

**OUR TEXAS STATUTE AND THE NEW UNIFORM
COLLABORATIVE LAW ACT**

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Publications and Articles

Our Texas Statute and the New Uniform Collaborative Law Act, CLI-TEXAS COLLABORATIVE LAW
SPRING RETREAT (2009)
The Impact of Attachment on Preschooler's Emotional Understanding, Master's Thesis (2000)

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OUR TEXAS STATUTE AND THE NEW UNIFORM COLLABORATIVE LAW ACT

I. INTRODUCTION

In 2001 the Texas Legislature passed § 6.603 and §153.0072 of the Texas Family Code and codified collaborative law as statutory means for achieving a divorce and settling a suit affecting the parent-child relationship (SAPCR). This July of 2009, the National Conference of Commissioners on Uniform State Laws (NCCUSL) anticipates introducing a final version of Uniform Collaborative Law Act (UCLA) for final approval. The UCLA has already been endorsed by both the Collaborative Law Commission of the Dispute Resolution Section of the American Bar Association and by the American Academy of Matrimonial Lawyers.

II. OUR TEXAS STATUTE

Section 6.603 of the Texas Family Code recognizes collaborative law as non-judicial means for dissolution of marriage. Similarly, Section 153.0072 recognizes collaborative law as non-judicial means for resolving SAPCR issues. The statute sets forth requirements and limitations for use of collaborative law during the divorce and SAPCR processes.

A. Requirements

1. Written Agreement to use Collaborative Law

To conduct divorce and / or SAPCR proceedings under collaborative law procedures, parties and their attorneys must execute a written agreement indicating their intent to do so. TEX. FAM. CODE § 6.603(a). TEX. FAM. CODE § 153.0072(a). Through the agreement, the parties must commit to a full and candid exchange of information, suspension of court proceedings during the collaborative process, agreement to jointly hire experts, and agreement to withdrawal of counsel if resolution is not achieved through the collaborative process. TEX. FAM. CODE §6.603(c)(1)-(4). TEX. FAM. CODE § 153.0072(c)(1)-(4). The statute also provides that parties to the collaborative law process may agree to any other provisions “consistent to a good faith effort” to settle the matter. TEX. FAM. CODE §6.603(c)(5). TEX. FAM. CODE § 153.0072(c)(5)

2. Entry of Judgment On Settlement

Once a collaborative law settlement is reached, the parties are entitled to entry of judgment in accordance to the settlement agreement. TEX. FAM. CODE §6.603(d). TEX. FAM. CODE § 153.0072(d). A court must enter judgment on the collaborative law settlement agreement so long as the agreement is signed by both parties their counsel and prominently states that it is not subject to revocation. Id.

3. Exemption from Court Imposed Deadlines and Scheduling

In keeping with the purpose of collaborative law to resolve divorce without resorting to judicial intervention, if a court is notified 30 days prior to trial that the parties are using the collaborative law process, the court may not impose settings or deadlines otherwise within the discretion of the court. TEX. FAM. CODE §6.603(e). TEX. FAM. CODE § 153.0072(e). Specifically, with such notice, a court may not set a hearing or trial in the case, impose discovery deadlines, require compliance with scheduling orders, or dismiss the case. TEX. FAM. CODE §6.603(e)(1)-(4). TEX. FAM. CODE § 153.0072(e)(1)-(4).

4. Confidentiality

Collaborative law proceedings are given the same confidentiality as other alternative dispute resolution procedures. TEX. FAM. CODE §6.603(h). TEX. FAM. CODE § 153.0072(h). The confidentiality requirement is in accordance with Texas Civil Practice & Remedies Code § 154, which includes prohibition of disclosure of information given in confidence, and of the conduct and demeanor of the parties and their lawyers during the process. TEX. CIV. PRAC. & REM. CODE ANN § 154.053 Communications and records made during collaborative proceedings are also protected as confidential and as inadmissible evidence against a participant during a subsequent judicial proceeding. TEX. CIV. PRAC. & REM. CODE ANN § 154.073.

B. Limitations

1. Time Frame

Although collaborative law is intended to be free of judicial intervention, the statute sets forth limits on the process in the form of time frames.

If parties have not yet reached a settlement within 180 days after they have agreed to pursue agreement by collaborative law, the parties must file a status report no later than the 180th day after the date of the written agreement to use collaborative law. TEX. FAM. CODE § 6.603(f)(1). TEX. FAM. CODE § 153.0072(f)(1). A status report must also be filed on or before the one year anniversary of the agreement to proceed by collaborative law, and this report must be accompanied by a motion for continuance if the parties wish to continue using collaborative law. TEX. FAM. CODE § 6.603(f)(2). TEX. FAM. CODE § 153.0072(f)(2). A court receiving a motion for continuance accompanied by a one year status report must grant the continuance. TEX. FAM. CODE § 6.603(f). TEX. FAM. CODE § 153.0072(f).

If the collaborative law procedures do not result in a settlement within two years of the filing of the suit, the court may set the divorce for trial or dismiss it without prejudice. TEX. FAM. CODE § 6.603(g). TEX. FAM. CODE § 153.0072(g).

2. Counsel's Capacity

Because of the openness and candor required in pursuing a collaborative law settlement agreement, an attorney who serves as counsel for a party during collaborative proceedings may not serve that party as litigation counsel in the same suit. Thus, if collaborative law proceedings are not successful, original counsel must be discharged and new counsel retained for the litigation process. TEX. FAM. CODE § 6.603(b). TEX. FAM. CODE § 153.0072(b)

III. THE UNIFORM COLLABORATIVE LAW ACT

The Uniform Collaborative Law Act (UCLA) is proposed for application of Collaborative Law in all areas of civil law. The UCLA is comprehensive in setting forth procedures for collaborative law and in addressing the many aspects in which a collaborative approach may affect a case.

A. A Guide for Broad Application

The UCLA is written broadly as a guide applicable to all areas of civil law, not just family law.

Section 2 of the Act is dedicated to definitions, thus indicating the drafters' intent of making collaborative law accessible to many practice areas. This intent of accessibility is further indicated in Sections 3 and 12, which list requirements for a Collaborative Law Participation Agreement and required disclosures about the process and in Section 4, which describes how to begin and terminate the collaborative law process. Furthermore, the Act specifies the requirement of full, timely, candid, and informal disclosure of information between parties during the process. Uniform Collaborative Law Act § 11, January 2009 Draft.

In keeping with the goal of broad application, the UCLA provides that collaborative law may be used "to resolve a matter substantially related to [a] proceeding" pending before a court and notice of a participation agreement shall operate as a stay of the proceeding. Uniform Collaborative Law Act § 5(a), January 2009 Draft. Thus, the act indicates collaborative law may be used to resolve not only a case in its entirety, but also isolated issues in a case.

The goal of broad application of collaborative law is evident in the drafter's inclusion of instances when collaborative law is appropriate despite a party's history of domestic violence with another party. Uniform Collaborative Law Act § 12, January 2009 Draft. Such an instance requires that a party requests use of collaborative law, that the lawyer reasonably believes a party's safety can be adequately protected during the process, and that the lawyer is familiar with the American Bar Association's Standards of practice for Representing Victims of Domestic Violence, Sexual Assault and Stalking in Civil Protection Order Cases, For Lawyers Who Represent Children in Abuse and Neglect Cases and for Lawyers Who Represent Parents in Abuse and Neglect Cases. *Id.*

The UCLA's broad applicability is furthered also by its mandate that the same professional responsibility and obligations apply to lawyers engaged in the collaborative law process as in any other legal setting. Uniform Collaborative Law Act § 18, January 2009 Draft.

B. Tolerance of Court Intervention

In recognition that courts retain ultimate control over filed cases, the UCLA provides for appropriate intervention by a presiding court.

Despite the stay a participation agreement provides to pending case, a presiding court may require parties and lawyers to provide a status report on the proceedings. Uniform Collaborative Law Act § 5(c), January 2009 Draft. Such status report however is limited so as not to reveal confidential information such as assessments, evaluations, recommendations, or findings, but rather to include only basic information such as whether or not the process has occurred, terminated, who attended, and whether an agreement was reached. Uniform Collaborative Law Act § 5(c), January 2009 Draft.

Importantly, the Act specifically provides for court intervention to issue emergency orders to protect health, safety, and welfare of a party or family or household member as set forth by protective statutes. Uniform Collaborative Law Act § 6, January 2009 Draft.

C. Disqualification

If a collaborative law process terminates without a resolution, a collaborative lawyer is disqualified from otherwise representing a party in the same matter or a substantially related matter. Uniform Collaborative Law Act § 8, January 2009 Draft. Furthermore, the firm of the disqualified lawyer is also disqualified from participation in a substantially related matter or litigation. *Id.*

However, in keeping with the goal of broad application and accessibility of collaborative law, the Act makes two exceptions to the disqualification of a collaborative lawyer's firm. First, if the collaborative lawyer was serving a low income party without receiving a fee, then that lawyer's firm may not be disqualified from participation in related litigation if the collaborative law participation agreement so provides and if the collaborative lawyer is isolated from any participation in the litigation. Uniform Collaborative Law Act § 9, January 2009 Draft.

A similar provision applies when one of the parties to a collaborative law participation agreement is a government entity. Although a collaborative lawyer in the matter is disqualified upon termination of collaborative law, the lawyer's firm may participate in a substantially related matter if the collaborative law participation agreement so provides and if the collaborative lawyer is isolated from any participation

in the litigation. Uniform Collaborative Law Act § 10, January 2009 Draft.

D. Confidentiality & Privilege

The UCLA provides not only for confidentiality in the collaborative law process, but also for the application of privilege to the process.

As previously set forth, the Act protects the confidentiality of collaborative proceedings by prohibiting a court from requiring that a status report include information such as assessments, evaluations, recommendations, reports, or findings. Uniform Collaborative Law Act § 5(c), January 2009 Draft. The scope of confidentiality may also be extended or limited by agreement of the parties. Uniform Collaborative Law Act § 13, January 2009 Draft. However, excluded from confidentiality is any communication during the collaborative process indicating abuse, neglect, abandonment, or exploitation of an individual. Uniform Collaborative Law Act § 5(c), January 2009 Draft. Reporting of abuse or neglect of a child is mandatory despite use of collaborative law. Uniform Collaborative Law Act § 18, January 2009 Draft.

The Act goes beyond providing for mere confidentiality and stipulates that collaborative law communication is privileged and not subject to discovery. Uniform Collaborative Law Act § 14, January 2009 Draft. However, privilege may be waived either expressly by all parties or to the extent necessary that a representation made about a communication would prejudice another party. Uniform Collaborative Law Act § 15(a)-(b), January 2009 Draft. Additionally, assertion of privilege may be precluded if a person intentionally uses a collaborative law process to engage in criminal activity. Uniform Collaborative Law Act § 15(c), January 2009 Draft. Exceptions to privilege are enumerated by the Act and include threats of violence, proof of abuse or neglect, proof of malpractice, and evidence that is not otherwise available when the need for the evidence substantially outweighs the interest in protection of confidentiality. Uniform Collaborative Law Act § 16, January 2009 Draft.

IV. CONCLUSION

This coming July, our Texas Collaborative Law Statute will be joined by the Uniform

Collaborative Law Act. With the introduction of the Uniform Act, practice of collaborative law in our state has the potential for expanding beyond use in family law. Nationally, as well as locally, the Act stands to promote broader acceptance and accessibility of Collaborative Law.

APPENDIX A

TEXAS FAMILY CODE - TITLE 1. THE MARRIAGE RELATIONSHIP
CHAPTER 6. SUIT FOR DISSOLUTION OF MARRIAGE

§ 6.603. COLLABORATIVE LAW

SUBTITLE C. DISSOLUTION OF MARRIAGE

SUBCHAPTER G. ALTERNATIVE DISPUTE RESOLUTION

(a) On a written agreement of the parties and their attorneys, a dissolution of marriage proceeding may be conducted under collaborative law procedures.

(b) Collaborative law is a procedure in which the parties and their counsel agree in writing to use their best efforts and make a good faith attempt to resolve their dissolution of marriage dispute on an agreed basis without resorting to judicial intervention except to have the court approve the settlement agreement, make the legal pronouncements, and sign the orders required by law to effectuate the agreement of the parties as the court determines appropriate. The parties' counsel may not serve as litigation counsel except to ask the court to approve the settlement agreement.

(c) A collaborative law agreement must include provisions for:

(1) full and candid exchange of information between the parties and their attorneys as necessary to make a proper evaluation of the case;

(2) suspending court intervention in the dispute while the parties are using collaborative law procedures;

(3) hiring experts, as jointly agreed, to be used in the procedure;

(4) withdrawal of all counsel involved in the collaborative law procedure if the collaborative law procedure does not result in settlement of the dispute; and

(5) other provisions as agreed to by the parties consistent with a good faith effort to collaboratively settle the matter.

(d) Notwithstanding Rule 11, Texas Rules of Civil Procedure, or another rule or law, a party is entitled to judgment on a collaborative law settlement agreement if the agreement:

(1) provides, in a prominently displayed statement that is boldfaced, capitalized, or underlined, that the agreement is not subject to revocation; and

(2) is signed by each party to the agreement and the attorney of each party.

(e) Subject to Subsection (g), a court that is notified 30 days before trial that the parties are using collaborative law procedures to attempt to settle a dispute may not, until a party notifies the court that the collaborative law procedures did not result in a settlement:

(1) set a hearing or trial in the case;

(2) impose discovery deadlines;

(3) require compliance with scheduling orders; or

(4) dismiss the case.

(f) The parties shall notify the court if the collaborative law procedures result in a settlement. If they

do not, the parties shall file:

(1) a status report with the court not later than the 180th day after the date of the written agreement to use the procedures; and

(2) a status report on or before the first anniversary of the date of the written agreement to use the procedures, accompanied by a motion for continuance that the court shall grant if the status report indicates the desire of the parties to continue to use collaborative law procedures.

(g) If the collaborative law procedures do not result in a settlement on or before the second anniversary of the date that the suit was filed, the court may:

- (1) set the suit for trial on the regular docket; or
- (2) dismiss the suit without prejudice.

(h) The provisions for confidentiality of alternative dispute resolution procedures as provided in Chapter 154, Civil Practice and Remedies **Code**, apply equally to collaborative law procedures under this section.

Added by Acts 2001, 77th Leg., ch. 1022, § 1, eff. Sept. 1, 2001. Amended by Acts 2005, 79th Leg., ch. 916, § 1, eff. June 18, 2005. Page 2 of 2 Statutes and Session Law - FAM. 6.603

APPENDIX B

TEXAS FAMILY CODE - TITLE 5. THE PARENT-CHILD RELATIONSHIP AND THE SUIT AFFECTING THE PARENT-CHILD RELATIONSHIP

CHAPTER 153. CONSERVATORSHIP, POSSESSION, AND ACCESS

Sec. 153.0072. COLLABORATIVE LAW.

(a) On a written agreement of the parties and their attorneys, a suit affecting the parent-child relationship may be conducted under collaborative law procedures.

(b) Collaborative law is a procedure in which the parties and their counsel agree in writing to use their best efforts and make a good faith attempt to resolve the suit affecting the parent-child relationship on an agreed basis without resorting to judicial intervention except to have the court approve the settlement agreement, make the legal pronouncements, and sign the orders required by law to effectuate the agreement of the parties as the court determines appropriate. The parties' counsel may not serve as litigation counsel except to ask the court to approve the settlement agreement.

(c) A collaborative law agreement must include provisions for:

(1) full and candid exchange of information between the parties and their attorneys as necessary to make a proper evaluation of the case;

(2) suspending court intervention in the dispute while the parties are using collaborative law procedures;

(3) hiring experts, as jointly agreed, to be used in the procedure;

(4) withdrawal of all counsel involved in the collaborative law procedure if the collaborative law procedure does not result in settlement of the dispute; and

(5) other provisions as agreed to by the parties consistent with a good faith effort to collaboratively settle the matter.

(d) Notwithstanding Rule 11, Texas Rules of Civil Procedure, or another rule or law, a party is entitled to judgment on a collaborative law settlement agreement if the agreement:

(1) provides, in a prominently displayed statement that is boldfaced, capitalized, or underlined, that the agreement is not subject to revocation; and

(2) is signed by each party to the agreement and the attorney of each party.

(e) Subject to Subsection (g), a court that is notified 30 days before trial that the parties are using collaborative law procedures to attempt to settle a dispute may not, until a party notifies the court that the collaborative law procedures did not result in a settlement:

(1) set a hearing or trial in the case;

(2) impose discovery deadlines;

(3) require compliance with scheduling orders; or

(4) dismiss the case.

(f) The parties shall notify the court if the collaborative law procedures result in a settlement. If they do not, the parties shall file:

(1) a status report with the court not later than the 180th day after the date of the written agreement to use the procedures; and

(2) a status report on or before the first anniversary of the date of the written agreement to use the procedures, accompanied by a motion for continuance that the court shall grant if the status report indicates the desire of the parties to continue to use collaborative law procedures.

(g) If the collaborative law procedures do not result in a settlement on or before the second anniversary of the date that the suit was filed, the court may:

(1) set the suit for trial on the regular docket; or

(2) dismiss the suit without prejudice.

(h) The provisions for confidentiality of alternative dispute resolution procedures as provided in Chapter 154, Civil Practice and Remedies Code, apply equally to collaborative law procedures under this section.

Added by Acts 2001, 77th Leg., ch. 1022, Sec. 2, eff. Sept. 1, 2001.

Amended by:

Acts 2005, 79th Leg., Ch. 916, Sec. 8, eff. June 18, 2005.

APPENDIX C

DRAFT

FOR DISCUSSION ONLY

UNIFORM COLLABORATIVE LAW ACT

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

January 2009 Draft

WITHOUT PREFATORY NOTE OR COMMENTS

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By

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

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

January 5, 2009

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UNIFORM COLLABORATIVE LAW ACT

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UNIFORM COLLABORATIVE LAW ACT

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

SECTION 2. DEFINITIONS. In this [act]:

(1) A “collaborative law process” means parties represented by collaborative lawyers voluntarily enter into a collaborative law participation agreement to attempt to resolve a matter without the intervention of a tribunal.

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

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

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

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

(4) “Collaborative lawyer” means a lawyer identified in a collaborative law participation agreement as engaged to represent a party in a collaborative law process and who is disqualified from representing a party in the matter and substantially related matters under section 8 if the collaborative law process terminates.

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

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

(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 enters into a collaborative law participation agreement and whose consent is necessary to resolve the matter.

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

(10) “Proceeding” means a judicial, administrative, arbitral, legislative or other adjudicative

process before a tribunal, including related pre-hearing and post-hearing motions, conferences, and discovery.

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

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

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

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

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

(14) “Substantially related” means involving the same transaction or occurrence, nucleus of operative fact, claim, issue, or dispute as a matter.

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

SECTION 3. COLLABORATIVE LAW PARTICIPATION AGREEMENT REQUIREMENTS.

(a) A collaborative law participation agreement must:

(1) be in a record;

(2) be signed by the parties;

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

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

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

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

(b) Parties to a collaborative law participation agreement:

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

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

SECTION 4. BEGINNING AND TERMINATING A COLLABORATIVE LAW PROCESS.

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

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

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

(1) a party:

(A) terminates the process;

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

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

(2) except as qualified by subsection (d), a party discharges a collaborative lawyer or a collaborative lawyers withdraws from further representation of a party.

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

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

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

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

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

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

(f) All parties may agree that a party may initiate an appropriate procedure such as commencing a proceeding or filing a motion in a pending proceeding to ask a tribunal to approve an agreement or sign orders to effectuate an agreement that results from the process without terminating the collaborative law process.

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

SECTION 5. COLLABORATIVE LAW PROCESS AND PROCEEDINGS PENDING BEFORE A TRIBUNAL.

(a) Parties to a proceeding pending before a tribunal may sign a collaborative law participation agreement to resolve a matter substantially related to the proceeding.

(1) Parties and their collaborative lawyers must promptly file a notice of collaborative law process with the tribunal after the collaborative law participation agreement is signed.

(2) The filing of a notice of collaborative law process shall operate as a stay of the proceeding.

(b) Parties and collaborative lawyers shall promptly file a written notice of termination with the tribunal when a collaborative law process terminates.

(1) The stay of the proceeding created by subsection (a) (2) terminates when the notice of termination of a collaborative law process is filed with the tribunal.

(2) The notice of termination shall not specify any reason for the termination.

(c) Notwithstanding the filing of a notice of collaborative law process, a tribunal may require parties and collaborative lawyers to provide status reports on the proceeding.

(1) Except as required in subsection (2), a status report to a tribunal may not include a report, assessment, evaluation, recommendation, finding, or other communication regarding a collaborative law process.

(2) A status report to a tribunal may require parties and collaborative lawyers to disclose:

(A) whether the collaborative law process occurred or has terminated, whether an agreement was reached, and attendance;

(B) a collaborative law communication as permitted under Section 16 (exceptions to privilege); or

(C) a collaborative law communication evidencing abuse, neglect, abandonment, or exploitation of an individual to a public agency responsible for protecting individuals against such mistreatment.

(3) A communication made in violation of subsection (c)(1) may not be considered by a tribunal.

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

SECTION 6. COLLABORATIVE LAW PROCESS AND EMERGENCY ORDERS.

Notwithstanding the stay of proceedings created by section 5(a) (2), a tribunal may issue emergency orders to protect the health, safety, welfare or interests of a party or family or household member as defined in [the state civil protection order statute].

SECTION 7. COLLABORATIVE LAW PROCESS AND TRIBUNAL APPROVAL OF AGREEMENTS. If requested by all parties through appropriate procedure, a tribunal may approve an agreement and sign orders to effectuate an agreement resulting from a collaborative law process.

Legislative Note: In states where judicial procedures for management of proceedings can be prescribed only by court rule or administrative guideline and not by legislative act, the duties of courts and other tribunals listed in sections 5-7 should be adopted by the appropriate measure.

SECTION 8. DISQUALIFICATION OF COLLABORATIVE LAWYER AND LAWYERS IN COLLABORATIVE LAWYER'S LAW FIRM AFTER TERMINATION OF COLLABORATIVE LAW PROCESS.

(a) Except as otherwise provided in subsection (c), if a collaborative law process terminates, a collaborative lawyer is disqualified from representing a party in the matter or any substantially related matter and may not appear before a tribunal to represent a party in a proceeding substantially related to the matter.

(b) A lawyer in a law firm with which the collaborative lawyer is associated shall not knowingly represent a party in the matter or a substantially related matter and may not appear before a tribunal to represent a party in a proceeding substantially related to the matter if the collaborative lawyer is disqualified from doing so by subsection (a).

(c) Notwithstanding subsections (a) and (b), a collaborative lawyer or a lawyer in the collaborative lawyer's law firm may represent a party and appear before a tribunal for the purpose of:

(1) if agreed to by all parties, using appropriate procedure such as commencing a proceeding or filing a motion in a pending proceeding to ask a tribunal to approve an agreement or sign orders to effectuate an agreement resulting from a collaborative law process; or

(2) seeking emergency orders to protect the health, safety, welfare or interests of a party or family or household member as defined in [the state civil protection order statute] if successor counsel is not immediately available to represent the threatened party. In that event, the provisions of subsections (a) and (b) take effect when the party engages a successor lawyer or reasonable measures are taken to adequately protect the health, safety, welfare or interests of a party or family or household member.

SECTION 9. COLLABORATIVE LAW PROCESS AND LOW INCOME PARTIES.

(a) This section is applicable to a collaborative law participation agreement where a party has an annual income which does not exceed one hundred and twenty five percent (125%) of the current Federal Poverty Guidelines amounts and the collaborative lawyer represents the party without fee.

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

(b) The disqualification requirements of subsection 8 (a) are applicable to the collaborative lawyer for a party described in subsection (a).

(c) Notwithstanding subsection 8 (b), after a collaborative law process terminates a lawyer in a law firm with which the collaborative lawyer is associated may represent a party described in subsection (a) in the matter or a substantially related matter and may appear before a tribunal to represent a party in a proceeding substantially related to a matter if:

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

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

SECTION 10. COLLABORATIVE LAW PROCESS AND GOVERNMENT ENTITIES AS PARTIES.

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

(b) The disqualification requirement of subsection 8 (a) is applicable to the collaborative lawyer for a party described in subsection (a).

(c) Notwithstanding subsection 8 (b), after a collaborative law process terminates, a lawyer in a law firm with which the collaborative lawyer is associated may represent a party described in subsection (a) in the matter or a substantially related matter and may appear before a tribunal to represent a party in a proceeding substantially related to a matter if:

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

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

SECTION 11. DISCLOSURE OF INFORMATION IN THE COLLABORATIVE LAW

PROCESS. During a collaborative law process a party shall make timely, full, candid, and informal disclosure of information reasonably related to the matter upon request of a party, but without formal discovery, and shall promptly update information which has materially changed.

SECTION 12. REQUIRED DISCLOSURES CONCERNING COLLABORATIVE LAW PROCESS.

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

(1) provide the prospective party with sufficient information 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 matter such as litigation, mediation, arbitration, or expert evaluation;

(2) advise the prospective party that:

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

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

(C) if a collaborative law process terminates, a collaborative lawyer and the lawyers in a collaborative lawyer's law firm are disqualified from further representation of a party in the matter or substantially related matters and may not appear before a tribunal to represent a party in a proceeding substantially related to the matter as described in section 8, and

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

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

(b) A collaborative lawyer shall make reasonable efforts to determine whether a prospective party has a history of domestic violence with another prospective party before a prospective party signs a collaborative law participation agreement and shall continue throughout the collaborative law process to assess for the presence of domestic violence.

(c) If a collaborative lawyer reasonably believes that a prospective party or party has a history of

domestic violence with another party or prospective party, the collaborative lawyer shall not begin or continue a collaborative law process unless:

- (1) the prospective party or party requests beginning or continuing a collaborative law process;
- (2) the lawyer reasonably believes that the prospective party or party's safety can be adequately protected during a collaborative law process; and
- (3) the lawyer is familiar with the American Bar Association's Standards of Practice for Representing Victims of Domestic Violence, Sexual Assault and Stalking in Civil Protection Order Cases; for Lawyers Who Represent Children in Abuse and Neglect Cases and for Lawyers Who Represent Parents in Abuse and Neglect Cases.

SECTION 13. 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 or rule of this state other than this [act].

SECTION 14. PRIVILEGE AGAINST DISCLOSURE FOR COLLABORATIVE LAW COMMUNICATIONS; ADMISSIBILITY; DISCOVERY.

(a) Except as otherwise provided in section 16, a collaborative law communication is privileged as provided in subsection (b) and is not subject to discovery or admissible in evidence in a proceeding unless the privilege is waived or precluded as provided by section 15.

(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 by reason of its disclosure or use in a collaborative law process.

SECTION 15. WAIVER AND PRECLUSION OF PRIVILEGE.

(a) A privilege under section 14 may be waived in a record or orally during a proceeding if it is expressly waived by all parties and, in the case of the privilege of a nonparty participant, it is also expressly waived by the nonparty participant.

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

that prejudices another person in a proceeding is precluded from asserting a privilege under section 14, but only to the extent necessary for the person prejudiced to respond to the representation or disclosure.

(c) A person that intentionally uses a collaborative law process to commit, or attempt to commit, or to plan a crime, or to conceal an ongoing crime or ongoing criminal activity is precluded from asserting a privilege under section 14.

SECTION 16. EXCEPTIONS TO PRIVILEGE.

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

- (1) in an agreement evidenced by a record signed by all parties;
- (2) available to the public under [insert statutory reference to open records act] or made during a session of a collaborative law process which is open, or is required by law to be open, to the public;
- (3) a threat or statement of a plan to inflict bodily injury or commit a crime of violence;
- (4) intentionally used to plan a crime, attempt to commit or commit a crime, or conceal an ongoing crime or ongoing criminal activity;
- (5) 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
- (6) sought or offered to prove or disprove abuse, neglect, abandonment, or exploitation of a child unless the [State to insert, for example, child or adult protective services agency] is a party to or otherwise participates in a collaborative law process.

(b) There is no privilege under section 14 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 to prove a claim to rescind or reform or a defense to avoid liability on a contract arising out of the collaborative law process.

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

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

(e) 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, the privileges

under section 14 do not apply to the collaborative law process or the part thereof to which the agreement to waive the privilege applies. However, section 14 applies to a collaborative law communication made by a person that has not received actual notice of the agreement before the communication is made.

SECTION 17. COLLABORATIVE LAW PARTICIPATION AGREEMENTS NOT MEETING REQUIREMENTS. Notwithstanding the failure of a collaborative law participation agreement to meet the requirements of section 3 other than section 3(a)(1) and (a)(4), or a lawyer's failure to comply with the disclosure requirements of section 12, if a tribunal finds that the parties intended to enter into a collaborative law participation agreement, that they reasonably believed they were participating in a collaborative law process, and that the interests of justice require, the tribunal may:

- (1) enforce an agreement resulting from the process in which the parties participated;
- (2) apply the disqualification provisions of sections 8, 9 or 10; or
- (3) apply the evidentiary privilege of section 14.

SECTION 18. STANDARDS OF PROFESSIONAL RESPONSIBILITY AND MANDATORY REPORTING AND COLLABORATIVE LAW PROCESS.

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

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

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

SECTION 19. UNIFORMITY OF APPLICATION AND CONSTRUCTION. In applying and construing this Uniform Act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

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

SECTION 21. SEVERABILITY CLAUSE. If any provision of this [act] or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this [act] which can be given effect without the invalid provision or application, and to this end the provisions of this [act] are severable.

SECTION 22. APPLICATION TO EXISTING AGREEMENTS. This [act] governs a collaborative law participation agreement signed after [the effective date of this [act]].

SECTION 23. EFFECTIVE DATE. This [act] takes effect.....

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

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