AMERICAN ACADEMY
AAML
OF MATRIMONIAL LAWYERS

April 26, 2013

VIA EMAIL to denise.foster@courts.wa.gov
Washington Supreme Court
P.O. Box 40929
Olympia, WA 98504-0929

Re: Proposed FLCR 16

Dear Ms. Foster

Please find the enclosed memorandum reflecting the comments of the Washington Chapter of the American Academy of Matrimonial Lawyers on proposed FLCR 16.

Very truly yours,

Sherri M. Anderson

Enclosure

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AMERICAN ACADEMY
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WASHINGTON CHAPTER

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These comments are submitted on behalf of the Washington chapter of the American Academy of Matrimonial Lawyers ("AAML").[1]

AAML Position Regarding Proposed Rule 16

Mandatory disclosure of financial information

With regard to the proposed rule, a more constructive approach would be to have a mandatory disclosure under oath of only the assets and liabilities of the parties at the outset of each dissolution of marriage or domestic partnership case, within 45 to 60 days from the date of filing, rather than shortly before trial. Such a requirement would reduce the need for discovery in practically every case, and perhaps eliminate the need for additional discovery in a number of cases. An exchange at the outset would make information timely available to allow for the prompt resolution of cases.

Automatic temporary restraining orders

A majority of our Washington chapter fellows favor automatic financial and parenting TRO's in family law cases.

[1] The AAML was founded in 1962 by highly regarded domestic relations attorneys "[t]o provide leadership that promotes the highest degree of professionalism and excellence in the practice of family law." There are currently more than 1,600 Fellows in 50 states. The Washington chapter has 25 Fellows throughout the state. Academy Fellows are highly skilled family law attorneys who represent individuals in all facets of family law. These areas include divorce, annulment, prenuptial agreements, postnuptial agreements, marital settlement agreements, child custody and visitation, business valuations, property valuations and division, alimony, child support and other family law issues. Fellowship is granted only after a rigorous application process, which includes recognition by the bench and bar as an expert practitioner in matrimonial law, admission to the bar for 10 years, 75 percent specialization in matrimonial law, a written and an oral examination on wide-ranging issues pertaining to matrimonial and family law, an interview by a state board of examiners, being passed upon by other matrimonial law practitioners in the state, aspiring to the ethical standards set forth in the "Bounds of Advocacy" and State bar rules of professional conduct, and involvement in study or improvement of matrimonial law, such as publishing articles or continuing education presentations. Among other activities, the Washington chapter of AAML writes and edits an authoritative secondary source on family law (West's *Washington Practice* volumes on family law), holds annual CLEs for attorneys, conducts judicial seminars, and occasionally participates as *amicus curiae* in the courts.

We find a provision that automatically allocates responsibility for post-separation indebtedness to the party incurring it to be problematic, as it could create significant inequities for the financially-disadvantaged party if there are no support orders in effect. If such a provision is automatically issued, it should expressly state that the court may otherwise order at any time, including retroactively. It should also contain a provision that states that the rule is not intended to preclude either party from seeking spousal maintenance, attorney's fees, or child support.

Our fellows uniformly support a simple "opt-out" method for parties who agree that one or more of the automatic TRO's is unnecessary in their case.

The rule providing for some form of automatic restraining orders should have a simple administrative process available to opt out by the petitioner or mutual agreement of the parties. Automatic restraining orders are not appropriate in every case. For example, a substantial number of cases resolved through some ADR processes (such as party-only mediation and Collaborative Law) achieve complete settlement of all issues prior to any filing with the court; the issuance of automatic restraining orders in such cases is not only unnecessary and would hinder the ability to carry out terms of agreements. In other cases, the automatic issuance of restraining orders may be unnecessarily inflammatory. An administrative opt-out provision should be available so that parties do not need to incur the expense and challenges of obtaining a court order to be relieved from automatic restraining orders.