WASHINGTON STATE BAR ASSOCIATION
Regulatory Services Department

LLLT Board

Established by Washington Supreme Court APR 28
Administered by the WSBA
Steve Crossland, Chair

Meeting Agenda for September 13, 2021
Remote meeting – by Zoom only
1:00 p.m.

Link to access the Zoom meeting:
https://wsba.zoom.us/j/89256416119?pwd=ZHlyY1FITzFVc3RDQk9zUGpOcE9iZz09
Zoom Conference Call Lines: **LOCAL OPTION:** (253) 215-8782 || **TOLL-FREE OPTION**: (888) 788-0099
Meeting ID: 892 5641 6119 || Passcode: 972103

1:00 p.m. PUBLIC SESSION

Welcome and Call to Order	Steve Crossland	
Public Comments		
Review August 9, 2021 Minutes	Steve Crossland	Action
Outreach and Press Update	Steve Crossland	Discussion
Family Law Practice Area Committee Report	Jennifer Ortega	Discussion
FY 2022 Budget/Budget & Finance Committee	Steve Crossland	Discussion

EXECUTIVE SESSION

Exam Results	Christy Carpenter	Discussion

Adjourn

PUBLIC MEETING MATERIALS

A. August 9, 2021 Minutes
B. Outreach and Press Update – August/September 2021
C. FY 2022 LLLT Cost Center Budget
D. FY 2022 LLLT Board Meeting Schedule
E. Special Notice Request Form
F. Praecipe for Subpoena Form
G. GR 40 Amendments

Jon Burke, WSBA Staff Liaison
1325 4th Avenue | Suite 600 | Seattle, WA 98101-2539
206.733.5916 | jonb@wsba.org | LLLT@wsba.org | www.wsba.org

LIMITED LICENSE LEGAL TECHNICIAN (LLLT) BOARD

Meeting Minutes for August 9, 2021

Remote meeting only (held via Zoom)
1:00 p.m.

LLLT Board Members in Attendance:

☒ Stephen Crossland, Chair
☒ Sarah Bove
☒ Margaret Bridewell
☒ Christy Carpenter
☒ Crystal Lambert-Schroeder
☐ Carolyn McKinnon (Ex Officio)
☒ Jennifer Ortega
☒ Jennifer Petersen
☐ Judith Potter
☐ Geoffrey Revelle
☒ Amy Riedel

Liaisons in Attendance

☒ Bobby Henry, RSD Associate Director
☒ Jon Burke, WSBA Staff Liaison
☐ PJ Grabicki, BOG Liaison
☐ Hon. Fred Corbit, ATJ Liaison

Other WSBA Staff in Attendance:

☐ Renata de Carvalho Garcia, Chief Regulatory Counsel
☐ Terra Nevitt, Executive Director
☐ Katherine Skinner, RSD Specialist
☒ Shay Adhikari, RSD Paralegal

Others in Attendance During Some or All of the Meeting:
Nancy Ivarinen

PUBLIC SESSION

Call to Order / Preliminary Matters
The meeting was called to order at 1:06 p.m. by Chair Steve Crossland.

Family Law Practice Area Committee Update
Committee Chair, Sarah Bove, provided a Family Law Practice Area Committee update to the Board. The committee prepared two new forms for the Board's approval: (1) a Special Notice Request for the LLLT, and (2) a Praecipe for Subpoena requesting the court to issue subpoenas.
The board will consider and vote on the proposed forms at the next board meeting, currently scheduled for September 9, 2021.

The Committee Chair discussed submitting a comment to the Supreme Court on the proposed amendment to General Rule (GR) 40, which authorizes parties to participate in informal domestic relations trials. The Board discussed the implications and possible effect of proposed GR 40 on LLLTs. The Board needs more information regarding the proposed amendment to GR 40 in light of provisions in APR 28. The Board needs time to review other comments to the GR 40 Amendments. The Board will discuss submitting a comment to the Supreme Court before the September 28, 2021 deadline regarding the GR 40 amendments at the next meeting.

Budget/Retreat

The Chair discussed the issues relating to the LLLT Board's budget proposal, including the proposed retreat.

MCLE Requirements

The staff liaison informed the Board of the recent MCLE amendment to APR 11 ordered by the Supreme Court requiring members, including LLLTs, to take one ethics credit in the "topic of equity, inclusion, and mitigation of bias" per each three-year reporting period, starting in the reporting periods 2023-2025.

Approval of Meeting Minutes

The Board approved the minutes for the June 14, 2021 meeting.

Outreach and Press Update

Board members discussed articles relating to the LLLT Program.

Public Comments

None

EXECUTIVE SESSION

Family Law Exam Committee Update

The Board discussed the status of grading the 2021 Summer LLLT Exams. Grading of the exam is currently on schedule to meet the September 10, 2021 deadline for notifying exam takers of exam results.

Professional Responsibility Exam Committee Update

The Board unanimously approved the motion authorizing the outgoing Chair of the LLLT Board to continue to attend and participate in future LLLT Board meetings in the capacity as Emiratis Chair.

Adjournment

The meeting adjourned at 2:21 p.m.

Press and Outreach Update: August/September 2021

Press
▪ Comment: Don't end successful program for affordable legal aid | HeraldNet.com ▪ Money & the Law: States, courts work to increase access to justice | Business | gazette.com
Statistics
LLLT Statistics: ▪ **Active LLLTs: 51** ▪ 3 LLLTs are inactive; 1 LLLT is administratively suspended; 3 have voluntarily resigned.
Meetings/Events
Recent: ▪ LLLT Board Meeting on August 9, 2021 ▪ Board of Governors Meeting on August 20-21, 2021 ▪ Budget & Audit Committee on September 8, 2021 Upcoming: ▪ LLLT Board Meeting – October 4, 2021 ▪ Board of Governors Meeting on September 23-25, 2021

Jon Burke, WSBA Staff Liaison
1325 4th Avenue | Suite 600 | Seattle, WA 98101-2539
206-733-5916 | jonb@wsba.org | LLLT@wsba.org | www.wsba.org

Washington State Bar Association
FY2022 Budget v2

LLLT-Limited License Legal Technician

	FY19 Actuals	FY21 Reforecast	FY22 Budget v2	FY22 Budget vs FY21 Reforecast F/(U)	% of change F/(U)
REVENUE:					
Seminar Registrations	25,508	2,319	-	(2,319)	-100%
LLLT Exam Late Fee	-	1,350	600	(750)	-56%
LLLT License Fees	-	9,985	14,449	4,464	45%
LLLT Exam Fees	-	14,300	13,500	(800)	-6%
Investigation Fees	-	100	-	(100)	-100%
LLLT Late License Fees	-	-	1,412	1,412	100%
TOTAL REVENUE	**25,508**	**28,054**	**29,961**	**1,907**	**7%**
DIRECT EXPENSES:					
Staff Travel/Parking	431	-	-	-	-100%
LLLT Board	14,649	2,450	6,000	(3,550)	-145%
LLLT Outreach	2,652	-	-	-	-100%
Exam Writing	-	5,375	9,000	(3,625)	-67%
LLLT Education	13,047	-	-	-	-100%
TOTAL DIRECT EXPENSES:	**30,779**	**7,825**	**15,000**	**(7,175)**	**-92%**
INDIRECT EXPENSES:					
Salaries - Salaries	121,848	70,940	35,622	35,318	50%
Staff Replacement Temps	192			-	-100%
Salaries - Vacation & Comp Time	(49)	534		534	100%
Indirect Allocation In - Salaries		43	172	(128)	-296%
Benefits	45,068	27,070	14,199	12,871	48%
OTHER INDIRECT EXPENSE	40,812	28,009	14,252	13,756	49%
TOTAL INDIRECT EXPENSES:	**207,871**	**126,595**	**64,245**	**62,350**	**49%**
TOTAL ALL EXPENSES:	**238,650**	**134,420**	**79,245**	**55,176**	**41%**
NET INCOME (LOSS):	**(213,142)**	**(106,367)**	**(49,284)**	**57,083**	**54%**
FTEs		0.95	0.48		

FY 2022 LLLT Board Meeting Calendar
(**Primary** meetings in bold are to be held in-person; and "– Supplemental" dates if needed will be remote meetings). Dates are Mondays unless otherwise noted.

October 4, 2021

- November 8, 2021

December 6, 2021

- Thursday, January 20, 2022

February 7, 2022

- March 14, 2022

April 11, 2022

- May 9, 2022

June 13, 2022

- July 11, 2022
- Wednesday, August 10, 2022

September 12, 2022

Robert Henry, WSBA Staff Liaison
1325 4th Avenue | Suite 600 | Seattle, WA 98101-2539
206.727.8227 | roberth@wsba.org | LLLT@wsba.org | www.wsba.org

DRAFT

SUPERIOR COURT OF WASHINGTON
FOR KING COUNTY

In re: Petitioner, And Respondent,	**NO.** **REQUEST FOR SPECIAL NOTICE**

I, _____, am Petitioner/Respondent in the above titled action. I am a self-represented party with limited legal services provided by a limited license legal technician (LLLT). I request service continue to be sent to me and a special copy of all matters, steps, and proceedings to be provided to my LLLT at the address provided below until my LLLT files a notice of completion of limited legal service.

MY SERVICE ADDRESS REMAINS:

Mailing Address: 123 Maple Lane, Apt 250
Bellevue, WA 98000
Email address: Does not apply.

SPECIAL COPY TO BE SENT TO:

LLLT: Sarah Bove, WSBA No. 124LLLT
Mailing Address: **Legal Technician Division, PLLC**
15600 Redmond Way, Suite 201
Redmond, WA 98052
Email Address: sarah@LTDivision.com

Signed at *(city and state)*: _____ Date: _____

▶ _____ _____
Petitioner/Respondent signs here *Print name*

Limited Licensed Legal Technician:

Prepared with the assistance of a Family Law Legal Technician.

	Sarah Bové, 124LLLT	
LLLT signs here	*Print name and WSBA #*	*Date*

Superior Court of Washington, County of _____

In re: Petitioner: _____ And Respondent: _____	No. _____ PRAECIPE (REQUEST) FOR ISSUANCE OF SUBPOENA: [ ] DUCES TECUM (FOR RECORDS) [ ] FOR DEPOSITION [ ] FOR TRIAL/HEARING TESTIMONY

TO THE CLERK OF THE _____ COUNTY SUPERIOR COURT:

This is a praecipe (request) for issuance of a subpoena by the Clerk of the Court, as permitted by CR 45(a)(4).

Please issue a subpoena [ ] duces tecum (for records) [ ] for deposition testimony [ ] for trial/hearing testimony for service on:

[ ] RECORDS CUSTODIAN
Business Name
c/o Registered Agent, if applicable
Street Address
City, State, Zip

[ ] Individual
Street Address
City, State, Zip

[ ] to produce the documents set forth in the Subpoena Duces Tecum
[ ] to appear at deposition and give testimony on behalf of the petitioner/respondent
[ ] to appear at:
[ ] trial and give testimony on behalf of the petitioner/respondent
[ ] hearing and give testimony on behalf of the petitioner/respondent

ADDRESS:	DATE AND TIME:

_____ Pro Se
Signature of party

_____
Print Name *Date*

Prepared by:

_____
Signature of LLLT

_____ WSBA No. ___LLLT
Print Name

DO NOT ADD ANY PERSONAL IDENTIFIERS TO THIS DOCUMENT, AS IT WILL BE FILED WITH THE COURT. IF THE LOCAL JURISDICTION ALSO REQUIRES THE SUBPOENA TO BE FILED, BE SURE TO REDACT PERSONAL IDENTIFIERS.

CR45(a)(4):
A subpoena may be issued by the court in which the action is pending under the seal of that court or by the clerk in response to a praecipe. An attorney of record of a party or other person authorized by statute may issue and sign a subpoena, subject to RCW 5.56.010.

July 26, 2021

Honorable Charles W. Johnson
Supreme Court Rules Committee
c/o Clerk of the Supreme Court
Temple of Justice
PO Box 40929
Olympia, WA 98504

Re: Access to Justice Board Committee to General Rule 40 – Informal Domestic Relations Trial

Dear Justice Johnson,

I write on behalf of the Access to Justice Board in support of proposed General Rule 40 – Informal Domestic Relations Trial.

The Board supports GR 40 in part because the rule helps address the needs of unrepresented parties in domestic relations matters such as dissolutions and parenting plans. We know from the 2015 Civil Legal Needs study that a majority of low-income members of our community in Washington have at least one civil legal need every year and that most of those needs go unaddressed. Family law is among the greatest needs for low-income individuals lacking access to legal representation, and that lack of access is compounded for victims of domestic violence and BIPOC and LGBTQ+ communities.

Until or unless there is a civil *Gideon* right to counsel in the civil legal system, many marginalized members of our community with pressing domestic relations civil legal needs relating to their wellbeing, children, and property, but without access to an attorney, will either not vindicate those rights or will proceed without representation, trying to navigate statutes, case law, statewide court rules, and local court rules, many of which can challenge even the most experienced counsel, let alone unrepresented parties who may already be traumatized by people and institutions.

Though some courts are already conducting informal family law proceedings, many courts are not, and proposed GR 40 would provide guidance to courts statewide, offering an important option for unrepresented parties. The proposed rule would give much-needed guidance to judicial officers trying to navigate their obligation to remain neutral alongside their ability to work with unrepresented parties to ensure equal access to justice. The rule is also consistent with the goals set forth in the Access to Justice Board's 2020-22 Priorities, including the Board's goal of supporting work designed to assist unrepresented parties.

The Access to Justice Board supports proposed General Rule 40 relating to Informal Domestic Relations Trials and hopes for its approval, quick implementation, and effectives.

David S. Keenan
Chair, Rules Committee
On behalf of the Access to Justice Board

Cc: Terra Nevitt, Executive Director, Washington State Bar Association

From:	OFFICE RECEPTIONIST, CLERK
To:	Linford, Tera
Subject:	FW: ATJ Board regarding the proposed GR 40 - Informal Domestic Relations Trial
Date:	Monday, July 26, 2021 2:03:12 PM
Attachments:	image001.png image004.png 2021.7.26.ATJ Board Comment Re GR40 Informal Domestic Relations Trial.pdf

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From: Bonnie Sterken [mailto:bonnies@wsba.org]
Sent: Monday, July 26, 2021 1:57 PM
To: OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>
Cc: Keenan, David <David.Keenan@kingcounty.gov>; Diana Singleton <dianas@wsba.org>; Adewale, Francis <fadewale@spokanecity.org>; Terra Nevitt <terran@wsba.org>
Subject: ATJ Board regarding the proposed GR 40 - Informal Domestic Relations Trial

Good afternoon,

Attached, please find a comment from the ATJ Board regarding the proposed GR 40 - Informal Domestic Relations Trial.

Thank you,

Bonnie Middleton Sterken | Equity and Justice Specialist
Washington State Bar Association | bonnies@wsba.org
1325 Fourth Avenue, Suite 600 | Seattle, WA 98101-2539 | www.wsba.org
Pronouns: She/Her

The WSBA is committed to full access and participation by persons with disabilities. If you have questions about accessibility or require accommodation please contact bonnies@wsba.org.

From: OFFICE RECEPTIONIST, CLERK
To: Linford, Tera
Cc: Tracy, Mary
Subject: FW: Comment in support of Proposed New General Rule 40 Informal Domestic Relations Trials
Date: Thursday, July 8, 2021 8:18:22 AM

From: Terry J. Price [mailto:tprice@uw.edu]
Sent: Wednesday, July 7, 2021 6:07 PM
To: OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>
Subject: Comment in support of Proposed New General Rule 40 Informal Domestic Relations Trials

Dear Justices of the Washington Supreme Court:

This comment is in support of proposed rule IDRT [NEW] GR 40, the Informal Domestic Relations Trial Rule, that has been posted for comment on the Administrative Office of the Courts' website. The Court Recovery Task Force Family Law Subcommittee supports adoption of the proposed rule for the following three reasons:

1. According to the Administrative Office of the Courts annual Domestic Relations caseloads, currently only 3-4% of domestic relations matters per year go to trial. However, there are potentially many more cases with self-represented litigants where they likely settled because they are intimidated by the litigation itself. The option to go to a simplified trial rather than settle would give them more choices in the process, and possibly more just outcomes.
2. Thurston County has had good success with these trials in the last three years, and King County adopted a similar rule last year. Apparently, Clark County also uses a variation of the Informal Domestic Relations Trial rule. These three counties represent almost 40% of the state's population. In other words, this rule is already an option for a large proportion of Washington's population, and it would be fair to bring it to the rest of the state. Also, as noted on the Cover Sheet, our surrounding neighbor states (Oregon, Idaho and Alaska) all have variations of this rule as well.
3. There is no downside. If the parties do not want to avail themselves of the Informal Domestic Relations Trial rule, then they will not. But if they do, then the judges in these matters will have more robust guidance about how to deal with those matters.

This Informal Domestic Relations Trial rule will go a long way to helping litigants who cannot afford representation to get their fair day in court. We fully support the

proposed rule and encourage the Supreme Court to adopt it.

Sincerely, Terry Price, Chair, on behalf of the Family Law Subcommittee

Terry J. Price, MSW, JD
Pronouns: He/Him
Executive Director, Graduate Programs
University of Washington School of Law
William H. Gates Hall, Rm. 442
P.O. Box 353020
Seattle, WA 98195-3020
Direct: (206) 221-6030
Fax: (206) 543-5671
tprice@uw.edu www.law.washington.edu

The University of Washington acknowledges the Coast Salish peoples of this land, the land which touches the shared waters of all tribes and bands within the Suquamish, Tulalip and Muckleshoot nations.

July 30, 2021

Clerk of the Supreme Court
P.O. Box 40929
Olympia, Washington 98504-0929

E: supreme@courts.wa.gov

Re: Comment on Proposed General Rule 40 Informal Domestic Relations Trial

Dear Clerk of the Court:

Domestic Relations Attorneys of Washington ("DRAW") is a statewide group of approximately 600 Family Law (or Domestic Relations) attorneys. DRAW vigorously supports the cost effective and timely exercise of justice. For that reason, we support the *concept* of the proposed GR 40, subject to strong protections being built into the rule for civil and constitutional rights.

Due Process Concerns

As officers of the Court, we have a duty to guard against unconstitutional reductions in due process, particularly to "*those most disparately impacted by the justice system…including people of color, victims of domestic and sexual violence, the self-represented and low-income persons.*" (Comments GR9.)[1] Speedy, low cost, and informal do not always constitute justice as we envision it. While clearing court docket backlogs remains a concern to the orderly administration of justice, that does not translate to individuals going through the justice system, particularly when cases present issues of child custody and domestic violence.

DRAW fears a "paternalistic outcome" where, under the guise of "access to justice," disenfranchised parties end up with ***fewer*** rights than more traditionally privileged groups.

Evidence and Right To Appeal

First, DRAW believes the Rules of Evidence should be preserved to the greatest extent possible.[2] For instance, exclusion of hearsay forms a bedrock principle of American jurisprudence, and for good reason. Hearsay evidence often contains unreliable and prejudicial information. Not being subject to cross-examination can diminish the credibility and weight of such evidence compared to statements that are tempered by cross-examination. Proposed GR 40 allows for such evidence to be admitted without cross-examination.

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[1] DRAW would add indigenous peoples and non-Anglophone immigrants.

[2] On this point, DRAW and the WSBA Family Law Section's Executive Committee take different positions.

More specifically, the word "received" as written in the first sentence of Sections (3)(f), and (g) is ambiguous. DRAW advises these sentences be replaced as follows:

3(f) Expert reports will be admitted into evidence as exhibits.

3(g) The Court will admit into evidence any exhibits offered by the parties.

Second, another bedrock principle of American jurisprudences is the right to appeal, which should be preserved as a Federal and State Constitutional mandate that curtails judicial mistake or overreach. (Wa.Const. IV, Sec 4, "appellate jurisdiction in all actions and proceedings."). This must not be a process where parties are required to "abandon hope, all ye who enter here." When the parties use such an unstructured and discretionary system, the right of appeal is ***more*** important, not less. In addition, the process should ***not*** place a higher burden on appealing findings of fact, but rather a ***lesser*** burden, given the lack of procedural safeguards GR 40 provides. The intent may be to streamline the process at the trial level, ***but not*** at the appellate level.

Mutual, Knowing, and Voluntary Waiver

Waiving one's right to a full trial must be (a) mutual, (b) genuinely knowing, and (c) voluntary. The judicial officer should make findings of fact that specifically address:

- Whether the parties have more than a minimal competency (i.e., rule out dementia, debilitating mental health disorders, current addiction or intoxication that precludes clear thought, mental function, or both);
- Inquiry into written literacy and confirmation of such;
- Inquiry into language fluency and confirmation of such;
- Inquiry into history of domestic violence (i.e., have there been RCW 26.09.191 findings, issuance of a DVPO, criminal charges, JIS background check, etc.);
- Inquiry into whether there is undue economic or emotional control or coercion. (i.e. vastly unequal resources, economic control, etc.);
- Inquiry into each party's consent and understanding of the IDRT rules and process, including the pros and cons of each system. (*See* Exhibit A);
- Failure to make such inquiries and findings should constitute reversible error.

Preserving Due Process During Trial

It is extremely dangerous to ask litigants who agree to an informal process to give up ***all*** rights. Only children and the financially less-advantaged or unsophisticated party will be prejudiced.

Thus, both parties should have a right to bring a motion during the pendency of the trial to terminate the informal trial in favor of a traditional trial with full procedural safeguards with all the rules of evidence in play. Such a motion should be granted unless good cause exists to deny the motion, and although there is a presumption in favor of granting such a motion, it should be subject to the formal trial addressing any claims of costs and fees incurred by the non-moving party from the start of the informal trial until that process ends. The motion should be required to be heard and the court should be required to make written findings.

Moreover, upon demand of either party, the trial court should be required to recess and allow a party to seek representation or advice of counsel at any time, and at least twice without penalty for doing so. The duration of the recess should be discretionary while allowing a party reasonable time to secure and bring counsel up to speed on the case.

Proposed Solutions and Amendments

First, the trial court should advise litigants, in writing, of all options for settlement and litigation of all claims, including an informal trial, mediation (mostly mandatory), the option to proceed under RCW 7.77 (collaborative divorce), voluntary binding arbitration, and voluntary non-binding arbitration.[3] The Court should also inform litigants of both the advantage and disadvantaes of proceeding with an informal trial, including the inability to conduct a direct and cross-examination of witnesses other than expert witnesses.

Based on DRAW's members' collective experience, very few people with the means to hire counsel will proceed with an informal trial. Thus, the vast majority of those who agree to an informal trial are highly unlikely to retain expert witnesses, much less know when and how to use such a witness in trial.

Second, DRAW suggests the alternative of using experienced family law practitioners to act as judges pro tempore. Judges pro tempore are cost-effective, yet knowledgeable. A pro tempore judge with subject matter expertise can better deduce the issues, statutes, and case law that applies to the facts of the case. Such judges can also inquire as to relevant issues that neither party presented on, and that a judge with little or no domestic relations expertise would know to inquire into.

Family law remains complex, particularly where issues related to child custody remain in dispute. Judges pro tempore should be those who can commit the time to conduct a trial from start to finish.

Finally, consider the use of sworn affidavits or declarations in lieu of hearsay testimony. Iowa Informal Family Law Trials. (See Exhibit A) Affidavits or declarations can be admitted or rejected and should be subject to the Rules of Evidence. While not as reliable as live testimony subject to cross-examination,

[3] Certain disputes cannot be resolved in a binding arbitration, such as the residential provisions of a parenting plan.

this remains better than hearsay testimony, while remaining probative and part of an appellate record.

The DRAW Board of Directors remains available to provide further insight or development into proposed GR 40 if you have further questions of us.

Most respectfully,

DOMESTIC RELATIONS ATTORNEYS OF WASHINGTON

Lisa E. Brewer

Lisa E. Brewer
LEB/ajs

701 FIFTH AVENUE | SUITE 4550 | SEATTLE, WASHINGTON 98104
TEL: 206-624-4900 | FAX: 206-823-0120
WWW.DRAW.LEGAL

THE FOURTH JUDICIAL DISTRICT OF IOWA

INFORMAL FAMILY LAW TRIAL PROGRAM

District Court Administration
Pottawattamie County Courthouse
227 S. 6th Street
Council Bluffs, Iowa 51501
(712) 328-5754 [p]
(712) 328-5891 [f]

THE BASICS

Two different types of trials are available in the Fourth Judicial District of Iowa for resolving family law cases. Family law cases include:

- Dissolution of Marriage (Divorce)
- Legal Separation
- Paternity (Unmarried Parent)
- Modifications of child custody, visitation, and child support.

The two types of trials are called a traditional trial and an informal family law trial (IFLT). You will need to choose the type of trial that you think is best for your case. Both parties must agree to an informal trial. If one or both parties does not want an informal trial, a traditional trial will be scheduled. Please read the following information carefully so that you can make the decision that is right for you.

HOW AN INFORMAL FAMILY LAW TRIAL WORKS:

1) The person that started the case will speak first. He or she swears to tell the truth and may speak about anything he or she wishes.
2) He or she is not questioned by a lawyer. Instead, the judge will ask some questions in order to make a better decision.
3) If the person talking has a lawyer, then that lawyer may ask the judge to ask their client questions on specific topics.
4) This process is repeated for the other person.
5) If there are any experts, the expert's report may be given to the judge. Either person may also ask to have the expert testify and be questioned by the judge or the other person.
6) Each person may submit documents and other evidence that they want the judge to see. The judge will look at each document and decide whether it is trustworthy and should be considered.
7) Each person may briefly respond to comments made by the other person.
8) Each person or their lawyer may make a short legal argument about how the laws apply to their case.
9) Once all the above steps are complete, the judge states their decision. In some cases, the judge may give the ruling at a later date.
10) Any of the above steps may be modified by the judge in order to make sure the trial is fair for both people.

DIFFERENCES AT-A-GLANCE

INFORMAL TRIAL		TRADITIONAL TRIAL
X	Judge asks questions directly of parties; besides the parties only expert witnesses (doctor, counselor) are generally allowed.	
	Lawyers/Self-Represented Parties ask questions of parties/witnesses in common direct examination/cross examination format.	X
	Rules of Evidence are followed; a party can object to testimony and exhibits.	X
X	Parties can submit any document or testimony for the judge to review without objection by the opposing party.	
X	Lawyers are only allowed to say what the issues are, respond if the judge asks if there are any other areas the person wants the court to ask about, and make short arguments about the law at the end of the case.	
	Lawyers are allowed to question witnesses and object to certain testimony and proposed exhibits.	X
X	Before the trial starts, each person must give the judge and the other person a copy of all documents and other evidence you plan to submit.	X
X	Financial affidavits must be filed by each party.	X
X	Proposed Parenting Plans must be filed by each party (in cases with children).	X
X	Children in the Middle must be completed by each party (in cases with children).	X
X	Mediation/Settlement Conference is typically required.	X

The Iowa Judicial Branch has provided several helpful guides and forms for self-represented parties on its website at www.iowacourts.gov. These forms include:

Form 124 Financial Affidavit for Dissolution without Children

Form 128 Settlement Agreement for Dissolution without Children

Form 224 Financial Affidavit for Dissolution with Children

Form 228 Settlement Agreement for Dissolution with Children

Form 229 Agreed Parenting Plan

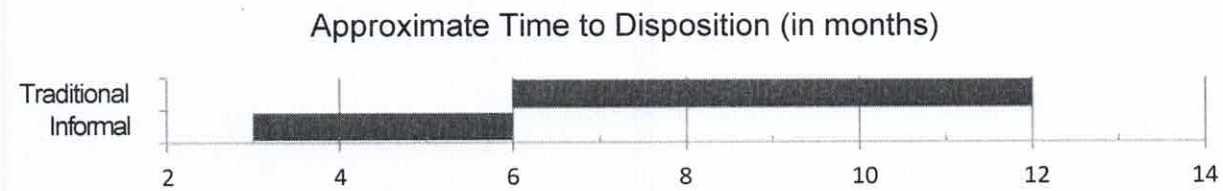
Form 230 Proposed Parenting Plan

Form 324 Child Support Modification Financial Statement

Form 328 Settlement Agreement for Modification of Child Support

WHY WOULD I CHOOSE AN INFORMAL FAMILY LAW TRIAL?

1) Fewer rules apply, so an IFLT is more flexible. IFLTs may be easier for people who are representing themselves. The judge is more involved in asking questions and guiding the process. The judge may be able to reduce conflict between the two sides and help them focus on the children or other issues.
2) You can speak directly to the judge about your situation without interruption or objections from the other person or their lawyer. The other person is not allowed to ask you questions.
3) You do not have to worry about formal rules that limit what you can say in court. You can:
   - Speak freely about conversations between you and other people who are not in court;
   - Talk to the judge about what your children have said about custody and parenting time; and
   - Tell the judge whatever you think is important before he or she makes a decision about your case.
4) You can give any documents you think are important to the judge.
5) Informal Family Law Trials may be shorter. A lawyer may be able to prepare in a shorter amount of time. Therefore, the cost to have a lawyer represent you may be less. You may have to take less time off from work.
6) The judge usually, but not always, makes a decision the same day as the trial.
7) Your case is relatively simple. You are comfortable explaining your circumstances and the facts to the judge.



WHY WOULD I CHOOSE A TRADITIONAL TRIAL?

1) Rules and formal procedures are in place to protect each person's rights. The rules of evidence apply. You or your lawyer may feel more comfortable with this structure.
2) You like the fact that the rules of evidence will limit what people can say and the information that can be given to the judge in writing.
3) The question and answer format will be more effective in getting out the information about your case. It may be important to be able to ask the other person follow-up questions.
4) You may bring any witnesses you think are important to court.
5) Generally, written statements from family members, teachers, and friends will not be considered by the judge. People with something to say about your situation or the other person's situation will need to come to court.
6) Your case is complicated. You and the other person own a business or have lots of stocks, property, and retirement funds to divide.

From: OFFICE RECEPTIONIST, CLERK
To: Linford, Tera
Subject: FW: Comment on Proposed General Rule 40 Informal Domestic Relations Trial
Date: Monday, August 2, 2021 8:16:02 AM
Attachments: Letter to Supreme Court 30-July-2021.pdf

-----Original Message-----
From: Amir John Showrai [mailto:president@draw.legal]
Sent: Friday, July 30, 2021 8:53 PM
To: OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>
Subject: Comment on Proposed General Rule 40 Informal Domestic Relations Trial

Please see attached.

THE BREWER FIRM
LISA BREWER

Friday, July 30, 2021

Clerk of the Supreme Court
P.O. Box 40929
Olympia, WA 98504-0929

supreme@courts.wa.gov.

Re: GR 40 – Informal Domestic Relations Trial (IDRT)

Dear Supreme Court Justices:

AGREEMENT. I agree that cost effective and timely exercise of justice is a noble purpose. For that reason, I support the *concept* of the proposed GR 40, subject to vigorous protections of civil and Constitutional rights.

DUE PROCESS CONCERNS. However, as an officer of the Court, I feel a sacred duty to vigilantly guard against any reduction in due process, particularly to "*those most disparately impacted by the justice system…including people of color, victims of domestic and sexual violence, the self-represented and low-income persons.*" (Comments GR9) Speedy justice isn't necessarily justice. Free justice isn't necessarily justice. Informal justice isn't necessarily justice. Clearing huge backlogs in dockets is a social concern, but it isn't necessarily personal justice, particularly when children and safety are at issue.[1]

DRAW fears a "paternalistic outcome" where, under the guise of "access to justice," disenfranchised parties actually have fewer rights than more traditionally privileged groups.

EVIDENCE & RIGHT TO APPEAL – (1) I believe the Rules of Evidence should be preserved to the greatest extent possible.[2] For instance, it is a hallmark of Anglo-American jurisprudence to exclude hearsay. As tempting as hearsay is, such comments are unreliable,

[1] The references cited in the GR9 disclosure do not consistently stand for the proposition as stated.
[2] On this point, DRAW and FLEC take different positions.

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prejudicial, and not subject to examination as to credibility and weight. Further, use of the word "received" at GR 40 (3)(f, g) is ambiguous. Does this mean the exhibit is "admitted" for purposes of appeal? What will be included in "the record?"

(2) The right to appeal should be preserved as a Federal and State Constitutional mandate. (Wa.Const. IV, Sec 4, "appellate jurisdiction in all actions and proceedings.") This, too, is a hallmark of justice, that curtails judicial mistake or overreach.

MUTUAL, KNOWING, AND VOLUNTARY WAIVER - The waiver of right to full trial must be (a) mutual, (b) genuinely knowing, and voluntary. The judicial officer should make findings that specifically address:

-The parties have more than a minimal competency (Rule out: dementia, debilitating mental health disorder, current addiction/intoxication that precludes clear thought, mental function)

- Inquiry into written literacy and confirmation of such

-Inquiry into language fluency and confirmation of such

-Inquiry into history of domestic violence (Have there been RCW 26.09.191 findings, issuance of a DVPO, criminal charges, etc.)

-Inquiry into whether there is undue economic or emotional influence. (ie. Vastly unequal resources or economic control)

- Inquiry into each party's consent and understanding of the IDRT rules & process, including the pros and cons of each system. See Exhibit A

-Failure to make such inquiries and findings should be a reversable error.

PRESERVING DUE PROCESS DURING TRIAL - If a party brings a motion during the pendency of the trial, the motion shall be heard and the court shall make findings. Where the interests of justice require, the court shall recess and allow a party to seek representation or advice of counsel.

PROPOSED SOLUTIONS – (1) The court should advise litigants of all options for settlement separate from IFLTs, including mediation, mandatory mediation, and voluntary arbitration.

(2) I suggest the use of experienced family law practitioners to act as Judge Pro- Tempore Judges. Pro-Tempore Judges are cost-effective, yet knowledgeable. A pro-tempore judge may have the resources and time to conduct a trial with more procedural due process because they can commit to a single trial (i.e. 2-4 per year, etc).

(3) Consider the use of sworn affidavits in lieu of hearsay or third-party testimony. Iowa Informal Family Law Trials. Affidavits can be admitted or rejected and should be subject to the Rules of Evidence, but are probative and can be a part of an appellate record.

Most respectfully,

Lisa E. Brewer
Attorney, WSBA #24579

From: OFFICE RECEPTIONIST, CLERK
To: Linford, Tera
Subject: FW: Comment - GR40 (Informal Family Law Trials)
Date: Monday, August 2, 2021 8:15:45 AM
Attachments: Letter Brewer GR40.pdf

From: Lisa Brewer [mailto:lbrewerlaw@msn.com]
Sent: Friday, July 30, 2021 5:08 PM
To: Lisa Brewer <lbrewerlaw@msn.com>; OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>
Subject: Comment - GR40 (Informal Family Law Trials)

Dear Clerk:

Please find attached my letter of comment on proposed General Rule 40 (GR40) regarding Informal Family Law Trials (IFLT).

Regards, Lisa Brewer,
Attorney, WSBA #24579

Lisa E. Brewer, Esq
The Brewer Firm
Gateway #6
901 E. 2nd Ave., Suite 207
Spokane, WA 99202
Ph (509) 325-3720; Fax (509) 534-0464
lbrewerlaw@msn.com

In Support of IDRT GR 40:

Everyone involved in family law understands how tense and conflicted and emotional this area of law is to work within. The more contentious, the worse separating partners can be to each other. The tensions ratchet up as trial becomes more and more inevitable.

Results from trial procedures, while they may be "settled" by a judicial decision, rarely seem to heal the breaches that have occurred. Yet, with children involved, many years might be ahead for parents who have had to go through this process. Clearly, the emphasis on mediation and the requirement to do so (besides mandated exceptions) is based on the premise that agreement can lead to a more productive post-legal family environment, which is also clearly so much better for any children involved with the "contenders."

In the same way that mediation can help force parents to agree, even reluctantly, an IDRT choice can also help lower the tensions, even though it is also a "trial" procedure. It seems to me that it resembles a sort of uber-arbitration, but not quite an all-out fight to the death (as it were).

LLLTs are well-situated to support IDRT preparation. LLLTs can also help clients choose an IDRT process over a full trial if both sides agree, and these options appear likely to reduce the cost of and the numbers of cases that must therefore proceed all the way to the regular trial as now practiced in the counties. Therefore, the costs are reduced for the participants and also to the counties' court dockets.

This can be another valuable tool in the arsenal of alternatives that enhance the long-term futures of separately-parenting-collaborators and that allow more low-income families to have their needs addressed more economically.

Further language could be added that specifies that a longer window of time be given to transition back to a full-trial requirement. Additional discovery might be given another week or two and the now-imminent trial should be further away in time, such as a minimum of a month, so that each side is fully prepared. This ensures that there is time to further prepare for a full trial when a party might not have taken all the actions that style of trial would necessitate. Preparing witnesses and clients for examination and cross-examination necessitate a fair opportunity to successfully complete readiness.

Clear deadlines and a clearly articulated process of transition also avoid prejudicing economically-disadvantaged parties. Another area to explore, perhaps with further input from the county judges who already have experience in this type of trial, is whether one party could use an "informal" process to power-play the disadvantaged party in some kind of unintended consequence.

To me, this opportunity seems a win-win-win. I hope this is an easy choice for the Supreme Court to make, and I look forward to this opportunity becoming a routine choice for solving family law issues.

Thank you,
Miryam Gordon
157LLLT

From: OFFICE RECEPTIONIST, CLERK
To: Linford, Tera
Subject: FW: Comment on the new GR 40
Date: Friday, July 2, 2021 8:08:09 AM
Attachments: In Support of IDRT GR 40.docx

From: Miryam Gordon [mailto:LLLTgal@gmail.com]
Sent: Thursday, July 1, 2021 5:10 PM
To: OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>
Subject: Comment on the new GR 40

Please submit my attached document to the comments on the proposed new GR 40. Thank you so much.

Miryam Gordon
157LLLT

1814 Cornwall
Bellingham, WA 98225
Tel. 1-360-734-8680
Fax. 1-206-299-3025

Toll Free 1-800-562-8836
www.nwjustice.org

César E. Torres
Executive Director

Northwest Justice Project

July 30, 2021

Clerk of the Supreme Court
P.O. Box 40929
Olympia, WA 98504-0929,

supreme@courts.wa.gov

GR 40 – Informal Domestic Relations Trial (IDRT)

Dear Supreme Court Justices:

The Northwest Justice Project (NJP) writes in support of proposed General Rule 40, with some concerns and suggested edits to the proposed rule.

NJP's Interest as a Provider of Civil Legal Services

Washington State recognizes that "[t]he provision of civil legal aid services to indigent persons is an important component of the state's responsibility to provide for the proper and effective administration of civil and criminal justice." RCW 2.53.005. The Northwest Justice Project is the largest provider of civil legal aid in Washington State, employing over 165 attorneys working in 19 offices across the state. NJP provides representation to low-income people in over 13,000 cases a year. Approximately 36% of NJP's cases in 2020 involved family law matters such as protection orders, dissolution of marriage, and parenting plans.

Proposed General Rule 40

The lack of representation in family law matters is a significant problem. The court process can be complicated and confusing for attorneys at times and can be almost impossible for unrepresented parties to navigate successfully. Most family law litigants are unrepresented, an informal process would be simpler for pro se individuals to navigate and succeed in finalizing their case. Litigants are not required to use the GR 40 process, but it provides an option that eliminates barriers that the more formal option requires. For example, the proposed rule provides that the parties will not be cross-examined by the other parties. This provision would address the concerns that a litigant may have in testifying if they know the other party will not be able to directly address them in court.

NJP does not believe that this proposed rule is a substitute for representation in a full trial where all issues can be fully litigated. NJP seconds the comments made by the Access to Justice Board that until there is a civil Gideon right to counsel in the civil legal system, many marginalized and unrepresented litigants will be unable to proceed through the court system. This informal option may help some pro se litigants finalize their cases, but it does not replace the need for adequate representation. There should continue to be a focus on securing adequate funding for representation of all litigants.

The following are areas of concern with the proposed rule:

- The right to appeal should not be foreclosed and the rule should specifically provide that the appeal rights are not affected by participation in the IDRT process.
- The proposed rule should clearly state that the rules of evidence do not apply so that there is not different treatment depending on how courts interpret this rule. ER 1101 should be amended under ER 1101(a)(c) to add the IDRT process to the list of situations where the evidence rules need not apply.
- There should be more clarity about what litigants are told about the rule. Make sure the information is in plain language and add safeguards on the front end of the disclosure so that litigants know what they are getting in this new process.
- The process and local rules will still differ from county to county and will likely still be confusing to most pro se litigants. All counties should be required to develop a checklist of what needs to be done and what the deadlines are in each county. As part of this checklist, there should be a requirement for when documents that a party plans to use at trial be provided to the other party and how they will be provided.
- There should be screening of both parties when they opt into this process. As part of that screening, a JIS report should be run. While domestic violence may not always be a reason not to use the IDRT process, additional screening should be done to make sure that parties are knowingly and intelligently waiving the full trial and choosing this process.
- Additional care should be taken when LEP litigants use the IDRT process as the manner in which a judge questions an LEP litigant. Judges should take into consideration cultural and language barriers so they ask questions that elicit all the appropriate and desired information.

NJP has proposed amendments to GR 40 at the end of this letter which we believe may address some of the concerns listed above and we ask that you consider these amendments.

Sincerely,

Mary Welch
Statewide Advocacy Counsel for Family Law

SUGGESTED [NEW] GENERAL RULE 40

INFORMAL DOMESTIC RELATIONS TRIAL (IDRT)

(1) Upon the consent of both parties, Informal Domestic Relations Trials (IDRT) may be held to resolve any or all issues in original actions or modification for dissolution of marriage, separate maintenance, invalidity, child support, parenting plans, residential schedules, and child custody filed under chapters 26.09; 26.19; 26.26A; 26.26B; and 26.27 RCW.

(2) The parties may select an IDRT within 14 days of a case ~~subject to this rule being at issue~~being set for trial. The parties must file a Trial Process Selection and Waiver for IDRT in substantially the form specified at _____. This form must be accepted by all superior courts. This form will fully inform the parties of the differences between an IDRT and a formal trial. If domestic violence is alleged by either party or found in a JIS search, additional screening will be done prior to assignment to a IDRT process.

(3) The IDRT will be conducted as follows:

(a) At the beginning of an IDRT, the parties will be asked to affirm that they understand the rules and procedures of the IDRT process, they are consenting to this process freely and voluntarily, and they have not been threatened or promised anything for agreeing to the IDRT process.

(b) The Court may ask the parties or their lawyers for a brief summary of the issues to be decided.

(c) The moving party will be allowed to speak to the Court under oath concerning all issues in dispute. The party is not questioned by counsel, but may be questioned by the Court to develop evidence required by any statute or rule, for example, the applicable requirements of the Washington State Child Support Schedule if child support is at issue.

(d) The parties will not be subject to cross-examination. However, the Court will ask the nonmoving party or their counsel whether there are any other areas the party wishes the Court to inquire about. The Court will inquire into these areas if requested and if relevant to an issue to be decided by the Court.

(e) The process in subsections (3)(c) and (3)(d) is then repeated for the other party.

(f) Expert reports will be received as exhibits. Upon request of either party, the expert will be sworn and subjected to questioning by counsel, the parties, or the Court.

(g) The Court will receive any exhibits offered by the parties. The Court will determine what weight, if any, to give each exhibit. The Court may order the record to be supplemented. The rules of evidence do not apply to the IDRT.

(h) The parties or their counsel will then be offered the opportunity to respond briefly to the statements of the other party.

(i) The parties or their counsel will be offered the opportunity to make a brief legal argument.

(j) At the conclusion of the case, the Court shall render judgment. The Court may take the matter under advisement, but best efforts will be made to issues prompt judgments.

(k) The Court may modify these procedures as justice and fundamental fairness requires.

(4) The Court may refuse to allow the parties to utilize the IDRT procedure at any time and may also direct that a case proceed in the traditional manner of trial even after an IDRT has been commenced but before judgment has been entered.

(5) A party who has previously agreed to proceed with an IDRT may file a motion to opt out of the IDRT provided that this motion is filed not less than 10 calendar days before trial. This time period may be modified or waived by the Court upon a showing of good cause. A change in the type of trial to be held may result in a change in the trial date.

(5) A party's right to appeal the Court's rulings is not affected by their participation in the IDRT.

From:	OFFICE RECEPTIONIST, CLERK
To:	Linford, Tera
Subject:	FW: NJP comments - Proposed GR 40
Date:	Friday, July 30, 2021 3:08:46 PM
Attachments:	image001.png NJP Letter re Proposed GR 40.pdf

From: Mary Welch [mailto:maryw@nwjustice.org]
Sent: Friday, July 30, 2021 2:56 PM
To: OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>
Subject: NJP comments - Proposed GR 40

Enclosed please find NJP's comments to the Proposed GR 40 – IDRT.

Thank you,

Mary Welch
Statewide Advocacy Counsel
Northwest Justice Project
1814 Cornwall Ave.
Bellingham, WA 98225
Phone: (206) 707-0826
Fax: (360) 734-0121

Pronouns: she/her

From: OFFICE RECEPTIONIST, CLERK
To: Linford, Tera
Subject: FW: NO on GR40 IDRT
Date: Wednesday, June 30, 2021 11:44:53 AM

From: Olivia Irwin [mailto:atty@irwinfirm.com]
Sent: Wednesday, June 30, 2021 11:28 AM
To: OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>
Subject: NO on GR40 IDRT

As an attorney who regularly assists those in poverty with family law matters I ask that you not implement a state-wide rule for a separate Informal Domestic Relations Trial process. While I agree that there is and has always been a crisis in this area of law, I would rather see an informal (and streamlined) process for all civil cases than further fracturing the courts essential functions, which tends to diminish consistency and accountability in the system as a whole.

Please note that any new/additional set of rules further complicates the process for attorneys and pro se litigants alike by providing an additional set of rules and procedures and does not solve the problem of access to justice by pro se litigants who are often functionally illiterate in the first place.

Another thing to consider is that the more informal the process often the less legally correct/lawful and may give rise to brand new legal issues, as many such programs already do.

In this instance, implementation of a new procedure is not necessary. There are already Family Law Court Facilitators and provisions for mandatory and optional mediation which can be adjusted to take any form--and in fact they should be---because mediator qualification rules (and funding) at this point are narrow and circular, and limit the practitioner/procedural options. I would be in favor of that kind of reform.

Respectfully,
C. Olivia Irwin, J.D.

From: OFFICE RECEPTIONIST, CLERK
To: Linford, Tera
Subject: FW: Comment on Proposed General Rule 40 - IDRT
Date: Wednesday, June 2, 2021 1:58:20 PM

From: Ruth Gordon [mailto:RGordon@co.jefferson.wa.us]
Sent: Wednesday, June 2, 2021 1:54 PM
To: OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>
Cc: Mike Killian (michael.killian@co.franklin.wa.us) <michael.killian@co.franklin.wa.us>; Fitzgerald, Timothy W. <TFITZGERALD@spokanecounty.org>; Barb Miner (Barbara.Miner@kingcounty.gov) <Barbara.Miner@kingcounty.gov>; Josie Delvin <josie.delvin@co.benton.wa.us>
Subject: Comment on Proposed General Rule 40 - IDRT

Greetings to the Court,

I strongly favor the proposed rule GR40, because as a clerk I have watched many a *pro se* couple struggle through a bench trial with no idea how to follow the rules of evidence, and indeed, not having any general knowledge of the necessary protocol of a trial. This rule should expedite the process to everyone's benefit and directly assist judicial officers in eliciting the information needed to make a well-grounded decision in the matter before the court.

But, as a clerk, I am concerned about the modifier "any" in subsection (g) on exhibits. Many courts have local court rules regarding exhibits that protect staff safety and take into account reasonable storage limits, and to my mind, the reference to "any exhibits offered" may put those prudent local rules in conflict with the new state rule.

I ask that you consider simply cutting the word "any" in the following subsection, or alternately suggest that you add something like the underlined language below.

(g) The Court will receive any exhibits offered by the parties in compliance with local court rules governing exhibits. The Court will determine what weight, if any, to give each exhibit. The Court may order the record to be supplemented.

Thank you for your consideration. I really do know clerks who have had to store cars, couches and garbage cans in their exhibit storage areas. I think most judges are up to the

challenge of determining what constitutes an adequate exhibit in a *pro se* domestic bench trial, and do not think the general rule should limit their discretion.

Respectfully,

Ruth Gordon
Jefferson County Clerk
rgordon@co.jefferson.wa.us
(360) 385-9128
P.O. Box 1220
Port Townsend, WA 98368

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509-736-3071

July 13, 2021

Honorable Charles W. Johnson, Co-Chair
Honorable Mary I. Yu, Co-Chair
Washington State Supreme Court Local Rules Committee
Sent Electronically To: supreme@courts.wa.gov

Re: Proposed General Rule 40

Dear Justice Johnson and Justice Yu:

The Superior Court Judges' Association (SCJA) Family and Juvenile Law Committee (FJLC) strongly supports the implementation of a rule permitting and governing informal family law trials, with the attached offered edits to Proposed General Rule 40. We believe it would be especially helpful to self-represented parties who must bring the issues of the most importance to them – access to their children, safety from intimate partner violence, financial security – to the court for decision, yet who struggle mightily to figure out how to participate meaningfully in their court case. Making informal family law trials available statewide through a general rule assists courts of all sizes in creating these programs, and ensures that access to justice does not depend on geography.

In Thurston and King counties, judicial officers report that the informal family law trial rules their courts have adopted have been extremely successful. To some extent, the adoption of local Informal Family Law Trials (IFLT) rules has reflected the practical realities of how some family law trials have been conducted in the past, especially in matters where both parties are self-represented.

In both of those counties, the rule actually refers to "Informal Family Law Trials" or "IFLT," rather than the currently-proposed "Informal Domestic Relations Trials" or "IDRT." We prefer "IFLT," as "family law" is the more often used, "plain language" reference to the area of law which used to be referred to as "domestic relations."

A statewide rule which permits local jurisdictions to retain needed flexibility to flesh out the practicalities of the IFLT process, dependent upon local court resources and case volume, is preferred. This recognizes that case processes differ from county to county. For instance, some counties issue a case schedule with a trial date set at filing. In those counties, a rule permitting opt-in to an IFLT prior to "trial setting" would not make sense. Other counties do have trial setting, but the timing of such setting varies quite a bit. Therefore, our edits include needed deference to local rules for process.

We believe the rule must include a requirement that parties formally affirm that in opting in to the IFLT process, they are entering into a process where the Rules of Evidence will not apply, and where they are waiving their right to appeal based on evidentiary issues or processes which differ from that of a formal trial process. Clarity is needed to ensure parties know and understand what they are opting in to, and so judicial officers are clear about their responsibility in examining and assessing the evidence. We have also included a provision to ensure the trial judge considers the possible prejudice to any party should the court consider, or should a party make a motion to, opt out of the IFLT process at any time, including after the trial has started but before ruling has been made.

The FJLC sub-group which met to discuss this proposed rule had a lively discussion about whether specific, additional training may or should be made available to judges presiding over IFLTs. While many agreed it would be a good idea, others were concerned that such a requirement would mandate reassignment of scarce resources, which during this time when courts are facing unprecedented backlogs and scarcity of funding, we did not feel comfortable suggesting.

We also discussed the logistics of exhibits, and admission of same. We collectively read the rule to mandate that any/all offered exhibits shall be admitted, and that the judge in making findings would refer, when appropriate, to which exhibits or documents were specifically relied upon. Because the process for handling, filing, and storing exhibits also varies so much across jurisdictions, we did not propose specific alternative language except to note that local jurisdictions could address this if they choose.

Thank you for taking the time to consider our input and to review our proposed edits. If we can be of any assistance in the future, please do contact us at your convenience. Commissioner Laird can be reached, as the primary contact person on this issue, at 206-477-1442, or via email at jennie.laird@kingcounty.gov.

Sincerely,

Commissioner Jennie Laird, Co-Chair
Judge Cindy Larsen, Co-Chair
SCJA Family & Juvenile Law Committee

Attachments

cc: SCJA Board of Trustees
Crissy Anderson

SCJA FJLC PROPOSED EDITED GR 40
7.12.2021

SUGGESTED [NEW] GENERAL RULE 40

INFORMAL FAMILY LAW TRIAL
(IFLT)

(1) Upon the consent of both parties and with approval of the court, Informal Family Law Trials (IFLT) may be held to resolve any or all issues in original actions or modification for dissolution of marriage, separate maintenance, invalidity, child support, parenting plans, residential schedules, child custody, and other family law matters as established by local rule.

(2) The parties may select an IFLT within 30 days before trial or trial setting if no trial date is set at filing, or as otherwise directed by local court rule. The parties must file a Trial Process Selection and Waiver for IFLT in substantially the form specified at _____. This form must be accepted by all superior courts, but may be modified to conform to local rule practices.

(3) When a trial is conducted pursuant to this rule, the following procedures may, at the discretion of the trial judge and consistent with local rules, be used. The trial judge retains discretion to modify any of these procedures as justice and fundamental fairness require.

(a) At the beginning of an IFLT, the parties will be asked to affirm that they understand the rules and procedures of the IFLT process, they are consenting to this process freely and voluntarily, and they have not been threatened or promised anything for agreeing to the IFLT process. Parties must affirm that they waive the right to appeal the court's use of the IFLT process or the court's admission of evidence pursuant to the IFLT process that is not consistent with the traditional court process, court rules and Rules of Evidence.

(b) The Court may ask the parties or their lawyers for a brief summary of the issues to be decided.

(c) The moving party will be allowed to speak to the Court under oath concerning all issues in dispute. The party is not questioned by their counsel (if represented), but may be questioned by the Court to develop evidence required by any statute or rule, for example, the applicable requirements of the Washington State Child Support Schedule if child support is at issue.

(d) The parties will not be subject to cross-examination unless permitted by the court. However, the Court will ask the nonmoving party or their counsel whether there are any other areas the party wishes the Court to inquire about. The Court will inquire into these areas if requested and if relevant to an issue to be decided by the Court.

(e) The process in subsections (3)(c) and (3)(d) is then repeated for the other party.

(f) Expert reports will be received as exhibits. Upon request of either party, the expert will be sworn and subjected to questioning by counsel, the parties, or the Court.

(g) The Rules of Evidence will not apply.

(h) The Court will receive and admit exhibits offered by the parties. The Court will determine what weight, if any, to give each exhibit. The Court may order the record to be supplemented. The process for submitting, filing, and storing exhibits shall be governed by local rule.

(i) The parties or their counsel will then be offered the opportunity to respond briefly to the statements of the other party.

(j) The parties or their counsel will be offered the opportunity to make a brief legal argument.

(k) At the conclusion of the case, the Court shall make its ruling or may take the matter under advisement, but best efforts will be made to issue prompt rulings. Findings shall be made and orders entered consistent with family law statutes and case law, the same as for traditional family law case resolution.

(l) The Court may modify these procedures as justice and fundamental fairness requires.

(4) The Court may refuse to allow the parties to utilize the IFLT procedure, or a party who has previously agreed to proceed with an IFLT may file a motion to opt out of the IFLT, at any time including after an IFLT has started but before a ruling has been issued.

(a) In assessing whether this change in format should be made after trial has started, the trial judge will consider whether enforcement of traditional trial rules after the IFLT has started will prejudice either party.

(b) A change in the type of trial to be held may result in a change of the trial date.

SCJA FJLC PROPOSED EDITS, GR 40
7.12.2021

SUGGESTED [NEW] GENERAL RULE 40

INFORMAL FAMILY LAW~~DOMESTIC RELATIONS~~ TRIAL
(~~IDRT~~~~IFLT~~IFLT)

(1) Upon the consent of both parties and with approval of the court, Informal Family Law~~Domestic Relations~~ Trials (~~IDRT~~IFLT~~IFLT~~IFLT) may be held to resolve any or all issues in original actions or modification for dissolution of marriage, separate maintenance, invalidity, child support, parenting plans, residential schedules, ~~and~~ child custody, and other family law matters as established by local rule. ~~filed under chapters 26.09; 26.19; 26.26A; 26.26B; and 26.27 RCW.~~

(2) The parties may select an ~~IDRT~~~~IFLT~~ IFLT within ~~14~~ 30 days before trial or trial setting if no trial date is set at filing, or as otherwise directed by local court rule ~~of a case subject to this rule being at issue~~. The parties must file a Trial Process Selection and Waiver for ~~IDRT~~~~IFLT~~ IFLT in substantially the form specified at _____. This form must be accepted by all superior courts, but may be modified to conform to local rule practices.

(3) When a trial is conducted pursuant to this rule, the following procedures may, at the discretion of the trial judge and consistent with local rules, be used. The trial judge retains discretion to modify any of these procedures as justice and fundamental fairness require. ~~The IDRT will be conducted as follows:~~

(a) At the beginning of an ~~IDRT~~IFLT, the parties will be asked to affirm that they understand the rules and procedures of the ~~IDRT~~IFLT process, they are consenting to this process freely and voluntarily, and they have not been threatened or promised anything for agreeing to the ~~IDRT~~IFLT process. Parties must affirm that they waive the right to appeal the court's use of the IFLT process or the court's admission of evidence pursuant to the IFLT process that is not consistent with the traditional court process, court rules and Rules of Evidence.

(b) The Court may ask the parties or their lawyers for a brief summary of the issues to be decided.

(c) The moving party will be allowed to speak to the Court under oath concerning all issues in dispute. The party is not questioned by their counsel (if represented), but may be questioned by the Court to develop evidence required by any statute or rule, for example, the applicable requirements of the Washington State Child Support Schedule if child support is at issue.

(d) The parties will not be subject to cross-examination unless permitted by the court. However, the Court will ask the nonmoving party or their counsel whether there

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are any other areas the party wishes the Court to inquire about. The Court will inquire into these areas if requested and if relevant to an issue to be decided by the Court.

(e) The process in subsections (3)(c) and (3)(d) is then repeated for the other party.

(f) Expert reports will be received as exhibits. Upon request of either party, the expert will be sworn and subjected to questioning by counsel, the parties, or the Court.

(g) The Rules of Evidence will not apply.

(h) The Court will receive and admit ~~any~~ exhibits offered by the parties. The Court will determine what weight, if any, to give each exhibit. The Court may order the record to be supplemented. The process for submitting, filing, and storing exhibits shall be governed by local rule.

(i~~h~~) The parties or their counsel will then be offered the opportunity to respond briefly to the statements of the other party.

(j~~i~~) The parties or their counsel will be offered the opportunity to make a brief legal argument.

(k~~j~~) At the conclusion of the case, the Court shall ~~render judgment~~make its ruling or may~~. The Court may~~ take the matter under advisement, but best efforts will be made to issue~~s~~ prompt ~~judgments~~rulings. Findings shall be made and orders entered consistent with family law statutes and case law, the same as for traditional family law case resolution.

(l~~k~~) The Court may modify these procedures as justice and fundamental fairness requires.

(4) The Court may refuse to allow the parties to utilize the ~~IDRT~~IFLT procedure~~ at any time~~, or a party who has previously agreed to proceed with an IFLT may file a motion to opt out of the IFLT, at any time including after an IFLT has started but before a ruling has been issued.

(a) ~~and may also direct that a case proceed in the traditional manner of trial even after an IDRT has been commenced but before judgment has been entered.~~ In assessing whether this change in format should be made after trial has started, the trial judge will consider whether enforcement of traditional trial rules after the IFLT has started will prejudice either party.

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(b) A change in the type of trial to be held may result in a change of the trial date.

~~**(5)** A party who has previously agreed to proceed with an IDRT may file a motion to opt out of the IDRT provided that this motion is filed not less than 10 calendar days before trial. This time period may be modified or waived by the Court upon a showing of~~

~~good cause. A change in the type of trial to be held may result in a change in the trial date.~~

From: OFFICE RECEPTIONIST, CLERK
To: Linford, Tera
Subject: FW: SCJA FJLC - GR 40, letter of support with proposed edits
Date: Friday, July 23, 2021 8:08:28 AM
Attachments: 7.12 - FJLC edits to Prop Rule 40 - with changes.docx
7.12 - FJLC edits to Prop Rule 40 - clean.docx
FJLC Proposed General Rule 40 07132021.docx

From: Laird, Jennie [mailto:Jennie.Laird@kingcounty.gov]
Sent: Friday, July 23, 2021 7:51 AM
To: OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>
Cc: Larsen, Cindy <Cindy.Larsen@snoco.org>; Anderson, Crissy <Crissy.Anderson@courts.wa.gov>
Subject: SCJA FJLC - GR 40, letter of support with proposed edits

Attached please find the Superior Court Judges' Association's Family & Juvenile Law Committee's letter in support of proposed GR 40, as edited here. This has been approved by the SCJA Board of Trustees for submission.

We've attached a copy of the proposed rule with our proposed edits "tracked," and then also provided a "clean" copy of our edited proposal, for ease of viewing.

Please contact me with any questions, of if any additional input is requested.

Thank you,
Commissioner Jennie Laird
Judge Cindy Larsen
Co-Chairs, SCJA FJLC

From: Anderson, Crissy <Crissy.Anderson@courts.wa.gov>
Sent: Friday, July 23, 2021 7:28 AM
To: Laird, Jennie <Jennie.Laird@kingcounty.gov>; Larsen, Cindy <Cindy.Larsen@snoco.org>

Cc: David Estudillo <destudillo@grantcountywa.gov>; Helson, Janet <Janet.Helson@kingcounty.gov>; Valdez, Andrea <Andrea.Valdez@courts.wa.gov>; Green, Heidi <Heidi.Green@courts.wa.gov>; Ireland, Shelley <Shelley.Ireland@courts.wa.gov>
Subject: GR 40

Good morning Commissioner Laird and Judge Larsen,

The SCJA Board has approved submission of FJLC's comment re proposed GR 40, Informal Domestic Relations Trials.

Thank you!

Crissy Anderson, J.D.
Court Association Coordinator
ASD Office of Judicial and Legislative Relations
Washington State Administrative Office of the Courts
PO Box 41170 | Olympia WA 98504
Office: (360) 705-5252 | Cell: (360) 688-3650
Twitter: @WaCourts | Facebook.com/WashingtonCourts | YouTube.com/Washington Courts
Get the most current information on the Courts' response to COVID-19 here.

WASHINGTON COURTS
www.courts.wa.gov

From: OFFICE RECEPTIONIST, CLERK
To: Linford, Tera
Subject: FW: Comment - INFORMAL DOMESTIC RELATIONS TRIAL (IDRT)
Date: Monday, June 21, 2021 8:03:34 AM

From: Tamara Garrison [mailto:famlawlegaltechnician@gmail.com]
Sent: Saturday, June 19, 2021 4:16 PM
To: OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>
Subject: Comment - INFORMAL DOMESTIC RELATIONS TRIAL (IDRT)

I strongly support GR 40 - Informal Domestic Relations Trial format. I recently had a pro se client participate in an informal trial in King County and the experience was very positive for her. The opposing party was also pro se, English was not their first language, there was an interpreter for the opposing party, and my client was a domestic violence survivor. (The opposing party was the perpetrator.) Any of these circumstances alone would be problematic. She was terrified that she would have to question her former abuser.

This is a wonderful option, especially for pro se parties and cases that are relatively simple. Also, this format also significantly cut down on costs for parties. This will allow more individuals, who would normally have no ability to pay for legal assistance, to possibly hire someone for the limited services and time that would be needed to prepare them for trial (LLLT or attorney) or actually appear with them (attorney) at a very brief (one day) trial. Thank you.

Tamara Garrison
Family Law Legal Technician, PLLC
(206) 414-9521
8490 Mukilteo Speedway, Suite 108
Mukilteo, WA 98275
www.familylawlegaltechnician.com

"Compassionate, Experienced, and Affordable Legal Help"

WASHINGTON STATE
ASSOCIATION OF
COUNTY CLERKS

Kimberly A. Allen, President
Grant County Clerk
P.O. Box 37
Ephrata, WA 98823
509-754-2011 ext. 2818
kallen@grantcountywa.gov

July 20, 2021

Via E-mail Only

Clerk of the Supreme Court
supreme@courts.wa.gov

Re: Comment on GR 40 – Informal Domestic Relations Trial

To Whom It May Concern:

WSACC supports this rule for all the reasons mentioned by the original requestor. We support the edit suggested by the Jefferson County Clerk. We want to be clear that this new general rule would not contradict existing provisions in GR 20.

Sincerely,

Kimberly A. Allen, President
Washington State Association of County Clerks
and Grant County Clerk

:kaa
cc: WSACC Membership

From: OFFICE RECEPTIONIST, CLERK
To: Linford, Tera
Subject: FW: Comment on GR 40
Date: Wednesday, July 21, 2021 9:00:16 AM
Attachments: WSACC Letter in Support of GR 40.pdf

From: Kimberly Allen [mailto:kallen@grantcountywa.gov]
Sent: Tuesday, July 20, 2021 5:00 PM
To: OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>
Subject: Re: Comment on GR 40

Attached please find a letter from WSACC in support of GR 40.

Please confirm your receipt of this e-mail.

Thank you.

Kimberly A. Allen, Grant County Clerk
P.O. Box 37
Ephrata, WA 98823

Phone: 509-754-2011 ext. 2818
Email: kallen@grantcountywa.gov

Family Law Section

Family Law Section of the Washington State Bar Association

July 22, 2021

Clerk of the Supreme Court
P.O. Box 40929
Olympia, WA 98504-0929,

supreme@courts.wa.gov.

GR 40 – Informal Domestic Relations Trial (IDRT)

Dear Supreme Court Justices:

The Family Law Executive Committee (FLEC) has unanimously endorsed the following comments and concerns regarding GR 40 and requested that I forward these comments and concerns on behalf of FLEC to you via email. A related supplemental memorandum will be mailed through the US Postal Service.

Comments And Concerns Regarding Proposed GR 40
Informal Domestic Relations Trials (IDRT)

1. Incorporate comments submitted by Superior Court Judges Association, including
    a. Retitling IDRT to IFLT (Informal Family Law Trial).
    b. Incorporating "plain language" in rules and pleadings.
2. Incorporate appropriate provisions from existing informal trial procedures in King County [LFLR 23] and Thurston County [LSPR 94.03F].
3. The existence or limitation of appellate options should be expressly identified in materials for attorneys and prospective participants, including any explicit waiver of evidence rules and evidence-based appeals.
4. Include provision that judges can, at any stage of proceeding, expand – but not further limit - the role of attorneys.
5. If the case includes the determination of a parenting plan or residential schedule, the judge shall review and consider the JIS (criminal history) of both parents and other adults in each parent's household in the determination of whether an informal trial is appropriate or should occur and, if so, the judge shall take into consideration the relevance

of such history during the proceeding and in the determination of a parenting plan or residential schedule.

6. Enhance the orientation and education for judges, for attorneys and the public (who may be represented clients or pro se).
    a. This could include a short video, in multiple languages.
    b. NW Justice's Washington Law Help website is a good example with the following language options: American Sign Language / Amharic አማርኛ / Arabic العربية / Cambodian / Khmer / Chinese (Traditional) 中文 / Farsi / فارسی) / Hindi / हिन्दी / Korean 한국어 / Laotian ພາສາລາວ / Mandarin Chinese 官話 / Marshallese / Kajin Ṃajeḷ / Oromo ኦሮምኛ / Punjabi ਪੰਜਾਬੀ / Russian Русский / Samoan Gagana Samoa / Somali Soomaali / Spanish Español / Tagalog Pilipino / Tigrinya Ge'ez / Ukrainian Українська) / Vietnamese Tiếng Việt.
    c. It is particularly important that the judge presiding over an informal trial should have as much possible knowledge and experience in family law issues, including domestic violence (as defined by RCW 26.50.010 – as amended in 2021 - See 1320-S2.SL) and its impact upon participants in family law proceedings.
7. Uniformity across the state to provide consistency and avoid conflicts or confusion.
    a. Allowing some flexibility for counties, e.g., time to opt in.
8. Budget/allocate funds to
    a. survey judges, attorneys and parties who have participated in informal trials.
        i. Particular emphasis and focus should be on types of cases, e.g., domestic violence, advantage/disadvantage in case where one party is pro se and the other is represented by counsel, complex issues, multiple experts, etc.
    b. Obtain statistics from county court clerks.
        i. regarding number and ratio of informal trials vs. regular trials.
        ii. judicial efficiency (reduction of caseloads and back logs).
9. Any informal trial process should be for a limited time period such as two years and then not resumed until and unless there is a meaningful review of the results.
    a. Such review should include judicial officers, lawyers, and clients as well as other named stakeholders.

b. The review should monitor results state-wide, including stakeholder survey(s) and monitor national trends re informal trials; additional state adoptions; and modifications, enhancement or curtailment of existing informal trial programs.
c. A report should be submitted not later than two years to the Supreme Court, including successes, failures, suggestions for improvements, recommendation for continuing program or elimination.

Sincerely,

/s/

Christopher J. Fox, WSBA 7345
Washington Family Law Executive Committee

From:	OFFICE RECEPTIONIST, CLERK
To:	Linford, Tera
Subject:	FW: Comment Re Proposed Rule GR 40 - Informal Domestic Relations Trial
Date:	Friday, July 23, 2021 8:06:41 AM
Attachments:	FLEC RE GR 40 072221.pdf

From: foxlawkirkland@gmail.com [mailto:foxlawkirkland@gmail.com]
Sent: Thursday, July 22, 2021 5:19 PM
To: OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>
Subject: Comment Re Proposed Rule GR 40 - Informal Domestic Relations Trial

Please find WSBA Family Law Executive Committee (FLEC) comment attached.

Christopher J. Fox, P.S.
Ph: 425.827.8757 #1
50 16th Avenue
Kirkland, WA 98033

Foxlawkirkland.com
foxlawkirkland@gmail.com

Family Law Section

Family Law Section of the Washington State Bar Association

July 22, 2021

Clerk of the Supreme Court
P.O. Box 40929
Olympia, WA 98504-0929,

supreme@courts.wa.gov.

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2. Incorporate appropriate provisions from existing informal trial procedures in King County [LFLR 23] and Thurston County [LSPR 94.03F].
3. The existence or limitation of appellate options should be expressly identified in materials for attorneys and prospective participants, including any explicit waiver of evidence rules and evidence-based appeals.
4. Include provision that judges can, at any stage of proceeding, expand – but not further limit - the role of attorneys.
5. If the case includes the determination of a parenting plan or residential schedule, the judge shall review and consider the JIS (criminal history) of both parents and other adults in each parent's household in the determination of whether an informal trial is appropriate or should occur and, if so, the judge shall take into consideration the relevance

of such history during the proceeding and in the determination of a parenting plan or residential schedule.

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    a. survey judges, attorneys and parties who have participated in informal trials.
        i. Particular emphasis and focus should be on types of cases, e.g., domestic violence, advantage/disadvantage in case where one party is pro se and the other is represented by counsel, complex issues, multiple experts, etc.
    b. Obtain statistics from county court clerks.
        i. regarding number and ratio of informal trials vs. regular trials.
        ii. judicial efficiency (reduction of caseloads and back logs).
9. Any informal trial process should be for a limited time period such as two years and then not resumed until and unless there is a meaningful review of the results.
    a. Such review should include judicial officers, lawyers, and clients as well as other named stakeholders.

b. The review should monitor results state-wide, including stakeholder survey(s) and monitor national trends re informal trials; additional state adoptions; and modifications, enhancement or curtailment of existing informal trial programs.

c. A report should be submitted not later than two years to the Supreme Court, including successes, failures, suggestions for improvements, recommendation for continuing program or elimination.

Sincerely,

/s/ 

Christopher J. Fox, WSBA 7345
Washington Family Law Executive Committee

TO: WSBA FAMILY LAW EXECUTIVE COMMITTEE
FROM: CHRIS FOX
RE: Informal Domestic Relations Trial (IDRT)
June 30, 2021

Informal Family Law Trials have been adopted in two Washington State superior courts.

Thurston County Superior Court LSPR 94.03F. Adopted effective September 1, 2017. Amended effective September 2019 and amended effective January 13, 2020. Scope: To resolve all issues in original actions or modifications for dissolution of marriage, paternity, parenting plans, child support, and non-parental custody.

King County Superior Court LFLR 23. Adopted September 24, 2020 and effective January 2, 2021. Scope: To resolve issues in actions for divorce, parentage, parenting plan and child support, relocation, and non-parental custody, and modification of parenting plans or non-parental custody orders.

- Information for Party Re Formal & Informal Trial
- Informal Trial Selection Form

Acting on the **December 2020 proposal by Spokane attorney** Dennis "D.C." Cronin, WSBA No. 16018 for a general statewide rule for Informal Domestic Relations Trial (IDRT), the Washington State Supreme Court published in April 2021 **the following proposed rule**.

SUGGESTED [NEW] GENERAL RULE 40
INFORMAL DOMESTIC RELATIONS TRIAL (IDRT)

(1) Upon the consent of both parties, Informal Domestic Relations Trials (IDRT) may be held to resolve any or all issues in original actions or modification for dissolution of marriage, separate maintenance, invalidity, child support, parenting plans, residential schedules, and child custody filed under chapters 26.09; 26.19; 26.26A; 26.26B; and 26.27 RCW.

(2) The parties may select an IDRT within 14 days of a case subject to this rule being at issue. The parties must file a Trial Process Selection and Waiver for IDRT in substantially the form specified at _____. This form must be accepted by all superior courts.

(3) The IDRT will be conducted as follows:

(a) At the beginning of an IDRT, the parties will be asked to affirm that they understand the rules and procedures of the IDRT process, they are consenting to this process freely and voluntarily, and they have not been threatened or promised anything for agreeing to the IDRT process.

(b) The Court may ask the parties or their lawyers for a brief summary of the issues to be decided.

(c) The moving party will be allowed to speak to the Court under oath concerning all issues in dispute. The party is not questioned by counsel, but may be questioned by

the Court to develop evidence required by any statute or rule, for example, the applicable requirements of the Washington State Child Support Schedule if child support is at issue.

(d) The parties will not be subject to cross-examination. However, the Court will ask the nonmoving party or their counsel whether there are any other areas the party wishes the Court to inquire about. The Court will inquire into these areas if requested and if relevant to an issue to be decided by the Court.

(e) The process in subsections (3)(c) and (3)(d) is then repeated for the other party.

(f) Expert reports will be received as exhibits. Upon request of either party, the expert will be sworn and subjected to questioning by counsel, the parties, or the Court.

(g) The Court will receive any exhibits offered by the parties. The Court will determine what weight, if any, to give each exhibit. The Court may order the record to be supplemented.

(h) The parties or their counsel will then be offered the opportunity to respond briefly to the statements of the other party.

(i) The parties or their counsel will be offered the opportunity to make a brief legal argument.

(j) At the conclusion of the case, the Court shall render judgment. The Court may take the matter under advisement, but best efforts will be made to issues prompt judgments.

(k) The Court may modify these procedures as justice and fundamental fairness requires.

(4) The Court may refuse to allow the parties to utilize the IDRT procedure at any time and may also direct that a case proceed in the traditional manner of trial even after an IDRT has been commenced but before judgment has been entered.

(5) A party who has previously agreed to proceed with an IDRT may file a motion to opt out of the IDRT provided that this motion is filed not less than 10 calendar days before trial. This time period may be modified or waived by the Court upon a showing of good cause. A change in the type of trial to be held may result in a change in the trial date.

Informal family law trials currently exist in Alaska, Idaho, Iowa and Utah, and in one Oregon county. The following tables contained in Informal Domestic Relations Trials, published January 26, 2021 by the National Center for State Courts, identify and provide information about the rules and procedures in each program.

	Primary Citation(s)	Status	Form of Adoption
Alaska	Alaska Rules of Court Rules of Civil Procedure Rule 16.2 – Informal Trials in Domestic Relations Cases	Applies to entire state Effective April 15, 2015 Review and report after three years	Statewide court rule
Idaho	Idaho Rules of Family Law Procedure Rule 713. Informal Trial	Applies to entire state Effective statewide July 1, 2015 (Originally adopted as IRCP Rule 16 (p) in 2008)	Statewide court rule
Oregon	11th Judicial District	Pilot in Deschutes County	Local court rule

	Deschutes County Circuit Court Supplementary Local Rules Rules 7.045 and 8.015	Effective May 29, 2013 Statewide rule under consideration	(Statewide court rule under consideration)
Utah	Judicial Council Rules of Judicial Administration Rule 4-904. Informal trial of support, custody and parent-time.	Applies to entire state Effective April 12, 2012	Statewide court rule

	Case and Hearing Types	How Selected	Waiver
Alaska	Trials in actions of divorce, property division, child custody, and child, including motions to modify.	Opt-in. In a case proceeding to trial, the court may offer the parties the option of electing the informal trial process.	Parties must consent to the process. An explicit waiver of the rules of evidence is not included in the rule.
Idaho	Trials in actions for child custody and child support.	Opt-in. Parties must waive the application of the Idaho Rules of Evidence and the normal question answer manner of a trial.	Consent and waiver to be given verbally on the record or in writing on a form developed by the Supreme Court.
Oregon	Trials in original actions or modifications for divorce, separate maintenance, annulment, child custody and child support.	Forced choice/opt-in. Parties must select the type of trial they would like at the pre-trial conference. Both parties must select an informal trial, otherwise a traditional trial is scheduled.	Not explicitly required in the rule, however the trial selection form contains a written waiver and it is the practice of the court to engage the parties in an oral waiver on the record at the time of trial.
Utah	Trials in actions for child support, child custody and parent-time.	Opt-in. Upon waiver and stipulated motion, orally or in writing, by the parties.	The court must find that the parties have made a valid waiver of their right to a regular trial.

	General Process	Evidence	Witnesses
Alaska	Opening (summary of issues to be decided), the parties' present case in turn, opportunity to respond to factual information presented by opposing party, closing.	Parties may offer any relevant documentation. Court will determine admission and weight. Court may require additional documentation. Letters	Only the court may question a party. Parties may advise the court of additional questions or issues they would like the court to address with the opposing

		from children regarding custody discouraged.	party. Exclusion of witnesses is implicit.
Idaho	The moving party speaks to the court regarding their position(s). The Court questions the party to develop required evidence. Process repeats for opposing party.	Parties may offer any documentation they wish the court to consider. Court shall determine weight, if any, given to each document. Court may order the record be supplemented.	Only the court may question a party. Parties may advise the court of additional questions or issues they would like the court to address with the opposing party. Exclusion of witnesses is implicit.
Oregon	Opening (summary of issues to be decided), the parties' present case in turn, opportunity to respond to factual information presented by opposing party, closing.	Parties may offer any relevant documentation. Court will determine admission and weight. Court may require additional documentation. Letters from children regarding custody discouraged.	Only the court may question a party. Parties may advise the court of additional questions or issues they would like the court to address with the opposing party. Exclusion of witnesses is implicit.
Utah	The moving party speaks to the court regarding their position(s). The Court questions the party to develop required evidence. Process repeats for opposing party.	Parties may offer any documentation they wish the court to consider. Court shall determine weight, if any, given to each document. Court may order the record be supplemented.	Only the court may question a party. Parties may advise the court of additional questions or issues they would like the court to address with the opposing party. Exclusion of witnesses is implicit.

	Expert Witnesses	**Role of Attorneys**	**Other**
Alaska	Expert reports may be admitted without testimony. If expert testifies, all parties, their attorneys and the court may question the expert.	May provide opening summary, propose questions for the court to ask of the opposing party or issues to explore, question expert witnesses and closing statement.	Court may disallow a request to withdraw from the procedure if it would prejudice the other party or postpone the trial date absent a showing of good cause.
Idaho	Guardian ad Litem and expert reports may be admitted without testimony. If expert testifies, all parties, their	May propose questions for the court to ask of the opposing party or issues to explore, question expert	

	attorneys and the court may question the expert.	witnesses and make legal argument.	
Oregon	Expert reports may be admitted without testimony. If expert testifies, all parties, their attorneys and the court may question the expert.	May provide opening summary, propose questions for the court to ask of the opposing party or issues to explore, question expert witnesses and make legal argument.	A party who previously agreed to the informal trial may motion the court to opt out of the informal trial not less than 10 days prior to trial. The Court will make effort to issue prompt judgments. The Court may modify procedures as justice and fundamental fairness requires.
Utah	If there is an expert, any report is entered as the Court's exhibit and the expert may be questioned by the parties, their attorneys and the court.	Following the opposing party's testimony, may identify areas of inquiry and the Court may make the inquiry.	Entry of an order by the court is explicitly included in the Rule. If the order is a final order, it may be appealed on any grounds that do not rely upon the Utah Rules of Evidence.

Additional Resources

Alaska

- Getting ready for Hearing or Trial
- Domestic Relations Trials: Understanding the Two Options
- Family law hearing and trial prep videos

Idaho

- March 2014 Evaluation Report - Informal Custody Trial

Iowa

- Informal Family Law Trial Pilot Project, Final Report (June 2018)

Oregon

- Informal Domestic Relations Brochure and Information for Selecting Which Type of Trial.
- Oregon Judicial Department, Uniform Trial Court Rule 8.120 on Informal Domestic Relations Trials.
- Oregon's Informal Domestic Relations Trial: A New Tool To Efficiently And Fairly Manage Family Court Trials, By William J. Howe Iii And Jeffrey E. Hall

Utah

- Article from the Utah Journal of Family Law written by Commissioner Cathy Conklin and now-retired Judge Ben Hadfield.
- Results of attorney survey from 2016
- Rule 4-904
- Waiver & consent form

Post Informal Trial Adoption Reports

Idaho

March 2014 Evaluation Report - Informal Custody Trial
[*Excerpts*]

Judges were asked 16 questions regarding their interaction with and utilization of the ICT model in their courtroom. Questions ranged from asking about their process of utilization to perceptions of forms and perceptions of potential advantages and disadvantages of the ICT model.

Most judges reported that a typical ICT lasted anywhere from two hours to half a day, and 78% of judges (14) agreed that the process was more efficient than a traditional court trial. Additionally, a majority of judges interviewed believed the ICT was a more effective use of judicial time. A small percentage (less than 20%), were either unsure or had not done enough ICTs to accurately gauge whether or not it was a more effective use of judicial time.

While the ICT was considered potentially beneficial, it was not recommended for all cases. The majority of judges did not feel that it was a good option for cases involving domestic violence, or cases with a history of alleged child abuse or mental health or substance abuse issues. One judge specifically indicated that the ICT was probably not the best process for a case that had pending criminal charges. Also, the inability of an individual to provide adequate testimony as a result of limited cognitive capacity should be considered.

Regarding the Consent and Waiver form, none of the judges had concerns with the form or suggestions for ways to improve it.

The majority of judges reported that the ICT model was introduced and discussed at the litigant education class and was introduced again at the scheduling conference. Of the 18 judges interviewed, 11 indicated that they also introduced it at the pre-trial conference. However, some concerns were raised by two judges as to the best time to introduce the ICT process. These judges were of the opinion that it was best not to introduce the ICT until later in the case (right before trial), and should not be an option early on in the process.

Factors that indicated a particular case was especially well-suited to an ICT, as reported by judges, included self-represented litigants and simple-issue custody cases, including modification cases. **Several judges commented that the process was not well-suited for cases that presented with domestic violence or mental health issues because it was difficult to get at the bottom of**

these issues without expert witnesses. Also, parties generally did not understand that all evidence was not given equal weight. Most judges commented that they felt that ICTs were especially well-suited to modifications or initial filings that involved only custody and visitation disputes. [*Emphasis added*]

However, some judges felt that there were no factors that could "disqualify a case from an ICT". **Additionally, a few judges indicated that they had used the ICT very successfully in high-conflict cases, including a case involving domestic violence.** [*Emphasis added*]

To ensure the parties understood the ICT process prior to agreeing to participate, 17 of the 18 judges (94%) indicated they used the Waiver and Consent form that had been developed for the ICT process, in addition to a verbal review of the process with the parties. Another 44% of judges (8) indicated that when parties were represented by attorneys, they asked the attorneys to review the ICT process with their clients.

Influence of ICT on Conflict

Half of the judges believed the ICT process reduced conflict, 33% were unsure, and 17% believed that it did not reduce conflict. The judges primarily believed it reduced conflict because parties were not subject to cross-examination, were not able to question each other, and both parties were able to freely tell their side of the story without objection or argument. Other ways judges believed the ICT reduced conflict included:

1. **How the case was managed.** One judge attempted to make the experience positive by asking the parties to name positive aspects about the other party and attempted to help parties see their requests from the other party's perspective. Another judge believed that to the extent the parties felt they had been heard and that the judge had listened to them, it enhanced the likelihood of acceptance of the decision which potentially reduced conflict.

2. **Reducing courtroom time.** One judge believed the ICT reduced conflict by reducing the number of times parties were in courtrooms involved in high stress conversations. For those who did not believe the ICT reduced conflict, reasons provided were that both parties are experiencing hurt in both the ICT and the traditional process regardless of how the case is tried and that the potential to increase conflict is actually raised by the ICT because of the difficulty of controlling the amount of venting, or "mudslinging," the parties did during the hearings.

Oregon

Oregon's Informal Domestic Relations Trial: A New Tool To Efficiently And Fairly Manage Family Court Trials
Family Court Review, Vol. 55 No. 1, January 2017 70–83
[Excerpts]

Initially IDRT was conceived as a process to more efficiently manage the crushing family court docket and also as a way to relieve judges of the discomfort and concern over whether relaxing the rules of evidence or assisting in the preparation of judgments would violate judicial ethics rules.

It immediately became obvious that the benefits of IDRT were far greater than judicial economy and avoiding judicial ethics heartburn. This process was greeted by litigants as affording access to justice in a way that SRLs, even more than represented litigants, felt was more understandable. Furthermore, procedural fairness was advanced, as litigants felt and experienced being heard directly by the person who possessed the power to resolve the dispute.

Deschutes County Circuit Court proposed a Supplemental Local Rule (SLR 8.015) establishing IDRTs in 2012.13 The court did so in collaboration with Oregon's Statewide Family Law Advisory Committee (SFLAC).14 Since 1997 the SFLAC has generated many of Oregon's family law reforms and innovations. SFLAC was assisted in the IDRT innovation by IAALS.15 This rule was approved by Chief Justice Balmer and went into effect on May 29, 2013. *[Emphasis added]*

...

Factors In Cases That Affect Suitability For An IDRT

The broadest category of cases that are appropriate for the IDRT process are those where neither party is represented, where the marital assets are reasonably straightforward, and where no nonexpert witness testimony was critical to achieving a just result. Most cases involving two SRLs followed this pattern. IDRT was appropriate in these cases because most SRLs did not have sufficient familiarity with the law to effectively present their case, use witness testimony, operate within the confines of the rules of evidence, and focus on the statutory factors a judge must consider in deciding the issues presented.

Cases involving domestic violence where both parties are self-represented are viewed as particularly well suited for the IDRT process. The IDRT rules allow the victim to introduce medical and law enforcement reports without having to call a witness to establish foundation. Additionally, the IDRT process allows the victim to avoid cross-examination by the perpetrator, and the judge is able to maintain a level of control in directing the lines of inquiry and focus of the trial, thus mitigating the inappropriate exercise of power and control by a perpetrator during the conduct of the trial. *[Emphasis Added]*

Of the forty IDRTs conducted between June 2013 and December 2015, one or both parties were represented in as many as nine cases.22 The IDRT process proved appropriate in cases where one or both litigants were represented, when the parties could not afford counsel for a traditional trial, where the trial was focused on a narrow issue, or where legal strategy suggested the IDRT process would allow evidence to be introduced that might otherwise be excluded in a formal trial process. allow evidence to be introduced that might otherwise be excluded in a formal trial process.

...

When initially implemented, some worried that the IDRT process would not be appropriate in cases involving high-value marital assets. These concerns were refuted by a self-represented divorcing couple who had worked together to resolve all issues, except the division of several parcels of real estate valued in excess of one million dollars. The parties had carefully researched the law, but arrived at different conclusions on how to correctly value the real estate. They simply wanted a judge to tell them who was correct and successfully used the IDRT process to bring that one issue before a judge.

There were no cases in which the IDRT process was initiated, but during the trial or hearing the

judge found this process to be unfair or inappropriate. The judges and attorneys participating in the evaluation agreed that the traditional trial process was more appropriate for cases in which both parties were represented, where there were significant and complex marital assets, where nonexpert testimony was critical in achieving a just result, or where there were complexities surrounding the issues of child custody and support.

...

Conclusion

Deschutes County's IDRT process is an innovative option for courts seeking to better serve the public and provide greater access to justice and procedural fairness in any family law matter. While no panacea, this important innovation provides a less adversarial and more user-friendly family law dispute resolution regime for many disputes. It is particularly attractive to SRLs who struggle to navigate the complexities of the traditional trial model. Families reconstellating and requiring the assistance of the court need and deserve accessible, fair, and customer-friendly innovations like IDRT.

Perspectives:

Judicial

Commissioner Jennie Laird, King County Superior Court
June 24, 2021 (email)

"I communicated with Judge Sutton so far, and she believes there has been about 6-8 of these informal trials so far. The couple she has done, she reports went well. ...

I can tell you generally that the SCJA FJLC will be writing a letter in support of the statewide rule and proposing some comments to make the rule more "plain language" and also to incorporate some of the provisions from King and Thurston counties (such as an explicit waiver of the evidence rules and appeal based on the ERs, as an example). And to change the name from IDRT to IFLT, given "domestic relations" is an antiquated or at least non-plain language term. And the acronym flows a little better.

We had a subcommittee meeting yesterday, and judicial officers from both KC and TC reported positive experiences with their county rules. Permitting some flexibility for the details, in particular the timing of parties opting in, also seems important, given each county sets trial dates differently (some with a case schedule, some requiring a trial setting filing)."

Commissioner Catherine S. Conklin, Domestic Relation, Second District Court, Utah
May – June 2021 (email thread excerpts)

From Commissioner Conklin: The informal trials are a great tool for the right cases."

To Commissioner Conklin: Thank you very much for your email and for the accompanying documents. This is very helpful information which I have shared with members of the WSBA Family Law Executive Committee.

A number of WSBA attorney members have expressed concern about the imbalance of power and language disparities that exists in many relationships. The following comment by one member illustrates that concern:

> The power imbalance that I see as problematic is not a division of chores and child-rearing in a marriage. A problematic power imbalance can be DV, history of controlling or intimidating behavior, vast disparity in education or employment that results in one spouse being far more skilled at paperwork and organization and speaking, etc. Language disparities can create a situation where one spouse cannot effectively communicate his/her position, cultural differences that require explanations and on and on.
>
> The materials that are presented by courts thus far encourage parties to choose informal trials without identifying potential problems. Even more concerning, they do not spell out the responsibilities of a judge to protect against informal trials where unfair decisions can result from a power imbalance. A process that, in effect, requires a vulnerable spouse to identify problem areas before trial in front of the other spouse so as to avoid the informal trial does not understand the issues. In a world where many judges are not experienced with family law or, worse yet, have little interest in learning the intricacies of family law, such a new process as informal trials needs to be more protective of vulnerable spouses.

The law journal article that you sent includes a memo by Idaho Judge Simpson on his state's ICT model. His comments about screening identify some of the concerns, but it appears his comments are directed to counsel for the parties. However, in many cases there is no attorney and one or both parties are pro se. Should judicial officers perform the screening? It would be helpful to know if this is a concern in Utah and, if so, how it has been addressed.

From Commissioner Conklin: The type of screening you mention is performed by the judge or commissioner at the time of pre-trial. We have 8 judicial districts in Utah, and there are domestic relations commissioners in the 4 most populous districts. The commissioners handle only family law cases, so there is some expertise there. We have the ability to focus on one area of the law, while the judges have to do a little of everything. That is part of the reason for amending the rule on informal trials to make it clear that commissioners can do them.

But the power imbalance you describe will be present no matter what format the trial follows. It is easier for the parties to sit at their separate tables, with all of their notes and paperwork, and have the judge or commissioner asking questions instead of being on the witness stand and cross-examined by the opposing party. Like everything else in life, it's a tradeoff."

To Commissioner Conklin: Is there/should there be:

- advance orientation or training for judges preparing them for the informal trial process and procedures?
- Standardized form with post-trial survey questions posed to participating attorneys seeking comments and possible suggestions for improvements?

From Commissioner Conklin: Yes, to both of your questions. I have taught a couple of classes at our judicial conferences about informal trials, but we haven't done a survey since 2016 or so. We should do another one.

Attorneys

John Ferguell
Kent Attorney, WSBA 26461
June 24, 2021 (email)

"In general, I thought it worked out very well. The process was as the (proposed GR 40) states. ... My case involved a dissolution, with kids. Child support, property/ debt division, maintenance and Parenting were all contested. The wife was not represented by counsel and frankly, was not prepared; however, it was not from her good faith effort to prepare. She just did not do much of anything during the whole case."

Notes from 6/27/21 PC: One informal trial. 25-year experience. Client felt got "his day in court." Informal trial option presented at pretrial hearing. Significant cost and time saving. Client (Petitioner) wanted to minimize cost. Had faith in Judge Sutton and comfortable having judge make call and question parties. Judge controls process. Judge controls questions: attorney submitted questions and judge asked questions she felt to be relevant. Wouldn't discount use of informal trials in DV cases; provides more protection for victim and avoids cross examination. Formal documents presented prior to trial: trial brief, financial declaration, proposed orders, etc. Ruling made at conclusion of trial. Petitioner's attorney instructed to make changes to proposed documents to conform to ruling. May not be favorable option with complex case with high valued estate and multiple experts. *[Emphasis added]*

Kiona Gallup, Kent Attorney, WSBA# 51997
Community Advocates Northwest
June 28,2021 (email)

"I did just complete my first informal family law trial in King County.

Overall, it was a great experience. The only issue was a Final Parenting Plan modification, with .191 restrictions for chemical dependency and abusive use of conflict.

The opposing party represented themselves *pro se*. Had we gone through a formal trial, it would have been beyond challenging to get through trial efficiently.

I prepared my client prior on what to expect from Judge Sutton asking questions, rather than me. They did well, but I also had little to no concerns going in as to their credibility and ability to tell their story through testimony. It really was great having Judge Sutton ask the questions for which she needed the answers without all the red tape around evidentiary issues and hearsay. Follow-up questions from both sides went smoothly and elicited the necessary information.

This case had a lot of CPS records and police reports – it was wonderful not having to issue subpoenas to all the state agencies.

A lot may disagree, but I thought it was great that child hearsay statements could come in. Obviously, they both disagreed on what the child had to say, but it was left to the Court to determine credibility. Far too many people have a difficult time not testifying about their child's statements.

I think this is a wonderful tool and should be selected more often. I had zero problem being there to advise my client and let the Court put in the most "effort" in asking questions. Very rarely do parties (the majority of my client base) in family law have the financial or time resources to go through a formal trial.

I very much hope GR 40 is approved."

Suggestions

Idaho Suggestions for Improvement

- Suggestions that judges provided for improving the ICT model included:
- Attorney training from the Idaho State Bar
- Enhanced judicial education
- Allow the ability to include expert testimony in proceeding
- Discussion of ways to filter the information coming in to the Court
- Set date for exhibits to be submitted by parties to allow judges adequate time to review exhibits and prepare for the decision
- Enhanced flexibility with the process
- Development of a "how-to" for self-represented litigants

Idaho March 2014 Evaluation Report - Informal Custody Trial

Oregon Suggestions For Improvement

- The Deschutes County Court is in the process of developing a trial preparation outline for SRLs.
- There are excellent materials available, including those from the National Judicial Institute in Canada.
- When developed, the trial preparation outline would be of particular benefit to SRLs selecting either trial process, but these materials would be available to all litigants and lawyers.
- The attorney group felt that allowing the judge to review and consider any available mediator's report could help to narrow the issues for trial. Mediation proceedings in Oregon are confidential.

- As such, mediation reports are inadmissible unless both parties consent to their admissibility. Therefore, either the IDRT waiver would need to include the stipulation that mediator reports are admissible, or the mediation confidentiality statute would have to be amended.

Oregon's Informal Domestic Relations Trial:
A New Tool To Efficiently And Fairly Manage Family Court Trials - 2017

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