

April 4, 2013

Ronald R. Carpenter, Clerk
Washington Supreme Court
P.O. Box 40929
Olympia, WA 98504-0929

VIA EMAIL TO Denise Foster
denise.foster@courts.wa.gov

Re: Proposed Family Law Civil Rules (FLCR)

Dear Mr. Carpenter:

Thank you for the opportunity to comment on the proposed Family Law Civil Rules.

Background Regarding Legal Voice's Perspective

Thousands of people contact Legal Voice's Self Help Program every year. Most of them cannot afford an attorney, are unable to obtain pro bono representation, and end up appearing *pro se* in matters of dissolution, family violence, employment, collections, landlord-tenant, and other areas of the law.

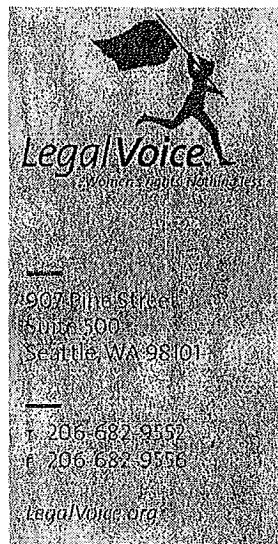
Through our legal information and referral line and free self help publications, Legal Voice assists the general public in Washington State, and particularly pro se litigants, to understand legal options and procedures and to find resources in their area. 50-60% of our callers are involved in family law matters. 80% of our callers cannot afford to pay for even limited time with an attorney.

General Comments

We see both advantages and disadvantages to merging general Civil Rules with the Family Law Civil Rules: the length of the FLCR is now intimidating, but eliminating the need to refer to several sets of rules could certainly improve understanding of and compliance with the rules.

We understand that the purpose of this effort was to address the proliferation of local rules and specific issues regarding some local rules. However, we are very concerned about the lack of readability of the rules. The use of terms such as "hereunder," "purport" and "condition precedent" are sure to discourage and confuse the average reader. The use of sentences with multiple clauses and passive voice add to the difficulty. We urge the court to consider a readability review and plain language approach to the rules before adopting them. 80-85% of family law litigants are *pro se*, so this issue is particularly relevant to this set of rules.

Women's rights. Nothing less.



Specific Comments

Rule 5(j) Filing by Facsimile is reserved. Should there be a Rule 5(k) reserved for filing electronically? King County Superior Court covers this under General Local Rule 30, but it is likely that a pro se would assume that this information would be included in **Rule 5, Service and Filing of Pleadings and Other Documents.**

Rule 7(d)(5): We recommend that a requirement to include or post information about scheduling telephonic appearances be added.

Rule 7(d)(6): We recommend that each court include information about which hearings are conducted with and without oral testimony.

Rule 9(c) Condition Precedent: We are not clear on why this would apply to family law matters.

Rule 10(c)(6): The requirement to use numbered paper is often not enforced. In addition, the AOC forms are not formatted on numbered paper, so users have to create a template on their computer or copy onto purchased paper. We recommend this requirement be eliminated.

Rule 16 (d): We have concerns regarding Proposed Rule 16, Pretrial Procedure & Formulating Issues, section d) Automatic Temporary Orders Preserving Status Quo, in particular regarding the impact of automatic restraining orders on women and specifically victims of domestic violence.

While we can imagine some cases where automatic restraining orders on finances could help DV victims, we can also foresee situations in which victims may not have access to community funds or would risk violating the order if they use community funds to establish a safe place to live, seek services for themselves or their children, retain an attorney, or otherwise use funds to remove themselves from an abusive situation.

We are also concerned about both parties having automatic access to the children's records because this could give an abuser access to the children's therapy and medical records.

The rule is procedurally vague, and raises a number of questions. Among those are:

- How will such a rule be implemented?
- The rule states that the order may be initiated on the court's own initiative. At what point does the court exercise this initiative?
- Are boilerplate temporary orders issued automatically using the generalized language of the rule itself as a text?
- Does this rule reward the first person to file with the court by automatically adopting the division of debts and liabilities proposed by the petitioner?

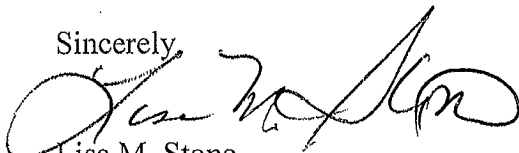
- What is considered as evidence supporting the automatic order, when is it presented, who gets to decide, and when does that occur?
- Is there a hearing required at which testimony will be presented?
- Does this proposed rule compel parties to file temporary orders where none is necessary, given that many of the provisions end with the words “absent written agreement or court order”? If the parties cannot come to a written agreement, then a motion must be filed to obtain a court order, potentially negating any savings in court time that would result from the issuance of automatic temporary orders. Automatic orders could cost the court and the parties time and money if the procedural issues are not thoroughly mapped out.
- With respect to paragraph 5, Requires each party to grant the opposing party access to all tax, financial, legal and household records: which legal records? Suppose a domestic violence survivor had been involved in a previous family law dispute with someone else. Would sealed records, medical or otherwise, from other cases be made available?
- Are automatic temporary restraints open to revision or reconsideration?

For these reasons, and in light of the likely confusion and procedural difficulties, we recommend eliminating section d) of rule 16.

If section d) cannot be eliminated, we recommend eliminating the word “automatic” from the title of the section and changing the language to: “Upon the filing of any petition under Title 26 RCW to dissolve any relationship and any complaint to dissolve a domestic partnership, either party may bring a motion for a temporary order that:” This would allow domestic violence survivors to contest restraints or access to records that could increase the risk to their safety and that of their children. It would alert litigants to the option of filing for temporary orders and what type of restraints are available without encouraging the imposition of temporary orders where they are not appropriate.

Thank you for your consideration of these comments.

Sincerely,



Lisa M. Stone
Executive Director