

DRAFT
FOR DISCUSSION ONLY

UNIFORM COLLABORATIVE LAW ACT

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

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ON UNIFORM STATE LAWS

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December 8, 2008

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1 **UNIFORM COLLABORATIVE LAW ACT**

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

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

5 (1) A “collaborative law process” means an attempt by parties who have voluntarily
6 entered into a collaborative law participation agreement and are represented by collaborative
7 lawyers to resolve a matter without the intervention of a tribunal.

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

10 (A) occurs between the time the parties enter into a collaborative law participation
11 agreement and the time when the parties have a reasonable belief that a collaborative law process
12 is terminated or is concluded by negotiated resolution of a matter; and

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

15 (3) “Collaborative law participation agreement” means an agreement by persons to
16 participate in a collaborative law process to attempt to resolve a matter.

17 (4) “Collaborative lawyer” means a lawyer identified in a collaborative law participation
18 agreement as engaged to represent a party in a collaborative law process and who is disqualified
19 from representing a party in the matter and a substantially related matters under section 6 if the
20 collaborative law process terminates.

21 (5) “Law firm” means lawyers who practice together in a partnership, professional
22 corporation, sole proprietorship, limited liability corporation, or other association authorized to
23 practice law or lawyers employed in a legal services organization or the legal department of a

1 corporation or other organization.

2 (6) “Matter” means a dispute, transaction, claim, problem or issue for resolution as
3 described in a collaborative law participation agreement. The term includes a claim, issue, or
4 dispute in a proceeding.

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

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

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

12 (10) “Proceeding” means a judicial, administrative, arbitral, legislative or other
13 adjudicative process before a tribunal, including related pre-hearing and post-hearing motions,
14 conferences, and discovery.

15 (11) “Prospective party” means a person who discusses the possibility of entering into a
16 collaborative law participation agreement with a potential collaborative lawyer.

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

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

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

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

23 (14) “Substantially related matter” means a matter involving the same transaction or

1 occurrence, nucleus of operative fact, claim, issue, or dispute as another matter.

2 (15) “Tribunal” means a court, an arbitrator, or a legislative body, administrative agency,
3 or other body acting in an adjudicative capacity in which a neutral official, after presentation of
4 evidence or legal argument, renders a binding decision directly affecting a party’s interests in a
5 matter.

6 **SECTION 3. COLLABORATIVE LAW PARTICIPATION AGREEMENT**
7 **REQUIREMENTS.**

8 (a) A collaborative law participation agreement must:

9 (1) be in a record;

10 (2) be signed by the parties;

11 (3) describe the nature and scope of a matter;

12 (4) state the parties’ intention to attempt to resolve the matter through a
13 collaborative law process;

14 (5) identify the collaborative lawyer engaged by each party to represent the party
15 in the collaborative law process; and

16 (6) contain a signed acknowledgment by each party’s collaborative lawyer
17 confirming the lawyer’s engagement.

18 (b) Parties to a collaborative law participation agreement:

19 (1) may agree to include additional provisions not inconsistent with the provisions
20 of this act; and

21 (2) may not agree to waive or vary the effect of the requirements of this act.

22 **SECTION 4. BEGINNING AND TERMINATING A COLLABORATIVE LAW**
23 **PROCESS.**

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

3 (b) A party may unilaterally terminate a collaborative law process with or without cause.

4 (c) A collaborative law process terminates when all parties have a reasonable belief that
5 the process is over because:

6 (1) a party:

7 (A) terminates the process;

8 (B) begins a proceeding substantially related to the matter without the
9 agreement of all other parties;

10 (C) begins a pleading, motion, order to show cause, request for a
11 conference with the tribunal, request that the proceeding be put on a tribunal's active calendar or
12 takes similar action in a pending proceeding substantially related to the matter without the
13 agreement of all other parties; or

14 (D) discharges a collaborative lawyer; or

15 (2) a collaborative lawyer withdraws from further representation of a party.

16 (d) The collaborative lawyer for a party that terminates a collaborative law process or a
17 collaborative lawyer who withdraws from further representation of a party shall provide prompt
18 written notice of the termination of the process to all other parties and collaborative lawyers. The
19 notice need not specify a reason for terminating the process.

20 (e) Notwithstanding the discharge or withdrawal of a collaborative lawyer, a
21 collaborative law process continues without termination if within 30 days of the date written
22 notice of termination is received by the parties:

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

1 (2) all parties consent to continuation of process by reaffirming the collaborative
2 law participation agreement in a signed record;

3 (3) the collaborative law participation agreement is amended to identify the
4 successor collaborative lawyer in a signed record; and

5 (4) the successor collaborative lawyer acknowledges the engagement in a signed
6 record.

7 (f) A party that begins a proceeding or files a motion under section 5(a) with the
8 agreement of all other parties does not terminate a collaborative law process.

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

11 **SECTION 5. COLLABORATIVE LAW PROCESS AND PROCEEDINGS.**

12 (a) Parties may agree that a party can begin a proceeding or file a motion in a pending
13 proceeding to ask a tribunal to approve a settlement agreement or sign orders to effectuate a
14 settlement agreement resulting from a collaborative law process. The party designated to begin
15 the proceeding or file the motion shall file a notice of collaborative law process signed by all
16 parties and collaborative lawyers with the tribunal at the time the proceeding begins or the
17 motion is filed.

18 (b) Parties to a pending proceeding which a party began without the agreement of all
19 parties may sign a collaborative law participation agreement to resolve any matter substantially
20 related to the proceeding. They shall file a notice of collaborative law process signed by all
21 parties and collaborative lawyers promptly with the tribunal after the collaborative law
22 participation agreement is signed.

23 (c) The filing of a notice of collaborative law process with a tribunal shall operate as an

1 automatic stay of the proceeding until the tribunal receives written notice from the parties and
2 collaborative lawyers that the collaborative law process is terminated. Nothing in this section
3 prohibits a tribunal from requiring periodic status reports from parties and collaborative lawyers.

4 (d) Notwithstanding the filing of a notice of a collaborative law process, a tribunal may
5 issue emergency orders to protect the health, safety, welfare or interests of a party or family or
6 household member as defined in [the state civil protection order statute].

7 (e) After a notice of a collaborative law process is filed, unless all parties otherwise
8 agree, a collaborative lawyer and the collaborative lawyer's law firm may not appear before a
9 tribunal to represent a party in a proceeding substantially related to the matter except to seek an
10 emergency order to protect the health, safety, welfare or interests of a party or family or
11 household member as defined in [the state civil protection order statute].

12 (f) Upon request of all parties, a tribunal may approve a settlement agreement and sign
13 orders to effectuate a settlement agreement resulting from a collaborative law process.

14 (g) Parties and collaborative lawyers shall promptly notify the tribunal in writing when a
15 collaborative law process terminates. The notice of termination must specify the date on which
16 the collaborative law process terminates, but shall not specify any reason for the termination.
17 Upon filing of the notice of termination, the automatic stay of proceedings authorized by
18 subsection (c) terminates.

19 (h) A tribunal shall not dismiss a proceeding in which a notice of a collaborative law
20 process is filed based on failure to prosecute or delay without providing parties and collaborative
21 lawyers appropriate notice and an opportunity to be heard.

22 ***Legislative Note:*** *In states where judicial procedures for management of proceedings can be*
23 *prescribed only by court rule or administrative guideline and not by legislative act, the duties of*
24 *courts and other tribunals listed in this section should be adopted by the appropriate measure.*
25

1 **SECTION 6. DISQUALIFICATION OF COLLABORATIVE LAWYER AND**
2 **LAWYERS IN COLLABORATIVE LAWYER’S LAW FIRM.**

3 (a) Except as otherwise provided in subsection (c), a collaborative lawyer is disqualified
4 from representing a party in the matter or any substantially related matter if a collaborative law
5 process terminates.

6 (b) A lawyer in a law firm with which the collaborative lawyer is associated shall not
7 knowingly represent a party in the matter or a substantially related matter if the collaborative
8 lawyer is disqualified from doing so by subsection (a).

9 (c) Notwithstanding subsections (a) and (b), a collaborative lawyer or a lawyer in a
10 collaborative lawyer’s law firm may represent a party to seek emergency orders to protect the
11 health, safety, welfare or interests of a party or family or household member as defined in [the
12 state civil protection order statute] if successor counsel is not immediately available to represent
13 the threatened party. In that event, the provisions of subsections (a) and (b) take effect when the
14 party engages a successor lawyer or reasonable measures are taken to adequately protect the
15 health, safety, welfare or interests of a party or family or household member.

16 (d) A tribunal may enforce this section through entry of appropriate orders.

17 **SECTION 7. DISCLOSURE OF INFORMATION IN THE COLLABORATIVE**
18 **LAW PROCESS.** During a collaborative law process a party shall make timely, full, candid,
19 and informal disclosure of information reasonably related to the matter upon request of a party,
20 but without formal discovery, and shall promptly update information which has materially
21 changed.

22 **SECTION 8. DISCLOSURES CONCERNING AND APPROPRIATENESS OF**
23 **COLLABORATIVE LAW PROCESS.**

1 (a) Before a prospective party executes a collaborative law participation agreement, a
2 prospective collaborative lawyer shall:

3 (1) provide the prospective party with sufficient information to make an informed
4 decision about the material benefits and risks of a collaborative law process as compared to the
5 material benefits and risks of other reasonably available alternatives for resolving the matter such
6 as litigation, mediation, arbitration, or expert evaluation;

7 (2) advise the prospective party that:

8 (A) a party may not initiate a proceeding or seek tribunal intervention in a
9 pending proceeding substantially related to the matter until the collaborative law process
10 terminates except to seek an emergency order to protect the health, safety, welfare or interests of
11 a party or family or household member as defined in [the state civil protection order statute];

12 (B) any party has the right to unilaterally terminate a collaborative law
13 process with or without cause;

14 (C) if a collaborative law process terminates, a collaborative lawyer and
15 the lawyers in a collaborative lawyer's law firm are disqualified from further representation of a
16 party in the matter or substantially related matters pursuant to section 6 and,

17 (D) if appropriate for the prospective party, the exceptions to the
18 disqualification requirement allowing continued representation by a lawyer in the collaborative
19 lawyer's law firm described in sections 9 and 10.

20 (3) inquire about and discuss with the prospective party factors relevant to
21 whether a collaborative law process is appropriate for the prospective party's matter.

22 (b) A collaborative lawyer shall make reasonable efforts to determine whether a
23 prospective party has a history of domestic violence with another prospective party before a

1 prospective party signs a collaborative law participation agreement and shall continue throughout
2 the collaborative law process to assess for the presence of domestic violence.

3 (c) If a collaborative lawyer reasonably believes that a prospective party or party has a
4 history of domestic violence with another prospective party, the collaborative lawyer shall not
5 begin or continue a collaborative law process unless:

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

8 (2) the lawyer reasonably believes that the prospective party or party's safety can
9 be adequately protected during a collaborative law process; and

10 (3) the lawyer is familiar with the American Bar Association's Standards of
11 Practice for Representing Victims of Domestic Violence, Sexual Assault and Stalking in Civil
12 Protection Order Cases; for Lawyers Who Represent Children in Abuse and Neglect Cases and
13 for Lawyers Who Represent Parents in Abuse and Neglect Cases.

14 **SECTION 9. COLLABORATIVE LAW PROCESS AND LOW INCOME**
15 **PARTIES.**

16 (a) This section is applicable to a collaborative law participation agreement where one of
17 the parties has an annual income which does not exceed one hundred and twenty five percent
18 (125%) of the current Federal Poverty Guidelines amounts.

19 *Legislative Note: States should modify the above description of the scope of this section as*
20 *appropriate to include their own definition of low income clients who are eligible for free legal*
21 *representation by legal aid societies in civil matters.*

22
23 (b) The disqualification requirements of subsections 6 (a) and (c) are applicable to the
24 collaborative lawyer for a party described in subsection (a).

1 (c) Notwithstanding subsection 6 (b), after a collaborative law process terminates a
2 lawyer in a law firm with which the collaborative lawyer is associated may represent a party
3 described in subsection (a) in the matter or a substantially related matter if:

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

5 (2) the collaborative lawyer is isolated from any participation in the matter or
6 substantially related matters through the timely imposition of procedures within the law firm that
7 are reasonably adequate under the circumstances for the intended purpose.

8 (d) A tribunal may enforce this section through entry of appropriate orders.

9 **SECTION 10. COLLABORATIVE LAW PROCESS AND GOVERNMENT**

10 **ENTITIES AS PARTIES**

11 (a) This section is applicable to a collaborative law participation agreement when one of
12 the parties is a public corporation, government or governmental subdivision, agency, or
13 instrumentality.

14 (b) The disqualification requirements of subsections 6 (a) and (c) are applicable to the
15 collaborative lawyer for a party described in subsection (a).

16 (c) Notwithstanding subsection 6 (b), after a collaborative law process terminates, a
17 lawyer in a law firm with which the collaborative lawyer is associated may represent a party
18 described in subsection (a) in the matter or a substantially related matter if:

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

20 (2) the collaborative lawyer is isolated from any participation in the matter or
21 substantially related matters through the timely imposition of procedures within the law firm that
22 are reasonably adequate under the circumstances for the intended purpose.

23 (d) A tribunal may enforce this section through entry of appropriate orders.

1 **SECTION 11. CONFIDENTIALITY OF COLLABORATIVE LAW**

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

4 **SECTION 12. PRIVILEGE AGAINST DISCLOSURE FOR COLLABORATIVE**
5 **LAW COMMUNICATIONS; ADMISSIBILITY; DISCOVERY.**

6 (a) Except as otherwise provided in section 14, a collaborative law communication is
7 privileged as provided in subsection (b) and is not subject to discovery or admissible in evidence
8 in a proceeding unless the privilege is waived or precluded as provided by section 13.

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

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

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

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

17 **SECTION 13. WAIVER AND PRECLUSION OF PRIVILEGE.**

18 (a) A privilege under section 12 may be waived in a record or orally during a proceeding
19 if it is expressly waived by all parties and, in the case of the privilege of a nonparty participant, it
20 is also expressly waived by the nonparty participant.

21 (b) A person that discloses or makes a representation about a collaborative law
22 communication that prejudices another person in a proceeding is precluded from asserting a
23 privilege under section 12, but only to the extent necessary for the person prejudiced to respond

1 to the representation or disclosure.

2 (c) A person that intentionally uses a collaborative law process to commit, or attempt to
3 commit, or to plan a crime, or to conceal an ongoing crime or ongoing criminal activity is
4 precluded from asserting a privilege under section 12.

5 **SECTION 14. EXCEPTIONS TO PRIVILEGE.**

6 (a) There is no privilege under Section 12 for a collaborative law communication that is:

7 (1) in an agreement evidenced by a record signed by all parties;

8 (2) available to the public under [insert statutory reference to open records act] or
9 made during a session of a collaborative law process which is open, or is required by law to be
10 open, to the public;

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

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

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

17 (6) sought or offered to prove or disprove abuse, neglect, abandonment, or
18 exploitation in a proceeding in which a child or adult protective services agency is a party, unless
19 the [State to insert, for example, child or adult protective services agency] is a party to or
20 otherwise participates in a collaborative law process; or

21 (7) sought or offered to prove or disprove abuse, neglect, abandonment, or
22 exploitation in a proceeding in which the abuse or neglect of a child or is an issue

23 (b) There is no privilege under section 12 if a tribunal finds, after a hearing in camera,

1 that: the party seeking discovery or the proponent of the evidence has shown the evidence is not
2 otherwise available, the need for the evidence substantially outweighs the interest in protecting
3 confidentiality, and the collaborative law communication is sought or offered in:

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

5 (2) a proceeding to prove a claim to rescind or reform or a defense to avoid
6 liability on a contract arising out of the collaborative law process.

7 (c) If a collaborative law communication is not privileged under subsection (a) or (b),
8 only the portion of the communication necessary for the application of the exception from
9 nondisclosure may be admitted.

10 (d) Admission of evidence under subsection (a) or (b) does not render the evidence, or
11 any other collaborative law communication, discoverable or admissible for any other purpose.

12 (e) If the parties agree in advance in a signed record, or if a record of a proceeding
13 reflects agreement by the parties, that all or part of a collaborative law process is not privileged,
14 the privileges under section 12 do not apply to the collaborative law process or the part thereof to
15 which the agreement to waive the privilege applies. However, section 12 applies to a
16 collaborative law communication made by a person that has not received actual notice of the
17 agreement before the communication is made.

18 **SECTION 15. COLLABORATIVE LAW PARTICIPATION AGREEMENTS**

19 **NOT MEETING REQUIREMENTS.** Notwithstanding the failure of a collaborative law
20 participation agreement to meet the requirements of section 3 other than section 3(a)(1) and
21 (a)(4), or a lawyer's failure to comply with the disclosure requirements of section 8, if a tribunal
22 finds that the parties intended to enter into a collaborative law participation agreement, that they
23 reasonably believed they were participating in a collaborative law process, and that the interests

1 of justice require, the tribunal may:

2 (1) enforce an agreement resulting from the process in which the parties participated;

3 (2) apply the disqualification provisions of sections 6, 9 or 10; or

4 (3) apply the evidentiary privilege of section 12.

5 **SECTION 16. STANDARDS OF PROFESSIONAL RESPONSIBILITY AND**
6 **MANDATORY REPORTING AND COLLABORATIVE LAW PROCESS.**

7 (a) The professional responsibility obligations and standards of a collaborative lawyer
8 are not changed because of the lawyer's engagement to represent a party in a collaborative law
9 process.

10 (b) The professional responsibility obligations and standards applicable to any licensed
11 professional who participates in a collaborative law process as a nonparty participant are not
12 changed because of that participation.

13 (c) The obligations of any person to report abuse or neglect of a child under the laws of
14 this state are not changed by a person's participation in a collaborative law process.

15 **SECTION 17. UNIFORMITY OF APPLICATION AND CONSTRUCTION.** In
16 applying and construing this Uniform Act, consideration must be given to the need to promote
17 uniformity of the law with respect to its subject matter among states that enact it.

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

1 **SECTION 19. SEVERABILITY CLAUSE.** If any provision of this [act] or its
2 application to any person or circumstance is held invalid, the invalidity does not affect other
3 provisions or applications of this [act] which can be given effect without the invalid provision or
4 application, and to this end the provisions of this [act] are severable.

5 **SECTION 20. APPLICATION TO EXISTING AGREEMENTS.** This [act] governs
6 a collaborative law participation agreement signed after [the effective date of this [act]].

7 **SECTION 21. EFFECTIVE DATE.** This [act] takes effect.....

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