

§ 1-659. Limits of privilege.

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

- (1) Available to the public under Chapter 132 of the General Statutes 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.
- (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 G.S. 1-657 for a collaborative law communication do not apply to the extent that a collaborative law communication is 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.

(c) There is no privilege under G.S. 1-657 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 law communication is sought or offered in any of the following:

- (1) A criminal action involving the prosecution of a felony.
- (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 section, only the part of the collaborative law 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 section does not make the evidence or any other collaborative law communication discoverable or admissible for any other purpose.

(f) The privileges under G.S. 1-657 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 collaborative law communication was made. (2020-65, s. 1.)