

## ALABAMA RULES OF PRIVILEGE IN COLLABORATIVE LAW PRACTICE

### Rule 4.

#### Limits of Privilege.

(a) There is no privilege under Rule 2 for a collaborative law communication that is:

- (1) a threat or statement of a plan to inflict bodily injury or to commit a crime of violence;
- (2) intentionally used to plan a crime, to commit or attempt to commit a crime, or to conceal an ongoing crime or ongoing criminal activity; or
- (3) in an agreement resulting from the collaborative law process, evidenced by a record signed by all parties to the "collaborative law participation agreement."

(b) The privileges under Rule 2 for a collaborative 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.

(c) There is no privilege under Rule 2 if a tribunal finds, after a hearing in camera, that the party seeking discovery or the proponent of the evidence has shown that the evidence is not otherwise available, that the need for the evidence substantially outweighs the interest in protecting confidentiality, and that the collaborative 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 law communication is subject to an exception under subsection (b) or (c) of this rule, 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) of this rule does not make the evidence or any other collaborative law communication discoverable or admissible for any other purpose.

(f) The privileges under Rule 2 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 who did not receive actual notice of the agreement before the communication was made.

[Adopted 2-9- 2015.]

### **Alabama Committee Comment**

This rule is similar to Section/Rule 19 of the Uniform Collaborative Law Act/Rules and delineates specific and exclusive exceptions to the broad grant of privilege provided to collaborative law communications under Rule 2 of these Rules. The exceptions are similar to those contained in the Uniform Mediation Act.

Subsection (a)(1) of Uniform Section/Rule 19 was deleted as being unnecessary because the Act is limited to family-law matters. Subsection (b)(2) of this rule omitted the exception relating to a governmental agency's participation contemplated in subsection (b)(2) of Uniform Section/Rule 19.

Consistent with the direction of the other states adopting collaborative law statutes or rules, both felonies and misdemeanors are included in subsection (c)(1).

**Note from the reporter of decisions:** The order adopting the Alabama Rules of Privilege in Collaborative Law Practice, including the Alabama Committee Comments, effective February 9, 2015, is published in that volume of *Alabama Reporter* that contains Alabama cases from \_\_\_ So. 3d.