

1 Comment.” Under the designation “North Carolina Comment” are the comments of the General
2 Statutes Commission, which adapted the Uniform Act for enactment in North Carolina.

3 Some Official Comments refer to the Uniform Act’s Prefatory Note, which is available on
4 the Uniform Law Commission’s website. Some Official Comments reflect that the Uniform Law
5 Commission’s Drafting Committee recommends enactment of certain sections by court rule rather
6 than legislation. As previously noted, Article 53 reflects the enactment of the Uniform Act in its
7 entirety by legislation.

8 The North Carolina Comments are designed to note substantive variations from the text of
9 the Uniform Act. Non-substantive variations, such as those to conform to this State’s numbering
10 system and its stylistic drafting conventions, are not separately noted, since no change from the
11 Uniform Act’s meaning is intended. By way of example, the designators “a.” and “b.” and “1.”
12 and “2.” were substituted for the Uniform Act’s designators “(A)” and “(B)” and “(i)” and “(ii)”
13 throughout the Article to conform to the numbering system used in the General Statutes. Other
14 style changes include reformatting sections with lists and altering introductory and other language
15 to account for the reformatting, capitalizing “state” when referring to North Carolina, adding “of
16 this section” after subsection and subdivision references, using the entire defined term throughout
17 the Article rather than a short form of the defined term, and using “shall not” rather than “may
18 not.”

19 **"§ 1-642. Definitions.**

20 ~~In this [act]:~~The following definitions apply in this Article:

- 21 (1) ~~“Collaborative law communication” means a~~Collaborative law
22 communication. – A statement, whether oral or in a record, or verbal or
23 nonverbal, ~~that:~~that does all of the following:

1 (A)a. ~~is~~Is made to conduct, participate in, continue, or reconvene a
2 collaborative law ~~process;~~ and process.

3 (B)b. ~~occurs~~Occurs after the parties sign a collaborative law participation
4 agreement and before the collaborative law process is concluded.

5 (2) ~~“Collaborative law participation agreement” means an~~Collaborative law
6 participation agreement. – An agreement by persons to participate in a
7 collaborative law ~~process.~~ process **under this Article.**

8 (3) ~~“Collaborative law process” means a~~Collaborative law process. – A
9 procedure intended to resolve a collaborative matter without intervention
10 by a tribunal in which ~~persons;~~ persons do all of the following:

11 (A)a. ~~sign~~Sign a collaborative law participation ~~agreement;~~
12 and agreement.

13 (B)b. ~~are~~Are represented by collaborative lawyers.

14 (4) ~~“Collaborative lawyer” means a~~Collaborative lawyer. – A lawyer who
15 represents a party in a collaborative law process.

16 (5) ~~“Collaborative matter” means a~~Collaborative matter. – A dispute,
17 transaction, claim, problem, or issue for resolution, including a dispute,
18 claim, or issue in a proceeding, which

19 **Alternative A**

20 ~~is described in a collaborative law participation agreement and arises~~
21 ~~under the family or domestic relations law of this state, including:~~

22 (A) ~~— marriage, divorce, dissolution, annulment, and property~~
23 distribution;

1 ~~(B) — child custody, visitation, and parenting time;~~

2 ~~(C) — alimony, maintenance, and child support;~~

3 ~~(D) — adoption;~~

4 ~~(E) — parentage; and~~

5 ~~(F) — premarital, marital, and post-marital agreements.~~

6 **Alternative B**

7 is described in a collaborative law participation agreement.

8 **End of Alternatives**

9 (6) ~~“Law firm” means:~~Law firm. – Any of the following:

10 ~~(A)a. lawyers~~Lawyers who practice law together in a partnership,
11 professional corporation, sole proprietorship, limited liability
12 company, or ~~association;~~ and association.

13 ~~(B)b. lawyers~~Lawyers employed in a legal services organization, or the
14 legal department of a corporation or other organization, or the legal
15 department of a government or governmental subdivision, agency,
16 or instrumentality.

17 (7) ~~“Nonparty participant” means a~~Nonparty participant. – A person, other than
18 a party and the party’s collaborative lawyer, that participates in a
19 collaborative law process.

20 (8) ~~“Party” means a~~Party. – A person that signs a collaborative law
21 participation agreement and whose consent is necessary to resolve a
22 collaborative matter.

- 1 (9) ~~“Person” means an~~Person. – An individual, corporation, business trust,
2 estate, trust, partnership, limited liability company, association, joint
3 venture, public corporation, government or governmental subdivision,
4 agency, or instrumentality, or any other legal or commercial entity.
- 5 (10) ~~“Proceeding” means:~~Proceeding. – Any of the following:
6 (A)a. aA judicial, administrative, arbitral, or other adjudicative process
7 before a tribunal, including related prehearing and post-hearing
8 motions, conferences, and ~~discovery;~~ or discovery.
- 9 (B)b. aA legislative hearing or similar process.
- 10 (11) ~~“Prospective party” means a~~Prospective party. – A person that discusses
11 with a prospective collaborative lawyer the possibility of signing a
12 collaborative law participation agreement.
- 13 (12) ~~“Record” means information~~Record. – Information that is inscribed on a
14 tangible medium or that is stored in an electronic or other medium and is
15 retrievable in perceivable form.
- 16 (13) ~~“Related to a collaborative matter” means involving~~Related to the
17 collaborative matter. – Involving the same parties, transaction or
18 occurrence, nucleus of operative fact, dispute, claim, or issue as the
19 collaborative matter.
- 20 (14) ~~“Sign” means, with~~Sign. – With present intent to authenticate or adopt a
21 ~~record;~~ record to do any of the following:
22 (A)a. ~~to execute~~Execute or adopt a tangible ~~symbol;~~ or symbol.

1 ~~(B)~~b. ~~to attach~~Attach to or logically associate with the record an electronic
2 symbol, sound, or process.

3 (15) ~~“Tribunal” means:~~Tribunal. – Any of the following:

4 ~~(A)~~a. ~~a~~A court, arbitrator, administrative agency, or other body acting in
5 an adjudicative capacity which, after presentation of evidence or
6 legal argument, has jurisdiction to render a decision affecting a
7 party’s interests in a ~~matter~~, ~~or~~matter.

8 ~~(B)~~b. ~~a~~A legislative body conducting a hearing or similar process.

9 *[Staff Note to GSC: The Official Comment to comparable Section 2 of the Uniform Act will appear*
10 *here. The Official Comment includes the following specific comments referring to the Uniform*
11 *Act’s Prefatory Note: “As discussed in the Preface, a party must be represented by a lawyer to*
12 *participate in a collaborative law process; it is not an option for the self-represented.” and “The*
13 *rationale and application of the definition of “related to a collaborative matter” is discussed in*
14 *detail in the Prefatory Note. See supra.”]*

15 **PROPOSED NORTH CAROLINA COMMENT**

16 In subdivision (2), “under this Article” was inserted for specificity.

17 Subdivision (5) reflects the Uniform Act’s Alternative B definition of “collaborative
18 matter” which places no substantive limitation on the scope of matters that can be submitted to a
19 collaborative law process under the Article. [The Uniform Act’s Alternative A definition of
20 “collaborative matter” limits the scope of matters to those which arise under the family or domestic
21 relations law of a state.]

1 In subdivision (13), “parties” was deleted from the Uniform Act’s definition of “related to
2 a collaborative matter” to exclude an unrelated matter involving the same parties from the
3 definition.

4 **"§ 1-643. ~~Applicability.~~ Applicability; restrictions.**

5 (a) ~~This {act}~~ Except as provided in subsection (b) of this section, this Article applies
6 to a collaborative law participation agreement that meets the requirements of ~~Section 4~~ G.S. 1-644
7 signed ~~{on or}~~ after ~~{the effective date of this {act}}~~.

8 (b) This Article does not apply to any claim or proceeding arising under Chapters 35A,
9 35B, or 50 of the General Statutes.

10 (c) Minors, unborn individuals, and individuals who are incompetent shall not be
11 parties to a collaborative law process.

12 *[Staff Note to GSC: The Official Comment to comparable Section 3 of the Uniform Act will appear*
13 *here.]*

14 **PROPOSED NORTH CAROLINA COMMENT**

15 The section’s catchline was modified by adding “restrictions.” In subsection (a), “Except
16 as provided in subsection (b) of this section” was added. Subsections (b) and (c) were added.

17 **"§ 1-644. Collaborative law participation agreement; requirements.**

18 (a) A collaborative law participation agreement ~~must~~ must meet all of the following
19 requirements:

20 (1) ~~be~~ Be in a ~~record~~ record.

21 (2) ~~be~~ Be signed by the ~~parties~~ parties and their collaborative lawyers.

22 (3) ~~state~~ State the parties’ intention to resolve a collaborative matter through a
23 collaborative law process under this ~~{act}~~ Article.

- 1 (4) ~~describe~~Describe the nature and scope of the ~~matter~~collaborative matter.
- 2 (5) ~~identify~~Identify the collaborative lawyer who represents each party in the
- 3 ~~process~~and collaborative law process.
- 4 (6) ~~contain~~Contain a statement by each collaborative lawyer confirming the
- 5 collaborative lawyer’s representation of a party in the collaborative law
- 6 process.
- 7 (7) State that the collaborative lawyers are disqualified from representing their
- 8 respective parties in a proceeding before a tribunal related to the
- 9 collaborative matter, except as provided in G.S. 1-647, 1-649(c), 1-650, or
- 10 1-651.
- 11 (8) Provide an address for each party where any notice required under this
- 12 Article may be sent.

13 (b) Parties may agree to include in a collaborative law participation agreement

14 additional provisions not inconsistent with this ~~fact~~Article.

15 *[Staff Note to GSC: The Official Comment to comparable Section 4 of the Uniform Act will appear*

16 *here. The Official Comment includes the following specific comment: “The confirmation of*

17 *representation required by this section does not make the collaborative lawyer to be a “party”*

18 *[sic] to the participation agreement, a status which, as discussed in the Preface, would raise*

19 *professional responsibility concerns. See Preface, supra.”]*

20 **PROPOSED NORTH CAROLINA COMMENT**

21 In subdivision (a)(2), “and their collaborative lawyers” was added. Subdivisions (a)(7)

22 and (8) were added.

1 "§ 1-645. Beginning and concluding collaborative law ~~process~~process; tolling of time
2 periods.

3 (a) Participation in a collaborative law process is voluntary. A collaborative law
4 process begins when the parties sign a collaborative law participation agreement.

5 (b) A tribunal ~~may~~shall not order a ~~party~~person to participate in a collaborative law
6 process over that ~~party's~~person's objection.

7 (c) A collaborative law process is concluded by ~~a~~any of the following:

8 (1) ~~resolution~~Resolution of a collaborative matter as evidenced by a signed
9 ~~record~~record.

10 (2) ~~resolution~~Resolution of a part of the collaborative matter, evidenced by a
11 signed record, in which the parties agree that the remaining parts of the
12 collaborative matter will not be resolved in the ~~process~~or collaborative law
13 process.

14 (3) ~~termination~~Termination of the process.

15 (d) A collaborative law process ~~terminates~~terminates upon the occurrence of any of
16 the following:

17 (1) ~~when~~When a party or collaborative lawyer gives notice to all other parties
18 in a record that the collaborative law process is ended~~ended~~.

19 (2) ~~when~~When a ~~party~~party does any of the following:

20 (A)a. ~~begins~~Begins a proceeding related to the collaborative matter
21 without the agreement of all ~~parties~~or parties, except as provided in

22 G.S. 1-647.

1 ~~(B)~~b. ~~in~~In a pending proceeding related to the ~~matter~~:collaborative matter,
2 does any of the following:

3 ~~(i)~~1. ~~initiates~~Without the agreement of all parties, initiates a
4 pleading, motion, order to show cause, or request for a
5 conference with the ~~tribunal~~:tribunal, except as provided in
6 G.S. 1-647.

7 ~~(ii)~~2. ~~requests~~Requests that the proceeding be put on the
8 [~~tribunal's active calendar~~]; ~~or~~tribunal's active calendar.

9 ~~(iii)~~—takes similar action requiring notice to be sent to the parties;

10 ~~or~~

11 (3) ~~except~~Except as otherwise provided ~~by~~in subsection ~~(g)~~:(g) of this section,
12 when a party discharges a collaborative lawyer or a collaborative lawyer
13 withdraws from further representation of a party.

14 (e) A party's collaborative lawyer shall give prompt notice to all other parties in a
15 record of a discharge or withdrawal.

16 (f) A party may terminate a collaborative law process with or without cause.

17 (g) Notwithstanding the discharge or withdrawal of a collaborative lawyer, a
18 collaborative law process continues, if not later than 30 days after the date that the notice of the
19 discharge or withdrawal of a collaborative lawyer required by subsection (e) of this section is sent
20 to the ~~parties~~:parties, all of the following occur:

21 (1) ~~the~~The unrepresented party engages a successor collaborative ~~lawyer;~~
22 ~~and~~lawyer.

23 (2) ~~in~~In a signed ~~record~~:record, all of the following occur:

1 ~~(A)~~a. ~~the~~The parties consent to continue the collaborative law process by
2 reaffirming the collaborative law participation
3 ~~agreement;~~agreement.

4 ~~(B)~~b. ~~the~~The collaborative law participation agreement is amended to
5 identify the successor collaborative ~~lawyer;~~ and lawyer.

6 ~~(C)~~c. ~~the~~The successor collaborative lawyer confirms the lawyer's
7 representation of a party in the collaborative law process.
8 and adherence to the collaborative law participation agreement.

9 (h) A collaborative law process does not conclude if, with the consent of the parties, a
10 party requests a tribunal to approve a resolution of the collaborative matter or any part thereof as
11 evidenced by a signed record.

12 (i) A collaborative law participation agreement may provide additional methods of
13 concluding a collaborative law process.

14 (j) A collaborative law participation agreement tolls all legal time periods applicable
15 to legal rights and issues under law between the parties from the time the parties sign a
16 collaborative law participation agreement until terminated as set forth in this subsection. This
17 subsection applies to any applicable statutes of limitations, statutes of repose, filing deadlines, or
18 other time limitations imposed by law, court rule, or court order. The tolling period continues until
19 terminated by any party delivering notice to all other parties of an intent to terminate the tolling
20 period. The notice shall be delivered by hand delivery or by certified mail, return receipt requested,
21 to all other parties, and the tolling period terminates 30 days after receipt by the last party to receive
22 the notice.

1 *[Staff Note to GSC: The Official Comment to comparable Section 5 of the Uniform Act will appear*
2 *here.]*

3 **PROPOSED NORTH CAROLINA COMMENT**

4 The section’s catchline was modified by adding “tolling of time periods.” Subsection (a)
5 was modified to emphasize the voluntary nature of collaborative law by adding the sentence:
6 “Participation in a collaborative law process is voluntary.”

7 In subsection (b), “party” was changed to “person” and “party’s” was changed to
8 “person’s” as being the more appropriate terms to use in the subsection.

9 In subdivision (d)(1), “or collaborative lawyer” and “all” were added to provide that a
10 collaborative law process terminates “when a party or collaborative lawyer gives notice to all other
11 parties in a record that the collaborative law process is ended.”

12 In sub-subdivision (d)(2)a., “a collaborative matter” was changed to “the collaborative
13 matter” and “except as provided in G.S. 1-647” was added.

14 In sub-sub-subdivision (d)(2)b.1., “Without the agreement of all parties” and “except as
15 provided in G.S. 1-647” were added. The Uniform Act’s Section 5(d)(2)(B)(iii), that is, “(iii) takes
16 similar action requiring notice to be sent to the parties” was omitted [as being unnecessary
17 considering sub-sub-subdivisions (d)(2)b.1. and (d)(2)b.2. and to eliminate any possible
18 ambiguity].

19 In sub-subdivision (g)(2)c., “and adherence to the collaborative law participation
20 agreement” was added for clarity.

21 Subsection (j) was added and, except for the provisions regarding termination of the tolling
22 of time periods, is based on G.S. 50-73, the comparable provision in Article 4 (Collaborative Law
23 Proceedings) of Chapter 50 of the General Statutes regarding family law disputes.

1 **"§ 1-646. Proceedings pending before tribunal; status report.**

2 (a) Persons in a proceeding pending before a tribunal may sign a collaborative law
3 participation agreement to seek to resolve a collaborative matter related to the proceeding. The
4 parties shall file promptly with the tribunal a notice of the collaborative law participation
5 agreement after it is signed. Subject to subsection (c) of this section and ~~Sections 7 and 8, G.S. 1-~~
6 ~~647 and G.S. 1-648,~~ the filing operates as an application for a stay of the proceeding-a stay of the
7 proceeding as to the parties in the collaborative law process as long as the parties are in that
8 process.

9 (b) The parties shall file promptly with the tribunal notice in a record when a
10 collaborative law process concludes. The stay of the proceeding under subsection (a) of this
11 section is lifted when the notice is filed. The notice ~~may~~shall not specify any reason for termination
12 of the collaborative law process.

13 (c) A tribunal in which a proceeding is stayed under subsection (a) of this section may
14 require the parties and collaborative lawyers to provide a status report on the collaborative law
15 process and the proceeding. A status report may include only information on whether the
16 collaborative law process is ongoing or concluded. It ~~may~~shall not include a report, assessment,
17 evaluation, recommendation, finding, or other communication regarding a collaborative law
18 process or collaborative ~~law~~ matter.

19 (d) A tribunal ~~may~~shall not consider a communication made in violation of subsection
20 ~~(e)-(c)~~(c) of this section.

21 (e) A tribunal shall provide parties notice and an opportunity to be heard before
22 dismissing a proceeding in which a notice of collaborative law process is filed based on delay or
23 failure to prosecute.

1 *[Staff Note to GSC: The Official Comment to comparable Section 6 of the Uniform Act will appear*
2 *here. The Official Comment includes the following sentences: “The Drafting Committee*
3 *recommends that Section 6 be enacted by judicial rule rather than legislation.” and “This section*
4 *authorizes parties to enter into a collaborative law participation agreement to attempt to resolve*
5 *matters in pending proceedings, a subject discussed in the Prefatory Note. See supra.”]*

6 **PROPOSED NORTH CAROLINA COMMENT**

7 In subsection (a), “an application for a stay of the proceeding” was changed to “a stay of
8 the proceeding as to the parties in the collaborative law process as long as the parties are in that
9 process.”

10 **"§ 1-647. Emergency order.**

11 During a collaborative law process, a party may begin a proceeding and a tribunal may
12 issue emergency orders upon motion of a party in that or an already pending proceeding to protect
13 the health, safety, welfare, or interest of a party or insert term for family or household member as
14 defined in [state civil protection order statute]-otherwise preserve the status quo.

15 *[Staff Note to GSC: The Official Comment to comparable Section 7 of the Uniform Act will appear*
16 *here. The Official Comment includes the following sentence: “The Drafting Committee*
17 *recommends that Section 7 be enacted by judicial rule rather than legislation.”]*

18 **PROPOSED NORTH CAROLINA COMMENT**

19 This section of the Uniform Act was modified to add “a party may begin a proceeding
20 and,” “upon motion of a party in that or an already pending proceeding,” and “otherwise preserve
21 the status quo.”

22 **"§ 1-648. Approval of agreement by tribunal.**

23 A tribunal may approve an agreement resulting from a collaborative law process.

1 *[Staff Note to GSC: The Official Comment to comparable Section 8 of the Uniform Act will appear*
2 *here. The Official Comment includes the following sentence: “The Drafting Committee*
3 *recommends that Section 8 be enacted by judicial rule rather than legislation.”]*

4 **PROPOSED NORTH CAROLINA COMMENT**

5 This section is identical to Section 8 of the Uniform Act.

6 **"§ 1-649. Disqualification of collaborative lawyer and lawyers in associated law firm.**

7 (a) Except as otherwise provided in subsection ~~(e)~~(c) of this section and G.S. 1-647, a
8 collaborative lawyer is disqualified from appearing before a tribunal to represent a party in a
9 proceeding related to the collaborative matter.

10 (b) Except as otherwise provided in subsection (c) of this section and ~~Sections 10 and~~
11 ~~11~~ G.S. 1-647, 1-650 and G.S. 1-651, a lawyer in a law firm with which the collaborative lawyer
12 is associated is disqualified from appearing before a tribunal to represent a party in a proceeding
13 related to the collaborative matter if the collaborative lawyer is disqualified from doing so under
14 subsection ~~(a)~~(a) of this section.

15 (c) A collaborative lawyer or a lawyer in a law firm with which the collaborative
16 lawyer is associated may represent a ~~party~~party to do any of the following:

17 (1) ~~to~~To ask a tribunal to approve an agreement resulting from the collaborative
18 law ~~process~~or process.

19 (2) ~~to~~To seek or defend an emergency order in either a pending or newly filed
20 proceeding to protect the health, safety, welfare, or interest of a party, or
21 ~~[insert term for family or household member as defined in [state civil~~
22 ~~protection order statute]]~~ if a successor lawyer is not immediately available
23 to represent that person. otherwise preserve the status quo.

1 (d) ~~If subsection (c)(2) applies, a collaborative lawyer, or lawyer in a law firm with~~
2 ~~which the collaborative lawyer is associated, may represent a party or [insert term for family or~~
3 ~~household member] only until the person is represented by a successor lawyer or reasonable~~
4 ~~measures are taken to protect the health, safety, welfare, or interest of the person.~~ If subdivision
5 (c)(2) of this section applies, a collaborative lawyer, or lawyer in a law firm with which the
6 collaborative lawyer is associated, may continue to represent a party:

7 (1) Until the party is represented by a successor lawyer or for no more than 30
8 days after the date any action is taken under subdivision (c)(2) of this
9 section, whichever occurs first; or

10 (2) If the parties consent to continue the collaborative law process subject to
11 any emergency order which may have been entered, in which event, any
12 proceeding as referenced in subdivision (c)(2) of this section shall be stayed
13 as provided in G.S. 1-646.

14 *[Staff Note to GSC: The Official Comment to comparable Section 9 of the Uniform Act will appear*
15 *here. The Official Comment includes the following sentences: “The Drafting Committee*
16 *recommends that Section 9 be enacted by judicial rule rather than legislation.” and “As previously*
17 *discussed in the Prefatory Note, this section extends the disqualification provision to “matters*
18 *related to the collaborative matter” in addition to the matter described in the collaborative law*
19 *participation agreement. See supra.”]*

20 PROPOSED NORTH CAROLINA COMMENT

21 In subsections (a) and (b), a cross reference to “G.S. 1-647” was added. In subdivision
22 (c)(2), “in either a pending or newly filed proceeding” and “otherwise preserve the status quo”

1 were added and “if a successor lawyer is not immediately available to represent that person” was
2 omitted. Subsection (d) of the Uniform Act was restructured and rewritten.

3 **"§ 1-650. Low income parties.**

4 (a) The disqualification of ~~Section 9(a)~~under G.S. 1-649(a) applies to a collaborative
5 lawyer representing a party with or without fee.

6 (b) After a collaborative law process concludes, another lawyer in a law firm with
7 which a collaborative lawyer disqualified under ~~Section 9(a)~~G.S. 1-649(a) is associated may
8 represent a party without fee in the collaborative matter or a matter related to the collaborative
9 matter ~~if~~if all of the following apply:

10 (1) ~~the~~The party has an annual income that qualifies the party for free legal
11 representation under the criteria established by the law firm for free legal
12 ~~representation;~~representation.

13 (2) ~~the~~The collaborative law participation agreement so ~~provides;~~and provides.

14 (3) ~~the~~The collaborative lawyer is isolated from any participation in the
15 collaborative matter or a matter related to the collaborative matter through
16 procedures within the law firm which are reasonably calculated to isolate
17 the collaborative lawyer from such participation.

18 *[Staff Note to GSC: The Official Comment to comparable Section 10 of the Uniform Act will*
19 *appear here. The Official Comment includes the following sentences: “The Drafting Committee*
20 *recommends that Section 10 be enacted by judicial rule rather than legislation.” and “As*
21 *previously discussed in the Prefatory Note, this section allows parties to modify the imputed*
22 *disqualification requirement by advance agreement for lawyers in a law firm which represents low*
23 *income clients without fee. See supra.”]*

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PROPOSED NORTH CAROLINA COMMENT

This section is substantively identical to Section 10 of the Uniform Act.

"§ 1-651. Governmental entity as party.

(a) The disqualification ~~of Section 9(a)~~under G.S. 1-649(a) applies to a collaborative lawyer representing a party that is a government or governmental subdivision, agency, or instrumentality.

(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~~if all of the following apply:

- (1) ~~the~~The collaborative law participation agreement so ~~provides; and~~provides.
- (2) ~~the~~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.

[Staff Note to GSC: The Official Comment to comparable Section 11 of the Uniform Act will appear here. The Official Comment includes the following sentences: "The Drafting Committee recommends that Section 11 be enacted by judicial rule rather than legislation." and "This section allows parties to agree in advance to modify the imputed disqualification requirement for lawyers in a law firm which represents the government or its agencies or subdivisions. The rationale for creating this exception to the imputed disqualification rule is discussed in the Prefatory Note. See supra."]

PROPOSED NORTH CAROLINA COMMENT

1 This section is substantively identical to Section 11 of the Uniform Act.

2 **"§ 1-652. Disclosure of information.**

3 (a) Except as provided ~~by subsection (b) of this section or~~ by law other than this
4 ~~fact~~,Article, during the collaborative law process, on the request of another party, a party shall
5 make timely, full, candid, and informal disclosure of all relevant information related to the
6 collaborative matter without formal discovery. A party also shall update promptly previously
7 disclosed information that has materially changed. ~~The parties may define the scope of disclosure~~
8 ~~during the collaborative law process.~~

9 (b) ~~The parties may define the scope and terms of the disclosure during the~~
10 ~~collaborative law process.~~

11 *[Staff Note to GSC: The Official Comment to comparable Section 12 of the Uniform Act will*
12 *appear here. The Official Comment includes the following sentence: "The rationale for this*
13 *section is described in the Prefatory Note. See supra."]*

14 **PROPOSED NORTH CAROLINA COMMENT**

15 This section was divided into two subsections. In subsection (a), “by subsection (b) of this
16 section” and “all relevant” were added. In subsection (b), “The parties may define the scope of
17 disclosure during the collaborative law process” was modified by adding “and terms.”

18 **“§ 1-653. Standards of professional responsibility ~~and mandatory reporting~~ not affected.**

19 This ~~fact~~Article does not ~~affect~~affect the professional responsibility obligations and
20 standards applicable to a lawyer or other licensed professional, including rules governing the
21 confidentiality of information acquired by a lawyer during the professional relationship with a
22 client.

1 ~~(1) the professional responsibility obligations and standards applicable to a~~
2 ~~lawyer or other licensed professional; or~~

3 ~~(2) the obligation of a person to report abuse or neglect, abandonment, or~~
4 ~~exploitation of a child or adult under the law of this state.~~

5 *[Staff Note to GSC: The Official Comment to comparable Section 13 of the Uniform Act will*
6 *appear here. The Official Comment includes the following sentence: “The relationship between*
7 *the act and the standards of professional responsibility for collaborative lawyers is discussed in*
8 *the Prefatory Note. See supra.”]*

9 PROPOSED NORTH CAROLINA COMMENT

10 This section was restructured to remove the Uniform Act’s provision regarding “the
11 obligation of a person to report abuse or neglect, abandonment, or exploitation of a child or adult
12 under the law of this state.” Collaborative law procedures for the resolution of family law disputes
13 are governed by Article 4 (Collaborative Law Proceedings) of Chapter 50 of the General Statutes.
14 Also, “and mandatory reporting” was omitted from the section’s catchline, and the phrase
15 “including rules governing the confidentiality of information acquired by a lawyer during the
16 professional relationship with a client” was added.

17 "**§ 1-654. ~~Appropriateness of collaborative law process.~~ Informed consent.**

18 Before a prospective party signs a collaborative law participation agreement, a prospective
19 collaborative lawyer ~~shall~~:shall do all of the following:

20 (1) ~~assess~~Assess with the prospective party factors the lawyer reasonably
21 believes relate to whether a collaborative law process is appropriate for the
22 prospective party’s ~~matter~~;matter.

- 1 (2) ~~provide~~Provide the prospective party with information that the lawyer
2 reasonably believes is sufficient for the prospective party to make an
3 informed decision about the material benefits and risks of a collaborative
4 law process as compared to the material benefits and risks of other
5 reasonably available alternatives for resolving the proposed collaborative
6 matter, such as litigation, mediation, arbitration, or expert ~~evaluation;~~
7 ~~and~~evaluation. The information provided shall include the respective rules
8 regarding privilege and confidentiality that apply to each of the alternative
9 means of resolving disputes.
- 10 (3) ~~advise~~Advise the prospective party that:
- 11 (A)~~a.~~ ~~after~~After signing ~~an agreement~~a collaborative law participation
12 agreement, agreement if a party initiates a proceeding or seeks
13 tribunal intervention in a pending proceeding related to the
14 collaborative matter, the collaborative law process
15 ~~terminates;~~terminates except as provided in G.S. 1-647.
- 16 (B)~~b.~~ ~~participation~~Participation in a collaborative law process is voluntary
17 and any party has the right to terminate unilaterally a collaborative
18 law process with or without ~~cause;~~ andcause.
- 19 (C)~~c.~~ ~~the~~The collaborative lawyer and any lawyer in a law firm with which
20 the collaborative lawyer is associated ~~may~~shall not appear before a
21 tribunal to represent a party in a proceeding related to the
22 collaborative matter, except as authorized by ~~Section 9(c), 10(b), or~~
23 ~~11(b).~~ G.S. 1-647, 1-649(c), 1-650(b), or 1-651(b).

1 *[Staff Note to GSC: The Official Comment to comparable Section 14 of the Uniform Act will*
2 *appear here. The Official Comment consists of the following sentence: “The policy behind and*
3 *the act’s requirements for a prospective collaborative lawyer’s facilitating the informed consent*
4 *of a party to participate in a collaborative law process are discussed in the Prefatory Note. See*
5 *supra.”]*

6 PROPOSED NORTH CAROLINA COMMENT

7 The section’s catchline was rewritten for more precision. In subdivision (2), “prospective”
8 was inserted immediately before “party” (second occurrence) and the following sentence was
9 added: “The information provided shall include the respective rules regarding privilege and
10 confidentiality that apply to each of the alternative means of resolving disputes.” In sub-
11 subdivision (3)a., “except as provided in G.S. 1-647” was added. In sub-subdivision (3)c., “G.S.
12 1-647” was added.

13 "§ 1-655. ~~Coercive or violent relationship. No liability for decision to participate.~~

14 ~~(a) Before a prospective party signs a collaborative law participation agreement, a~~
15 ~~prospective collaborative lawyer shall make reasonable inquiry whether the prospective party has~~
16 ~~a history of a coercive or violent relationship with another prospective party.~~

17 ~~(b) Throughout a collaborative law process, a collaborative lawyer reasonably and~~
18 ~~continuously shall assess whether the party the collaborative lawyer represents has a history of a~~
19 ~~coercive or violent relationship with another party.~~

20 ~~(c) If a collaborative lawyer reasonably believes that the party the lawyer represents or~~
21 ~~the prospective party who consults the lawyer has a history of a coercive or violent relationship~~
22 ~~with another party or prospective party, the lawyer may not begin or continue a collaborative law~~
23 ~~process unless:~~

1 (1) ~~the party or the prospective party requests beginning or continuing a~~
2 ~~process; and~~

3 (2) ~~the collaborative lawyer reasonably believes that the safety of the party or~~
4 ~~prospective party can be protected adequately during a process.~~

5 No person incurs liability, either individually or in any fiduciary, official, or other capacity,
6 with regard to the person's decision to participate or not to participate in a collaborative law
7 process.

8 *[Staff Note to GSC: There is no Official Comment to § 1-655 (No liability for decision to*
9 *participate) because this section replaces Section 15 (Coercive or violent relationship) of the*
10 *Uniform Act, which was not brought forward into this Article and which addresses a collaborative*
11 *lawyer's duty of assuring safety for victims of coercive and violent relationships who are*
12 *prospective parties or parties in a collaborative law process.]*

13 PROPOSED NORTH CAROLINA COMMENT

14 This section has no counterpart in the Uniform Act.

15 "§ 1-656. Confidentiality of collaborative law communication.

16 A collaborative law communication ~~is confidential~~ shall not be disclosed to anyone other
17 than a party, a party's collaborative lawyer, or a non-party participant except to the extent agreed
18 by the parties in a signed record or as provided by law of this State other than this Article.

19 *[Staff Note to GSC: The Official Comment to comparable Section 16 of the Uniform Act will*
20 *appear here. The Official Comment includes the following sentence: "As previously discussed in*
21 *the Prefatory Note, the Drafting Committee recommends that a statute only assure that aspect of*
22 *confidentiality relating to evidence compelled in judicial and other legal proceedings. See*
23 *supra."]*

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PROPOSED NORTH CAROLINA COMMENT

This section was modified by changing “is confidential” to “shall not be disclosed to anyone other than a party, a party’s collaborative lawyer, or a non-party participant except.”

"§ 1-657. Privilege against disclosure for collaborative law communication; admissibility; discovery.

(a) Subject to ~~Sections 18 and 19,~~G.S. 1-658 and G.S. 1-659, a collaborative law communication is privileged under subsection ~~(b),~~(b) of this section, 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.

[Staff Note to GSC: The Official Comment to comparable Section 17 of the Uniform Act will appear here.]

PROPOSED NORTH CAROLINA COMMENT

This section is substantively identical to Section 17 of the Uniform Act.

"§ 1-658. Waiver and preclusion of privilege.

1 (a) A privilege under ~~Section 17~~G.S. 1-657 may be waived in a record or orally during
2 a proceeding if it is expressly waived by all parties and, in the case of the privilege of a nonparty
3 participant, it is also expressly waived by the nonparty participant.

4 (b) A person that makes a disclosure or representation about a collaborative law
5 communication which prejudices another person in a proceeding ~~may~~shall not assert a privilege
6 under ~~Section 17~~G.S. 1-657, but this preclusion applies only to the extent necessary for the person
7 prejudiced to respond to the disclosure or representation.

8 *[Staff Note to GSC: The Official Comment to Section 18 of the Uniform Act will appear here.]*

9 **PROPOSED NORTH CAROLINA COMMENT**

10 This section is substantively identical to Section 18 of the Uniform Act.

11 **"§ 1-659. Limits of privilege.**

12 (a) There is no privilege under ~~Section 17~~G.S. 1-657 for a collaborative law
13 communication that ~~is~~is any of the following:

14 (1) ~~available~~Available to the public under ~~[state open records act]~~Chapter 132
15 of the General Statutes or made during a session of a collaborative law
16 process that is open, or is required by law to be open, to the ~~public~~public.

17 (2) ~~a~~A threat or statement of a plan to inflict bodily injury or commit a crime
18 of ~~violence~~violence.

19 (3) ~~intentionally~~Intentionally used to plan a crime, commit or attempt to
20 commit a crime, or conceal an ongoing crime or ongoing criminal ~~activity~~;
21 ~~or~~activity.

22 (4) ~~in~~In an agreement resulting from the collaborative law process, evidenced
23 by a record signed by all parties to the agreement.

1 (b) The privileges under ~~Section 17~~G.S. 1-657 for a collaborative law communication
2 do not apply to the extent that a collaborative law communication is sought or offered to prove
3 or disprove a claim or complaint of professional misconduct or malpractice arising from or related
4 to a collaborative law process.

5 (1) ~~sought or offered to prove or disprove a claim or complaint of professional~~
6 ~~misconduct or malpractice arising from or related to a collaborative law~~
7 ~~process; or~~

8 (2) ~~sought or offered to prove or disprove abuse, neglect, abandonment, or~~
9 ~~exploitation of a child or adult, unless the [child protective services agency~~
10 ~~or adult protective services agency] is a party to or otherwise participates in~~
11 ~~the process.~~

12 (c) There is no privilege under ~~Section 17~~G.S. 1-657 if a tribunal finds, after a hearing
13 in camera, that the party seeking discovery or the proponent of the evidence has shown the
14 evidence is not otherwise available, the need for the evidence substantially outweighs the interest
15 in protecting confidentiality, and the collaborative law communication is sought or offered ~~in~~in
16 any of the following:

17 (1) ~~a court proceeding involving a felony [or misdemeanor]; or~~A criminal
18 action involving the prosecution of a felony.

19 (2) ~~a~~A proceeding seeking rescission or reformation of a contract arising out of
20 the collaborative law process or in which a defense to avoid liability on the
21 contract is asserted.

1 (d) If a collaborative law communication is subject to an exception under subsection
2 (b) or ~~(e)~~,(c) of this section, only the part of the collaborative law communication necessary for
3 the application of the exception may be disclosed or admitted.

4 (e) Disclosure or admission of evidence excepted from the privilege under subsection
5 (b) or (c) of this section does not make the evidence or any other collaborative law communication
6 discoverable or admissible for any other purpose.

7 (f) The privileges under ~~Section 17~~G.S. 1-657 do not apply if the parties agree in
8 advance in a signed record, or if a record of a proceeding reflects agreement by the parties, that all
9 or part of a collaborative law process is not privileged. This subsection does not apply to a
10 collaborative law communication made by a person that did not receive actual notice of the
11 agreement before the collaborative law communication was made.

12 *[Staff Note to GSC: The Official Comment to comparable Section 19 of Uniform Act will appear*
13 *here.]*

14 **PROPOSED NORTH CAROLINA COMMENT**

15 This section is substantively identical to Section 19 of the Uniform Act except that it omits
16 Section 19(b)(2) of the Uniform Act, which provides that the privileges under Section 17 of the
17 Uniform Act do not apply to the extent that a collaborative law communication is sought or offered
18 to prove or disprove abuse, neglect, abandonment, or exploitation of a child or adult, unless the
19 child protective services agency or adult protective services agency is a party to or otherwise
20 participates in the collaborative law process. Collaborative law procedures for the resolution of
21 family law disputes are governed by Article 4 (Collaborative Law Proceedings) of Chapter 50 of
22 the General Statutes.

23 **"§ 1-660. Authority of tribunal in case of noncompliance.**

1 (a) If an agreement fails to meet the requirements of ~~Section 4,~~G.S. 1-644 or a lawyer
2 fails to comply with ~~Section 14 or 15,~~G.S. 1-654, a tribunal may nonetheless find that the parties
3 intended to enter into a collaborative law participation agreement if ~~they;~~they did both of the
4 following:

5 (1) ~~signed~~Signed a record indicating an intention to enter into a collaborative
6 law participation ~~agreement;~~ and agreement.

7 (2) ~~reasonably~~Reasonably believed they were participating in a collaborative
8 law process.

9 (b) If a tribunal makes the findings specified in subsection ~~(a);~~(a) of this section and the
10 interests of justice require, the tribunal ~~may;~~may do all of the following:

11 (1) ~~enforce~~Enforce an agreement evidenced by a record resulting from the
12 collaborative law process in which the parties ~~participated;~~participated.

13 (2) ~~apply~~Apply the disqualification provisions ~~of Sections 5, 6, 9, 10, and~~
14 ~~11;~~ and in G.S. 1-645, 1-646, 1-647, 1-649, 1-650, and 1-651.

15 (3) ~~apply~~Apply a privilege under ~~Section 17.~~G.S. 1-657.

16 *[Staff Note to GSC: The Official Comment to comparable Section 20 of the Uniform Act will*
17 *appear here.]*

18 PROPOSED NORTH CAROLINA COMMENT

19 In Subdivision (b)(2), a cross reference to G.S. 1-647 was added.

20 "**§ 1-661. Alternate dispute resolution permitted.**

21 Nothing in this Article prohibits the parties from using, by mutual agreement, other forms
22 of nonadversarial alternate dispute resolution, including mediation, to reach a settlement on any of
23 the issues included in the collaborative law participation agreement. The parties' collaborative

1 lawyers may also serve as counsel for any form of nonadversarial alternate dispute resolution
2 pursued as part of the collaborative law participation agreement so long as it is not a proceeding
3 as that term is defined in G.S. 1-642(10).

4 *[Staff Note to GSC: There is no comparable section of the Uniform Act.]*

5 **PROPOSED NORTH CAROLINA COMMENT**

6 This section has no counterpart in the Uniform Act and is modeled on G.S. 50-78, which
7 allows parties to a collaborative law process in family law disputes to agree to use other forms of
8 alternative dispute resolution. G.S. 1-661 allows parties to a collaborative law process to agree to
9 use other nonadversarial forms of alternative dispute resolution to settle a collaborative matter and
10 allows the parties' collaborative lawyers to serve as counsel for those forms of alternative dispute
11 resolution.

12 **"§ 1-662. Uniformity of application and construction.**

13 In applying and construing this uniform act, consideration must be given to the need to
14 promote uniformity of the law with respect to its subject matter among states that enact it.

15 *[Staff Note to GSC: The Official Comment to comparable Section 21 of the Uniform Act will*
16 *appear here. The Official Comment includes the following sentence: "As discussed in the*
17 *Prefatory Note, uniform adoption of this act will make the law governing collaborative law more*
18 *accessible and certain in key areas and will thus encourage parties to participate in a*
19 *collaborative law process."]*

20 **PROPOSED NORTH CAROLINA COMMENT**

21 This section is identical to Section 21 of the Uniform Act.

22 **"§ 1-663. Relation to Electronic Signatures in Global and National Commerce Act.**

23 This ~~act~~Article modifies, limits, or supersedes the federal Electronic Signatures in Global
24 and National Commerce Act, 15 U.S.C. ~~Section 7001~~§ 7001, et seq., but does not modify, limit,

1 or supersede Section 101(c) of that ~~act, Act,~~ 15 U.S.C. ~~Section 7001(e), § 7001(c),~~ or authorize
2 electronic delivery of any of the notices described in Section 103(b) of that ~~act, Act,~~ 15 U.S.C.
3 ~~Section 7003(b), § 7003(b).~~"

4 *[Staff Note to GSC: There is no Official Comment for comparable Section 22 of the Uniform Act.]*

5 **PROPOSED NORTH CAROLINA COMMENT**

6 This section is substantively identical to Section 22 of the Uniform Act.

7 **SECTION 2.** If any provision of this act or its application to any person or circumstance
8 is held invalid, the invalidity does not affect other provisions or applications of this act which can
9 be given effect without the invalid provision or application, and, to this end, the provisions of this
10 act are severable.

11 **SECTION 3.** The Revisor of Statutes shall cause to be printed, as annotations to the
12 published General Statutes, all relevant portions of the Official Comments to the Uniform
13 Collaborative Law Act and all explanatory comments of the drafters of this act as the Revisor may
14 deem appropriate.

15 **SECTION 4.** This act becomes effective October 1, 2020.