

4-1.19 | COLLABORATIVE LAW PROCESS IN FAMILY LAW

(a) Duty to Explain Process to Client. A lawyer must obtain the informed consent of a client in a family law matter before proceeding in the collaborative law process after providing the client with sufficient information about the collaborative law process, including, but not limited to, the following:

- (1) the material benefits and risks of using 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) alternatives to the collaborative law process;
- (4) that participation in the collaborative law process is voluntary and any client may unilaterally terminate the collaborative law process for any reason;
- (5) that the collaborative law process will terminate if any participating client initiates a proceeding or seeks court intervention in a pending proceeding related to the collaborative law matter after the clients have signed the collaborative law agreement;
- (6) limitations on the lawyer's participation in subsequent proceedings imposed by family law court rules on the collaborative law process; and
- (7) fees and costs the client can reasonably expect to incur in the collaborative law process, including the fees of the lawyers, mental health professionals, and financial professionals.

(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 court 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 court 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 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.



(Added May 18, 2017, effective July 1, 2017 (218 So.3d 440); amended Jan. 4, 2019, effective March 5, 2019 (267 So.3d 891).)

Comments

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 client is an appropriate candidate for the collaborative law process and must provide the 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 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 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 client is likely to cooperate in voluntary discovery and discuss that process with the client. See rules 4-1.1 and 4-1.2. The lawyer should also advise the 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.* The lawyer must provide the client with information about costs the client can reasonably expect to incur, including fees and costs of all professionals involved. See rules 4-1.4 and 4-1.5.

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.

