

UNIVERSITY OF FLORIDA FREDRIC G. LEVIN
COLLEGE OF LAW

COLLABORATIVE LAW SYLLABUS

FALL 2024

ADJUNCT PROFESSOR ROBERT J. MERLIN

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COURSE DESCRIPTION

Collaborative Law focuses on helping clients (individuals or entities) identify their interests in a legal dispute and to facilitate settlement negotiations through which individuals and/or businesses resolve the disputes privately based upon mutual self-determination rather than through litigation. This skills course is designed to familiarize students with the history and theory of the Collaborative Process and to train them in the practical application of Collaborative Practice principles, not only to disputes in which the Collaborative Process is being used, but in all dispute resolutions and even personal relationships.

The course will introduce students to the concept and practice of Collaborative Law, a non-adversarial means of resolving disputes, most often used in the family law context. Collaborative Practice is usually a multi-disciplinary process that seeks to help parties settle family legal matters in a dignified, private and creative manner, with respect for all of the participants and others who may be affected by the outcome of the negotiation process, using constructive communication methods and the active participation of the parties to the dispute and the Collaborative professionals. Because family law is the area in which most Collaborative lawyering has occurred, this course will focus on the Collaborative divorce, touching briefly on the other legal contexts in which Collaborative Practice may be useful. Students are expected to attend class, to read the assigned materials in advance of each class, to complete assignments in a timely manner and to participate in class activities and discussions.

Course Number: 6314

Class Number: 29642

Credit Hours: 2

Class Times: Thursdays 10:00 am – 12:00 pm

Class Dates: Thursday, August 22, 2024 – Thursday, November 14, 2024

Office Hours: Please call my office, 305-448-1555, to schedule an appointment or text or call my cell at 305-322-5138 to speak with me. I will make myself available for office hours almost every Friday from 9:00 am until 11:00 am. Feel free to e-mail, call or text me at other times as well. I will respond to you as quickly as possible if I am not available when you contact me. I would also like to schedule one or two times to personally meet at the law school with students who would be interested in having an informal and voluntary discussion on any topic related to the Collaborative Process.

Format: Online

Canvas: Please make sure you can access the Canvas site for this course, where I will post the class materials and announcements.

Attendance: Class attendance is mandatory. If you miss more than three classes for any reason, you may be rendered ineligible to receive credit for the course. You are expected to arrive on time for each class. If you arrive late, it is your responsibility to communicate with me after class to make sure I have marked you as being late rather than absent. I do not distinguish between excused and unexcused absences, but simply allow you three absences for whatever reason, with the following exceptions: (a) According to UF policy, “students, upon prior notification to their instructors, shall be excused from class to observe a religious holy day of their faith.” (b) “Absences from class for court-imposed legal obligations (e.g., jury duty or subpoena) must be excused.” Such excused absences for a religious holy day or a court-imposed legal obligation shall not count toward the three permitted absences. If you miss a class, you will be expected to have been prepared for the class, to have completed assignments due for that class, to know what happened during the missed class and to be prepared for the next class.

Required Readings:

Collaborative Divorce (Handbook), Forrest S. Mosten, published by Jossey-Bass ISBN 978-1-63425-470-0

Uniform Collaborative Law Rules and Uniform Collaborative Law Act (UCLA/R). Please pay particular attention to the Prefatory Notes to the UCLA/R:

<https://www.uniformlaws.org/HigherLogic/System/DownloadDocumentFile.ashx?DocumentFileKey=515a6ede-25c2-1ab5-740e-0a8f0dfd3b18&forceDialog=0>

Florida Statutes Sections 61.55-61.58:

http://www.leg.state.fl.us/Statutes/index.cfm?App_mode=Display_Statute&URL=0000-0099/0061/0061PartIIIContentsIndex.html&StatuteYear=2020&Title=%2D%3E2020%2D%3EChapter%2061%2D%3EPart%20III

Florida Family Law Rule of Procedure 12.745:

<https://www-media.floridabar.org/uploads/2019/08/Family-Law-Rules-of-Procedure-08-2019.pdf>

Florida Bar Rule of Professional Conduct 4-1.19:

https://www-media.floridabar.org/uploads/2020/09/Ch-4-2021_03-SEP-RRTFB-9-3-2020.pdf

International Academy of Collaborative Professionals Standards and Ethics:

<https://www.collaborativepractice.com/sites/default/files/IACP%20Standards%20and%20Ethics%202018.pdf>

Recommended Readings:

“Getting to Yes,” Roger Fisher and William Ury, ISBN 978-0-14-311875-6

“The Collaborative Law Process Act: The Future is Now,” Robert J. Merlin, Esquire, The Florida Bar Journal, April 2017, <https://www.floridabar.org/the-florida-bar-journal/the-collaborative-law-process-act-the-future-is-now>

“The Collaborative Law Process Rules: This Is How We Do It,” Robert J. Merlin, Esquire, The Florida Bar Journal, April 2018, <https://www.floridabar.org/the-florida-bar-journal/the-collaborative-law-process-rules-this-is-how-we-do-it>

“Collaborative Law Movement Is Gaining In Popularity,” The Florida Bar News, December 23, 2020, <https://www.floridabar.org/the-florida-bar-news/collaborative-law-movement-is-gaining-in-popularity>

Class Participation: You are encouraged to prepare for each of our classes, including the first class. You will benefit from your preparation for the classes and your participation in our classroom discussions. You are encouraged to ask questions and to make relevant comments. My philosophy is that if you have a question, there is a reasonable chance someone else in the class will have the same question, so please ask the question. I do not mind being respectfully interrupted with a question. If I do not think it is an appropriate time to answer the question, I will let you know. Please remind me either before the end of the class or after the class if I did not answer your question. You should expect to be randomly called upon to answer my questions or to participate in discussions. I encourage you to think about what you have read to prepare for a class. Questioning how and why something is done will enable you to better understand the Collaborative Process. I do not expect you to answer all of my questions correctly, but I expect you to ask well thought-out questions and to actively participate in our discussions. Each student will play a role in a Collaborative team as part of your experiential learning. As such, you will play the role of an attorney, financial professional, facilitator, child specialist or party, so be prepared to embrace your role. There should be opportunities for all students to play multiple roles during our semester. Given that this will be a virtual class, it is easy to be distracted during the class. Not paying attention to what is being discussed during our classes will negatively affect your grade. While it may go without saying, you must use your video camera at all times during our classes, unless you let me know that you have an emergency. Your grade may be lowered if you do not have your camera on during a class. Please do not leave the class for any reason without communicating with me first. You should not leave the class except in extenuating circumstances. We will have a ten (10) minute break between the first and second hours of each class.

Final Exam: There will be a limited flexible final exam in this class, which will be administered between December 4 and 17 at noon, 2024. The format of the exam will be a combination of essay, multiple choice and fill in the blank.

Grading Policy:

Your grade will be based upon your participation in the classroom, your class assignments and your final exam grade, with 30% of your grade being based upon your class participation, 30% based upon your class assignments and 40% based upon your final exam grade. Per law school

policy, this class will be graded on a curve. UF recognizes the following grades, in accordance with the grading policy available at: <http://www.law.ufl.edu/students/policies.shtml#9>:

<u>Grade</u>	<u>Points</u>		
A (excellent)	4.0	C (Satisfactory)	2.0
A-	3.67	C-	1.67
B+	3.33	D+	1.33
B	3.00	D	1.0
B-	2.67	D-	0.67
C+	2.33	E (failure)	0.00

American Bar Association Out-of-Class Hours Requirement: ABA Standard 310 requires that students devote 120 minutes to out-of-class preparation for every “classroom hour” of in-class instruction. This Collaborative Law class will be two (2) hours in the classroom each week, so you should expect to spend at least four (4) hours of preparation work each week outside of the classroom.

Civil Discourse and Inclusive Excellence in the Classroom: As a law student and future lawyer, it is important that you are able to engage in rigorous discourse and critical evaluation while also demonstrating civility and respect for others. This is even more important in the case of controversial issues and other topics that may trigger strong emotions. As a group, we are likely diverse across racial, ethnic, sexual orientation, gender identity, economic, religious, and political lines. As we enter one of the great learning spaces in the world, the law school classroom, and develop our unique personal and professional identities, I encourage each of us to:

- commit to self-examination of our values and assumptions
- speak honestly, thoughtfully and respectfully
- listen carefully and respectfully
- reserve the right to change your mind and allow for others to do the same
- allow ourselves to verbalize ideas and to push the boundaries of logic and reasoning both as a means of exploring our beliefs as well as a method of sharpening our skills as lawyers.

Accommodations for Students with Disabilities: Students requesting accommodation should register with the UF Disability Resource Center (352-392-8565, <https://disability.ufl.edu>) and provide appropriate required documentation. Once registered, students will receive an accommodation letter, which should be presented to the UF Law Office of Student Affairs when

requesting accommodation. This procedure should be followed as early as possible in the semester. Law students with disabilities can also contact the Levin College of Law Office of Student Affairs for assistance on these matters in 164 Holland Hall, 273-0620, www.law.ufl.edu/students/.

Basic Needs Assistance: Any student who has difficulty accessing sufficient food or lacks a safe place to live is encouraged to contact the Office of Student Affairs. If you are comfortable doing so, you may also contact me so I can direct you to additional resources.

UF Law Honor Code: Students are bound by the UF Law Honor Code, which can be found at: <https://www.law.ufl.edu/life-at-uf-law/office-of-student-affairs/additional-information/honor-code-and-committee/honor-code>.

University Policy on Academic Misconduct: UF students are bound by The Honor Pledge, which states: “We, the members of the University of Florida community, pledge to hold ourselves and our peers to the highest standards of honor and integrity by abiding by the Honor Code. On all work submitted for credit by students at the University of Florida, the following pledge is either required or implied: “On my honor, I have neither given nor received unauthorized aid in doing this assignment.” The Honor Code (<https://sccr.dso.ufl.edu/students/student-conduct-code/>) specifies a number of behaviors that are in violation of this code and the possible sanctions. Furthermore, you are obligated to report any condition that facilitates academic misconduct to appropriate personnel. If you have any questions or concerns, please consult with the instructor.

Recording of Class Discussions: Students are allowed to record video or audio of class lectures. However, the purposes for which these recordings may be used are strictly controlled. The only allowable purposes are (1) for personal educational use, (2) in connection with a complaint to the university, or (3) as evidence in, or in preparation for, a criminal or civil proceeding. All other purposes are prohibited. Specifically, students may not publish recorded lectures without the written consent of the instructor. A “class lecture” is an educational presentation intended to inform or teach enrolled students about a particular subject, including any instructor-led discussions that form part of the presentation, and delivered by any instructor hired or appointed by the University, or by a guest instructor, as part of a University of Florida course. A class lecture does not include lab sessions, student presentations, clinical presentations such as patient history, academic exercises involving solely student participation, assessments (quizzes, tests, exams), field trips, private conversations between students in the class or between a student and the faculty or guest lecturer during a class session. Publication without permission of the instructor is prohibited. To “publish” means to share, transmit, circulate, distribute, or provide access to a recording, regardless of format or medium, to another person (or persons), including but not limited to another student within the same class section. Additionally, a recording, or transcript of a recording, is considered published if it is posted on or uploaded to, in whole or in part, any media platform, including but not limited to social media, book, magazine, newspaper, leaflet, or third-party note/tutoring services. A student who publishes a recording without written consent may be subject to a civil cause of action instituted by a person injured by the publication and/or discipline under UF Regulation 4.040 Student Honor and Student Conduct Code.

Online Course Evaluation: Students are expected to provide professional and respectful feedback on the quality of instruction in this course by completing course evaluations online via GatorEvals. Guidance on how to give feedback in a professional and respectful manner is available at <https://gatorevals.aa.ufl.edu/students/>. Students will be notified when the evaluation period opens and can complete the evaluations through the email they receive from GatorEvals, in their Canvas course menu under GatorEvals, or via <https://gatorevals.aa.ufl.edu/>. Summaries of course evaluation results are available to students at <https://gatorevals.aa.ufl.edu/public-results/>. I strongly urge you to complete the Course Evaluation. Doing so will help you analyze the course and your participation in it and it will greatly help me as your professor.

Class Schedule and Topics:

While the topics to be covered in the classes are subject to change and additional materials can be introduced during a class, this is what you can expect to be discussed during each class. I will try to leave time for questions and answers at the end of each class:

August 22, 2024

- Discussion of dispute resolution processes
- Introduction to Family Law
- Introduction to dispute resolution methods available in Family Law matters
- Discussion of problems with existing Family Law system
- David Hoffman, Esquire - TED Talk on Peacemaking
- Discussion of concept of being a peacemaker
- Introduction to Collaborative Process

Class assignment: Prepare a summary of your experience in divorces. The experience can be the result of your, a close relative's, or a friend's marriage being dissolved.

August 29, 2024

- Discussion of topics covered in prior class and homework
- Introduction to Collaborative Process (continued)
- History of Collaborative Process
- Different models of Collaborative Process
- Benefits of Collaborative Process
- Objections to Collaborative Process
- Discussion of Interest Based Negotiation

September 5, 2024

- Discussion of topics covered in prior class and homework
- Organization of Collaborative world
- Discussion of Prefatory Notes to the Uniform Collaborative Law Rules and Act

Uniform Collaborative Law Rules and Act
Florida Collaborative Law Process Act
Florida Collaborative Law Rule of Procedure
Florida Collaborative Law Rule of Professional Conduct
ABA Model Rules of Professional Conduct
International Academy of Collaborative Professionals Standards and Ethics

September 12, 2024

Discussion of topics covered in prior class and homework
Organization of a Collaborative matter
Roles of Collaborative Team members
Collaborative professional team building
Pre-brief and debrief meetings

September 19, 2024

Discussion of topics covered in prior class and homework
Collaborative Participation Agreement
Introducing Collaborative Process to clients
Conducting initial consultation with client
Retainer Agreement – limited scope representation
Karen L. Middlekauff, Esquire – role of the Collaborative attorney

September 26, 2024

Discussion of topics covered in prior class and homework
Lana M. Stern, PhD – role of the Mental Health Professional/Facilitator/Coach
Intimate Partner Violence and Collaborative Process
Role play with Facilitator

October 3, 2024

Discussion of topics covered in prior class and homework
Marta Alfonso, Esquire, CPA - role of the Financial Professional
Role play with Financial Professional

October 10, 2024

Discussion of topics covered in prior class and homework
Introduction of fact pattern
Preparing a client for first Collaborative meeting

October 17, 2024

Discussion of topics covered in prior class and homework
Planning first joint meeting
Role play initial joint meeting
Preparation of minutes of joint meeting

Communications between joint meetings

October 24, 2024

- Discussion of topics covered in prior class and homework
- Discussion of issues anticipated for second joint meeting
- Role play second joint meeting
- Debriefs of joint meeting with client and Team members

October 31, 2024

- Discussion of topics covered in prior class and homework
- Exercise on Interest Based Negotiations

November 7, 2024

- Discussion of topics covered in prior class and homework
- Preparation of Collaborative Marital Settlement Agreement
- Preparation of Petition for Dissolution of Marriage
- Preparation of Final Judgment of Dissolution of Marriage

November 14, 2024

- Discussion of topics covered in prior class and homework
- Debrief of Collaborative Process and classes

Course Learning Objectives:

At the end of this course, students should be able to:

1. Explain the dispute resolution options available in family law matters, including the benefits and drawbacks of each option;
2. Explain the Collaborative Process, including:
 - a. The participants and the role of each, including the parties and the required and potential professionals;
 - b. The structure of how the Collaborative Process works;
 - c. The documents required to be used and other documents typically used in the Collaborative Process;
 - d. The organization of meetings and communications in the Collaborative Process;
 - e. How the Collaborative Process concludes or is terminated and the consequences of each; and
 - f. The rules applicable to the Collaborative Process.
3. Conduct an initial interview with a potential client, including explaining the process choices for handling a family law matter;

4. Begin the Collaborative Process, including creating a Collaborative team, preparing relevant documents, preparing the client for the first joint meeting and conducting the first joint meeting;
5. Explain the various steps in the Collaborative Process between the first joint meeting and the signing of a settlement agreement;
6. Facilitate and participate in multiple joint Collaborative meetings, including understanding and playing the different roles in such meetings;
7. Recognize and de-escalate potential conflicts during the Collaborative Process;
8. Prepare documents relevant to the Collaborative Process, including minutes of meetings, partial agreements and a final settlement agreement;
9. Prepare the documents needed to obtain court approval of a Collaborative Settlement Agreement;
10. Understand the ethical rules that apply to the Collaborative Process.

Disclaimer: This syllabus represents my current plans and objectives for this Collaborative Law class. As we go through the semester, those plans may change depending on a variety of circumstances. The goal will be for such changes to enhance the student's learning experience. Such changes, which will be clearly communicated to the class, are not unusual and should be expected.