection (c) and Rules 10 and 11, 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).</p> <p>c. A collaborative lawyer or a lawyer in a law firm with which the collaborative lawyer is associated may represent a party:</p> <ol style="list-style-type: none"> <li>1. to ask a tribunal to approve an agreement resulting from the collaborative law process; or</li> <li>2. to seek or defend an emergency order to protect the health, safety, welfare, or interest 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.</li> </ol>	<p>The Committee proposes to adopt with the following edit:</p> <p>b. [delete] “and Rules 10 and 11”</p>

	<p>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 [insert term for family or household member] 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.</p>	
<b>RULE 10. LOW INCOME PARTIES</b>	<p>a. The disqualification of Rule 9(a) applies to a collaborative lawyer representing a party with or without fee.</p> <p>b. After a collaborative law process concludes, another lawyer in a law firm with which a collaborative lawyer disqualified under Rule 9(a) is associated may represent a party without fee in the collaborative matter or a matter related to the collaborative matter if:</p> <ol style="list-style-type: none"> <li>1. the party has an annual income that qualifies the party for free legal representation under the criteria established by the law firm for free legal representation;</li> <li>2. the collaborative law participation agreement so provides; and</li> </ol> <p>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.</p>	The Committee proposes to omit.
<b>RULE 11. GOVERNMENTAL ENTITY AS PARTY</b>	<p>a. The disqualification of Rule 9(a) applies to a collaborative lawyer representing a party that is a government or governmental subdivision, agency, or instrumentality.</p> <p>b. After a collaborative law process concludes, another lawyer in a law firm with which the collaborative lawyer is associated may represent a government or governmental subdivision,</p>	The Committee proposes to omit.

	<p>agency, or instrumentality in the collaborative matter or a matter related to the collaborative matter if:</p> <ol style="list-style-type: none"> <li>1. the collaborative law participation agreement so provides; and</li> <li>2. 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.</li> </ol>	
<b>RULE 12. DISCLOSURE OF INFORMATION</b>	<p>Except as provided by law other than this Rule, 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.</p>	The Committee proposes to adopt.
<b>RULE 13. STANDARDS OF PROFESSIONAL RESPONSIBILITY AND MANDATORY REPORTING NOT AFFECTED</b>	<p>This Rule does not affect:</p> <ol style="list-style-type: none"> <li>1. the professional responsibility obligations and standards applicable to a lawyer or other licensed professional; or</li> <li>2. the obligation of a person to report abuse or neglect, abandonment, or exploitation of a child or adult under the law of this state.</li> </ol>	The Committee proposes to adopt.
<b>RULE 14. APPROPRIATENESS OF COLLABORATIVE LAW PROCESS</b>	<p>Before a prospective party signs a collaborative law participation agreement, a prospective collaborative lawyer shall:</p> <ol style="list-style-type: none"> <li>1. 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;</li> <li>2. provide the prospective party with information that the lawyer reasonably believes is sufficient</li> </ol>	The Committee proposes to adopt.

	<p>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</p> <p>3. advise the prospective party that:</p> <ul style="list-style-type: none"> <li>A. 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;</li> <li>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</li> <li>C. 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 9(c), 10(b), or 11(b).</li> </ul>	
<p><b>RULE 15. COERCIVE OR VIOLENT RELATIONSHIP</b></p>	<ul style="list-style-type: none"> <li>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.</li> <li>b. Throughout a collaborative law process, a collaborative lawyer reasonably and continuously shall assess whether the party the collaborative lawyer represents has a history of a coercive or violent relationship with another party.</li> </ul>	<p>The Committee proposes to omit the model language and instead adopt:</p> <p>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.</p> <p><i>This language states the duty in more general terms and removes the requirement of a</i></p>

	<p>c. If a 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:</p> <ol style="list-style-type: none"> <li>1. the party or the prospective party requests beginning or continuing a process; and</li> <li>2. the collaborative lawyer reasonably believes that the safety of the party or prospective party can be protected adequately during a process.</li> </ol>	<p><i>consultation with the client and the client's consent to continue.</i></p>
<p><b>RULE 16. CONFIDENTIALITY OF COLLABORATIVE LAW COMMUNICATION</b></p>	<p>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 Rule.</p>	<p>The Committee proposes to adopt.</p>
<p><b>RULE 17. PRIVILEGE AGAINST DISCLOSURE FOR COLLABORATIVE LAW COMMUNICATION; ADMISSIBILITY; DISCOVERY</b></p>	<ol style="list-style-type: none"> <li>a. Subject to Rules 18 and 19, a collaborative law communication is privileged under subsection (b), is not subject to discovery, and is not admissible in evidence.</li> <li>b. In a proceeding, the following privileges apply: <ol style="list-style-type: none"> <li>1. A party may refuse to disclose, and may prevent any other person from disclosing, a collaborative law communication.</li> <li>2. A nonparty participant may refuse to disclose, and may prevent any other person from disclosing, a collaborative law communication of the nonparty participant.</li> </ol> </li> <li>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.</li> </ol>	<p>The Committee proposes to adopt.</p>

<p><b>RULE 18. WAIVER AND PRECLUSION OF PRIVILEGE</b></p>	<p>a. A privilege under Rule 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.</p> <p>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 17, but this preclusion applies only to the extent necessary for the person prejudiced to respond to the disclosure or representation.</p>	<p>The Committee proposes to adopt.</p>
<p><b>RULE 19. LIMITS OF PRIVILEGE</b></p>	<p>a. There is no privilege under Rule 17 for a collaborative law communication that is:</p> <ol style="list-style-type: none"> <li>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;</li> <li>2. a threat or statement of a plan to inflict bodily injury or commit a crime of violence;</li> <li>3. intentionally used to plan a crime, commit or attempt to commit a crime, or conceal an ongoing crime or ongoing criminal activity; or</li> <li>4. in an agreement resulting from the collaborative law process, evidenced by a record signed by all parties to the agreement.</li> </ol> <p>b. The privileges under Rule 17 for a collaborative law communication do not apply to the extent that a communication is:</p> <ol style="list-style-type: none"> <li>1. sought or offered to prove or disprove a claim or complaint of professional misconduct or malpractice arising from</li> </ol>	<p>Rule 19 was approved by the Members with the following changes:</p> <ul style="list-style-type: none"> <li>• a. (1): delete brackets</li> <li>• a. (4): delete “to the agreement” at the end</li> <li>• b. (2): delete brackets and leave language as is</li> <li>• c. (1): remove brackets and leave “misdemeanor” in</li> </ul>

	<p>or related to a collaborative law process; or</p> <ol style="list-style-type: none"><li>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.</li></ol> <p>c. There is no privilege under Rule 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:</p> <ol style="list-style-type: none"><li>1. a court proceeding involving a felony [or misdemeanor]; or</li><li>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.</li></ol> <p>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.</p> <p>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.</p> <p>f. The privileges under Rule 17 do not apply if the parties agree in advance in a signed record, or if a record of a proceeding reflects agreement by</p>	
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	<p>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.</p>	
<p><b>RULE 20. AUTHORITY OF TRIBUNAL IN CASE OF NONCOMPLIANCE</b></p>	<p>a. If an agreement fails to meet the requirements of Rule 4, or a lawyer fails to comply with Rule 14 or 15, a tribunal may nonetheless find that the parties intended to enter into a collaborative law participation agreement if they:</p> <ol style="list-style-type: none"> <li>1. signed a record indicating an intention to enter into a collaborative law participation agreement; and</li> <li>2. reasonably believed they were participating in a collaborative law process.</li> </ol> <p>b. If a tribunal makes the findings specified in subsection (a), and the interests of justice require, the tribunal may:</p> <ol style="list-style-type: none"> <li>1. enforce an agreement evidenced by a record resulting from the process in which the parties participated;</li> <li>2. apply the disqualification provisions of Rules 5, 6, 9, 10, and 11; and apply a privilege under Rule 17.</li> </ol>	<p>The Committee proposes to adopt.</p>
<p><b>RULE 21. UNIFORMITY OF APPLICATION AND CONSTRUCTION</b></p>	<p>In applying and construing this uniform rule, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.</p>	<p>The Committee proposes to adopt.</p>
<p><b>RULE 22. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT</b></p>	<p>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).</p>	<p>The Committee proposes to adopt.</p>

<b>[RULE 23. SEVERABILITY]</b>	[If any provision of this Rule or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this Rule which can be given effect without the invalid provision or application, and to this end the provisions of this Rule are severable.]	The Committee proposes to adopt.
<b>RULE 24. EFFECTIVE DATE</b>	This Rule takes effect.....	The Committee proposes to adopt and insert effective date when appropriate.

Enactments of the Uniform Collaborative Law Act/Rules

Last updated May 3, 2021

Jurisdiction	Citation	Family or general application?	Enactment Year
Alabama	Alabama Code 6-6-26 to 6-6-26.21	Family	2013
Arizona	Arizona Rules Fam. Law Proc. Rule 67.1	Family	2015
District of Columbia	DC Code 16-4001 to 16-4020	Family	2012
Florida	F.S.A. §§ 61.55 to 61.58	Family	2016
Hawaii	H.R.S. 658G-1 to 658G-22	General	2012
Illinois	750 ILCS 90/1 to 750 ILCS 90/70	Family	2017
Maryland	MD Code Cts. & Jud. Pro., §§ 3-2001 to 3-2015	General	2014
Michigan	M.C.L.A. §§ 691.1331 to 691.1354	Family	2014
Montana	MCA §§ 25-40-101 to 25-40-121	General	2015
Nevada	N.R.S. 38.400 to 38.575	General	2011
New Jersey	N.J.S.A. 2A:23D-1 to 2A:23D-18	Family	2014
New Mexico	NMRA, Rules 1-128 to 1-128.13	Family	2017
North Carolina	N.C. Gen. Stat. §§ 1-641 to 1-663	General	2020
North Dakota	N.D. R. Ct. Rule 8.10	General	2016
Ohio	Ohio Rev. Code 3105.41 to 3105.54	Family	2013
Pennsylvania	42 Pa.C.S.A. §§ 7401 to 7411	Family	2018
Tennessee	Tenn. Sup.Ct.Rules, Rule 53	Family	2019
Texas	V.T.C.A., Family Code 15.001 to 15.116	Family	2011
Utah	U.C.A. 1953, 78B-19-101 to 78B-19-116	General	2010
Virginia	Enacted in 2021 via HB 1852; not yet codified	Family	2021
Washington	West's RCWA, 7.77.010 to 7.77.902	General	2013

8 = general application

13 = family law only

21 enactments total

Section	UCLA	States' Substantive Deviations
<b>SECTION 1. SHORT TITLE</b>	This [act] may be cited as the Uniform Collaborative Law Act.	N/A
<b>SECTION 2. DEFINITIONS.</b>	<p>In this [act]:</p> <ol style="list-style-type: none"> <li>1) "Collaborative law communication" means a statement, whether oral or in a record, or verbal or nonverbal, that: <ol style="list-style-type: none"> <li>A. is made to conduct, participate in, continue, or reconvene a collaborative law process; and</li> <li>B. occurs after the parties sign a collaborative law participation agreement and before the collaborative law process is concluded.</li> </ol> </li> <li>2) "Collaborative law participation agreement" means an agreement by persons to participate in a collaborative law process.</li> <li>3) "Collaborative law process" means a procedure intended to resolve a collaborative matter without intervention by a tribunal in which persons: <ol style="list-style-type: none"> <li>A. sign a collaborative law participation agreement; and</li> <li>B. are represented by collaborative lawyers.</li> </ol> </li> <li>4) "Collaborative lawyer" means a lawyer who represents a party in a collaborative law process.</li> <li>5) "Collaborative matter" means a dispute, transaction, claim, problem, or issue for resolution, including a dispute, claim, or issue in a proceeding, which is</li> </ol> <p style="text-align: center;"><b>Alternative A</b></p>	<p><b>Alabama:</b> Alternative A (limits to family law)</p> <p>Alabama also modifies some definitions, including: adds "and other probate court matters involving families and children" to the definition of collaborative matter" and includes "entity including those acting in a fiduciary capacity" in the definition of "Person."</p> <hr/> <p><b>D.C.:</b> Alternative A (limits to family law)</p> <p>D.C. also added a definition defining "family member." D.C. additionally omits legislative bodies from its definitions of "Proceeding" and "Tribunal."</p> <hr/> <p><b>Florida:</b> Alternative A (limits to family law) and adds the following as other kinds of collaborative matters: "parenting plan"; "parental relocation with child"; and "paternity."</p> <p>Florida excludes legislative hearings from the definition of "proceeding" and "tribunal."</p> <hr/> <p><b>Hawaii:</b> Alternative B (no scope limitation)</p> <hr/> <p><b>Illinois:</b> Alternative A (limits to family law)</p> <p>Illinois permits legal separation to be resolved via collaborative law and specifically exempts from collaborative law matters that are (1) the subject of a pending action under the Juvenile Court Act of 1987; (2) under investigation by the Illinois DCFS; and (3) open cases of the Illinois DCFS.</p> <p>Illinois strikes administrative, arbitral, and legislative hearings from the definition of "proceeding" and strikes the entire definition of "tribunal."</p>

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	<p>is described in a collaborative law participation agreement and arises under the family or domestic relations law of this state, including:</p> <ul style="list-style-type: none"> <li>A. marriage, divorce, dissolution, annulment, and property distribution;</li> <li>B. child custody, visitation, and parenting time;</li> <li>C. alimony, maintenance, and child support;</li> <li>D. adoption;</li> <li>E. parentage; and</li> <li>F. premarital, marital, and post-marital agreements.</li> </ul> <p style="text-align: center;"><b>Alternative B</b></p> <p>described in a collaborative law participation agreement.</p> <p>6) "Law firm" means:</p> <ul style="list-style-type: none"> <li>A. lawyers who practice law together in a partnership, professional corporation, sole proprietorship, limited liability company, or association; and</li> <li>B. 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.</li> </ul> <p>7) "Nonparty participant" means a person, other than a party and the party's collaborative lawyer, that participates in a collaborative law process.</p> <p>8) "Party" means a person that signs a collaborative law participation agreement and whose consent is necessary to resolve a collaborative matter.</p> <p>9) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation,</p>	<hr/> <p><b>Maryland:</b> Alternative B (no scope limitation) but omits the definition for law firm and adds a definition for "person eligible for relief."</p> <hr/> <p><b>Michigan:</b> Alternative A (limits to family law)</p> <hr/> <p><b>Montana:</b> Alternative B (no scope limitation)</p> <hr/> <p><b>Nevada:</b> Alternative B (no scope limitation)</p> <hr/> <p><b>New Jersey:</b> Alternative A (limits to family law) but omits adoption and parentage as categories of family or domestic relations laws qualifying under the Act.</p> <p>New Jersey modifies the "Definitions" section in several other ways, including: providing for civil unions or domestic partnerships; making explicit that nonparty participants may include financial practitioners, mental health professionals, and more; and adds the term "settlement agreement."</p> <hr/> <p><b>New Mexico:</b> Alternative A (limits to family law)</p> <p>New Mexico removes legislative hearings from the definitions of "proceeding" and "tribunal."</p> <hr/> <p><b>North Carolina:</b> Alternative B (no scope limitation)</p> <hr/> <p><b>North Dakota:</b> Alternative B (no scope limitation)</p> <p>North Dakota does not include definitions of "collaborative law process," "collaborative lawyer," "law firm," "party," "person," "proceeding," "prospective party," "related to collaborative matter," "sign," and "tribunal."</p> <hr/> <p><b>Ohio:</b> Limits to family law but does not use the language provided in Alternative A of the UCLA to do so.</p>

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	<p>government or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.</p> <p>10) "Proceeding" means:</p> <p style="padding-left: 40px;">A. a judicial, administrative, arbitral, or other adjudicative process before a tribunal, including related prehearing and post-hearing motions, conferences, and discovery; or</p> <p style="padding-left: 40px;">B. a legislative hearing or similar process.</p> <p>11) "Prospective party" means a person that discusses with a prospective collaborative lawyer the possibility of signing a collaborative law participation agreement.</p> <p>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.</p> <p>13) "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.</p> <p>14) "Sign" means, with present intent to authenticate or adopt a record:</p> <p style="padding-left: 40px;">A. to execute or adopt a tangible symbol; or</p> <p style="padding-left: 40px;">B. to attach to or logically associate with the record an electronic symbol, sound, or process.</p> <p>15) "Tribunal" means:</p> <p style="padding-left: 40px;">A. a court, arbitrator, administrative agency, or other body acting in an adjudicative capacity which, after presentation of evidence or legal argument, has jurisdiction to render a decision affecting a party's interests in a matter; or</p>	<p>Ohio modifies several definitions, including: making clear that a "collaborative family lawyer" "does not include a lawyer who is a public official and who does not represent individuals other than public officials in their official capacities"; defines "family or household member"; indicates that a "nonparty participant" must be designated in an express writing; excludes legislative hearings from the definition of "proceeding"; defines "public official"; does not define "tribunal."</p> <hr/> <p><b>Pennsylvania:</b> Alternative A (limits to family law)</p> <p>Pennsylvania removes legislative hearings from the definition of "proceeding" and "tribunal"</p> <hr/> <p><b>Tennessee:</b> Alternative A (limits to family law)</p> <hr/> <p><b>Texas:</b> Limits to family law but does not use the language provided in Alternative A of the UCLA/R to do so.</p> <p>Texas modifies several definitions, including: excluding legislative hearings from the definition of "proceeding" and "tribunal"; and not including a definition of "person."</p> <hr/> <p><b>Utah:</b> Alternative B (no scope limitation), but removes illustrative language: "dispute, claim or issue in a proceeding."</p> <hr/> <p><b>Virginia:</b> Alternative A (limits to family law)</p> <hr/> <p><b>Washington:</b> Alternative B (no scope limitation)</p> <p>Washington excludes legislative hearings from the definition of "proceeding" and "tribunal."</p> <hr/>

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	B. a legislative body conducting a hearing or similar process.	
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]].	<p><b>Florida</b> omits.</p> <hr/> <p><b>Maryland</b> omits.</p> <hr/> <p><b>Montana</b> omits</p> <hr/> <p><b>Nevada</b> omits.</p> <hr/> <p><b>New Jersey</b> adds a second provision indicating that the Act “does not apply to any other collaborative law process or any other collaborative law participation agreement.”</p> <hr/> <p><b>North Carolina</b> adopts the uniform language but adds non-uniform language stating that minors, unborn individuals, and incompetent individuals cannot be parties to a collaborative law agreement. North Carolina’s statute also does not permit the use of collaborative law for claims arising under its Chapters 35A (Incompetency &amp; Guardianship), 35B (Uniform Adult Guardianship Protective Proceedings and Jurisdiction Act), and 50 (Divorce &amp; Alimony).</p> <hr/> <p><b>North Dakota</b> omits.</p> <hr/> <p><b>Ohio</b> expressly provides in this provision that participation cannot be compelled (concept is located at 5(b) in the UCLA).</p> <hr/> <p><b>Pennsylvania</b> omits.</p> <hr/> <p><b>Texas</b> limits applicability through this provision to matters arising under Title 1 (Marriage Relationship) or 5 (SAPCR) of the Texas Family Code.</p>

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		<p><b>Washington</b> adds a provision indicating that “the use of collaborative law applies only to matters that would be resolved in civil court and may not be used to resolve matters in criminal cases.”</p>
<p><b>SECTION 4. COLLABORATIVE LAW PARTICIPATION AGREEMENT; REQUIREMENTS</b></p>	<p>a. A collaborative law participation agreement must:</p> <ol style="list-style-type: none"> <li>1. be in a record;</li> <li>2. be signed by the parties;</li> <li>3. state the parties’ intention to resolve a collaborative matter through a collaborative law process under this [act];</li> <li>4. describe the nature and scope of the matter;</li> <li>5. identify the collaborative lawyer who represents each party in the process; and</li> <li>6. contain a statement by each collaborative lawyer confirming the lawyer’s representation of a party in the collaborative law process.</li> </ol> <p>b. Parties may agree to include in a collaborative law participation agreement additional provisions not inconsistent with this [act].</p>	<p><b>Alabama</b> imposes additional requirements: “(a) A collaborative law participation agreement must: ... (7) contain a provision informing the client that he collaborative lawyer and his or her law firm must withdraw from their representation of the client should the collaborative law process terminate under Section 5(d); and (8) contain a statement explaining the disclosure of information required under Section 12.”</p> <hr/> <p><b>Florida</b> omits.</p> <hr/> <p><b>Illinois</b> requires that the collaborative process participation agreement state the parties’ agreement to discharge their collaborative process lawyers and law firms if the process fails.</p> <hr/> <p><b>New Jersey</b> includes several additional requirements, including: a statement that a collaborative lawyer’s role is limited; providing the manner in which the process begins and terminates or concludes; a statement that collaborative law communications are confidential and privileged; and a statement that collaborative lawyers are governed by the state’s Rules of Professional Conduct.</p> <hr/> <p><b>North Carolina</b> requires that the collaborative law participation agreement state that the collaborative lawyers will be disqualified from representing their respective parties before a tribunal in a proceeding related to the collaborative matter.</p> <hr/> <p><b>Tennessee</b> adds the following requirements for each family law participation agreement: (1) statement that the parties will forego court intervention while using the collaborative family law process; (2) statement that they will jointly engage any professionals, experts, etc. in a neutral capacity; and (3) statement about mandatory disqualification of the collaborative lawyer.</p>

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		<p><b>Texas</b> also requires collaborative family law participation agreements to include provisions for: “(1) suspending tribunal intervention in the collaborative family law matter while the parties are using the collaborative family law process; and (2) unless otherwise agreed in writing, jointly engaging any professionals, experts, or advisors serving in a neutral capacity.”</p>
<p><b>SECTION 5. BEGINNING AND CONCLUDING COLLABORATIVE LAW PROCESS</b></p>	<ul style="list-style-type: none"> <li>a. A collaborative law process begins when the parties sign a collaborative law participation agreement.</li> <li>b. A tribunal may not order a party to participate in a collaborative law process over that party’s objection.</li> <li>c. A collaborative law process is concluded by a: <ul style="list-style-type: none"> <li>1. resolution of a collaborative matter as evidenced by a signed record;</li> <li>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</li> <li>3. termination of the process.</li> </ul> </li> <li>d. A collaborative law process terminates: <ul style="list-style-type: none"> <li>1. when a party gives notice to other parties in a record that the process is ended;</li> <li>2. when a party: <ul style="list-style-type: none"> <li>A. begins a proceeding related to a collaborative matter without the agreement of all parties; or</li> <li>B. in a pending proceeding related to the matter:</li> </ul> </li> </ul> </li> </ul>	<p><b>New Jersey</b> modifies subsection (b) to explicitly provide that collaborative law is voluntary.</p> <p>New Jersey also splits Section 5 into two separate sections: one for beginning the process and one for concluding.</p> <p>New Jersey provides several additional grounds for concluding a collaborative law process, including: obtaining a restraining order; commencing an action to request a tribunal issue emergency relief to protect the health, safety, welfare, or interests of a party; or failing to provide information necessary to address the disputed issues which causes one of the parties to terminate the process.</p> <p><b>New Mexico</b> alters the circumstances that would trigger termination of the collaborative law process. Under the uniform act, the process is terminated when a party initiates a pleading, motion, order to show cause, etc. with the tribunal or requests that the proceeding be put on the tribunal’s active calendar. New Mexico permits these actions as long as they are done with the agreement of all parties to the collaborative law process.</p> <p>Also, the UCLA states that a party may terminate the collaborative law process with or without cause, and New Mexico strikes that subsection.</p> <p>New Mexico also struck subsections (h) (stating that a collaborative law process does not end if the parties request a</p>

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	<ul style="list-style-type: none"> <li>i. initiates a pleading, motion, order to show cause, or request for a conference with the tribunal;</li> <li>ii. requests that the proceeding be put on the [tribunal's active calendar]; or</li> <li>iii. takes similar action requiring notice to be sent to the parties; or</li> </ul> <p>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.</p> <p>e. A party's collaborative lawyer shall give prompt notice to all other parties in a record of a discharge or withdrawal.</p> <p>f. A party may terminate a collaborative law process with or without cause.</p> <p>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:</p> <ul style="list-style-type: none"> <li>1. the unrepresented party engages a successor collaborative lawyer; and</li> <li>2. in a signed record: <ul style="list-style-type: none"> <li>A. the parties consent to continue the process by reaffirming the collaborative law participation agreement;</li> <li>B. the agreement is amended to identify the successor collaborative lawyer; and</li> </ul> </li> </ul>	<p>tribunal to approve resolution of the collaborative matter) and (i) (a collaborative law participation agreement may provide additional methods of concluding a collaborative law process) from its rules.</p> <hr/> <p><b>North Carolina</b> adds a subsection (j), which states that the collaborative law participation agreement "tolls all legal time periods applicable to legal rights and issues under law between the parties from the time the parties sign a collaborative law participation agreement until terminated . . . ."</p> <hr/> <p><b>Pennsylvania</b> eliminates (h) and (i).</p> <hr/> <p><b>Utah</b> modifies the UCLA subsection (e) to state: "A party's collaborative lawyer shall give prompt notice to all other parties of a discharge or withdrawal, in accordance with the Rules of Civil Procedure."</p> <hr/>

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	<p>C. the successor collaborative lawyer confirms the lawyer's representation of a party in the collaborative process.</p> <p>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.</p> <p>i. A collaborative law participation agreement may provide additional methods of concluding a collaborative law process.</p>	
<p><b>SECTION 6. PROCEEDINGS PENDING BEFORE TRIBUNAL; STATUS REPORT</b></p>	<p>a. Persons in a proceeding pending before a tribunal may sign a collaborative law participation agreement to seek to resolve a collaborative matter related to the proceeding. The parties shall file promptly with the tribunal a notice of the agreement after it is signed. Subject to subsection (c) and Sections 7 and 8, the filing operates as an application for a stay of the proceeding.</p> <p>b. The parties shall file promptly with the tribunal notice in a record when a collaborative law process concludes. The stay of the proceeding under subsection (a) is lifted when the notice is filed. The notice may not specify any reason for termination of the process.</p> <p>c. A tribunal in which a proceeding is stayed under subsection (a) may require the parties and collaborative lawyers to provide a status report on the collaborative law process and the proceeding. A status report may include only information on whether the process is ongoing or concluded. It may not include a report, assessment, evaluation, recommendation, finding, or other communication regarding a collaborative law process or collaborative law matter.</p>	<p><b>Florida</b> omits.</p> <hr/> <p><b>Maryland</b> omits.</p> <hr/> <p><b>New Jersey</b> omits.</p> <hr/> <p><b>New Mexico</b> adds language stating what information must be in a certificate/stipulated order of abatement if the parties choose to pursue collaborative law when there is a proceeding pending before a tribunal.</p> <hr/> <p><b>North Dakota</b> omits.</p> <hr/> <p><b>Ohio</b> omits.</p> <hr/> <p><b>Pennsylvania</b> omits.</p> <hr/> <p><b>Texas</b> adds four provisions regarding deadlines and parties' communication with the court. (Sec. 15.103(b)-(e))</p> <hr/> <p><b>Utah</b> modifies the first two sentences of the UCLA subsection (b) to state that "Parties shall file promptly with the tribunal notice in a record when a collaborative law process concludes and request the stay to be lifted." Utah also omits UCLA Section 6(d) regarding a tribunal's consideration of communication made in violation of subsection (c).</p>

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	<p>d. A tribunal may not consider a communication made in violation of subsection (c).</p> <p>e. A tribunal shall provide parties notice and an opportunity to be heard before dismissing a proceeding in which a notice of collaborative process is filed based on delay or failure to prosecute.</p>	<p><b>Virginia</b> rewords subsections (b) and (c) so that (b) explains what happens when a stay is <i>not</i> granted by the tribunal, and (c) explains what happens when a stay <i>is</i> granted by the tribunal.</p>
<p><b>SECTION 7. EMERGENCY ORDER</b></p>	<p>During a collaborative law process, a tribunal may issue emergency orders to protect the health, safety, welfare, or interest of a party or [insert term for family or household member as defined in [state civil protection order statute]].</p>	<p><b>Florida</b> omits.</p> <p><b>New Jersey</b> omits.</p> <p><b>North Carolina</b> reworded this language to state that a party may begin a proceeding, and that a tribunal may issue emergency orders on motion of a party in that proceeding or a pending proceeding.</p> <p><b>North Dakota</b> omits.</p> <p><b>Ohio</b> omits.</p> <p><b>Pennsylvania</b> omits.</p> <p><b>Texas</b> adds that “[i]f the emergency order is granted without the agreement of all parties, the granting of the order terminates the collaborative process.”</p> <p><b>Utah</b> modifies Section 7 slightly to explicitly indicate that the court may issue protective orders.</p>
<p><b>SECTION 8. APPROVAL OF AGREEMENT BY TRIBUNAL</b></p>	<p>A tribunal may approve an agreement resulting from a collaborative law process.</p>	<p><b>Florida</b> omits.</p> <p><b>Illinois</b> requires the court to approve the agreement if the agreement is to be enforceable.</p> <p><b>Michigan</b> adds Section 8a which provides:</p>

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		<p>(1) The state court administrative office shall develop standards for the qualifications and training of collaborative lawyers.</p> <p>(2) After 2 years after the state court administrative office develops the standards under this section, a lawyer shall not act as a collaborative lawyer unless the lawyer meets the qualifications and has completed the training set forth in the standards.</p> <hr/> <p><b>New Jersey</b> omits.</p> <hr/> <p><b>North Dakota</b> omits.</p> <hr/> <p><b>Ohio</b> omits.</p> <hr/> <p><b>Pennsylvania</b> omits.</p> <hr/> <p><b>Tennessee</b> rephrases this language to state that a settlement agreement under this rule is enforceable in the same manner as a written settlement agreement under Tennessee law.</p> <hr/> <p><b>Texas</b> retitles this section "Effect of Written Settlement Agreement" and provides more detail than the UCLA/R:</p> <p>(a) A settlement agreement under this chapter is enforceable in the same manner as a written settlement agreement under Section 154.071, Civil Practice and Remedies Code.</p> <p>(b) Notwithstanding Rule 11, Texas Rules of Civil Procedure, or another rule or law, a party is entitled to judgment on a collaborative family law settlement agreement if the agreement:</p> <ul style="list-style-type: none"> <li>(1) provides, in a prominently displayed statement that is in boldfaced type, capitalized, or underlined, that the agreement is not subject to revocation; and</li> <li>(2) is signed by each party to the agreement and the collaborative lawyer of each party.</li> </ul> <hr/>

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		<p><b>Virginia</b> retitles this section "Affirmation of agreement by tribunal." Virginia also alters the wording of the statute to provide that a tribunal may "affirm, ratify, and incorporate into a court order any agreement resulting from a collaborative law process."</p>
<p><b>SECTION 9. DISQUALIFICATION OF COLLABORATIVE LAWYER AND LAWYERS IN ASSOCIATED LAW FIRM</b></p>	<p>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.</p> <p>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 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).</p> <p>c. A collaborative lawyer or a lawyer in a law firm with which the collaborative lawyer is associated may represent a party:</p> <ol style="list-style-type: none"> <li>1. to ask a tribunal to approve an agreement resulting from the collaborative law process; or</li> <li>2. to seek or defend an emergency order to protect the health, safety, welfare, or interest 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.</li> </ol> <p>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 [insert term for family or household member] only until the person is represented by a successor lawyer or reasonable</p>	<p><b>Alabama's</b> subsection (a) provides that "[t]his disqualification is not subject to waiver by the parties." Alabama also adds to subsection (c)(1) that a collaborative lawyer (or associated firm) is permitted to "prepare and file all documents necessary to obtain a final order."</p> <hr/> <p><b>Florida</b> omits.</p> <hr/> <p><b>Hawaii</b> combines subsections (c)(2) and (d) into one subsection.</p> <hr/> <p><b>Maryland</b> omits.</p> <hr/> <p><b>New Jersey</b> places the disqualification requirement in its section governing the conclusion of a collaborative law process.</p> <hr/> <p><b>New Mexico</b> eliminates (c)(2) and (d).</p> <hr/> <p><b>North Dakota</b> eliminates (b) and instead notes that "[a]ny disqualification of a lawyer in a law firm with which the collaborative lawyer is associated is governed under N.D.R. Prof. Conduct 1.10."</p> <hr/> <p><b>Ohio</b> retitles this Section: "Representation by collaborative family lawyer."</p> <hr/> <p><b>Pennsylvania</b> eliminates (c)(2) and (d).</p> <hr/> <p><b>Texas</b> provides in this section that disqualification applies equally to a collaborative lawyer representing a party with or without fee.</p>

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	<p>measures are taken to protect the health, safety, welfare, or interest of the person.</p>	<p><b>Utah</b> does not include this section but does provide for disqualification in 78B-19-111 (Appropriateness of collaborative law process).</p>
<p><b>SECTION 10. LOW INCOME PARTIES</b></p>	<p>a. The disqualification of Section 9(a) applies to a collaborative lawyer representing a party with or without fee.</p> <p>b. After a collaborative law process concludes, another lawyer in a law firm with which a collaborative lawyer disqualified under Section 9(a) is associated may represent a party without fee in the collaborative matter or a matter related to the collaborative matter if:</p> <ol style="list-style-type: none"> <li>1. the party has an annual income that qualifies the party for free legal representation under the criteria established by the law firm for free legal representation;</li> <li>2. the collaborative law participation agreement so provides; and</li> <li>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.</li> </ol>	<p><b>Florida</b> omits.</p> <hr/> <p><b>Illinois</b> omits.</p> <hr/> <p><b>Maryland</b> omits.</p> <hr/> <p><b>New Jersey</b> omits.</p> <hr/> <p><b>New Mexico</b> omits.</p> <hr/> <p><b>North Dakota</b> omits.</p> <hr/> <p><b>Ohio</b> omits.</p> <hr/> <p><b>Pennsylvania</b> omits.</p> <hr/> <p><b>Utah</b> omits.</p> <hr/> <p><b>Washington</b> omits.</p>
<p><b>SECTION 11. GOVERNMENTAL ENTITY AS PARTY</b></p>	<p>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.</p> <p>b. After a collaborative law process concludes, another lawyer in a law firm with which the collaborative lawyer is associated may represent a government or governmental subdivision, agency, or instrumentality in the collaborative matter or a matter related to the collaborative matter if:</p>	<p><b>Alabama</b> reserves.</p> <hr/> <p><b>Florida</b> omits.</p> <hr/> <p><b>Illinois</b> omits.</p> <hr/> <p><b>Maryland</b> omits.</p> <hr/> <p><b>New Jersey</b> omits.</p> <hr/> <p><b>New Mexico</b> omits.</p>

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	<ol style="list-style-type: none"> <li>1. the collaborative law participation agreement so provides; and</li> <li>2. 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.</li> </ol>	<p><b>North Dakota</b> omits.</p> <hr/> <p><b>Ohio</b> omits.</p> <hr/> <p><b>Pennsylvania</b> omits.</p> <hr/> <p><b>Utah</b> omits.</p> <hr/> <p><b>Virginia</b> omits.</p>
<p><b>SECTION 12. DISCLOSURE OF INFORMATION</b></p>	<p>Except as provided by law other than this [act], 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.</p>	<p><b>Florida</b> omits.</p> <hr/> <p><b>New Jersey</b> adds a good faith obligation to the disclosure requirement.</p> <hr/> <p><b>Tennessee</b> requires parties to sign and submit a joint complete statement of "assets and liabilities, including contingent assets and possessory interests. . . ."</p>
<p><b>SECTION 13. STANDARDS OF PROFESSIONAL RESPONSIBILITY AND MANDATORY REPORTING NOT AFFECTED</b></p>	<p>This [act] does not affect:</p> <ol style="list-style-type: none"> <li>1. the professional responsibility obligations and standards applicable to a lawyer or other licensed professional; or</li> <li>2. the obligation of a person to report abuse or neglect, abandonment, or exploitation of a child or adult under the law of this state.</li> </ol>	<p><b>Florida</b> omits.</p> <hr/> <p><b>North Carolina</b> eliminates subsection (2) of the uniform language, which references the obligation to report abuse or neglect, abandonment, etc.</p> <hr/> <p><b>North Dakota</b> omits.</p> <hr/> <p><b>Washington</b> adds to UCLA's Section 13(1) that the act does not "relieve a lawyer or other licensed professional from the duty to comply with all applicable professional responsibility obligations and standards." Washington also adds a new subsection: "(3) Noncompliance with an obligation or prohibition imposed by this chapter does not in itself establish grounds for professional discipline."</p>

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<p><b>SECTION 14. APPROPRIATENESS OF COLLABORATIVE LAW PROCESS</b></p>	<p>Before a prospective party signs a collaborative law participation agreement, a prospective collaborative lawyer shall:</p> <ol style="list-style-type: none"> <li>1. 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;</li> <li>2. 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</li> <li>3. advise the prospective party that: <ol style="list-style-type: none"> <li>A. 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;</li> <li>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</li> <li>C. 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).</li> </ol> </li> </ol>	<p><b>Alabama</b> removes the language "such as litigation, mediation, arbitration, or expert evaluation" from subsection (2).</p> <hr/> <p><b>Florida</b> omits.</p> <hr/> <p><b>Illinois</b> omits.</p> <hr/> <p><b>New Jersey</b> omits.</p> <hr/> <p><b>North Carolina</b> renames this section "Informed consent" and requires the collaborative attorney to provide a prospective client the "respective rules regarding privilege and confidentiality that apply to each of the alternative means of resolving disputes."</p> <hr/> <p><b>North Dakota</b> omits.</p> <hr/> <p><b>Ohio</b> omits.</p> <hr/> <p><b>Texas</b> retitles: "Informed Consent."</p> <hr/> <p><b>Utah</b> modifies subsection (3)(c) to provide "... except as authorized by the Rules of Professional Conduct" instead of "except as authorized by Section 9(c), 10(b), or 11(b)" of the UCLA.</p> <hr/> <p><b>Washington</b> retains the substance and most of the language of UCLA Section 14, but phrases the requirements in the passive voice (e.g., "the prospective party must...be advised" as opposed to "a prospective collaborative lawyer shall...advise").</p>
<p><b>SECTION 15. COERCIVE OR VIOLENT RELATIONSHIP</b></p>	<p>a. Before a prospective party signs a collaborative law participation agreement, a prospective collaborative lawyer shall make reasonable inquiry whether the</p>	<p><b>Florida</b> omits.</p> <hr/> <p><b>Illinois</b> omits.</p>

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	<p>prospective party has a history of a coercive or violent relationship with another prospective party.</p> <p>b. Throughout a collaborative law process, a collaborative lawyer reasonably and continuously shall assess whether the party the collaborative lawyer represents has a history of a coercive or violent relationship with another party.</p> <p>c. If a 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:</p> <ol style="list-style-type: none"> <li>1. the party or the prospective party requests beginning or continuing a process; and</li> <li>2. the collaborative lawyer reasonably believes that the safety of the party or prospective party can be protected adequately during a process.</li> </ol>	<p><b>Michigan</b> adds the following sentence to the beginning of 15(a):</p> <p>“A reasonable inquiry includes the use of the domestic violence screening protocol for mediation provided by the state court administrative office.”</p> <hr/> <p><b>Maryland</b> omits.</p> <p>Note: The issue is partially addressed in the MD Rules, Rule 17-503 (a)(5):</p> <ol style="list-style-type: none"> <li>(a) Before beginning a collaborative law process, an attorney shall: [...] <ol style="list-style-type: none"> <li>(5) make a reasonable effort to determine whether the client has a history of a coercive or violent relationship with another prospective party, and if such circumstances exist, to determine whether a collaborative law process is appropriate.</li> </ol> </li> </ol> <hr/> <p><b>New Jersey</b> omits.</p> <hr/> <p><b>New Mexico</b> eliminates (c).</p> <hr/> <p><b>North Carolina</b> omits.</p> <hr/> <p><b>North Dakota</b> omits.</p> <hr/> <p><b>Ohio</b> omits.</p> <hr/> <p><b>Texas</b> retitles: “Family Violence.”</p> <p>Texas also: defines dating relationship, family violence, household, and member of a household; limits the family violence inquiry to family members or dating relationships; and requires that “the collaborative lawyer ... determines with the party ... what if, any,</p>

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		<p>reasonable steps could be taken to address the concerns regarding family violence.”</p> <hr/> <p><b>Virginia</b> retitles: “History of family abuse.”</p>
<p><b>SECTION 16. CONFIDENTIALITY OF COLLABORATIVE LAW COMMUNICATION</b></p>	<p>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].</p>	<p><b>North Dakota</b> omits.</p> <hr/> <p><b>Texas</b> provides that confidentiality extends to party and non-party participants’ conduct and demeanor, and any communications made before the execution of the collaborative law agreement.</p> <hr/> <p><b>Washington</b> makes this section subject to its version of UCLA Section 13 governing professional responsibility standards.</p>
<p><b>SECTION 17. PRIVILEGE AGAINST DISCLOSURE FOR COLLABORATIVE LAW COMMUNICATION; ADMISSIBILITY; DISCOVERY</b></p>	<p>a. Subject to Sections 18 and 19, a collaborative law communication is privileged under subsection (b), is not subject to discovery, and is not admissible in evidence.</p> <p>b. In a proceeding, the following privileges apply:</p> <ol style="list-style-type: none"> <li>1. A party may refuse to disclose, and may prevent any other person from disclosing, a collaborative law communication.</li> <li>2. A nonparty participant may refuse to disclose, and may prevent any other person from disclosing, a collaborative law communication of the nonparty participant.</li> </ol> <p>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.</p>	<p><b>Alabama</b> reserves.</p> <hr/> <p><b>New Jersey</b> adds a provision that states “the privilege created by this section may be claimed by the party or nonparty participant in person, or if the party or nonparty participant is incapacitated or deceased, by his guardian or personal representative. Where a corporation or association or other legal entity is the nonparty participant claiming the privilege, and the corporation, association or other entity has been dissolved, the privilege may be claimed by its successors, assigns or trustees in dissolution.”</p> <hr/> <p><b>New Jersey</b> also adds to subsection (c) that evidence that is “readily available from other sources” does not become inadmissible or protected because of its use in the collaborative law process.</p> <hr/> <p><b>New Mexico</b> rewrites this section to state that the following people may claim the privilege: (1) a party; (2) a party’s guardian or conservator; (3) the personal representative of a deceased party; or (4) a nonparty participant, but only with respect to a collaborative law communication of the nonparty participant.</p> <hr/> <p><b>Ohio</b> retitles: “Privileges.”</p>

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		<p><b>Texas</b> elaborates on and modifies the language of UCLA Section 17 in its Sec. 15.114. It also combines UCLA Sections 17 and 18 into this one section.</p> <hr/> <p><b>Utah</b> omits.</p>
<p><b>SECTION 18. WAIVER AND PRECLUSION OF PRIVILEGE</b></p>	<p>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.</p> <p>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 Section 17, but this preclusion applies only to the extent necessary for the person prejudiced to respond to the disclosure or representation.</p>	<p><b>Alabama</b> reserves.</p> <hr/> <p><b>Ohio</b> retitles: "Waiver of privilege." Ohio also removes the condition on subsection (b) that the preclusion of privilege be limited "only to extent necessary for the person prejudiced to respond...."</p> <hr/> <p><b>Texas</b> combines UCLA Sections 17 and 18 into one section and modifies the language (Sec. 15.114).</p> <hr/> <p><b>Utah</b> omits.</p>
<p><b>SECTION 19. LIMITS OF PRIVILEGE</b></p>	<p>a. There is no privilege under Section 17 for a collaborative law communication that is:</p> <ol style="list-style-type: none"> <li>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;</li> <li>2. a threat or statement of a plan to inflict bodily injury or commit a crime of violence;</li> <li>3. intentionally used to plan a crime, commit or attempt to commit a crime, or conceal an ongoing crime or ongoing criminal activity; or</li> <li>4. in an agreement resulting from the collaborative law process, evidenced by a record signed by all parties to the agreement.</li> </ol>	<p><b>Alabama</b> reserves.</p> <hr/> <p><b>D.C.</b> includes felony or misdemeanors in subsection (c)(1).</p> <hr/> <p><b>Hawaii</b> includes felony or misdemeanors in subsection (c)(1).</p> <hr/> <p><b>Michigan</b> includes felony or misdemeanors in subsection (c)(1).</p> <hr/> <p><b>Nevada</b> includes felony or misdemeanors in subsection (c)(1).</p> <hr/> <p><b>New Jersey</b> also excepts from the privilege a collaborative law communication that is "a disclosure in a report of suspected domestic violence or suspected child abuse to an appropriate agency under the laws of this State."</p> <hr/> <p>Instead of "felony or misdemeanors" in subsection (c)(1), New Jersey includes court proceedings involving "a crime."</p>

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	<p>b. The privileges under Section 17 for a collaborative law communication do not apply to the extent that a communication is:</p> <ol style="list-style-type: none"> <li>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</li> <li>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.</li> </ol> <p>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:</p> <ol style="list-style-type: none"> <li>1. a court proceeding involving a felony [or misdemeanor]; or</li> <li>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.</li> </ol> <p>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.</p> <p>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.</p>	<p>New Jersey also modifies subsection (b)(1) to include a communication used to prove or disprove “the unreasonableness of a family collaborative lawyer’s fee....”</p> <hr/> <p><b>New Mexico</b> eliminates (b), (c), (d), and (f).</p> <hr/> <p><b>North Carolina</b> eliminates subsection(b)(2).</p> <hr/> <p>In its version of (c)(1), <b>North Dakota</b> includes court proceedings involving a “crime,” rather than “involving a felony [or misdemeanor].”</p> <hr/> <p><b>Ohio</b> retitles: “Communications not subject to privilege.”</p> <hr/> <p>Ohio’s Subsection (c) is more specific than the UCLA, and includes “felony, a delinquent child proceeding based on what would be a felony if committed by an adult, or a proceeding initiated by the state or a child protection agency in which it is alleged that a child is an abused, neglected, or dependent child.” But, it does not require the court’s balancing the need for the evidence and confidentiality in those cases.</p> <hr/> <p>Ohio places the court’s weighing the need for the evidence and the need for confidentiality in a new subsection (D).</p> <hr/> <p><b>Texas</b> greatly elaborates on the limits of privilege in its Sec. 15.115.</p> <hr/> <p><b>Virginia</b> rephrases subsection (a) to state that there is no privilege for a collaborative law communication that is “available to the public”, which is broader than the text of the uniform act.</p> <hr/> <p><b>Washington</b> includes felonies or misdemeanors.</p> <hr/> <p>Washington also adds a privilege exception for communications “sought or offered to prove or disprove stalking or cyber standing of a party or child.”</p>

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	<p>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.</p>	
<p><b>SECTION 20. AUTHORITY OF TRIBUNAL IN CASE OF NONCOMPLIANCE</b></p>	<p>a. If an agreement fails to meet the requirements of Section 4, or a lawyer fails to comply with Section 14 or 15, a tribunal may nonetheless find that the parties intended to enter into a collaborative law participation agreement if they:</p> <ol style="list-style-type: none"> <li>1. signed a record indicating an intention to enter into a collaborative law participation agreement; and</li> <li>2. reasonably believed they were participating in a collaborative law process.</li> </ol> <p>b. If a tribunal makes the findings specified in subsection (a), and the interests of justice require, the tribunal may:</p> <ol style="list-style-type: none"> <li>1. enforce an agreement evidenced by a record resulting from the process in which the parties participated;</li> <li>2. apply the disqualification provisions of Sections 5, 6, 9, 10, and 11; and</li> <li>3. apply a privilege under Section 17.</li> </ol>	<p><b>Alabama</b> expands the tribunal's authority to "apply any privilege under law" (as opposed to applying a privilege under UCLA Section 17).</p> <hr/> <p><b>Florida</b> omits.</p> <hr/> <p><b>Illinois</b> omits.</p> <hr/> <p><b>New Jersey</b> omits subsection (b) regarding the tribunal's specific abilities.</p> <hr/> <p><b>North Dakota</b> omits.</p> <hr/> <p><b>Ohio</b> retitles: "Effect of finding of intent to make an agreement."</p> <hr/> <p><b>Pennsylvania</b> omits.</p> <hr/> <p><b>Utah</b> provides that in the interest of justice, "the tribunal may ... apply the privileges in the Utah Rules of Evidence" (as opposed to a privilege under UCLA Section 17).</p>
<p><b>SECTION 21. UNIFORMITY OF APPLICATION AND CONSTRUCTION</b></p>	<p>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.</p>	<p><b>Florida</b> omits.</p> <hr/> <p><b>Illinois</b> omits.</p> <hr/> <p><b>New Mexico</b> omits.</p>

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		<p data-bbox="1220 178 1465 203"><b>North Dakota</b> omits.</p> <hr/> <p data-bbox="1220 244 1356 269"><b>Ohio</b> omits.</p>
<p data-bbox="142 313 384 533"><b>SECTION 22. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT</b></p>	<p data-bbox="455 313 1192 505">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).</p>	<p data-bbox="1220 313 1388 338"><b>Florida</b> omits.</p> <hr/> <p data-bbox="1220 379 1381 404"><b>Illinois</b> omits.</p> <hr/> <p data-bbox="1220 446 1434 470"><b>New Jersey</b> omits.</p> <hr/> <p data-bbox="1220 512 1444 536"><b>New Mexico</b> omits.</p> <hr/> <p data-bbox="1220 578 1465 602"><b>North Dakota</b> omits.</p> <hr/> <p data-bbox="1220 644 1648 669"><b>Ohio</b> retitles: "Electronic signatures."</p>
<p data-bbox="142 690 367 748"><b>[SECTION 23. SEVERABILITY]</b></p>	<p data-bbox="455 690 1182 847">[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.]</p>	<p data-bbox="1220 690 1270 715"><b>N/A</b></p>
<p data-bbox="142 859 394 916"><b>SECTION 24. EFFECTIVE DATE</b></p>	<p data-bbox="455 859 787 883">This [act] takes effect.....</p>	<p data-bbox="1220 859 1270 883"><b>N/A</b></p>