

FLORIDA SUPREME COURT

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Appendix B

Rules in two-column format with explanation of the proposals

Proposed Rule	Reasons for amendments
<p><u>RULE 4-1.19. COLLABORATIVE LAW PROCESS IN FAMILY LAW</u></p> <p><u>(a) Duty to Explain Process to Prospective Client.</u></p> <p><u>A lawyer must obtain the informed consent of a prospective client in a family law matter to proceed in the collaborative law process after providing the prospective client with sufficient information about the collaborative law process, including, but not limited to, the following:</u></p> <p><u>(1) the benefits and risks of the collaborative law process to resolve a family law matter;</u></p> <p><u>(2) the nature and scope of the matter to be resolved through the collaborative law process;</u></p> <p><u>(3) the material benefits and risks of participating in the collaborative law process;</u></p> <p><u>(4) alternatives to the collaborative law process;</u></p> <p><u>(5) that participation in the collaborative law process is voluntary and any client may unilaterally terminate the collaborative law process for any reason;</u></p> <p><u>(6) that the collaborative law process will terminate if any participating client initiates a proceeding or seeks tribunal intervention in a pending proceeding related to the collaborative law matter after the clients have signed the collaborative law agreement; and</u></p>	<p>To ensure that prospective clients clearly understand the collaborative law process and to minimize or avoid misunderstandings, subdivision (a) requires the lawyer to obtain the client’s informed consent and sets forth elements of that informed consent in (a)(1)–(a)(7).</p>

(7) limitations on the lawyer's participation in subsequent proceedings imposed by family law court rules on the collaborative law process.

(b) Written Agreement Required. A lawyer is prohibited from representing a client in the collaborative process in a family law matter unless all participating lawyers and clients sign a written agreement that includes:

(1) a statement of the clients' intent to resolve a matter through the collaborative law process under these rules;

(2) a description of the nature and scope of the matter;

(3) identification of the lawyers participating in the collaborative law process and which client(s) they represent;

(4) that the clients will make timely, full, candid, and informal disclosure of information related to the collaborative matter without formal discovery and will promptly update previously disclosed information that has materially changed;

(5) that participation in the collaborative law process is voluntary and any client may unilaterally terminate the collaborative law process for any reason;

(6) that the collaborative law process will terminate if any participating client initiates a proceeding or seeks tribunal intervention in a pending proceeding related to the collaborative law matter after the clients have signed the

To ensure that all participating lawyers and clients in a collaborative law matter specifically agree with the process and how it operates, subdivision (b) requires disclosure of specific information before a lawyer may represent a client in the collaborative law process and 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.

collaborative law agreement; and

(7) that the clients understand that their lawyers may not represent the clients or any other person before a tribunal in a proceeding related to the collaborative law matter except as provided by court rule.

(c) Duty to Address Domestic Violence. A lawyer must reasonably inquire whether a prospective client has a history of any coercive or violent relationship with another party in a family law matter before agreeing to represent a client in the collaborative law process and must make reasonable efforts to continue to assess whether a coercive or violent relationship exists between parties in a family law matter throughout the collaborative law process. A lawyer may not represent a client in the collaborative law process in a family law matter and must terminate the client-lawyer relationship in an existing collaborative law process in a family law matter if the lawyer reasonably believes that the lawyer's client has a history of any coercive or violent relationship with another party in the matter unless:

(1) the client requests to begin or continue the collaborative law process; and

(2) the lawyer reasonably believes that the safety of the client can be protected during the collaborative law process.

Comment

The collaborative law process involves the nonadversarial resolution of disputes through voluntary settlement procedures. Florida statutes and court rules permit collaborative law to

Clients or others involved in dissolution of marriage or paternity cases may have a history or coercive or violent relationships and those histories and relationships may carry over into the collaborative law process. Subdivision (c) 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 under specified circumstances.

This paragraph of the Comment describes the nonadversarial and voluntary dispute resolution underpinnings

resolve disputes in family law. Lawyers engaging in the collaborative law process in family law matters must comply with legislative and court requirements regarding the process. As part of this nonadversarial and voluntary resolution of disputes, lawyers who engage in the collaborative law process in a family law matter, and any other lawyers in that lawyer's firm, may not afterwards represent any party in any related proceeding except to request that a court approve the settlement reached during the collaborative law process or in specified emergency situations in accordance with family law court rules.

Before agreeing with the client to proceed in the collaborative law process in a family law matter, a lawyer should first consider whether a prospective client is an appropriate candidate for the collaborative law process and must provide the prospective client with sufficient information regarding the benefits and risks of the process, including the lawyer's limitations regarding subsequent proceedings. See also rules 4-1.4 and 4-1.2. To determine whether a prospective client is a good candidate for the collaborative law process, the lawyer must inquire regarding any history of coercive or violent relationships with any other persons who would be parties to the collaborative law process in the family law matter. See also rules 4-1.1 and 4-1.2. The lawyer also must provide the prospective client with information about other reasonably available alternatives to resolve the family law matter, which may include litigation, mediation, arbitration, or expert evaluation. See also rule 4-1.4. The lawyer should assess whether the prospective client is likely to cooperate in voluntary discovery and discuss that process with the prospective client. See rules 4-1.1 and 4-1.2. The lawyer should also advise the prospective client that the collaborative law process will terminate if any party initiates litigation or other court intervention in the matter after signing a collaborative law

of the collaborative law process and requires lawyers in the process to comply with legislative and court requirements. The Comment describes when a lawyer engaged in the process may not afterwards represent any party in any related proceeding and explains exceptions.

Before agreeing to proceed in the collaborative law process, a lawyer should take steps to consider if the client is an appropriate candidate and must provide the prospective client with sufficient information to make an informed consent to move forward in the process. This inquiry includes inquiring about coercive or violent relationships, disclosing reasonable dispute resolution alternatives, assessing cooperation in voluntary discovery and a discussion about the process.

The lawyer is to advise the client that the process will terminate if any party begins litigation or other court

agreement. *Id.* The lawyer should discuss with the client the fact that the collaborative law process is voluntary and any party to a collaborative law agreement may terminate the process at any time. *Id.*

An agreement between a lawyer and client to engage in the collaborative law process is a form of limited representation which must comply with all requirements of limited scope representations, including the requirement that the client must give informed consent in writing. See rule 4-1.2(c). The agreement between lawyer and client should include the nature and scope of the matter to be resolved through the collaborative law process, the material benefits and risks to participating in the collaborative law process, and the limitations on the lawyer's representation.

If a client agrees to participate in the collaborative law process and then terminates the process or initiates litigation regarding the dispute, the lawyer should terminate the representation. See rule 4-1.16.

intervention in the matter, that the process is voluntary, and that any party may terminate the process at any time.

As a form of limited representation, the lawyer/client agreement to engage in the collaborative law process must be consistent with all limited scope representation requirements including giving the client written informed consent, nature and scope of the matter, material benefits and risks and limitations on the lawyer's representation.

The lawyer should terminate the representation if a client who agreed to participate terminates the process or initiates litigation regarding the dispute.

RULE 12.745. COLLABORATIVE LAW PROCESS

(a) Application. This rule governs all proceedings under Chapter 61, part III, Florida Statutes.

(b) Collaborative Law Process.

(1) Initiating Process.

(A) A collaborative law process begins, regardless of whether a legal proceeding is pending, when the parties sign a collaborative law participation agreement.

(B) When a proceeding is pending before a tribunal, the parties may sign a collaborative law participation agreement to seek to resolve a matter related to the proceeding. The parties shall promptly file with the tribunal a notice of the agreement after it is signed and it shall operate as an application for a stay of the proceeding. A tribunal in which a proceeding is stayed under this subdivision may require the parties and collaborative lawyers to provide a status report on the collaborative law process and the proceeding. The status report may only indicate whether the process is ongoing or concluded and no other information. The status report may not include a report, assessment, recommendation, finding, or other communication regarding a collaborative matter. A tribunal shall provide notice to the parties and an opportunity to be heard before dismissing a proceeding, in which a notice of collaborative process is filed, based on delay or failure to prosecute. A tribunal may not consider a communication made

Chapter 2016-93 (act) creates a collaborative law process for resolving dissolution of marriage and paternity cases. The act requires rules of professional responsibility and rules of procedure to make the legislation effective. Rule 12.745 addresses the required procedural component. Subdivision (a) makes the collaborative law process applicable to proceedings under Chapter 61, Part III, Florida Statutes.

To make the collaborative law process available to parties in dissolution of marriage or paternity cases, the collaborative law process is structured so that it may begin even if a legal proceeding is already underway. Consequently, under subdivision (b)(1)(A) the collaborative law process begins when parties sign a collaborative law participation agreement even if a legal proceeding is already pending.

Under subdivision (b)(1)(B) parties may seek resolution of a matter related to the proceeding while it is pending before a tribunal. The rule requires that a collaborative law process agreement be filed with tribunal, that the agreement operates as a stay of the proceeding and that the tribunal may require status reports. To facilitate resolving issues in dissolution of marriage and paternity cases, the parties are to promptly file with the tribunal a notice of the signed collaborative law process agreement. That filing operates as an application to stay the proceeding. While the collaborative process is underway, the tribunal may require status reports of whether the process is ongoing or concluded but those status reports are not to include a report, assessment, recommendation, finding, or other communication regarding the collaborative process. Before a tribunal may dismiss a proceeding based on delay or failure to

in violation of this subdivision.

(2) Concluding and Terminating Process.

A collaborative law process is concluded by:

(A) the resolution of a collaborative matter as evidenced by a signed record;

(B) the resolution of a part of the collaborative matter, evidenced by a signed record, in which the parties agree that the remaining parts of the matter will not be resolved in the process;

(C) a party unilaterally terminating the collaborative law process, with or without cause, by

(i) giving notice to other parties in a record that the process is ended,

(ii) beginning a contested proceeding related to a collaborative matter without the agreement of all parties, or

(iii) in a pending proceeding related to the matter:

a. initiating a pleading, motion, order to show cause, or request for a conference with the tribunal;

b. requesting that the proceeding be put on the tribunal's active calendar; or

prosecute, both notice and an opportunity to be heard are required. The tribunal is prohibited from considering any communication made in violation of this subdivision.

To provide guidance and direction to lawyers in the collaborative law process, the rule describes circumstances and provides procedures for concluding and terminating the collaborative law process. Specifically, subdivisions (b)(2)(A)–(b)(2)(C) describe various methods to conclude the collaborative process and notice requirements. The process can be concluded through a resolution of the collaborative law process as evidenced by a signed record; by resolution through a written record of part of the collaborative matter with an agreement by the parties that the remaining issues will not be resolved through the collaborative law process; by a collaborative attorney being discharged or withdrawing except as provided in subdivision (b)(3); by the unilateral termination of the collaborative process by a party through notice given to the other parties in a signed record; by beginning a contested proceeding related to the collaborative matter without the agreement of the other parties; or, if there is a pending proceeding, by initiating a filing; requesting that the tribunal schedule a conference or place the matter on the tribunal's active calendar; or by taking similar action requiring notice to the other parties. When the collaborative process concludes while a proceeding is pending, the parties are to promptly file a notice of such conclusion with the tribunal, which notice shall lift a stay of the proceeding. The notice must not specify any reasons for the termination of the process. The notice lifts any stay of the proceeding.

c. taking similar action requiring notice to be sent to the parties; or

(D) except as otherwise provided by subdivision (b)(3), a party discharging a collaborative lawyer or a collaborative lawyer withdrawing from further representation of a party.

If a proceeding is pending before a tribunal, the parties shall promptly file with the tribunal notice in a record when a collaborative law process concludes. Any stay of the proceeding is lifted when the notice is filed. The notice may not specify any reason for termination of the process.

(3) Discharge or Withdrawal from Representation. A party's collaborative lawyer shall give prompt notice to all other parties in a record of a discharge or withdrawal. If a proceeding was pending prior to the initiation of the collaborative process, the party's collaborative lawyer shall comply with the requirements of Florida Rule of Judicial Administration 2.505. Notwithstanding the discharge or withdrawal of a collaborative lawyer, a collaborative law process continues, if not later than 30 days after the date that the notice of the discharge or withdrawal of a collaborative lawyer is sent to the parties:

(A) the unrepresented party retains a successor collaborative lawyer; and

(B) in a signed record:

(i) the parties consent to continue the process by reaffirming the collaborative law

During the course of a collaborative law process matter, it may become necessary to discharge a collaborative lawyer or the collaborative lawyer may need to withdraw. In the event of discharge or withdrawal of a lawyer in a collaborative matter, subdivision (b)(3) requires notice by the lawyer of such discharge or withdrawal. If a proceeding was pending before the collaborative process began, the party's collaborative lawyer must comply with provisions of Fla. R. Jud. Admin. 2.505. The collaborative process may continue after the discharge or withdrawal of a collaborative lawyer if the unrepresented party retains a successor collaborative lawyer and the parties and the successor collaborative lawyer timely amend and sign the participation agreement and consent to continuing the process.

participation agreement; and

(ii) the agreement is amended to identify the successor collaborative lawyer and the successor attorney signs the participation agreement.

(c) Approval of Interim Agreements. A collaborative law process does not conclude if, with the consent of the parties, a party requests a tribunal to approve a written agreement resolving an issue in the collaborative matter while other issues remain pending.

(d) Alternative Dispute Resolution Permitted. Nothing in this rule shall be construed to prohibit the parties from using, by mutual agreement, any other permissible form of alternative dispute resolution to reach a settlement on any of the issues included in the collaborative process.

(e) Emergency Order. During a collaborative law process, a tribunal may issue emergency orders to protect the health, safety, welfare, or interest of a party or a family or household member as defined in section 741.28, Florida Statutes.

(f) Disqualification of Collaborative Lawyer and Lawyers in Associated Law Firm.

(1) Except as otherwise provided in subdivision (b)(3), a collaborative lawyer is disqualified from appearing before a tribunal to represent a party in a proceeding related to the collaborative matter.

(2) Except as otherwise provided in

Collaborative law matters may involve incremental interim agreements. Consequently, the collaborative process created by the act envisions resolution of particular matters without concluding the proceeding. Subdivision (c) facilitates the process by permitting requests for approval by the tribunal of written interim agreements without concluding the collaborative law process.

The collaborative law process is not exclusive and envisions use of alternative dispute resolution methods. As an additional part of the collaborative process, subdivision (d) specifically permits use of other permissible forms of alternative dispute resolution to settle any issue in the collaborative process.

Some collaborative law proceedings may become volatile and may require emergency protective orders. As an aspect of anticipating such relief, subdivision (e) authorizes the tribunal to issue emergency orders during the collaborative process to protect the health, safety, welfare or interest of a party or a family or household member.

With exceptions, subdivisions (f)(1) and (f)(2) disqualify a collaborative lawyer and lawyers in an associated law firm

subdivisions (b)(3) and (c), a lawyer in a law firm with which the collaborative lawyer is associated is disqualified from appearing before a tribunal to represent a party in a proceeding related to the collaborative matter if the collaborative lawyer is disqualified from doing so under subdivision (b)(1).

(3) A collaborative lawyer or a lawyer in a law firm with which the collaborative lawyer is associated may represent a party:

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

(B) to seek or defend an emergency order to protect the health, safety, welfare, or interest of a party, or a family or household member as defined in section 741.28, Florida Statutes, if a successor lawyer is not immediately available to represent that person. In that event, subdivisions (b)(1) and (b)(2) apply when the party or family or household member is represented by a successor lawyer or reasonable measures are taken to protect the health, safety, welfare, or interest of that person.

from appearing before a tribunal to represent a party in any proceeding related to the collaborative matter.

To facilitate the collaborative law process, a collaborative lawyer or an associated firm lawyer may, under subdivisions (f)(3)(A) and (f)(3)(B), ask a tribunal to approve an agreement resulting from the process or make or defend an emergency order to protect health, safety, or interest of a party or a family or household member.