



THE UNIFORM COLLABORATIVE LAW RULES/ACT

- A Summary -

INTRODUCTION

The Uniform Collaborative Law Rules/Act (UCLR/A), originally promulgated by the Uniform Law Commission in 2009 and subsequently amended in 2010, standardizes the most important features of collaborative law practice, remaining mindful of ethical considerations and questions of evidentiary privilege.

COLLABORATIVE LAW PROCESS OVERVIEW

As the use of collaborative law grew, it became increasingly governed by a patchwork of statutes, court rules, formal, and informal standards. The UCLR/A represents a necessary comprehensive statutory framework which guarantees the benefits of the collaborative process and further enhances its use. Additionally, because collaborative law is a form of limited scope representation (where an attorney is retained solely for the purpose of reaching a settlement, and expressly not for the purpose of litigation) clear rules about the mechanics of the practice help both attorneys and clients. The Rules/Act provides clarity, allowing parties and counsel to consistently rely on a statutorily-enacted privilege governing communications during a collaborative law process. It further provides attorneys guidance in determining whether collaborative law is appropriate for a particular dispute or client. As a uniform state law, the UCLR/A will help establish uniformity in core procedures and consumer protections, while minimizing the spread of the patchwork of varying approaches and definitions. As an increasing number of states adopt the uniform approach, costs associated with interstate dispute resolution will be reduced, and both practitioners and clients will benefit from the practical experience of sister jurisdictions.

The collaborative law process provides lawyers and clients with an important, useful, and cost-effective option for amicable, non-adversarial dispute resolution. Like mediation, it promotes problem-solving and permits solutions not possible in litigation or arbitration. Collaborative law is a *voluntary* process in which clients and their lawyers agree that the lawyers will represent the clients solely for purposes of settlement, and that the clients will hire new counsel if the case does not settle. The parties and their lawyers work together to find an equitable resolution of the dispute at hand, retaining experts as necessary. No one is required to participate, and parties are free to terminate the process at any time. To this end, the UCLR/A includes explicit informed-consent requirements for parties to enter into collaborative law with an understanding of the costs and benefits of participation. The process is intended to promote full and open disclosure; information that is disclosed in a collaborative process, which is not otherwise discoverable, is privileged against use in any subsequent litigation.

2010 AMENDMENTS

The 2010 Amendments to the UCLR/A made several important changes. First, the amendments create an explicit mechanism for the operative provisions of the act to be adopted by rule, rather than statute, and new commentary provides guidance as to the method of implementation. Also, the amendments provide states with the option to limit the application of the act to family law matters. Finally, the amendments provide that courts have the discretion to approve stays of ongoing proceedings and calendaring deadlines when parties voluntarily enter into a collaborative law process. By standardizing the collaborative process, the UCLR/A secures the benefits of collaborative law for the parties while ensuring ethical safeguards for the process.

ENDORSEMENTS AND DRAFTING PROCESS

Like all of the Uniform Law Commission's uniform state laws, the UCLR/A is the result of more than three years of intensive effort. Representatives from state bars, collaborative attorney groups, litigators, domestic violence coalitions, and state courts all participated in the drafting of the UCLR/A, as did representatives from the family law, dispute resolution, and litigation sections of the American Bar Association (ABA).

The ABA Standing Committee on Ethics and Professional Responsibility and at least eight state bar ethics committees (Kentucky, Maryland, Minnesota, Missouri, New Jersey, North Carolina, Pennsylvania, and Washington) have expressly approved the use of collaborative law.

Since its promulgation, the UCLR/A has enjoyed broad support, including the ABA Section of Dispute Resolution, Section of Family Law, and Section of Individual Rights & Responsibilities, the Ohio Bar Association, South Carolina Bar Association, Tennessee Bar Association Board of Governors, Vermont Bar Association Board of Managers, and the Association of the Bar of the City of New York. In addition, in 2011, the UCLA was designated as "Suggested State Legislation" by the Council of State Governments.

SECTION-BY-SECTION SUMMARY

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

Rule/Section 2 sets forth definitions of terms used in the Rules/Act. *[Amended in 2010 to allow states to limit the application of the Rules/Act to family law disputes.]*

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

Rule/Section 4 establishes minimum requirements for a collaborative law participation agreement—the agreement that parties sign to initiate the collaborative law process. The agreement must be in writing, state the parties' intention to resolve the matter (the issue for resolution) through collaborative law, contain a description of the matter, and identify and

confirm the engagement of the collaborative lawyers. The Rule/Section further provides that the parties may include other provisions not inconsistent with the Rules/Act.

Rule/Section 5 specifies when and how the collaborative law process begins, and how the process is concluded or terminated. The process begins when parties sign a participation agreement, and any party may unilaterally terminate the process at any time without specifying a reason. The process is concluded by a negotiated, signed agreement resolving the matter, or a portion of the matter, and the parties' agreement that the remaining portions of the matter will not be resolved in the process.

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

Rule/Section 6 provides for an automatic application for a stay of proceedings before a tribunal (court, arbitrator, legislative body, administrative agency, or other body acting in an adjudicative capacity) once the parties file a notice of collaborative law with the tribunal. A tribunal may require status reports while the proceeding is stayed; however, the scope of the information that can be requested is limited to insure confidentiality of the collaborative law process. *[Amended in 2010.]*

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

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

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

Rule/Section 10 creates an exception to the disqualification for lawyers representing low income parties in a legal aid office, law school clinic, or a law firm providing free legal services to low income parties. If the process terminates without settlement, a lawyer in the organization or law firm with which the collaborative lawyer is associated may represent the low income party in an

adjudicatory proceeding involving the matter in the collaborative law process, provided that the participation agreement so provides, the representation is without fee, and the individual collaborative lawyer is appropriately isolated from any participation in the collaborative matter before a tribunal.

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

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

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

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

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

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

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

Rule/Sections 18 and 19 provide for the possibility of waiver of privilege by all parties, and certain exceptions to the privilege based on important countervailing public policies such as preventing threats to commit bodily harm or a crime, abuse or neglect of a child or adult, or information available under an open records act, or to prove or disprove professional misconduct

or malpractice. Parties may agree that all or part of the process is not privileged.

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

Section 21 emphasizes the need to promote uniformity in applying and construing the Act among states that adopt it. *[No equivalent Rule provision.]*

Section 22 provides that the Act may modify, limit, or supersede certain provisions the Federal Electronic Signatures in Global and National Commerce Act. *[No equivalent Rule provision.]*

Section 23 is a severability clause. *[No equivalent Rule provision.]*

Rule/Section 24 establishes an effective date for the Rules/Act.