

**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).

RECEIVED, 09/16/2016 02:13:28 PM, Clerk, Supreme Court

## **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*

Honorable Laurel Moore Lee, Chair  
Family Law Rules Committee  
813-307-3432  
Hillsborough County Courthouse  
800 East Twiggs Street, Suite 426  
Tampa, Florida 33602-3541  
[famlawdivi@fljud13.org](mailto:famlawdivi@fljud13.org)  
Florida Bar Number 177581

*/s/ John F. Harkness, Jr.*

John F. Harkness, Jr.  
Executive Director  
850-561-5600  
The Florida Bar  
651 East Jefferson Street  
Tallahassee, Florida 32399-2300  
[jharkness@floridabar.org](mailto:jharkness@floridabar.org)  
Florida Bar Number 123390

William J. Schifino, Jr.

President 2016-17  
813-221-2626  
Burr & Forman L L P  
PO Box 380  
Tampa, Florida 33601-0380  
[wschifino@burr.com](mailto:wschifino@burr.com)  
Florida Bar Number 564338

Michael J. Higer

President-elect 2016-17  
305-714-4373  
Berger Singerman LLP  
1450 Brickell Ave Ste 1900  
Miami, Florida 33131-5319  
[mhiger@bergersingerman.com](mailto:mhiger@bergersingerman.com)  
Florida Bar Number 500798

Lori S. Holcomb

Director, Division of Ethics and Consumer  
Protection  
850-561-5600  
The Florida Bar  
651 East Jefferson Street

In Re Amendments to Rules Regulating the Florida Bar  
and Family Law Court Rules – Rule 4-1.19 and 12.745  
(Collaborative Law Process)  
September 16, 2016

SC16-  
Page 8



Tallahassee, Florida 32399-6584  
[lholcomb@floridabar.org](mailto:lholcomb@floridabar.org)  
Florida Bar Number 501018

Elizabeth Clark Tarbert  
Ethics Counsel  
850-561-5780  
The Florida Bar  
651 East Jefferson Street  
Tallahassee, Florida 32399-6584  
[eto@floridabar.org](mailto:eto@floridabar.org)  
Florida Bar Number 861294

## 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*  
James M. Barclay  
Florida Bar Number 114183

## 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*  
James M. Barclay  
Florida Bar Number 114183

## CERTIFICATE OF READ-AGAINST

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

*/s/ James M. Barclay*  
James M. Barclay  
Attorney Liaison – Rules  
850-561-5663  
[jbarclay@floridabar.org](mailto:jbarclay@floridabar.org)  
The Florida Bar  
651 East Jefferson Street  
Tallahassee, Florida 32399-2300  
Florida Bar Number 114183

RECEIVED, 09/16/2016 02:13:29 PM, Clerk, Supreme Court

# Appendix A

## Full text of rules in legislative format

## **RULE 4-1.19. COLLABORATIVE LAW PROCESS IN FAMILY LAW**

**(a) Duty to Explain Process to Prospective Client.** 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:

(1) the benefits and risks of the collaborative law process to resolve a family law matter;

(2) the nature and scope of the matter to be resolved through the collaborative law process;

(3) the material benefits and risks of participating in the collaborative law process;

(4) alternatives to the collaborative law process;

(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 collaborative law agreement; and

(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 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 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 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.

**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 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

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 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 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.

# Appendix C

Notice of intent to file  
rules published in  
The Florida Bar *News*

RECEIVED, 09/16/2016 02:13:29 PM, Clerk, Supreme Court

## **Joint out-of-cycle proposed Rules 4-1.19 And 12.475 pertaining to collaborative law process**

Proposed Rule Regulating The Florida Bar 4-1.19 and Florida Family Law Rule of Procedure 12.475 address the collaborative law process enacted by Chapter 2016-93, Laws of Florida. The Family Law Rules Committee and The Florida Bar Board of Governors have created and approved the proposed rules, the full text of which is shown below. A petition to adopt the proposed rules will be filed on or about September 15, 2016, under Rules Regulating The Florida Bar 1-12.1 and Florida Rules of Judicial Administration 2.140(e). Comments must be filed with the Clerk of Court, Supreme Court of Florida, after the case has been docketed, with copies served on all named parties within the Petition. A copy of the petition may be requested by contacting James M. Barclay, Attorney Liaison – Rules, The Florida Bar, 651 East Jefferson Street, Tallahassee 32399-2300, [jbarclay@floridabar.org](mailto:jbarclay@floridabar.org), or calling (850) 561-5633.

### **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 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

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 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 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.

**RULE 4-1.19 COLLABORATIVE LAW PROCESS IN FAMILY LAW**

**(a) Duty to Explain Process to Prospective Client.** 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:

(1) the benefits and risks of the collaborative law process to resolve a family law matter;

(2) the nature and scope of the matter to be resolved through the collaborative law process;

(3) the material benefits and risks of participating in the collaborative law process;

(4) alternatives to the collaborative law process;

(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 collaborative law agreement; and

(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 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 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 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.

*[Revised: 09-13-2016]*

# Appendix D

Chapter 2016-93, page D-2

Comment received, page D-9

## CHAPTER 2016-93

### House Bill No. 967

An act relating to family law; providing a short title; providing a directive to the Division of Law Revision and Information; providing legislative findings; creating s. 61.55, F.S.; providing a purpose; creating s. 61.56, F.S.; defining terms; creating s. 61.57, F.S.; providing that a collaborative law process begins when the parties enter into a collaborative law participation agreement; prohibiting a tribunal from ordering a party to participate in a collaborative law process over the party's objection; providing the conditions under which a collaborative law process concludes, terminates, or continues; creating s. 61.58, F.S.; providing for confidentiality of communications made during the collaborative law process; providing exceptions; providing that specified provisions do not take effect until 30 days after the Florida Supreme Court adopts rules of procedure and professional responsibility; providing a contingent effective date; providing effective dates.

Be It Enacted by the Legislature of the State of Florida:

Section 1. This act may be cited as the "Collaborative Law Process Act."

Section 2. The Division of Law Revision and Information is directed to create part III of chapter 61, Florida Statutes, consisting of ss. 61.55-61.58, Florida Statutes, to be entitled the "Collaborative Law Process Act."

Section 3. The Legislature finds and declares that the purpose of part III of chapter 61, Florida Statutes, is to:

(1) Create a uniform system of practice for a collaborative law process for proceedings under chapters 61 and 742, Florida Statutes.

(2) Encourage the peaceful resolution of disputes and the early settlement of pending litigation through voluntary settlement procedures.

(3) Preserve the working relationship between parties to a dispute through a nonadversarial method that reduces the emotional and financial toll of litigation.

Section 4. Section 61.55, Florida Statutes, is created to read:

61.55 Purpose.—The purpose of this part is to create a uniform system of practice for the collaborative law process in this state. It is the policy of this state to encourage the peaceful resolution of disputes and the early resolution of pending litigation through a voluntary settlement process. The collaborative law process is a unique nonadversarial process that preserves a working relationship between the parties and reduces the emotional and financial toll of litigation.

Section 5. Section 61.56, Florida Statutes, is created to read:

61.56 Definitions.—As used in this part, the term:

(1) “Collaborative attorney” means an attorney who represents a party in a collaborative law process.

(2) “Collaborative law communication” means an oral or written statement, including a statement made in a record, or nonverbal conduct that:

(a) Is made in the conduct of or in the course of participating in, continuing, or reconvening for a collaborative law process; and

(b) Occurs after the parties sign a collaborative law participation agreement and before the collaborative law process is concluded or terminated.

(3) “Collaborative law participation agreement” means an agreement between persons to participate in a collaborative law process.

(4) “Collaborative law process” means a process intended to resolve a collaborative matter without intervention by a tribunal and in which persons sign a collaborative law participation agreement and are represented by collaborative attorneys.

(5) “Collaborative matter” means a dispute, a transaction, a claim, a problem, or an issue for resolution, including a dispute, a claim, or an issue in a proceeding which is described in a collaborative law participation agreement and arises under chapter 61 or chapter 742, including, but not limited to:

(a) Marriage, divorce, dissolution, annulment, and marital property distribution.

(b) Child custody, visitation, parenting plan, and parenting time.

(c) Alimony, maintenance, and child support.

(d) Parental relocation with a child.

(e) Parentage and paternity.

(f) Premarital, marital, and postmarital agreements.

(6) “Law firm” means:

(a) One or more attorneys who practice law in a partnership, professional corporation, sole proprietorship, limited liability company, or association; or

(b) One or more attorneys employed in a legal services organization, the legal department of a corporation or other organization, or the legal

department of a governmental entity, subdivision, agency, or instrumentality.

(7) “Nonparty participant” means a person, other than a party and the party’s collaborative attorney, who participates in a collaborative law process.

(8) “Party” means a person who signs a collaborative law participation agreement and whose consent is necessary to resolve a collaborative matter.

(9) “Person” means an individual; a corporation; a business trust; an estate; a trust; a partnership; a limited liability company; an association; a joint venture; a public corporation; a government or governmental subdivision, agency, or instrumentality; or any other legal or commercial entity.

(10) “Proceeding” means a judicial, an administrative, an arbitral, or any other adjudicative process before a tribunal, including related prehearing and posthearing motions, conferences, and discovery.

(11) “Prospective party” means a person who discusses with a prospective collaborative attorney the possibility of signing a collaborative law participation agreement.

(12) “Record” means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(13) “Related to a collaborative matter” means involving the same parties, transaction or occurrence, nucleus of operative fact, dispute, claim, or issue as the collaborative matter.

(14) “Sign” means, with present intent to authenticate or adopt a record, to:

(a) Execute or adopt a tangible symbol; or

(b) Attach to or logically associate with the record an electronic symbol, sound, or process.

(15) “Tribunal” means a court, an arbitrator, an administrative agency, or other body acting in an adjudicative capacity which, after presentation of evidence or legal argument, has jurisdiction to render a decision affecting a party’s interests in a matter.

Section 6. Section 61.57, Florida Statutes, is created to read:

61.57 Beginning, concluding, and terminating a collaborative law process.—

(1) The collaborative law process begins, regardless of whether a legal proceeding is pending, when the parties enter into a collaborative law participation agreement.

(2) A tribunal may not order a party to participate in a collaborative law process over that party's objection.

(3) A collaborative law process is concluded by any of the following:

(a) Resolution of a collaborative matter as evidenced by a signed record;

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

(c) Termination of the collaborative law process.

(4) A collaborative law process terminates when a party:

(a) Gives notice to the other parties in a record that the collaborative law process is concluded;

(b) Begins a proceeding related to a collaborative matter without the consent of all parties;

(c) Initiates a pleading, a motion, an order to show cause, or a request for a conference with a tribunal in a pending proceeding related to a collaborative matter;

(d) Requests that the proceeding be put on the tribunal's active calendar in a pending proceeding related to a collaborative matter;

(e) Takes similar action requiring notice to be sent to the parties in a pending proceeding related to a collaborative matter; or

(f) Discharges a collaborative attorney or a collaborative attorney withdraws from further representation of a party, except as otherwise provided in subsection (7).

(5) A party's collaborative attorney shall give prompt notice to all other parties in a record of a discharge or withdrawal.

(6) A party may terminate a collaborative law process with or without cause.

(7) Notwithstanding the discharge or withdrawal of a collaborative attorney, the collaborative law process continues if, not later than 30 days after the date that the notice of the discharge or withdrawal of a collaborative attorney required by subsection (5) is sent to the parties:

(a) The unrepresented party engages a successor collaborative attorney;

(b) The parties consent to continue the collaborative law process by reaffirming the collaborative law participation agreement in a signed record;

(c) The collaborative law participation agreement is amended to identify the successor collaborative attorney in a signed record; and

(d) The successor collaborative attorney confirms his or her representation of a party in the collaborative law participation agreement in a signed record.

(8) A collaborative law process does not conclude if, with the consent of the parties, a party requests a tribunal to approve a resolution of a collaborative matter or any part thereof as evidenced by a signed record.

(9) A collaborative law participation agreement may provide additional methods for concluding a collaborative law process.

Section 7. Section 61.58, Florida Statutes, is created to read:

61.58 Confidentiality of a collaborative law communication.—Except as provided in this section, a collaborative law communication is confidential to the extent agreed by the parties in a signed record or as otherwise provided by law.

(1) PRIVILEGE AGAINST DISCLOSURE FOR COLLABORATIVE LAW COMMUNICATION; ADMISSIBILITY; DISCOVERY.—

(a) Subject to subsections (2) and (3), a collaborative law communication is privileged as provided under paragraph (b), is not subject to discovery, and is not admissible into evidence.

(b) In a proceeding, the following privileges apply:

1. A party may refuse to disclose, and may prevent another person from disclosing, a collaborative law communication.

2. A nonparty participant may refuse to disclose, and may prevent another person from disclosing, a collaborative law communication of a 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.

(2) WAIVER AND PRECLUSION OF PRIVILEGE.—

(a) A privilege under subsection (1) may be waived orally or in a record during a proceeding if it is expressly waived by all parties and, in the case of the privilege of a nonparty participant, if it is expressly waived by the nonparty participant.

(b) A person who makes a disclosure or representation about a collaborative law communication that prejudices another person in a proceeding may not assert a privilege under subsection (1). This preclusion

applies only to the extent necessary for the person prejudiced to respond to the disclosure or representation.

(3) LIMITS OF PRIVILEGE.—

(a) A privilege under subsection (1) does not apply to a collaborative law communication that is:

1. Available to the public under chapter 119 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; or

4. In an agreement resulting from the collaborative law process, as evidenced by a record signed by all parties to the agreement.

(b) The privilege under subsection (1) for a collaborative law communication does not apply to the extent that such collaborative law communication is:

1. Sought or offered to prove or disprove a claim or complaint of professional misconduct or malpractice arising from or relating to a collaborative law process; or

2. Sought or offered to prove or disprove abuse, neglect, abandonment, or exploitation of a child or an adult unless the Department of Children and Families is a party to or otherwise participates in the process.

(c) A privilege under subsection (1) does not apply 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, the need for the evidence substantially outweighs the interest in protecting confidentiality, and the collaborative law communication is sought or offered in:

1. A proceeding involving a felony; or

2. A proceeding seeking rescission or reformation of a contract arising out of the collaborative law process or in which a defense is asserted to avoid liability on the contract.

(d) If a collaborative law communication is subject to an exception under paragraph (b) or paragraph (c), 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 paragraph (b) or paragraph (c) does not make the evidence or any other collaborative law communication discoverable or admissible for any other purpose.

(f) The privilege under subsection (1) does 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 paragraph does not apply to a collaborative law communication made by a person who did not receive actual notice of the collaborative law participation agreement before the communication was made.

Section 8. Sections 61.55-61.58, Florida Statutes, as created by this act, shall not take effect until 30 days after the Florida Supreme Court adopts rules of procedure and professional responsibility consistent with this act.

Section 9. Except as otherwise expressly provided in this act, this act shall take effect July 1, 2016.

Approved by the Governor March 24, 2016.

Filed in Office Secretary of State March 24, 2016.

Please respond to Ed Rubinoff <Rubinoff@krmlegal.com>

6-27-16

To: <eto@flabar.org>

cc:

Subject: FW: Message from "RNP002673A90702"

Staff: Janelle Stoutamire Green/The Florida Bar

Hi Elizabeth,

Attached is the email I sent to Gary after I saw his article about the Collaborative Process being approved by the Legislature. My only concern is that people that may be considering this option be fully informed. I will call Chris later.

Thanks, Ed

Dear Gary,

The following is a brief summary of the concerns I expressed about the Collaborative Process. From what I read in the advertising and in your article, it appears that legislator and public are not as fully informed as they should be about the Collaborative Process. Please understand that, although my experience did not go well, my comments are based on essentially undisputed facts regarding the process itself. As I said, in a recent hearing in my case, Bob Merlin, a leading advocate of the process gave testimony under oath that supports many of my comments.

The Collaborative Process is represented to be less expensive, faster, and less emotional to the parties than litigation. It involves each party retaining an attorney, who then agree on neutral mental health and financial consultants that comprises the "TEAM." You then have a series of TEAM meeting to try and reach a settlement. These meetings are scheduled for two hours. When I finally realized that they were limited to two hours, I was advised that the reason was that after two hours it was difficult for people to make important objective decisions. I then asked, what about surgeons, air traffic controllers, judges, trial lawyers, etc., who often have to make instantaneous decisions involving life or death? The response was vague and not credible. As I advised, I am getting a copy of the transcript and will supplement this email with the exact language that was used.

My concerns are the following:

1. Assuming an average hourly fee of \$400 for the lawyers and \$250 for the financial and mental health consultants, each hour of the team meeting can cost \$1,300. There are also pre-team meeting telephone conferences that last approximately one hour and a post-team "debriefing" sessions that are approximately another hour. Adding in an hour for each party to meet with their attorney prior to the team meeting brings the cost of a team meeting and related activities to approximately \$6,000.00 per meeting. This does not take into account preparation for the team meetings, telephone calls, review of records, etc., by the professionals between meetings. As you can see, the cost to the parties can accelerate pretty quickly.
2. There is no mechanism in the process such as a judge to resolve any issues that cannot be agreed upon.
3. There is no mechanism for determining when the process breaks down and an amicable resolution is unlikely. When Merlin was asked about this by the judge, he responded that it would be up to the parties to make that determination – not the professionals. Note that the parties are not a part of the pre and post meetings professional telephone conference nor are they directly involved with the conversations that go on between the professionals! Consequently, since most parties are not lawyers, in my opinion it should be up to the professionals to make

that determination and not a party. Understandably, the parties would be relying on their attorneys who are better informed particularly because of the fiduciary relationship between attorney/client. Again, you can see how this can result in the process continuing indefinitely.

4. It is alleged that there is a disincentive to the attorneys not to reach a settlement since they cannot represent the client at trial if the matter cannot be resolved through the Collaborative Process. However, this also means that the attorneys can take positions in the Collaborative Process that might be outrageously inconsistent with the applicable law because the Collaborative attorneys will never have to take those positions in front of the judge. There is no entity such as the Florida Bar that has the authority to sanction any professional (or party) for failure to follow the Collaborative process. However, this is not a major concern to me.

There is much more, but the above are my major concerns with the process. As I said, legislators and the public can make any decision they want, but I feel an obligation that they should be more fully informed and I don't believe this is happening.

Feel free to quote me. It would also be interesting to have a three-way conversation with any legislator and/or attorney advocate of the process that would allow you to hear the responses to my concerns.

The question arises, "What is the alternative to litigation if not the collaborative process?" My response would be that although there are many "sharks" out there, there are a lot of good family lawyers who place their clients' best interest ahead of their own. If you have 2 people who, understanding they would not be in agreement on all issues, but in a good-faith effort to resolve their divorce as unemotionally, quickly and with the least financial impact, there is an alternative. Each of them can get a good lawyer who will communicate with each other, determine what the issues are in their specific case and what information and documents are relevant to those issues, exchange that information and, when both sides are ready, schedule a mediation for half a day or whatever amount of time they feel is necessary. In my almost 50 years of experience in my field, I don't remember too many cases that required a second mediation; although, there is often follow-up activity after the initial mediation to get the case finally resolved.

If you have any further questions, or would like to discuss this in more detail, please feel free to call me.