



**ILLINOIS STATE
BAR ASSOCIATION**

**Assembly Meeting
December 10, 2016**

**Agenda Item 13B
Legislation
(Collaborative Process Legislation)**



**ILLINOIS STATE
BAR ASSOCIATION**

MEMORANDUM

To: ISBA Assembly
From: Jim Covington
Date: November 9, 2016
In re: Collaborative Process Legislative Proposal

You may recall that in 2013 Senate Bill 31 was filed in the Illinois General Assembly. It sought by statute to adopt the Collaborative Law Act as drafted by the Uniform Law Commission (ULC). This bill didn't become law, and at that time ISBA took a formal position opposing Senate Bill 31 because it sought to do certain things by statute that created separation of powers issues by regulating the practice of law.

Nevertheless, the collaborative process is being used by many of our family law lawyers—at the request of their clients—in an attempt to dissolve their marriages in such a way that the parties would still talk to each other afterward. Fifteen other states have enacted statutes or rules or both to standardize this limited scope representation. A short summary of the collaborative process that the 2013 version was modeled after is here.

Therefore, Immediate Past President Umberto Davi appointed a committee to take a second look at this issue. Members of the committee were Kelli Gordon, chair; Anna Krolikowska; Carlton Marcyan; Sari W. Montgomery; Lisa M. Nyuli; Hon. Donna-Jo Vorderstrasse; Rory Weiler; ISBA General Counsel Charles J. Northrup; and Jim Covington, ISBA Director of Legislative Affairs.

The ISBA committee has drafted a proposed statute and a complementing amendment to the Rules of Professional Conduct that are attached for your review. It limits the use of collaborative process to family law cases. I've added a redline version comparing the 2013 legislation to the statutory version that the ISBA Committee drafted.

To summarize, the differences between the 2013 legislation and the ISBA-proposed statute and rule are as follows:

- The ULC draft is entitled the “Uniform Collaborative Law Act” and the proposed statute is entitled the “Collaborative Process Act.”
- The enacting clause has been changed from the ULC version of “AN Act concerning civil law” to “AN Act concerning alternative dispute resolution.” (The Committee thought that this proposed statute fit rather neatly into the Alternative Dispute Resolution chapter here as 710 ILCS 5/50 (new) because the collaborative process is a form of alternative dispute resolution.)
- “Collaborative law” references have been changed to “collaborative process.”
- The new Supreme Court Rule 2.5 replaces a number of sections of the ULC draft as does the addition in Section 2(2) in the proposed statute of the phrase “informed consent.”
- The committee tried to shorten and condense the ULC draft if possible.

The proposed legislation was sent to these sections and committees:

- ADR—support.
- Bench and Bar—support but suggest reformatting of definitions that were incorporated into the ISBA draft statute.
- Civil Practice—oppose. Under this Act (and now without the Act) a person hires a lawyer who gets all the information and tries to help the client settle the dissolution case. The new proposed law would then require the client to hire a new lawyer if no settlement is reached. This deprives the client from the right to have the attorney the client chose handle the case if litigated. Plus, it will add costs as a new attorney would have to get all the information and analyze it, which the first lawyer already did. Plus only the ARDC rules should control attorney-client relationships, not the legislature. Again, the council was unanimously opposed.” *(The Collaborative Process Committee notes: This draft puts attorney-client relationships solely under the SCT with a proposed SCT rule. The General Assembly has no role in that regulation in this draft. Whether to use the collaborative process in family law matters would be the client’s choice after the attorney explains to the client the options – the required informed consent in the draft. Those options would include mediation,*

collaborative process, or litigation and the advantages and disadvantages of each. This would include the fact that if hired to represent the client in the collaborative process, the attorney would be hired for limited scope representation and the client would need to retain a new attorney if the collaborative process breaks down.)

- Child Law – TBD.
- Family Law – support.
- General Practice – support.
- Professional Conduct – now supports or least has no objection. The Special Committee on Collaborative Process originally drafted amendments to Rules 1.16 (mandatory withdrawal) and 1.10 (imputation) to the Rules of Professional Conduct. Professional Conduct raised some reasonable objections to the unintended consequences of the broadness of the proposed amendments. A couple of solutions were discussed, and a well-respected member of the Committee, who was very vocal about his concerns, offered to assist. After he performed some background research on other jurisdictions' ethical treatment of the collaborative law process, he felt more ethically comfortable with the collaborative process and what the Collaborative Process Committee was intending to accomplish. In contrast to the proposed piecemeal amendment of Rules 1.16 and 1.10, he has drafted a stand-alone rule (new Rule 2.5) to accommodate the collaborative process. His new, well-drafted Rule is attached and accomplishes the intent of the Special Committee on Collaborative Process. As a stand-alone rule, it addresses the concerns from the Professional Conduct Committee about unintended consequences from the originally proposed amendments to 1.16 and 1.10.
- Women and the Law – voted to take no position.
- YLD – oppose; neither legislation nor rule is necessary.

Legislation Committee. The Legislation Committee voted to approve the proposed statutory language and Supreme Court Rule with only one “no” vote.

ISBA Board of Governors. The Board voted to approve this proposal and recommends that the Assembly do the same.

If you have any questions, please call me. Thank you.



100TH GENERAL ASSEMBLY
State of Illinois
2017 and 2018

INTRODUCED _____, BY

SYNOPSIS AS INTRODUCED:

New Act

Creates the Collaborative Process Act. Defines terms. Provides that the Act applies to collaborative process participation agreements that meet the requirements of the Act signed on or after the effective date of the Act. Contains provisions concerning: requirements of collaborative process participation agreements; the beginning and conclusion of the collaborative process; proceedings before the court; disclosure of information; standards of professional responsibility and mandatory reporting; confidentiality; and privileges. Provides that the Act is subject to the supervisory authority of the Illinois Supreme Court.

LRB100 00354 HEP 10358 b

A BILL FOR

1 AN ACT concerning alternative dispute resolution.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 1. Short title. This Act may be cited as the
5 Collaborative Process Act.

6 Section 5. Definitions. In this Act:

7 (1) "Collaborative process communication" means a
8 statement, whether oral or in a record, or verbal or nonverbal,
9 that:

10 (A) is made to conduct, participate in, continue, or
11 reconvene a collaborative process; and

12 (B) occurs after the parties sign a collaborative
13 process participation agreement and before the
14 collaborative process is concluded.

15 (2) "Collaborative process participation agreement" means
16 a written agreement by persons acting with informed consent to
17 participate in a collaborative process, in which the persons
18 agree to discharge their collaborative process lawyer and law
19 firm if the collaborative process fails.

20 (3) "Collaborative process" means a procedure intended to
21 resolve a collaborative process matter without intervention by
22 a court in which persons:

23 (A) sign a collaborative process participation

1 agreement; and

2 (B) are represented by collaborative process lawyers.

3 (4) "Collaborative process lawyer" means a lawyer who
4 represents a party in a collaborative process and helps carry
5 out the process of the agreement, but is not a party to the
6 agreement.

7 (5) "Collaborative process matter" means a dispute,
8 transaction, claim, problem, or issue for resolution,
9 including a dispute, claim, or issue in a proceeding, which is
10 described in a collaborative process participation agreement
11 and arises under the family or domestic relations law of this
12 State, including:

13 (A) marriage, divorce, dissolution, annulment, legal
14 separation, and property distribution;

15 (B) significant decision making and parenting time of
16 children;

17 (C) maintenance and child support;

18 (D) adoption;

19 (E) parentage; and

20 (F) premarital, marital, and post-marital agreements.

21 (6) "Law firm" means:

22 (A) lawyers who practice law together in a partnership,
23 professional corporation, sole proprietorship, limited
24 liability company, or association; and

25 (B) lawyers employed in a legal services organization,
26 law school or the legal department of a corporation or

1 other organization.

2 (7) "Nonparty participant" means a person, other than a
3 party and the party's collaborative process lawyer, that
4 participates in a collaborative process.

5 (8) "Party" means a person other than a collaborative
6 process lawyer that signs a collaborative process
7 participation agreement and whose consent is necessary to
8 resolve a collaborative process matter.

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

14 (10) "Proceeding" means a judicial or other adjudicative
15 process before a court, including related prehearing and
16 post-hearing motions, conferences, and discovery.

17 (11) "Prospective party" means a person that discusses with
18 a prospective collaborative process lawyer the possibility of
19 signing a collaborative process participation agreement.

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

23 (13) "Related to a collaborative process matter" means
24 involving the same parties, transaction or occurrence, nucleus
25 of operative fact, dispute, claim, or issue as the
26 collaborative process matter.

1 (14) "Sign" means, with present intent to authenticate or
2 adopt a record:

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

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

6 Section 10. Applicability. This Act applies to a
7 collaborative process participation agreement that meets the
8 requirements of Section 15 signed on or after the effective
9 date of this Act.

10 Section 15. Collaborative process participation agreement;
11 requirements.

12 (a) A collaborative process participation agreement must:

13 (1) be in a record;

14 (2) be signed by the parties;

15 (3) state the parties' intention to resolve a
16 collaborative process matter through a collaborative
17 process under this Act;

18 (4) state the parties' agreement to discharge their
19 collaborative process lawyers and law firms if the
20 collaborative process fails.

21 (5) describe the nature and scope of the matter;

22 (6) identify the collaborative process lawyer who
23 represents each party in the process; and

24 (7) contain a statement by each collaborative process

1 lawyer confirming the lawyer's representation of a party in
2 the collaborative process.

3 (b) Parties may agree to include in a collaborative process
4 participation agreement additional provisions not inconsistent
5 with this Act.

6 Section 20. Beginning and concluding the collaborative
7 process.

8 (a) A collaborative process begins when the parties sign a
9 collaborative process participation agreement.

10 (b) A court may not order a party to participate in a
11 collaborative process over that party's objection.

12 (c) A collaborative process is concluded by:

13 (1) resolution of a collaborative process matter as
14 evidenced by a signed record of the parties;

15 (2) resolution of a part of the collaborative process
16 matter, evidenced by a signed record of the parties, in
17 which the parties agree that the remaining parts of the
18 matter will not be resolved in the process; or

19 (3) termination of the process.

20 (d) A collaborative process terminates:

21 (1) when a party gives notice to other parties in a
22 record that the process is ended;

23 (2) when a party:

24 (A) begins a proceeding related to a collaborative
25 process matter without the agreement of all parties; or

1 (B) in a pending proceeding related to the matter:

2 (i) initiates a pleading, motion, order to
3 show cause, or request for a conference with the
4 court;

5 (ii) requests that the proceeding be put on the
6 court's active calendar; or

7 (iii) takes similar action requiring notice to
8 be sent to the parties; or

9 (3) except as otherwise provided by subsection (g),
10 when a party discharges a collaborative process lawyer or a
11 collaborative process lawyer withdraws from further
12 representation of a party.

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

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

18 (g) A collaborative process continues, despite the
19 discharge or withdrawal of a collaborative process lawyer, if
20 not later than 30 days after the date that the notice of the
21 discharge or withdrawal of a collaborative process lawyer
22 required by subsection (e) is sent to the parties:

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

25 (2) in a signed record:

26 (A) the parties consent to continue the process by

1 reaffirming the collaborative process participation
2 agreement;

3 (B) the agreement is amended to identify the
4 successor collaborative process lawyer; and

5 (C) the successor collaborative process lawyer
6 confirms the lawyer's representation of a party in the
7 collaborative process.

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

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

15 Section 25. Proceedings pending before a court; status
16 report.

17 (a) Persons in a proceeding pending before a court may sign
18 a collaborative process participation agreement to seek to
19 resolve a collaborative process matter related to the
20 proceeding. The parties shall file promptly with the court a
21 notice of the agreement after it is signed. Subject to
22 subsection (c) and Sections 30 and 35, the filing operates as
23 an application for a stay of the proceeding.

24 (b) The parties shall file promptly with the court notice
25 in a record when a collaborative process concludes. The stay of

1 the proceeding, if granted, under subsection (a) is lifted when
2 the notice is filed. The notice may not specify any reason for
3 termination of the process.

4 (c) A court in which a proceeding is stayed under
5 subsection (a) may require the parties and collaborative
6 process lawyers to provide a status report on the collaborative
7 process and the proceeding. A status report may include only
8 information on: (i) whether the process is ongoing or
9 concluded; or (ii) the anticipated duration of the
10 collaborative process.

11 (d) A court may not consider a communication made in
12 violation of subsection (c).

13 (e) A court shall provide parties notice and an opportunity
14 to be heard before dismissing a proceeding in which a notice of
15 collaborative process is filed based on delay or failure to
16 prosecute.

17 Section 30. Emergency order. Nothing in the collaborative
18 process may prohibit a party from seeking an emergency order to
19 protect the health, safety, welfare, or interest of a party or
20 person identified as protected in Section 201 of the Illinois
21 Domestic Violence Act of 1986.

22 Section 35. Approval of agreement by the court. A court may
23 approve an agreement resulting from a collaborative process. An
24 agreement resulting from the collaborative process shall be

1 presented to the court for approval if the agreement is to be
2 enforceable.

3 Section 40. Disclosure of information. Voluntary informal
4 disclosure of information related to a matter is a defining
5 characteristic of the collaborative process. Except as
6 provided by law other than this Act, during the collaborative
7 process, on the request of another party, a party shall make
8 timely, full, candid, and informal disclosure of information
9 related to the collaborative process matter without formal
10 discovery. A party also shall update promptly previously
11 disclosed information that has materially changed. The parties
12 may define the scope of disclosure during the collaborative
13 process.

14 Section 45. Standards of professional responsibility and
15 mandatory reporting not affected. This Act does not affect:

16 (1) the professional responsibility obligations and
17 standards applicable to a lawyer or other licensed
18 professional; or

19 (2) the obligation of a person to report abuse or
20 neglect, abandonment, or exploitation of a child or adult
21 under the law of this State.

22 Section 50. Confidentiality of collaborative process
23 communication. A collaborative process communication is

1 confidential to the extent agreed by the parties in a signed
2 record or as provided by law of this State other than this Act.

3 Section 55. Privilege against disclosure for collaborative
4 process communication; admissibility; discovery.

5 (a) Subject to Sections 60 and 65, a collaborative process
6 communication is privileged under subsection (b), is not
7 subject to discovery, and is not admissible in evidence.

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

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

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

16 (c) Evidence or information that is otherwise admissible or
17 subject to discovery does not become inadmissible or protected
18 from discovery solely because of its disclosure or use in a
19 collaborative process.

20 Section 60. Waiver and preclusion of privilege.

21 (a) A privilege under Section 55 may be waived in a record
22 or orally during a proceeding if it is expressly waived by all
23 parties and, in the case of the privilege of a nonparty
24 participant, it is also expressly waived by the nonparty

1 participant.

2 (b) A person that makes a disclosure or representation
3 about a collaborative process communication which prejudices
4 another person in a proceeding may not assert a privilege under
5 Section 55, but this preclusion applies only to the extent
6 necessary for the person prejudiced to respond to the
7 disclosure or representation.

8 Section 65. Limits of privilege.

9 (a) There is no privilege under Section 55 for a
10 collaborative process communication that is:

11 (1) available to the public under the Freedom of
12 Information Act or made during a session of a collaborative
13 process that is open, or is required by law to be open, to
14 the public;

15 (2) a threat or statement of a plan to inflict bodily
16 injury or commit a crime of violence as defined in Section
17 1-10 of the Alcoholism and Other Drug Abuse and Dependency
18 Act;

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

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

25 (b) The privileges under Section 55 for a collaborative

1 process communication do not apply to the extent that a
2 communication is:

3 (1) sought or offered to prove or disprove a claim or
4 complaint of professional misconduct or malpractice
5 arising from or related to a collaborative process; or

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

11 (c) There is no privilege under Section 55 if a court
12 finds, after a hearing in camera, that the party seeking
13 discovery or the proponent of the evidence has shown the
14 evidence is not otherwise available, the need for the evidence
15 substantially outweighs the interest in protecting
16 confidentiality, and the collaborative process communication
17 is sought or offered in:

18 (1) a court proceeding involving a felony or
19 misdemeanor; or

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

24 (d) If a collaborative process communication is subject to
25 an exception under subsection (b) or (c), only the part of the
26 communication necessary for the application of the exception

1 may be disclosed or admitted.

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

6 (f) The privileges under Section 55 do not apply if the
7 parties agree in advance in a signed record, or if a record of
8 a proceeding reflects agreement by the parties, that all or
9 part of a collaborative process is not privileged. This
10 subsection does not apply to a collaborative process
11 communication made by a person that did not receive actual
12 notice of the agreement before the communication was made.

13 Section 70. Authority of the Illinois Supreme Court. This
14 Act is subject to the supervisory authority of the Illinois
15 Supreme Court.

Redline comparison between 2010 Uniform Law Commission proposal and the ISBA Committee

ULC Note for enacting states: The provisions for regulation of collaborative law are presented in two formats for enactment- by court rules or legislation. The substantive provisions of each format are identical with the exception of several standard form clauses typically found in legislation. Each state considering adopting the Uniform Collaborative Law Court Rules (UCLR) or the Uniform Collaborative Law Act (UCLA) should review its practices and precedent to first determine whether the substantive provisions are best adopted by court rule or statute. The decision may vary from state to state depending on the allocation of authority between the legislature and the judiciary for regulation of contracts, alternative dispute resolution and the legal profession. States may also decide to enact part of the substantive provisions by court rule and part by legislation. Specific comments following some particular rules or sections indicate whether the Drafting Committee recommends enactment by court rule or legislation. Drafting agencies may need to renumber sections and cross references depending on their decision concerning the appropriate method of enactment.

AN Act concerning alternative dispute resolution. ~~AN Act concerning civil law.~~

UNIFORM COLLABORATIVE LAW ACT

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

SECTION 2. DEFINITIONS. In this [act]:

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

(A) is made to conduct, participate in, continue, or reconvene a collaborative law process; and

(B) occurs after the parties sign a collaborative process law participation agreement and before the collaborative law process is concluded.

(2) “Collaborative process law participation agreement” means a written agreement by persons acting with informed consent to participate in a collaborative law

process in which the persons agree to discharge their collaborative process lawyer and law firm if the collaborative process fails.

(3) “Collaborative ~~law~~ process” means a procedure intended to resolve a collaborative matter without intervention by a tribunal in which persons:

- (A) sign a collaborative process law participation agreement; and
- (B) are represented by collaborative process lawyers.

(4) “Collaborative process lawyer” means a lawyer who represents a party in a collaborative ~~law~~ process and helps carry out the process of the agreement but is not a party to the agreement.

(5) “Collaborative process matter” means a dispute, transaction, claim, problem, or issue for resolution, including a dispute, claim, or issue in a proceeding, which is described in a collaborative process law participation agreement and arises under the family or domestic relations law of this state, including:

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

(ISBA draft adds to this list significant decision making and parenting time of children.)

(6) “Law firm” means:

- (A) lawyers who practice law together in a partnership, professional

corporation, sole proprietorship, limited liability company, or association; and

(B) lawyers employed in a legal services organization, law school, or the legal department of a corporation or other organization.

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

(8) “Party” means a person other than a collaborative process lawyer that signs a collaborative process law participation agreement and whose consent is necessary to resolve a collaborative process 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) a judicial, administrative, arbitral, or other adjudicative process before a tribunal, including related prehearing and post-hearing motions, conferences, and discovery ~~or~~

~~(B) a legislative hearing or similar process.~~

(11) “Prospective party” means a person that discusses with a prospective collaborative prospective lawyer the possibility of signing a collaborative ~~law~~ process participation agreement.

(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) “Related to a collaborative process matter” means involving the same parties,

transaction or occurrence, nucleus of operative fact, dispute, claim, or issue as the collaborative process matter.

(14) “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.

(15) “Tribunal” means:

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

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

SECTION 3. APPLICABILITY. This [act] applies to a collaborative process law participation agreement that meets the requirements of Section 4 signed [on or] after [the effective date of this [act]].

SECTION 4. COLLABORATIVE PROCESS LAW PARTICIPATION AGREEMENT; REQUIREMENTS.

(a) A collaborative process law participation agreement must:

(1) be in a record;

(2) be signed by the parties;

(3) state the parties’ intention to resolve a collaborative process matter through a collaborative law process under this [act];

(4) state the parties’ agreement to discharge their collaborative process

lawyers and law firms if the collaborative process fails;

(5) describe the nature and scope of the matter;

(6) identify the collaborative process lawyer who represents each party in the process; and

(6) contain a statement by each collaborative process lawyer confirming the lawyer's representation of a party in the collaborative ~~law~~ process.

(b) Parties may agree to include in a collaborative process ~~law~~ participation agreement additional provisions not inconsistent with this [act].

SECTION 5. BEGINNING AND CONCLUDING COLLABORATIVE ~~LAW~~ PROCESS.

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

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

(c) A collaborative ~~law~~ process is concluded by a:

(1) resolution of a collaborative process matter as evidenced by a signed record;

(2) resolution of a part of the collaborative process matter, evidenced by a signed record, in which the parties agree that the remaining parts of the matter will not be resolved in the process; or

(3) termination of the process.

(d) A collaborative ~~law~~ process terminates:

(1) when a party gives notice to other parties in a record that the process is

ended;

(2) when a party:

(A) begins a proceeding related to a collaborative process matter without the agreement of all parties; or

(B) in a pending proceeding related to the matter:

(i) initiates a pleading, motion, order to show cause, or request for a conference with the tribunal;

(ii) requests that the proceeding be put on the [tribunal's active calendar]; or

(iii) takes similar action requiring notice to be sent to the parties; or

(3) except as otherwise provided by subsection (g), when a party discharges a collaborative process lawyer or a collaborative process lawyer withdraws from further representation of a party.

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

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

(g) ~~Notwithstanding the discharge or withdrawal of a collaborative lawyer, a~~ A collaborative law process continues, despite the discharge or withdrawal of a collaborative process lawyer, if not later than 30 days after the date that the notice of the discharge or withdrawal of a collaborative process lawyer required by subsection (e) is sent to the parties:

(1) the unrepresented party engages a successor collaborative process

lawyer; and

(2) in a signed record:

(A) the parties consent to continue the process by reaffirming the collaborative process ~~law~~ participation agreement;

(B) the agreement is amended to identify the successor collaborative process lawyer; and

(C) the successor collaborative process lawyer confirms the lawyer's representation of a party in the collaborative process.

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

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

SECTION 6. PROCEEDINGS PENDING BEFORE TRIBUNAL; STATUS REPORT.

(a) Persons in a proceeding pending before a tribunal may sign a collaborative process ~~law~~ participation agreement to seek to resolve a collaborative process matter related to the proceeding. The parties shall file promptly with the tribunal a notice of the agreement after it is signed. Subject to subsection (c) and Sections 7 and 8, the filing operates as an application for a stay of the proceeding.

(b) The parties shall file promptly with the tribunal notice in a record when a collaborative law process concludes. The stay of the proceeding, if granted, under subsection (a) is lifted when the notice is filed. The notice may not specify any reason for

termination of the process.

(c) A tribunal in which a proceeding is stayed under subsection (a) may require the parties and collaborative lawyers to provide a status report on the collaborative law process and the proceeding. A status report may include only information on: (i) whether the process is ongoing or concluded; or (ii) the anticipated duration of the collaborative process. ~~It may not include a report, assessment, evaluation, recommendation, finding, or other communication regarding a collaborative law process or collaborative law matter.~~

(d) A tribunal may not consider a communication made in violation of subsection (c).

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

SECTION 7. EMERGENCY ORDER. Nothing in the collaborative process may prohibit a party from seeking an emergency order to protect the health, safety, welfare, or interest of a party or person identified as protected in Section 201 of the Illinois Domestic Violence Act of 1986. ~~During a collaborative law process, a tribunal may issue emergency orders to protect the health, safety, welfare, or interest of a party or [insert term for family or household member as defined in [state civil protection order statute]].~~

SECTION 8. APPROVAL OF AGREEMENT BY TRIBUNAL. A tribunal may approve an agreement resulting from a collaborative law process. An agreement resulting from the collaborative process shall be presented to a tribunal for approval if the

agreement is to be enforceable by the courts, an administrative agency, or any other tribunal.

**~~SECTION 9. DISQUALIFICATION OF COLLABORATIVE LAWYER
AND LAWYERS IN ASSOCIATED LAW FIRM.~~**

~~—— (a) Except as otherwise provided in subsection (c), a collaborative lawyer is disqualified from appearing before a tribunal to represent a party in a proceeding related to the collaborative matter.~~

~~—— (b) Except as otherwise provided in subsection (c) and Sections 10 and 11, a lawyer in a law firm with which the collaborative lawyer is associated is disqualified from appearing before a tribunal to represent a party in a proceeding related to the collaborative matter if the collaborative lawyer is disqualified from doing so under subsection (a).~~

~~—— (c) A collaborative lawyer or a lawyer in a law firm with which the collaborative lawyer is associated may represent a party:~~

~~—— (1) to ask a tribunal to approve an agreement resulting from the collaborative law process; or~~

~~—— (2) to seek or defend an emergency order to protect the health, safety, welfare, or interest of a party, or [insert term for family or household member as defined in [state civil protection order statute]] if a successor lawyer is not immediately available to represent that person.~~

~~—— (d) If subsection (c)(2) applies, a collaborative lawyer, or lawyer in a law firm with which the collaborative lawyer is associated, may represent a party or [insert term for family or household member] only until the person is represented by a successor~~

~~lawyer or reasonable measures are taken to protect the health, safety, welfare, or interest of the person.~~

~~SECTION 10. LOW INCOME PARTIES.~~

~~(a) The disqualification of Section 9(a) applies to a collaborative lawyer representing a party with or without fee.~~

~~(b) After a collaborative law process concludes, another lawyer in a law firm with which a collaborative lawyer disqualified under Section 9(a) is associated may represent a party without fee in the collaborative matter or a matter related to the collaborative matter if:~~

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

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

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

~~SECTION 11. GOVERNMENTAL ENTITY AS PARTY.~~

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

~~(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:~~

- ~~_____ (1) the collaborative law participation agreement so provides; and~~
- ~~_____ (2) the collaborative lawyer is isolated from any participation in the collaborative matter or a matter related to the collaborative matter through procedures within the law firm which are reasonably calculated to isolate the collaborative lawyer from such participation.~~

SECTION 12. DISCLOSURE OF INFORMATION. Voluntary informal disclosure of information related to a matter is a defining characteristic of the collaborative process. Except as provided by law other than this [act], during the collaborative law process, on the request of another party, a party shall make timely, full, candid, and informal disclosure of information related to the collaborative process matter without formal discovery. A party also shall update promptly previously disclosed information that has materially changed. The parties may define the scope of disclosure during the collaborative law process.

SECTION 13. STANDARDS OF PROFESSIONAL RESPONSIBILITY AND MANDATORY REPORTING NOT AFFECTED. This [act] does not affect:

- (1) the professional responsibility obligations and standards applicable to a lawyer or other licensed professional; or
- (2) the obligation of a person to report abuse or neglect, abandonment, or exploitation of a child or adult under the law of this state.

~~**SECTION 14. APPROPRIATENESS OF COLLABORATIVE LAW PROCESS.** Before a prospective party signs a collaborative law participation agreement, a prospective collaborative lawyer shall:~~

~~—— (1) assess with the prospective party factors the lawyer reasonably believes relate to whether a collaborative law process is appropriate for the prospective party's matter;~~

~~—— (2) provide the prospective party with information that the lawyer reasonably believes is sufficient for the party to make an informed decision about the material benefits and risks of a collaborative law process as compared to the material benefits and risks of other reasonably available alternatives for resolving the proposed collaborative matter, such as litigation, mediation, arbitration, or expert evaluation; and~~

~~—— (3) advise the prospective party that:~~

~~—— (A) after signing an agreement if a party initiates a proceeding or seeks tribunal intervention in a pending proceeding related to the collaborative matter, the collaborative law process terminates;~~

~~—— (B) participation in a collaborative law process is voluntary and any party has the right to terminate unilaterally a collaborative law process with or without cause; and~~

~~—— (C) the collaborative lawyer and any lawyer in a law firm with which the collaborative lawyer is associated may not appear before a tribunal to represent a party in a proceeding related to the collaborative matter, except as authorized by Section 9(c), 10(b), or 11(b).~~

~~—— **SECTION 15. COERCIVE OR VIOLENT RELATIONSHIP.**~~

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

~~—— (b) Throughout a collaborative law process, a collaborative lawyer reasonably and~~

~~continuously shall assess whether the party the collaborative lawyer represents has a history of a coercive or violent relationship with another party.~~

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

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

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

SECTION 16. CONFIDENTIALITY OF COLLABORATIVE LAW COMMUNICATION. A collaborative process law communication is confidential to the extent agreed by the parties in a signed record or as provided by law of this state other than this [act].

SECTION 17. PRIVILEGE AGAINST DISCLOSURE FOR COLLABORATIVE PROCESS LAW COMMUNICATION; ADMISSIBILITY; DISCOVERY.

(a) Subject to Sections 18 and 19, a collaborative process law communication is privileged under subsection (b), is not subject to discovery, and is not admissible in evidence.

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

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

(2) A nonparty participant may refuse to disclose, and may prevent any other person from disclosing, a collaborative process ~~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 process ~~law~~ process.

SECTION 18. WAIVER AND PRECLUSION OF PRIVILEGE.

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

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

SECTION 19. LIMITS OF PRIVILEGE.

(a) There is no privilege under Section 17 for a collaborative process ~~law~~ communication that is:

(1) available to the public under [state open records act] or made during a session of a collaborative ~~law~~ process that is open, or is required by law to be open, to the public;

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

(3) intentionally used to plan a crime, commit or attempt to commit a

crime, or conceal an ongoing crime or ongoing criminal activity; or

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

(b) The privileges under Section 17 for a collaborative process ~~law~~ communication do not apply to the extent that a communication is:

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

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

(c) There is no privilege under Section 17 if a tribunal finds, after a hearing in camera, that the party seeking discovery or the proponent of the evidence has shown the evidence is not otherwise available, the need for the evidence substantially outweighs the interest in protecting confidentiality, and the collaborative process ~~law~~ communication is sought or offered in:

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

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

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

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

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

**~~SECTION 20. AUTHORITY OF TRIBUNAL IN CASE OF
NONCOMPLIANCE.~~**

~~———— (a) If an agreement fails to meet the requirements of Section 4, or a lawyer fails to comply with Section 14 or 15, a tribunal may nonetheless find that the parties intended to enter into a collaborative law participation agreement if they:~~

~~———— (1) signed a record indicating an intention to enter into a collaborative law participation agreement; and~~

~~———— (2) reasonably believed they were participating in a collaborative law process.~~

~~———— (b) If a tribunal makes the findings specified in subsection (a), and the interests of justice require, the tribunal may:~~

~~———— (1) enforce an agreement evidenced by a record resulting from the process in which the parties participated;~~

~~———— (2) apply the disqualification provisions of Sections 5, 6, 9, 10, and 11;~~
~~and~~

~~_____ (3) apply a privilege under Section 17.~~

~~_____ **SECTION 21. 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 22. 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(e) of that act, 15 U.S.C. Section 7001(e), 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 23. SEVERABILITY.** 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 70. Authority of Supreme Court. This Act is subject to the supervisory authority of the Supreme Court.