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WASHINGTON

THE SUPREME COURT OF WASHINGTON

IN THE MATTER OF THE ADOPTION OF THE
WSBA'S PROPOSED NEW SET OF UNIFORM
COLLABORATIVE LAW RULES (UCLR)

ORDER
NO. 25700-A- 1020

The Supreme Court Rules Committee having recommended the adoption of the WSBA's Proposed New Set of Uniform Collaborative Law Rules (UCLR), and the Court having approved the proposed rules for publication;

Now, therefore, it is hereby

ORDERED:

(a) That pursuant to the provisions of GR 9(g), the proposed rules as attached hereto are to be published for comment in the Washington Reports, Washington Register, and on the Washington State Bar Association and Office of the Administrator for the Courts' websites expeditiously.

(b) The purpose statements as required by GR 9(e), are published solely for the information of the Bench, Bar and other interested parties.

(c) Comments are to be submitted to the Clerk of the Supreme Court by either U.S. Mail or Internet E-Mail by no later than 60 days from the published date. Comments may be sent to the following addresses: P.O. Box 40929, Olympia, Washington 98504-0929, or

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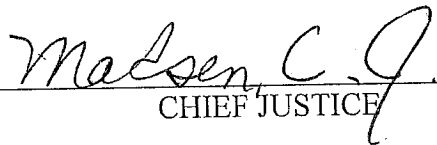
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*IN THE MATTER OF THE WSBA'S PROPOSED NEW SET OF UNIFORM COLLABORATIVE
LAW RULES (UCLR)*

Denise.Foster@courts.wa.gov. Comments submitted by e-mail message must be limited to 1500 words.

DATED at Olympia, Washington this 5th day of April, 2013.

For the Court



CHIEF JUSTICE

GR 9 COVER SHEET

Suggested New Rules UNIFORM COLLABORATIVE LAW RULES (UCLR)

(Creating new Uniform Collaborative Law Rules)

Submitted by the Board of Governors of the Washington State Bar Association

A. Purpose:

Collaborative law is a form of alternative dispute resolution (ADR) that has been practiced in Washington for many years. It is a voluntary process used to resolve disputes in which both parties are represented by a collaborative law attorney, with the purpose to reach settlement. It is distinguished from other ADR in that the parties maintain control of the outcome and, should the process fail, parties must retain new counsel.

The Uniform Law Commission (ULC) proposed a Uniform Collaborative Law Act (UCLA) to the Washington state legislature in 2012. The UCLA regulates the use of collaborative law and standardizes, among other things, key elements in a collaborative law agreement. The proposed Court Rules compliment and replace parts of the legislation. Rules 1, 2, 4, 5, 11, and 16-18 remain reserved and offer citation to the Act.

These rules have the support of the WSBA Family Law Section, WSBA ADR section, and all stakeholders who have been contacted.

UNIFORM COLLABORATIVE LAW RULES
(UCLR)

RULE 1. SHORT TITLE

These rules may be cited as the Collaborative Law Rules.

RULE 2. DEFINITIONS

(Reserved. See HB XXXX.)

RULE 3. APPLICABILITY

(a) These rules apply to a collaborative law participation agreement that meets the requirements of Rule 4 signed after on or after the effective date of these rules.

(b) The use of collaborative law applies only to matters that would be resolved in civil court and may not be used to resolve matters in criminal cases.

**RULE 4. COLLABORATIVE LAW PARTICIPATION AGREEMENT (codified in
HB XXXX)**

**RULE 5. BEGINNING AND CONCLUDING COLLABORATIVE LAW PROCESS
(codified in HB XXXX)**

**RULE 6. PROCEEDINGS PENDING BEFORE TRIBUNAL; STAYS; STATUS
REPORT**

(a) Persons in a proceeding pending before a tribunal may sign a collaborative law participation agreement to seek to resolve a collaborative matter related to the proceeding. The parties shall file promptly with the tribunal a notice of the agreement. Subject to subsection (c) and Rules 7 and 8, the filing stays the proceeding.

UNIFORM COLLABORATIVE LAW RULES
(UCLR)

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

4 (c) A tribunal in which a proceeding is stayed under subsection (a) may require the
5 parties and collaborative lawyers to provide a status report on the collaborative law process and
6 the proceeding. A status report may include only information on whether the process is ongoing
7 or concluded. It may not include a report, assessment, evaluation, recommendation, finding, or
8 other communication regarding a collaborative law process or collaborative law matter.

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

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

13 **RULE 7. EMERGENCY ORDER**

14 During a collaborative law process, a tribunal may issue emergency orders to protect the
15 health, safety, welfare, or interest of a party or a family or household member as defined in
16 RCW 26.50.010.

17 **RULE 8. APPROVAL OF AGREEMENT BY TRIBUNAL**

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

19 **RULE 9. DISQUALIFICATION OF COLLABORATIVE LAWYER AND**
20 **LAWYERS IN ASSOCIATED LAW FIRM**

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

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(UCLR)

1 **(b)** Except as otherwise provided in subsection (c) and Rule 10, a lawyer in a law firm
2 with which the collaborative lawyer is associated is disqualified from appearing before a
3 tribunal to represent a party in a proceeding related to the collaborative matter if the
4 collaborative lawyer is disqualified from doing so under subsection (a).

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

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

9 (2) to seek or defend an emergency order to protect the health, safety, welfare, or
10 interest of a party, or family or household member as defined in RCW 26.50.010, if a successor
11 lawyer is not immediately available to represent that person.

12 **(d)** If subsection (c)(2) applies, a collaborative lawyer, or lawyer in a law firm with
13 which the collaborative lawyer is associated, may represent a party or family or household
14 member only until the person is represented by a successor lawyer or reasonable measures are
15 taken to protect the health, safety, welfare, or interest of the person.

16 **RULE 10. GOVERNMENTAL ENTITY AS PARTY**

17 **(a)** The disqualification of Rule 9(a) applies to a collaborative lawyer representing a
18 party that is a government or governmental subdivision, agency, or instrumentality.

19 **(b)** After a collaborative law process concludes, another lawyer in a law firm with which
20 the collaborative lawyer is associated may represent a government or governmental subdivision,
21 agency, or instrumentality in the collaborative matter or a matter related to the collaborative
22 matter if:

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

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(UCLR)**

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

4 **RULE 11. DISCLOSURE OF INFORMATION (codified in HB XXXX)**

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6 **RULE 12. STANDARDS OF PROFESSIONAL RESPONSIBILITY AND**
7 **MANDATORY REPORTING NOT AFFECTED**

8 (a) These rules do not affect the professional responsibility obligations and standards
9 applicable to a lawyer or other licensed professional or relieve a lawyer or other licensed
10 professional from the duty to comply with all applicable professional responsibility obligations
11 and standards.

12 (b) These rules do not affect the obligation of a person to report abuse or neglect,
13 abandonment, or exploitation of a child or adult under the law of this state.

14 (c) Noncompliance with an obligation or prohibition imposed by these rules does not in
15 itself establish grounds for professional discipline.

16 **RULE 13. APPROPRIATENESS OF COLLABORATIVE LAW PROCESS**

17 Before a prospective party signs a collaborative law participation agreement, a
18 prospective collaborative lawyer shall:

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

21 (b) provide the prospective party with information that the lawyer reasonably believes is
22 sufficient for the party to make an informed decision about the material benefits and risks of a
23 collaborative law process as compared to the material benefits and risks of other reasonably
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(UCLR)

1 available alternatives for resolving the proposed collaborative matter, such as litigation,
2 mediation, arbitration, or expert evaluation; and

3 (c) advise the prospective party that:

4 (1) after signing an agreement if a party initiates a proceeding or seeks tribunal
5 intervention in a pending proceeding related to the collaborative matter, the collaborative law
6 process terminates;

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

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

12 **RULE 14. COERCIVE OR VIOLENT RELATIONSHIP**

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

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

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

23 (1) the party or the prospective party requests beginning or continuing a process;

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(UCLR)

1 and

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

4 **RULE 15. CONFIDENTIALITY OF COLLABORATIVE LAW COMMUNICATION**

5 Subject to Rule 12, a collaborative law communication is confidential to the extent
6 agreed by the parties in a signed record or as provided by law of this state other than these rules,
7 including as codified in HB XXXX.

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9 **RULE 16. PRIVILEGE AGAINST DISCLOSURE FOR COLLABORATIVE LAW**
10 **COMMUNICATION; ADMISSIBILITY; DISCOVERY (codified in HB XXXX)**

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12 **RULE 17. WAIVER AND PRECLUSION OF PRIVILEGE (codified in HB XXXX)**

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14 **RULE 18. LIMITS OF PRIVILEGE (codified in HB XXXX)**

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16 **RULE 19. AUTHORITY OF TRIBUNAL IN CASE OF NONCOMPLIANCE**

17 (a) If an agreement fails to meet the requirements of a collaborative law participation
18 agreement of the Uniform Collaborative Law Act, or a lawyer fails to comply with Rule 13 or
19 14, a tribunal may nonetheless find that the parties intended to enter into a collaborative law
20 participation agreement if they:

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

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

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

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

5 (2) apply the disqualification provisions of the Uniform Collaborative Law Act
6 and of Rules 6, 9, and 10; and

7 (3) apply a privilege under the Collaborative Law Act.
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