



## ARIZONA RULES OF FAMILY LAW PROCEDURE 67.1 -- THE NEW COLLABORATIVE RULE



### Highlights

**Summary:** Rule 67.1 is within the Alternative Dispute Resolution chapter of the ARFLP. The rule allows for both to submit a notice to the court that the parties opt to proceed thereunder. The rule applies to the described cases which essentially are those of parties in any title 25 family law case, “marital and post-marital agreements” (not statutory creatures), and adoptions (title 8). The notice may be provided to the court at any time *after* the parties sign a Collaborative Law Participation Agreement, and at any time before the collaborative law process is concluded. The Process is a term of art in that the definition suggests that each party will be represented by a collaborative lawyer, including the need to retain substitute counsel when counsel is terminated in order for the process to continue. An objective read suggests that *pro pers* may not avail themselves of the process.

**The effects of the notice are many.**

**Primarily, you will wish to study these:**

- The notice is an “application for a stay of the proceeding.” ARFLP Rule 67.1.F.
- The stay is lifted when notice of conclusion of the process is filed.
- If the court requests a status report, the report may *only* provide whether the process is “ongoing or concluded.” *Id.* and information beyond that may not be considered by the court.
- The lawyers may only represent the parties in court then to approve an agreement or in case of an emergency protective order proceeding.
- Collaborative communications are generally privileged with some specific exceptions.

### History of the Collaborative Movement

Local attorney Luke Salava previously wrote a thorough history of the Collaborative movement in the United States. His is a worthwhile read to place the concept in perspective. See Salava, Luke, “Collaborative Divorce: The Unexpectedly Underwhelming Advance of a Promising Solution in Marriage Dissolution,” *Family Law Quarterly*, Vol.48, No. 1, pgs. 179-96 (American Bar Association, Spring 2014). Mr. Salava reviews traditional divorce and mediated divorce concepts. Of course, our new Rule 67.1 applies to many a circumstance beyond divorce (pre-, marital, and post-marital agreements, paternity, adoption, and so forth). In his context, however, the reader will find a thorough history, and as well, analyzes benefits and disadvantages of collaborative law, there in the divorce context.

## History of the Rule in Arizona

Rule Change Petition R-15-0019 was filed on January 9<sup>th</sup>, 2015 by Barbara Atwood and Timothy Berg, Commissioners, Uniform Law Commission (from the James E. Rogers College of Law at The University of Arizona and from Fennemore Craig, respectively). The Petition requested adoption of the Uniform Collaborative Law Rules, which were the Commission's exhibit A to the Petition. The Petition describes the disqualification requirement of the collaborative lawyer in the event that the process concludes when the termination results in the case continuing as an adversarial case. Download the Petition and all related materials from [www.azcourts.gov](http://www.azcourts.gov) . There were three comments received by the Court during the open comment period in year 2015, two from attorneys and one from a financial planner. In the rule as passed (with some amendment from the original exhibit A), the **lawyer** is required to screen for domestic violence or coercive behavior before entering into a collaborative agreement with a client, as well as to assess the appropriateness of this path. These assessments and then the transparent process of non-adversarialness in a team format is a very different approach to many family law cases.

Today's seminar will take a glimpse into the world of ethical concerns that counsel will surely raise in deciding whether to integrate this option into his/her practice. Other consideration will include whether a whole team is needed everytime, or whether in fact the collaborative process can be available and successful in cases with narrow issues or wherein parties have limited resources.

Following this brief introduction, please find the following materials which will assist both during the seminar and also, as you go forward utilizing the collaborative model when appropriate:

The Petition R-15-0019 (without Exhibit A); and  
ARFLP, Rule 67.1.

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