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Joshua Aaron Jones [a1]

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FLORIDA FAMILY LAW BOUNDS OF ADVOCACY: A MANDATE FOR COLLABORATIVE PRACTICE

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I. INTRODUCTION

In the quest for a highly professional and ethical society of attorneys, the well-intentioned Florida Bar and sister state bar associations have created various committees, reports, recommendations, and law professionalism guidelines. [1] Yet, despite these ongoing efforts, scholars tell us that professionalism--an apparently elusive, aspirational state of legal work--has ***2** continued to decline. [2] Rather than create one streamlined source of guidance or proactive solutions that look toward the problems of evolving technologies, good intentions have only resulted in more and more committees, reports, recommendations, and law professionalism guidelines, sometimes the same material under a different name. [3] The Henry Latimer Center for Professionalism [4] ("HLCP") is the hub in a wheel of Florida attorney professionalism resources, with many spokes. [5] The mass of materials give the impression that Florida attorneys are over-regulated. [6]

To be sure, HLCP is an important, award-winning, and highly regarded project. [7] However, it still remains that attorneys must wade through a web of professionalism regulatory sources, including: (1) Oath of Admission to the Florida Bar; [8] (2) the Florida Bar Creed of Professionalism; [9] (3) the Florida Bar Professionalism Expectations; [10] (4) the Rules Regulating the Florida Bar; [11] and (5) the decisions of the Florida Supreme Court. [12] If those were not enough, a Florida attorney would be foolish to ignore the Guidelines for Professional Conduct, [13] the Standards for Imposing Lawyer Sanctions, [14] or the Professionalism Handbook. [15] These offer great insight into the methods and the levels of attorney discipline that arise from breaches of the various guidelines. [16] Who comes up with it all? [17] Technical ***3** administrative processes aside, the Florida Bar maintains

a Standing Committee on Professionalism that works closely with the Committee on Student Education & Admissions to the Bar, while the Florida Supreme Court has a Commission on Professionalism and Civility. [18]

And then, there is family law. [19] Family management attorneys commit to an even higher level of professionalism with yet another set of rules--the Florida Family Law Bounds of Advocacy ("BoA"). [20] Are family lawyers so lacking in moral and interpersonal skills that they need an additional guide for professionalism designed just for them? [21] Though some who have personally experienced a family or marital legal crisis might say that family lawyers do need extra rules, [22] the BoA Preliminary Statement explains that:

> The purpose of the *Bounds* is to guide Florida family lawyers through the quagmire of professional and ethical dilemmas that are unique to the practice of family law. The intent is to suggest a higher level of practice than the minimum baseline of conduct required by the Rules Regulating [t]he Florida Bar. Many family lawyers encounter situations where the rules provide insufficient guidance. [23]

Thus, the point of the BoA is not to add a layer of prohibitory conduct for a practice area allegedly run amok, but rather, it is to help attorneys navigate this very challenging field of law unique from all others. [24]

To date, there has not been a Florida ethics opinion that considers the BoA. [25] However, proceed with caution. [26] If the Florida Bar views other ***4** professionalism guidance as mandatory, why shouldn't the profession see the BoA as mandatory in the context of family law? [27] Going a step further, given the parallels between collaborative process philosophy and the spirit and points of the BoA, it is reasonable to suggest that there is now a mandate for family law practitioners to offer collaborative dispute resolution as the default option for family legal matters. [28] I suggest family attorneys accept "a higher level of practice than the minimum baseline." [29]

This discussion offers an overview of the BoA, collaborative dispute resolution, and an argument that all Florida family law attorneys are now required to offer collaborative process as the default standard method of dispute resolution, or at the very least, all family attorneys should be trained so that they are knowledgeable of the collaborative process and are able to fully inform their clients of all options. [30]

II. THE BOA

Florida adopted the BoA in 2004 [31] following the American Academy of Matrimonial Lawyers Model Bounds of Advocacy. [32] That step forward was in the wake of Florida's creation of a unified family court system. [33] In creating the unified family court, the Florida Supreme Court explained that families need "a system that provide[s] non-adversarial alternatives and flexibility of alternatives; a system that preserve[s] rather than destroy[s] family relationships; ... and a system that facilitate[s] the process chosen by the parties." [34] The unified family law concept and BoA are important foundations to Florida's growing philosophy of therapeutic justice, [35] and the ***5** official recognition of collaborative practice is another maneuver towards prioritizing peaceful dispute resolution. [36]

Recently, members of the Florida Bar Family Law Section received a beautiful, printed version of the revised BoA. [37] The Florida Family Law BoA is divided into six broad topics which are further subdivided into narrower issues that are often encountered by family law attorneys:

1. Professional Cooperation and the Administration of Justice; [38]

2. Competence and Advice; [39]

3. Client Relationship and Decision-Making; [40]

4. Conflict of Interest; [41]

5. Fees; [42] and

6. Children. [43]

Each of the sub-issues in these categories is complimentary to the collaborative pillars: Competency, confidentiality, good faith negotiation, and informed consent. [44]

Given recent ethics opinions, such as *Florida Bar v. Norkin* [45] and *In re Code for Resolving Professionalism Complaints*, [46] extra professionalism ***6** guides should be viewed as mandatory, not merely aspirational. [47] Yet, the revised BoA's Preliminary Statement implies that the BoA is only aspirational. [48] *In re Code for Resolving Professionalism Complaints* does not mention the BoA; [49] however, its omission from the cadre of integrated mandatory professional standards should not imply that the Court muted the BoA. [50] The Court's underlying public policy assertion is clear: Guidance produces stronger professionalism, thereby protecting legal consumers and the profession, and such resources should be followed. [51] The various professionalism guides are not mere façades of attorneys' commitments to professionalism. [52] The BoA should be a guiding star of professionalism mandates, at least as to family law attorneys. [53]

If the legal community is to view the BoA as mandatory for family lawyers, how do we define family lawyer? [54] Anyone who has called themselves a family lawyer has certainly been met with a response along the lines of: So, like, divorces?* Do you do custody cases?* Or adoptions?* Do you do wills?* Okay, let me ask you something.* Exactly which lawyers is the BoA meant to guide? [55]

The current BoA lacks a definition for *family law* or *family lawyer*. [56] What, then, is a family law case?* Neither the statutes, the professional rules, or various works of professional guidance provide a precise definition of family law. [57] Perhaps board certification is the fine line, but board ***7** certification is optional. [58] Further, there are family law issues that overlap many board certification areas, such as adoption, education law, elder law, immigration and naturalization, juvenile law, marital and family law, real estate, and wills and trusts. [59] Each of these has a significant impact on families. [60] Is a probate attorney a family lawyer? [61] Education lawyer? [62] Estate planner? [63] Real estate advisor? [64] What about the criminal attorney whose client also needs a divorce? [65] Not even the Florida Bar Family Law Section Bylaws define family law. [66] One can gather hints from the Family Law Section committees in the bylaws, but those clues are also vague--for example, children's issues. [67] However, lack of a committee for a particular issue should not be indicative of a practice area's exclusion from the concept of family law. [68] Perhaps, the BoA enshrouds a much larger portion of the Florida Bar than even family lawyers, whoever they may be, realize. [69]

*8 III. WHAT IS COLLABORATIVE FAMILY LAW?

Collaborative family law is a type of therapeutic justice focused on dispute resolution outside of court, with the help of an interdisciplinary team of professionals. [70] Collaborative process can also be useful in proactive legal planning, such as contract negotiations and premarital agreements. [71] Through interest-based negotiations, families reach a rational conclusion via respectful negotiations. [72] The parties improve communication and problem-solving skills, a necessity for co-parenting

success.[73] In theory, those new skills will produce a positive impact on those individuals and, in turn, their communities.[74] Collaborative process also offers positive mental health benefits for the professionals.[75] The broader goal among the collaborative movement is to create collaborative cultures, whether disputes are between children, neighbors, businesses, customers or families.[76] The most ardent collaborative professionals hope to evolve their professions and communities so that fellow citizens are empowered to problem-solve together, instead of resorting to the war of litigation.[77]

As a matter of professionalism, collaborative philosophy rests on four pillars, each reliant on informational transparency: Competency, confidentiality/non-confidentiality, good faith negotiation, and informed consent.[78] Attorneys and their clients work with a neutral facilitator, usually a licensed mental health professional, a financial professional, and/or any other expert that the family's situation may require, such as a real estate appraiser.[79] There are several models within the collaborative concept, ***9** reiterating the method's flexibility to suit the needs of each family or business.[80]

Except for the attorneys, all of the experts are neutral--the experts cannot be hired for future litigation.[81] The attorneys cannot be hired for future litigation between the same family members.[82] If the collaborative process fails, all professionals, including the attorneys, must withdraw from the case.[83] Thus, the protocols create great incentive to minimize adversarial conflict and to find a solution.[84] Though the withdrawal fail-safe may seem like a harsh consequence, it prevents disgruntled spouses from using courts for vengeance or attorneys from using courts for grand-standing.[85] The parties are not allowed to use the threat of litigation to force an agreement in the collaborative process.[86]

Many attorneys reject collaborative philosophy for fear of losing the lucrative revenue stream that litigation brings--assuming the bill is paid.[87] Offering collaborative dispute resolution does not require one to give up a litigation practice; it is merely another service.[88] There are very few Florida attorneys who exclusively practice collaborative family law.[89] Some cases may not be appropriate for collaborative process, such as families with ***10** ongoing domestic violence.[90] There will always be a need for family law litigators.[91]

Plus, a focus on revenue loss ignores the BoA's requirement to resolve family disputes in an efficient manner, while minimizing costs and conflict.[92] Resistant minds fail to recognize that the efficiency of the collaborative process frees up staff time and allows for a higher volume of cases completed in only a few months, rather than a few years.[93] And the method works.[94] According to research from the Florida Academy of Collaborative Professionals, ninety-two percent of family law cases that utilized the collaborative process reached a full settlement on all issues, including child time-sharing.[95]

The Collaborative Process Act became effective in 2016, along with Florida Bar Rule 4-1.19 in 2017.[96] Of particular interest in this discussion is that, though those who practice collaborative family law must obtain informed consent from a client, acknowledging that the attorney disclosed all possible methods to resolve the case,[97] there is not a corresponding mandate for litigators.[98] Rule differentiation between practice methods, in the same legal subject matter, does little to advance professionalism.[99]

IV. PARALLELS BETWEEN COLLABORATIVE STANDARDS AND ETHICS AND THE BOA

A. *Parallels*

The collaborative philosophy and protocols reflect the BoA and vice versa.[100] Many of the BoA points consider issues already governed by other ***11** rules, such as attorney fees, but the following are on point for the success of a collaborative family law case, and failure to observe the BoA would probably cause a collaborative process to collapse:[101]

1.1 A lawyer must strive to lower the emotional level of family disputes by treating everyone with respect ....

1.8 A lawyer must cooperate in the exchange of discovery ....

1.9 A lawyer must not use discovery for delay, harassment, or obstruction ....

1.17 A lawyer must avoid disparaging personal remarks or acrimony toward the opposing party, opposing counsel, third parties, or the court ....

2.1 A lawyer should advise the client of the emotional and economic impacts of altering the family structure, and explore all options including reconciliation ....

2.2 A lawyer should advise the client of the potential effect of the client's conduct in disputes involving children ....

2.3 A lawyer must advise the client about alternative dispute resolution ....

2.5 A lawyer should attempt to resolve family disputes by agreement and should consider all appropriate means of achieving resolution ....

2.8 A lawyer should endeavor to achieve the client's lawful objectives as economically and expeditiously as possible ....

3.5 A lawyer should share decision-making responsibility with the client, and counsel the client about the propriety of the objectives sought and the means employed to achieve them ....

6.1 A lawyer representing a parent should consider the welfare of the minor children and seek to minimize the adverse impact of the family law litigation on them ....

***12** 6.2 A lawyer should not communicate with minor children regarding issues in the litigation ....

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> 6.3 A lawyer must counsel a client not to use children's issues for leverage in the litigation ....
>
> 6.4 A lawyer must consider any impact on a child of bringing that child to court. This should be done in full discussion with the client and other professionals involved ....
>
> 6.5 A lawyer must reveal information to the extent the lawyer reasonably believes necessary to prevent a client from committing a crime or to prevent a death or substantial bodily harm to another. [102]

The guidance on children is of paramount importance to the collaborative process. [103] However, the most important takeaway for this discussion is 2.3: "A lawyer must advise the client about alternative dispute resolution." [104] If a family lawyer is not trained in collaborative practice, that lawyer cannot fully inform a client about all of the alternative dispute resolution options and, thus, if the Florida Bar is to take the BoA as mandatory, rather than aspirational, the attorney would be lacking in professional responsibility if the attorney excludes collaborative process from their intake meetings. [105]

Before passage of the Collaborative Process Act and Rule of Professional Regulation 4-1.19, there was room to argue that collaborative law training was unnecessary. [106] However, now, even if a litigation-motivated family lawyer has no interest in ever working with the collaborative method, the BoA requires that attorney to inform clients about alternative dispute resolution. [107] The comment to BoA 2.3 explains:

> ***13** A lawyer should advise clients of various methods of alternative dispute resolution, including collaborative law, mediation, arbitration, private judging, and parent coordination, among others .... Family lawyers must have sufficient knowledge about alternative dispute resolution to understand the advantages and disadvantages for a particular client and to counsel the client appropriately about the particular dispute resolution method selected. [108]

Litigators need to understand the collaborative process in case a client consults the litigator after a collaborative process failed. [109] Attorneys must know the boundaries within which the litigation may proceed out of the collaborative process--for example, disqualification of prior experts and confidentiality of prior discussions. [110] Given the statute, bar rule, revised BoA, and more than a decade of collaborative practice in Florida, it is perplexing that the Marital and Family Law Certification Exam Review course does not offer a session on collaborative practice and that the Board Certification Exam does not cover collaborative family law. [111]

B. *Collaborative Process as a BoA Mandate*

In *Florida Bar v. Norkin*, [112] the court expanded the breadth of materials to be consulted in Bar disciplinary matters. [113] Mr. Norkin had a problem with his temperament in court and toward opposing counsel, including such shenanigans as raising his voice, using an angry tone, constantly interrupting others, harassing judges with frivolous questions, accusing judges of favoring opposing counsel, and continuing to practice after he was suspended. [114]

***14** To be clear, "Mr. Norkin's transgressions were on the extreme end of a behavioral spectrum, but it is the Court's analysis that should draw attention." [115] "The Court ... went beyond the Florida Rules of Professional Conduct [("FRPC")] and held

Norkin to the aspirational standards of the Guidelines for Professional Conduct." [116] In his offenses to the Guidelines, the Court found that Norkin breached FRPC rules. [117] If the Court relies on the Guidelines to find violations of the FRPC, the same should be true of the BoA. [118]

With these directives, it is difficult to understand any family attorney's disregard for or refusal to become trained in the collaborative family law process. [119] The BoA should be interpreted as a mandate "that family attorneys fully support collaborative family law process, in almost every case ... as the first-line option." [120] Given the Court's approach to its analysis of the Rules Regulating Professional Conduct, a family law attorney must, at a minimum, be aware of and explain collaborative practice as an option. [121]

With themes centered on rational problem-solving, efficiency, and preservation of dignity, lawyers in other practice areas may also find value in the BoA. [122] The interpersonal communication points in the BoA are helpful to any profession. [123] A review of the BoA certainly won't harm one's practice. [124] Collaborative process should be seen as a valuable tool in any attorney's toolbox. [125]

*15 V. PUBLIC POLICY PROPOSALS

A. *Prioritize Collaborative Process over Litigation*

The practice of family law generally--however one may define *family law* and the practice of law--is in a state of identity crisis. [126] Once, the industry was a mysterious, retainer-and-hourly-billing structure hidden in dark, wood-paneled offices with Dictaphones. [127] Now, law practice is technology-driven, unbundled offers and flat fee services, is practiced in shared work spaces, and caters to sophisticated clients. [128] Families and businesses need to move faster than our courts can keep up and faster than the old way of adversarial law. [129] Meanwhile, the Internet and other computational law platforms are devouring potential business. [130] The growth of technology has led to a transfer of information from the elite and highly educated to the masses. [131] Attorneys need to view their clients as partners in problem-solving, rather than uninformed followers. [132] How long do we ignore the call for change? [133] Collaborative practice offers an efficient process focused on the end goal of solutions. [134]

The past several decades of family law have created a status quo for a my-side versus your-side mentality. [135] That perception is pointless because ***16** there are no winners in family law. [136] If a family is before a court, for any other reason than a marriage or an adoption, no one walks away the champion. [137] The family has already lost more than either side could ever be awarded by a court. [138]

The adversarial legal philosophy never made sense in the family arena. [139] Family law emerged over centuries of social equality progress in the context of adversarial justice systems. [140] It goes without saying that a judicial system evolved for businesses, property, and criminal justice is ill-suited for the task of family management. [141] The same is obvious given that family court dockets are backlogged for months and families end up bankrupt because of divorce. [142]

B. *Consolidate Professionalism Resources*

The Florida Bar should consolidate the universe of professional guidelines and rules into one simplified body of rules, sufficient with commentary to encompass the guidance. [143] With the BoA in mind, Florida attorneys need not differentiate ethical standards by practice area or scatter guidance among many different sources and committees. [144] Technology offers limitless options to maximize the consolidation of these materials. [145] The new LegalFuel initiative could be an excellent venue to

house such a consolidation, along with cross-referencing and hyperlinking to ethics opinions and historical materials. [146] Simplification of the sources will also ***17** benefit consumers. [147] The layman cannot understand his rights or role in the attorney-client relationship if even attorneys are on a bread crumb trail to sort out the ethical/professionalism standards. [148]

C. *Modernize Law School Pedagogy*

Law school education pedagogy should change tones. [149] Most classes present a theoretical perspective aimed at future litigators. [150] Practical courses focus on writing or litigation. [151] Even clinics have stalled at mediation as an offering of alternative dispute resolution training. [152] Only in advanced coursework, by which time a young attorney's practice philosophy has already been indoctrinated for adversarial work, does an aspiring lawyer learn about mediation, arbitration, and negotiation. [153] Classes that focus on proactive client/business management and solutions are almost unheard of. [154] Why aren't we teaching young attorneys to first look for solutions rather than first filing a case in court? [155] Problem-solving should be the priority; [156] litigation should be a last resort. [157] Until our law schools focus on peaceful problem solving as a priority, courts will remain overburdened-- thereby exhausting tax coffers, [158] leaving attorneys ***18** miserable, [159] and keeping clients unhappy about billing and the longevity of their cases. [160]

D. *Collaborative Process for Board Certification*

The Florida Family Law Section must add collaborative process to the board certification review course and exam. [161] With a specific statute, a specific rule, and more than a decade of successful collaborative practice in Florida, it is disingenuous for a board certified family and matrimonial law attorney--untrained in the collaborative method--to call themselves an expert in family law. [162] This dispute resolution method is no longer a goal of a handful of attorneys in South Florida. [163] It is a statewide, statutory, and professional responsibility reality. [164] A Florida family law attorney cannot comply fully with the BoA if the attorney is untrained in collaborative process and refuses to discuss the option with clients. [165] If fully committed to the spirit of the BoA, the Florida Family Law Section should prioritize collaborative practice, include it in the Family and Matrimonial Law Board Certification review course and exam, and support all efforts to train attorneys in the practice method. [166]

VI. CONCLUSION

Florida courts have never shied from therapeutic jurisprudence. [167] Collaborative practice offers a philosophy that can have positive impacts on professionals, court resources, and, most importantly, families. [168] That ***19** translates to a healthier society. [169] A divorce, paternity, time-sharing, alimony, or modification case need not ruin a family's financial and emotional well-being, and the BoA forbids family law attorneys to work in a way that leaves a family in a worse position--emotionally or financially. [170] The collaborative family law method satisfies attorney ethical obligations and has the potential to change lives and communities--the point of therapeutic justice. [171] So, then, why do so few family attorneys know about collaborative process; and worse, why do so many lawyers refuse to recognize it as one of the options that should be offered to every client? [172] Collaborative process can reduce or eliminate the negative and unavoidable outgrowths of family law litigation. [173] The BoA should be viewed as a mandate for collaborative family law process. [174]

Footnotes

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a1 Joshua Aaron Jones is an attorney from Pensacola, Florida, where he represents families, small businesses, and non-profit organizations. He holds a bachelor's degree in Music Education from the University of Montevallo, and he attended the University of New Hampshire School of Law where he earned both a juris doctor degree and a master's degree in Education Law. Jones was the Downey Brand Fellow for Public Service and Leadership at McGeorge School of Law and, while there, he earned an LLM in Government and Public Policy. He appreciates the comments and edits to this article that were offered by colleagues at the Florida Academy of Collaborative Professionals and thanks his spouse for his ongoing encouragement that even a busy, practicing attorney can publish a law review article.

1 *See* Keith W. Rizzardi, *Expectations in the Mirror: Lawyer Professionalism and the Errors of Mandatory Aspirations*, 44 FLA. ST. U. L. REV. 691, 694-95,697(2017).

2 Warren E. Burger, Remark, *The Decline of Professionalism*, 63 FORDHAM L. REV. 949, 949 (1995); *see also* Rizzardi, *supra* note 1, at 697.

3 *See* Rizzardi, *supra* note 1, at 694-97, 706.

4 *About the Center for Professionalism*, FLA. B., http://www.floridabar.org/prof/pabout/ (last visited Dec. 17, 2018).

5 *See id.*; *Resources*, FLA. B., http://www.floridabar.org/prof/presources/ (last visited Dec. 17, 2018).

6 *See* Rizzardi, *supra* note 1, at 694-95.

7 *About the Center for Professionalism, supra* note 4; *see also* Florida Bar v. Norkin, 132 So. 3d 77, 89 (Fla. 2013) (per curiam).

8 FLA. SUPREME COURT COMM'N ON PROFESSIONALISM ET AL., 2017-2019 LAW STUDENT PROFESSIONALISM HANDBOOK V (2017), http://www.floridabar.org/wp-content/uploads/2017/04/ADA-2017-19-Professionalism-Handbook-FINAL.pdf.

9 *Id.*

10 *Id.* at vi-xiv. The earliest version of this set of standards was published in 1989, and the most recent revision was 2015. *Id.* at xiv.

11 *See* R. Regulating Fla. Bar 4.

12 *See* FLA. SUPREME COURT COMM'N ON PROFESSIONALISM ET AL., *supra* note 8, at xviii, xxiv.

13 *See id.* at xv-xvii.

14 FLA. BAR, FLORIDA'S STANDARDS FOR IMPOSING LAWYER SANCTIONS 1 (2015 ed. 2015), http://www.floridabar.org/wp-content/uploads/2017/04/standards-for-lawyer-sanctions.pdf.

15 FLA. SUPREME COURT COMM'N ON PROFESSIONALISM ET AL., *supra* note 8, at vi.

16 *Id.* at xx; FLA. BAR, *supra* note 14, at 2, 4.

17 *See* FLA. SUPREME COURT COMM'N ON PROFESSIONALISM ET AL., *supra* note 8, at xiv.

18 *See Henry Latimer Center for Professionalism*, FLA. B., http://www.floridabar.org/prof (last visited Dec. 17, 2018); *Standing Committee on Professionalism*, FLA. B., http://www.floridabar.org/about/cmtes/cmtes-cm/pcmte/ (last visited Dec. 17, 2018).

19 RICHARD WEST ET AL., BOUNDS OF ADVOCACY: GOALS FOR FAMILY LAWYERS IN FLORIDA 2 (2018 ed. 2004).

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20 *See id.* at 1-2.

21 *See id.* at 2. To be sure, the spirit behind the BoA is to contextualize professionalism issues within the unique circumstances of inter-family relations. STEPHEN SESSUMS ET AL., BOUNDS OF ADVOCACY: GOALS FOR FAMILY LAWYERS IN FLORIDA 5 (2004).

22 *See* WEST ET AL., *supra* note 19, at 2.

23 *Id.*; *see also* R. Regulating Fla. Bar 4.

24 *See* WEST ET AL., *supra note* 19, at 2.

25 *See Search Ethics Opinions*, FLA. B., http://www.floridabar.org/ethics/etsearch/ (search in search bar for *bounds of advocacy*) (last visited Dec. 17, 2018).

26 WEST ET AL., *supra* note 19, at 2; *see also* FLA. SUPREME COURT COMM'N ON PROFESSIONALISM ET AL., *supra* note 8, at vi.

27 WEST ET AL., *supra* note 19, at 2; *see also* FLA. SUPREME COURT COMM'N ON PROFESSIONALISM ET AL., *supra* note 8, at vi.

28 Joshua Aaron Jones, *Penalty on the Field: Are You Operating Within the Bounds of Advocacy?*, FLA. ACAD. COLLABORATIVE PROFESSIONALS (July 24, 2018), http://www.collaborativepracticeflorida.com/penalty-on-the-field-are-you-operating-within-the-bounds-of-advocacy/; *see also* SESSUMS ET AL., *supra* note 21, at 34.

29 WEST ET AL., *supra* note 19, at 2.

30 *See* discussion *infra* Sections II, III, IV.B, V.A, V.C.

31 WEST ET AL., *supra* note 19, at 1.

32 *Id.*

33 *See In re* Report of the Family Court Steering Comm., 794 So. 2d 518, 523 (Fla. 2001).

34 *Id.*

35 *Id.* at 522; William W. Booth, *History and Philosophy of the Juvenile Court, in* FLORIDA JUVENILE LAW AND PRACTICE 1-38 (15th ed. 2018); Family Court Steering Comm., *Proposed Model Family Court Plan*, FLA. B. NEWS, Sept. 1, 2000, at 4 (explaining the concept of therapeutic justice); *see also* WEST ET AL., *supra* note 19, at 7; *About the ISTJ*, INT'L SOC'Y FOR THERAPEUTIC JURIS., http://www.intltj.com/about/therapeutic-jurisprudence/ (last visited Dec. 17, 2018).

36 *What Is Collaborative Divorce?*, COLLABORATIVEDIVORCE.NET, http://www.collaborativedivorce.net/what-is-collaborative-divorce/ (last visited Dec. 17, 2018); *What Is Collaborative Divorce?*, FLA. ACAD. COLLABORATIVE PROFS., http://www.collaborativepracticeflorida.com/collaborative-divorce/ (last visited Dec. 17, 2018) [hereinafter FLA. ACAD. COLLABORATIVE PROFESSIONALS].

37 *See* WEST ET AL., *supra* note 19, at 1. Note that all family lawyers are not members of the Florida Bar Family Law Section and possibly remain unaware of new developments until met with a crisis in a case. *See Family Law Section Membership*, FLA. B., http://www.floridabar.org/about/section/section-fl-mbrs/ (last visited Dec. 17, 2018). Lawyers, inattentive to the work of the Family Law Section, are the very attorneys who most need to review the BoA. WEST ET AL., *supra* note 19, at 2.

38 WEST ET AL., *supra* note 19, at 7.

39 *Id.* at 21.

40 *Id.* at 30.

41 *Id.* at 41.

42 *Id.* at 44.

43 WEST ET AL., *supra* note 19, at 51.

44 *See id.* at 7-8; INT'L ACAD. OF COLLABORATIVE PROF'LS, STANDARDS AND ETHICS 3-4 (2018).

45 132 So. 3d 77 (Fla. 2013) (per curiam).

46 116 So. 3d 280 (Fla. 2013). The Code was adopted upon recommendation of the Florida Supreme Court's Commission on Professionalism. *Id.* at 281.

47 *See* SESSUMS ET AL., *supra* note 21, at Preliminary Statement. Note that the recent BoA revision does not use the term aspirational or even aspire; whereas, the prior BoA and its predecessors included the language, "[b]ecause the goals aspire to a level of practice above the minimum established in the FRPC, it is inappropriate to use them to define the level of conduct required of lawyers for purposes of malpractice liability or discipline." *Id.*

48 *See* WEST ET AL., *supra* note 19, at 2.

49 *In re Code for Resolving Professionalism Complaints*, 116 So. 3d at 280-84.

50 *See* WEST ET AL., *supra* note 19, at 2.

51 *Id.* at 1-2.

52 *See* FLA. SUPREME COURT COMM'N ON PROFESSIONALISM ET AL., *supra* note 8, at xv.

53 WEST ET AL., *supra* note 19, at 1-2.

54 SESSUMS ET AL., supra note 21, at 5.

55 *See id.*

56 *See* WEST ET AL., *supra* note 19, at 2. Though the previous version of the BoA attempted to define the practice area, it only offered a circular definition of *family lawyer*: A family lawyer is defined to mean one who handles a family law matter. SESSUMS ET AL., *supra* note 21, at 5.

57 *See* FLA. STAT. § 61.046 (2018); FLA. STAT. § 88.1011 (2018); WEST ET AL., *supra* note 19, at 2.

58 R. Regulating Fla. Bar 6-3.4; *see also Marital and Family Law Certification Examination Specifications*, FLA. B. 1, http://www.floridabar.org/wp-content/uploads/2017/04/specs-fl.pdf (last visited Dec. 17, 2018); *Marital & Family Law Certification*, FLA. B., http://www.floridabar.org/about/cert/cert-fl/ (last visited Dec. 17, 2018). The definition for Marital and Family Law Certification is:
Marital and family law is the practice of law dealing with legal problems arising from the family relationship of husband and wife and parent and child, including civil controversies arising from those relationships. In addition to actual pretrial and trial process, *marital and family law* includes evaluating, handling, and resolving such controversies prior to and during the institution of suit and post judgment proceedings.
Marital & Family Law Certification, supra.

59 *See* WEST ET AL., *supra* note 19, at 25.

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66 *See* Fla. Bar Fam. L. Sec. By-Laws, art. I.

67 *See id.* art. VII.

68 *See id.*

69 *See* WEST ET AL., *supra* note 19, at 2.

70 *See* 23 STEVEN SCOTT STEPHENS, FLORIDA FAMILY LAW § 15:1 (2018 ed.).

71 *Id.* § 15:7.

72 *See id.* §15:1.

73 *See id.* §15:22.

74 *See Lawyers as Agents of Transformation in their Communities*, CUTTING EDGE L., http://www.cuttingedgelaw.com/page/lawyers-agents-transformation-their-communities (last visited Dec. 17, 2018).

75 *See* STEPHENS, *supra* note 70, § 15:15; Michael J. Higer, *Recognizing We Have a Problem: The Mental Health and Wellness of Lawyers*, FLA. B.J., Jan. 2018, at 4, 4. Given that the Florida Bar has found it necessary to create an entire division--the Mental Health and Wellness Center--it goes without saying that the status quo of litigation is not healthy for attorneys. Higer, *supra*, at 4.

76 *See* STEPHENS, *supra* note 70, § 15:1.

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79 STEPHENS, *supra* note 70, § 15:1.

80 *Id.*

81 *Id.* app. 15A.

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143 *See* Rizzardi, *supra* note 1, at 722. Perhaps we could also consolidate the Florida Rules of Civil Procedure, Florida Probate Rules, Florida Family Rules, Florida Juvenile Department Rules, Florida Criminal Procedure Rules, Florida Rules of Judicial Administration, etc. *See id.*

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164 FLA. STAT. § 61.55; Merlin, *supra* note 90, at 40.

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