

**IN THE SUPREME COURT OF FLORIDA**

**IN RE AMENDMENTS TO RULES  
REGULATING THE FLORIDA BAR  
RULE 4-1.19 AND FLORIDA FAMILY  
LAW RULE OF PROCEDURE 12.745  
(COLLABORATIVE LAW PROCESS)**

**CASE NO. SC 16 - \_\_\_\_\_**

**TIME-SENSITIVE PETITION TO ADOPT PROPOSED RULE REGULATING  
THE FLORIDA BAR 4-1.19 AND OUT-OF-CYCLE REPORT TO ADOPT  
FLORIDA FAMILY LAW RULE OF PROCEDURE 12.745  
(COLLABORATIVE LAW PROCESS)**

The Florida Bar (the bar) and the Florida Family Law Rules Committee (the committee), Honorable Laurel Moore Lee, Chair, respectfully petition this Court to adopt proposed Rule Regulating The Florida Bar 4-1.19 and proposed Florida Family Law Rule of Procedure 12.745 (the rules) to create procedures for the collaborative law process established by Chapter 2016-93, Laws of Florida (the act), in dissolution of marriage, paternity, and other family law actions. The bar and the committee have filed this time-sensitive out-of-cycle petition because adoption of these rules is required by the act to make the legislation effective. Once effective, these rules will help implement the collaborative law process legislation enacted by the Florida legislature and permit education of lawyers about the collaborative law process.

**Jurisdictional Statement**

This petition has been authorized by The Florida Bar Board of Governors and the committee under R. Reg. Fla. Bar 1-12.1 and Florida Rule of Judicial Administration 2.140(e).

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## **The Florida Bar Board of Governors and Committee Approval of Rules**

The rules have been approved by The Florida Bar Board of Governors and by the committee. The Family Law Rules Committee approved proposed Family Law Rule 12.745 by a vote of 27-0 on January 22, 2016. The Florida Bar Board of Governors voted unanimously to approve proposed Family Law Rule 12.745 on May 20, 2016, and voted unanimously to approve revised proposed Family Law Rule 12.745 on July 29, 2016. The Florida Bar Board of Governors approved proposed Rule Regulating The Florida Bar 4-1.19 and voted to waive second reading unanimously on July 29, 2016.

### **Publication for Comment**

Pursuant to Rules Regulating The Florida Bar 1–12.1(g) and Florida Rules of Judicial Administration 2.140(c), formal notice of intent to file the rules proposed in this petition were published for comment in *The Florida Bar News* on August 15, 2016, (Appendix C), and on September 1, 2016. The notice was also posted on The Florida Bar’s website. Each notice included direction for comments to be filed with this Court subsequent to this filing.

### **Proposed Rules**

The bar and the committee jointly propose 2 new rules to address the collaborative law process legislation enacted by the Florida Legislature: rule 4-1.19, Collaborative Law Process in Family Law, and rule 12.745, Collaborative Law Process. The proposed rules in legislative format are in Appendix A. The proposed rules are presented in two-column format, with explanation for the proposals, in Appendix B.

The collaborative law process is a contractual, voluntary, nonadversarial dispute resolution process used in dissolution of marriage and paternity cases. Essentially, the process is an alternative to traditional litigation for the resolution of issues in divorces, paternity, and other family law cases. Each party retains its own specially-trained lawyer. Neutral mental health and financial professionals are used with the lawyers as a team to help the parties negotiate a mutually acceptable settlement. The process is

voluntary, transparent, and private. If either party chooses to terminate the process, the lawyers are disqualified from representing their clients in the ensuing contested litigation.

Though proposed collaborative process rules were previously before this Court in the committee's three-year cycle report filed on January 10, 2011 (Case SC11-40), this Court concluded in its revised opinion that adoption would be "premature given the possibility of legislative action addressing the use of the collaborative process in Florida and the fact that certain foundations such as training or certification of attorneys for participation in the process had not been laid." *In re Amendments to Florida Family Law Rules of Procedure*, 84 So. 3d 257, 258 (Fla. 2012).

Subsequently, the legislature addressed the collaborative law process in Florida by enacting Chapter 2016-93, Laws of Florida. (Appendix D, pages 2–8), entitled the "Collaborative Law Process Act" creating part III of chapter 61, Florida Statutes, consisting of sections 61.55–61.58. The act was approved by the Governor on March 24, 2016. The act "does not take effect until 30 days after the Florida Supreme Court adopts rules of procedure and professional responsibility consistent with this act." In response to that call for action, the bar and the committee created Rule 4-1.19 and Rule 12.745.

The legislative purposes of the act in Section 3 include creating a uniform system of practice for a collaborative law process for proceedings under chapters 61 and 742, Florida Statutes; encouraging peaceful resolution of disputes and early settlement of pending litigation through voluntary settlement procedures; and preserving a working relationship between parties to a dispute through a nonadversarial method that reduces the emotional and financial toll of litigation.

Section 4 of the act echoes these legislative purposes and further describes the collaborative process as being unique in its ability to meet those purposes.

Section 5 creates several collaborative law process definitions in section 61.56. Section 6 defines when a collaborative law process begins, concludes, and terminates. Section 7 addresses confidentiality of collaborative law process communications to include privilege against disclosure, admissibility, and discovery; waiver, preclusion, and limits of privilege.

Section 8 of the act states that sections 61.55–61.58, Florida Statutes, “shall not take effect until 30 days after the Florida Supreme Court adopts rules of procedure and professional responsibility consistent with this act.”

### **Rule 4-1.19 Regulating the Florida Bar (Collaborative Law Process)**

The bar proposes new rule 4-1.19, Collaborative Law Process in Family Law.

## CHAPTER 4 RULES OF PROFESSIONAL CONDUCT SUBCHAPTER 4-1 CLIENT-LAWYER RELATIONSHIP

### **Rule 4-1.19 COLLABORATIVE LAW PROCESS IN FAMILY LAW**

*Explanation:* Proposed rule 4-1.19 will address the professional conduct component of the act. This proposed rule requires the lawyer to obtain the client’s informed consent after disclosure of specific information before representing a client in the collaborative law process; prohibits the lawyer from representing a client in the collaborative law process unless all participating lawyers and clients sign an agreement setting forth specific requirements; requires the lawyer to assess domestic violence issues initially and continually; and prohibits the lawyer from representing a client in a collaborative law matter where domestic violence issues are present except under specified circumstances.

*Reasons:* The legislature passed the act in 2016 and made it effective 30 days after a court procedure rule and a professional conduct rule are adopted addressing the collaborative law process.

*Source:* The Florida Bar Board of Governors Rules Committee and the Family Law Rules Committee.

*Committee Action:* The Rules Committee approved 7-0 on substantive and procedural basis by e-mail vote on July 12, 2016. The bar’s Chief Financial Officer determined de minimus fiscal impact on July 25, 2016. The Program Evaluation Committee approved 33-0 on a strategic basis on July 28, 2016.

*Board Action:* The Florida Bar Board of Governors approved and voted to waive second reading unanimously on July 29, 2016.

## **Rule 12.745, Collaborative Law Process**

The committee proposes new rule 12.745, Collaborative Law Process.

### **SECTION I. FAMILY LAW RULES OF PROCEDURE** **RULE 12.745. COLLABORATIVE LAW PROCESS**

The committee proposes adding new rule 12.745 to address the court procedure component of the act. Proposed rule 12.745 is broken into six subdivisions. Subdivision (a) provides applicability to proceedings under Chapter 61, Part III, Florida Statutes. Subdivision (b) details steps in the collaborative law process. Specifically, subdivision (b)(1) provides guidance regarding initiating the process and subdivision (b)(2) provides a process for concluding and terminating a collaborative matter. Subdivision (b)(3) details procedures of how a collaborative lawyer may be discharged or may withdraw from representation. Subdivision (c) provides procedures allowing interim agreements for certain matters to be approved by a tribunal without concluding the collaborative process. Subdivision (d) establishes the availability of other alternative dispute resolution methods within collaborative law cases. Subdivision (e) gives authority for a court to issue an emergency order to protect the health, safety, welfare, or interest of a party or household member as defined in F.S. 741.28. Subdivision (f) establishes the disqualification and participation restrictions of a collaborative lawyer and that lawyer's firm.

### **Official Notice of Proposals**

Pursuant to Rules Regulating The Florida Bar 1-12.1(g) and Florida Rules of Judicial Administration 2.140(e), formal notice of intent to file the proposals in this petition was published in the August 15, 2016 and September 1, 2016, issues of the bar *News* (Appendix C) and was posted on the bar's website. Prior to publication, a comment was received and provided to the board before final action (Appendix D, pages 9–11) indicating that bar members received notice of the proposed Rules.

## **Request for Waiver of Rules Procedures**

This petition exemplifies a collaborative effort by the bar and the committee to harmonize the bar's and the committee's differing rule-adoption procedures. Consequently, this petition requests waiver of certain internal bar rule-adoption procedures as specified below in order to permit submitting the proposed rules together in a joint time-sensitive out-of-cycle petition instead of separately and at different times. The bar has complied with the requirements of Rules Regulating The Florida Bar 1-12.1(d) and Standing Board Policy 1.60, with the following exceptions: final action on these proposals by The Florida Bar Board of Governors was not published prior to final board action and the board waived second reading of the proposed rules, because of the need to quickly address the legislative action. A summary of the proposed rules at first reading was published prior to final board action, and the full text of the rules was published prior to the filing of this petition.

The bar submits that this deviation from the requirements of Rules Regulating The Florida Bar 1-12.1(d) and Standing Board Policy 1.60 is minimal because of the publication of the summary before the board final action and the publication of the full text of the proposed rules before filing this petition. The fact that a comment was received and provided to the board before final action indicates that bar members did receive notice of the pending amendment, although the notice indicated the rules were before the board for first reading as opposed to final action. The bar therefore requests that these proposals be accepted by this Court, and that this Court waive any noncompliance with Rules Regulating The Florida Bar 1-12.1(d) and Standing Board Policy 1.60.

## **Comment in Response to Proposals**

One comment was received in opposition to the proposals during the adoption process and is attached in Appendix D, pages 9–11. The author of the comment seems opposed to the collaborative law process in general, as opposed to the specific rules and specifically mentions that the author's experience as a participant in the process involved more time and cost than the proponents of the process hold out. The bar and the committee respect the commenter's opinion, but, because the collaborative law

process is now statutorily defined within the law, rules of Court procedure and professionalism are now required.

### **Other Pending Amendments**

There are 3 pending rules petitions affecting Rules Regulating The Florida Bar: The Florida Bar *Petition to Amend Rule 4-1.5 Fees and Costs for Legal Services (Lien Resolution)*, Case No. SC16-104 (filed January 15, 2016); The Florida Bar *Petition to Amend Rules Regulating The Florida Bar 4-1.1 and 6-10.3 (Technology)*, Case No. SC16-574 (filed April 4, 2016); and *In re: Amendments to the Rules Regulating The Florida Bar – Subchapter 4–7 (Lawyer Referral Services)*, Case No. SC16-1470 (filed August 15, 2016). The proposed rules within this filing are unrelated to these 3 different rules petitions and may be considered independent of them.

### **Oral Argument Requested**

The committee seeks oral argument to assuage any concerns raised by commenters or the Court about the new collaborative law process rules. The bar does not seek oral argument.

### **Effective Date Request**

The bar and the committee request that the 2 new rules sought in this filing be made effective no sooner than 30 days from the date of this Court's opinion to provide time for lawyers to become educated and informed about using the new collaborative law process rules. The bar and the committee recognize that a 30-day effective time may be unique but this places the effective date of these rules squarely in sync with the effective date of the legislation and in compliance with Rule 1-1.12.1(h), Rules Regulating The Florida Bar.

The bar and the committee request that this Court enter an opinion adopting Rule Regulating The Florida Bar 4-1.19 and Family Law Rule of Procedure 12.745 as requested in this petition.

Respectfully submitted September 16, 2016.

/s/ Hon. Laurel Moore Lee

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In Re Amendments to Rules Regulating the Florida Bar  
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(Collaborative Law Process)  
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## **CERTIFICATE OF SERVICE**

I certify that this petition and its Appendixes were served upon Edward Gerald Rubinoff by email addressed to [rubinoff@krmlegal.com](mailto:rubinoff@krmlegal.com) on September 16, 2016.

*/s/ James M. Barclay*  
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## **CERTIFICATE OF TYPE SIZE AND STYLE**

I certify that this petition is typed in Times New Roman 14 point pursuant to Florida Rule of Appellate Procedure 9.100(l).

*/s/ James M. Barclay*  
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## **CERTIFICATE OF READ-AGAINST**

No certification of read-against is possible because these rules are new.

*/s/ James M. Barclay*  
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