

COLLABORATIVE FAMILY PRACTICE

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On June 13, 2017, the Tennessee Bar Association filed a petition in the Supreme Court of Tennessee seeking to amend the Rules of the Tennessee Supreme Court to add a new rule which would address the practice of “Collaborative Family Law.” The Court solicited written comments and closed the response period on November 21, 2017. There is no set timeline for a ruling from the Court now that the deadline for comments has expired, but based on the support that the rule has received from the Tennessee Bar Association, the Knoxville Bar Association, the Nashville Bar Association, the American Bar Association’s section of Dispute Resolution, and endorsement by the Tennessee Board of Professional Responsibility (with some minor revisions), it appears that there are many lawyers and other collaborative professionals who are hopeful that the Court will act expeditiously.

The TBA petitioned the Court to adopt a new rule concerning the practice of Collaborative Family Law in order to “offer guidance to lawyers and consumers with respect to a growing method of dispute resolution in domestic relations practice.” In their petition, the TBA states that “a rule is needed to provide better definition to Collaborative Family Law Practice and offer greater guidance for lawyers and consumers regarding family law services offered. The uniform definitions of the dispute resolution process of collaborative family law are derived from the Uniform Collaborative Law Rule/Act (“UCLR/A”) developed by the National Conference of Commission of Uniform State Laws.”

The goal of the proposed TBA rule appears to provide a structured and sanctioned process for Tennessee families who want a less adversarial, more supportive approach to navigating the difficult experience of divorce.

Initially, the TBA subcommittee on Collaborative Law had recommended adoption of a proposed amendment to Tennessee Supreme Court Rule 31 to govern the practice of Collaborative Family Law. After numerous meetings of TBA leadership, and feedback from TBA members, it was determined that rather than an amendment to Rule 31, the proposal should be a stand-alone rule based on the UCLR/A. The rationale being that although collaborative practice is a form of alternate dispute resolution, collaborative matters are submitted to the process voluntarily where Rule 31 applies to court annexed ADR. If passed, this collaborative Family Practice Rule would be Tenn. Sup. Ct. R. 53.

Under the rule, attorneys, mental health professionals and financial professionals will compose the collaborative practice family law team. The collaborative practice groups that have formed across the state of Tennessee typically require these professionals to have completed a two day, 14 hour collaborative training based on standards set by the International Academy of Collaborative Professionals (IACP). The IACP is the largest professional association of the collaborative world with over 5,000 members. To be a member of most collaborative practice groups, practitioners are also expected to complete interest-based negotiation training such as Rule 31 mediation training. Interest-based negotiation focuses on developing mutually beneficial agreements based on the interests of the disputants. Interests include the needs, desires, concerns, and fears important to each side. Interest-based negotiation is important to the collaborative process in that it assists in producing more satisfactory outcomes for the parties involved than does positional bargaining.

Collaborative Family Law is recognized as a legitimate and effective way for people to reorganize their families, without the damage and cost of litigation. It is a voluntary process in which divorce and other family law related issues are approached more as a transaction than a conflict. Collaborative practice can also apply to disputes involving civil unions or unmarried couples, employment law, probate law, elder law, estate planning, construction law, real property law, and other civil law where

continuing relationships exist after the conflict has been resolved.

In the family law context, we are well aware that divorce consistently ranks as one of the top stressors that a person will face in their lifetime. Coping with a divorce is usually accompanied by a multitude of effects on the emotional, financial, interpersonal, physical and spiritual well-being of the person going through the process. The collaborative divorce is a client-centered approach to divorce and other family law matters that relies on the guiding principal of respect and mutual problem-solving to reach an agreement that will be beneficial to the entire family.

Building on the success of mediation and unbundled legal services, collaborative attorneys are hired pursuant to a limited scope representation agreement whereby they represent clients for the purpose of assisting them in reaching a marital dissolution agreement, a parenting plan where necessary, and filing necessary documents to determine an uncontested resolution of the dispute. Attorneys and clients sign an agreement, called a participation agreement, which governs the terms of the process. The parties agree to work toward settlement without going to court; they retain neutral experts; they agree to full disclosure and candid exchange of information that would normally be obtained through formal written or oral discovery; the confidentiality requirements for the process are set out; and if no settlement is reached then both attorneys withdraw.

The parties will meet with each other and their attorneys in a series of meetings with the clients and the team of lawyers, the divorce coach, and/or financial professionals, where they discuss their individual needs and goals for the divorce and their post-divorce lives. With their counsel, the parties have the opportunity to develop and evaluate various options for maximizing their respective interests. The divorce coach is a mental health professional (MHP) who has experience and training in managing difficult discussions. The MHPs are not hired to provide therapy, but are valuable in tending to strong emotions that can come with the examination of divorce related issues.

Efficiency is promoted when parties jointly engage the financial neutral who assists the parties in gathering a complete profile of their assets and liabilities and preparing anticipated future budgets. The financial neutral works with both parties to develop and assess financial options. It is less expensive for one financial neutral to gather all relevant financial information from the parties than for each attorney to mine the same financial data from their respective clients. As with Rule 31 mediators, all neutrals are hired with the understanding that they will not work for either party after the case has settled.

One of the most important factors in a successful collaborative family law process is the nature of the skills that the lawyers for both parties and the neutral professionals have acquired through their formal training and experience. The collaborative family law process has a greater likelihood of success when the team of professionals has completed the training that teaches the necessary skills involved in representing and engaging with clients in collaborative conflict resolution.

The collaborative process empowers clients to be more engaged in how their marriage ends, and what their future holds. The presence of a set of rules governing collaborative practice will give the process the legitimacy and formal structure needed to advance the practice of Collaborative Family Law. As a Collaborative Family Law practitioner, I have experienced first-hand the extremely positive outcomes that collaborative divorce has provided to my clients. I am hopeful that the Supreme Court of Tennessee will adopt the proposed new Rule 53, support this creative, voluntary, confidential form of limited scope representation, and officially recognize the collaborative family law process as a viable option for divorcing families in Tennessee.