

ALABAMA RULES OF PRIVILEGE IN COLLABORATIVE LAW PRACTICE

Rule 2.

Privilege Against Disclosure for “Collaborative Law Communication”; Admissibility; Discovery

(a) Subject to Rules 3 and 4, a collaborative 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 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."

[Adopted 2-9-2015.]

Alabama Committee Comment

This rule is identical to Section/Rule 17 of the Uniform Collaborative Law Act/Rules. The rule provides the general structure for creating a privilege that prohibits the disclosure of collaborative law communications in legal proceedings. It is based on similar provisions in the Uniform Mediation Act.

The parties are holders of the collaborative-law-communications privilege. The rule includes a privilege for a nonparty participant, though limited to the communications by that individual in the collaborative law process. The retention of mental-health and/or financial experts by one or both parties, common in many collaborative law cases, is provided for under this rule. This provision would also cover statements prepared by such persons for the collaborative law process and submitted as part of it, such as experts' reports. Thus, any party who wants to later use an expert report prepared during the collaborative law process in a legal proceeding would have to secure permission of all parties and the expert in order to do so.

"Collaborative lawyers" are not nonparty participants under these Rules. They maintain the traditional attorney-client relationship with parties, which allocates to clients the right to waive the attorney-client privilege, even over their lawyer's objection.

Subsection (c) clarifies that relevant evidence otherwise discoverable and admissible may not be shielded from discovery or admission at trial merely because it is communicated in a collaborative law process.

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.