

KING COUNTY FAMILY LAWYER COMMITTEE
COMMENTS ON THE FAMILY LAW CIVIL RULES
Part 2 of 2

In October 2012, Judge Kim Prochnau forwarded the proposed statewide Family Law Civil Rules¹ (FLCR) to the King County Bar Association Family Law Section. At the request of the members an informal committee was formed to review the proposed FLCR. The following comments are the conclusions of volunteer attorneys² from this committee, reached after several months of reviewing the proposed rules, the existing rules, and conferring with other attorneys. These comments represent the opinions of a majority of the group members, and not the Family Law Section or the King County Bar Association in general.

1. *Depositions and Discovery*. Rules 26-37 total 44 pages, which is huge, especially for pro ses. Most changes were ordinary, such as changing plaintiff to petitioner and defendant to respondent. However, there were some problems. For example:
 - a. 26(b)(3): Structured settlements don't really apply to family law, and should not apply only to respondent.
 - b. 30(b)(2): Why does it only talk about petitioner's deposition? It should apply to both.
 - c. 33(a): Why include corporations, etc.?
 - d. 34(a): Why "by the respondent"? It really means "by the responding party".

2. *Rules 54-63*.
 - a. Rule 56(c) deals with summary judgments. The last sentence refers to "liability" and "damages" and these concepts generally do not apply to family law. Summary judgment in family law often occurs in parentage cases. The last sentence should be rewritten to refer to that context. For instance, a judgment regarding parentage may be rendered, yet the question of child support might be reserved for a later time.
 - b. Rule 56(d) refers to interlocutory rulings narrowing issues at trial, "including the extent to which the amount of damages or other relief is not in controversy. . . ." It

¹ The suggested new rules and their background can be found online at http://www.courts.wa.gov/court_rules/?fa=court_rules.proposedRuleDisplay&ruleId=282

² Committee members were Mark Alexander (Chair), Sharon Blackford, Mimi Buescher, Susan Carroll, Jennifer Forquer, Mary Hammerly, Dominik Musafia, Julie Park, Linda Roubik, and Shana Thompson.

should instead say “including the extent to which relief is not in controversy”.
Note: reference to damages *was* appropriately removed in rule 59(a)(5).

- c. As a basis for new trial or reconsideration, FLCR 59(a)(6) changes the same CR section as follows: “Error in the assessment of the amount of recovery whether too large or too small, ~~when the action is upon a contract~~, or for the injury or detention of property”.
 - i. Family law cases involve awards, not "recovery" so that language should be changed for clarity.
 - ii. Rule 59(a) begins “a new trial granted to all or any of the parties. . . .” It should read “a new trial may be granted. . . .”
3. *Rule 68*. The civil “offer of judgment” rule is carried over to the FLCR, although it is not commonly applied in a family law context.
 - a. It refers to entry of judgments, which are only sometimes entered in family law.
 - b. More importantly, since it contains the incentive “If the judgment finally obtained by the offeree is not more favorable than the offer, the offeree must pay the costs incurred after the making of the offer”, this would be a marked and undesirable change in family law practice, which is generally based on equitable principles.
4. *Rule 81*. The meaning of this rule is unclear, and sounds circular:

APPLICABILITY IN GENERAL

Except where inconsistent with rules or statutes applicable to special proceedings or Title 26 RCW proceedings, these rules shall govern all family law proceedings. Where statutes relating to special proceedings or Title 26 RCW proceedings provide for procedure under former statutes applicable generally to family law actions, the procedure shall be governed by these rules.

5. *Rules 100 to 114*. There are five new proposed sections of Rules that are not found in the general Civil Rules with regard to authorizing the court to direct the parties to attend Alternative Dispute Resolution, review of *pro se* prepared documents by Courthouse Facilitators, attendance at Parenting Seminars, disposition reports in Adoption Proceedings, and notice of Bankruptcy proceedings. There are nine other “reserved” sections. The additions of these Rules did not raise any general concerns within our committee. These rules seem to provide local courts with parameters within which they can develop their local rules. This, in contrast to the stated goal of having FLCRs, adds another layer of local rules which *pro se* litigants will then need to find, much as they currently need to do.