

Family Law Section

TACOMA-PIERCE COUNTY BAR ASSOCIATION

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April 11, 2013

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

also sent via email to
denise.foster@courts.wa.gov

RE: Proposed Rules of Court Published for Comment
Family Law Civil Rules

Dear Mr. Carpenter,

This letter is to serve as the official position of the Family Law Section of the Tacoma-Pierce County Bar Association, and its 218 members regarding the proposed Superior Court Family Law Civil Rules (FLCR) posted for comment.

Preliminarily, we would like to acknowledge the amount of time and effort put into the drafting of the proposed Superior Court Family Law Civil Rules (FLCR). However, we cannot endorse the enactment of these rules for the following reasons.

First, the rules are just too much. Given the number of rules, and the availability of local options, it is unlikely the passage of these rules would result in fewer local rules or streamline the rules practice. The current proposal seems to be a "one size fits all" approach, which does not fit all jurisdictions. We must echo the point made by Kitsap County Commissioner Thurman Lowans: more is rarely, if ever better. The FLCRs as proposed do nothing more than create an additional section of rules, which are nearly entirely duplicative of the existing Civil Rules. This does nothing to streamline the practice, nor make practice easier for those appearing unrepresented. Again, we agree with Commissioner Lowans' comment "if the new Family Law Court Rules are indeed so simply and readily understandable, then eliminate the existing Superior Court Civil Rules entirely and adopt a new set of Superior Court Civil Rules based on the approach of the proposed Family Law Court Rules."

The Pierce County Local Special Proceeding Rules (PCLSPR) that address family law practice is currently comprised of six rules under the heading of PCLSPR 94.04 Family Law Proceedings (PCLSPR 94.04 (a)-(h) and take up approximately five pages in the Local Washington Court Rules. The King County Local Rules (KCLFLR) that address family law practice is currently comprised of 20 rules and takes up approximately 15 pages in the Local Washington Court Rules. A number of jurisdictions have either *no local family rules*, or very few¹.

¹ Adams County has just two local rules addressing domestic relations practice: LR 5 and LR 6.

The proposed FLCR number more than 100, and currently number more than 160 pages as written. This section is unable to discern the benefit from quintupling the number of rules when it is clear the current Civil Rules are sufficient with local jurisdictions addressing local concerns when necessary.

Second, and more specifically are specific drafting issues.

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| Proposed FLCR 4 (a) (1) | The word "defend" is not appropriate in a family law action. A responding party should file a "response" |
| Proposed FLCR 7(b)(5) | Why should the cost of telephonic appearance be shared equally by the parties? Should not the expense be borne by the party requesting telephonic testimony? Alternatively, it should not be allocated in the rule at all, but up to the ruling judicial officer. |
| Proposed FLCR 8 (c) | Does not apply in family law matters. |
| Proposed FLCR 8 (e) (2) | Does not apply in family law matters. |
| Proposed FLCR 9 | Does not apply in family law matters. |
| Proposed FLCR 13 | Does not apply in family law matters. |
| Proposed FLCR 25 (c) | Does not apply in family law matters. |
| Proposed FLCR 26 (b)(2) | Does not apply in family law matters. |
| Proposed FLCR 26 (b)(3) | Does not apply in family law matters. |
| Proposed FLCR 33 | Pierce County Local Rules limit the number of interrogatories to 100. There is no language that permits a limit on the number of interrogatories by enactment of local rule. Will there now be no limit? |
| Proposed FLCR 43 (f) | How in a family law matter would a public or private corporation, partnership, or association be a party to an action? |
| Proposed FLCR 52 (c) | The word "defeated party" is not appropriate in a family law action. There are rarely "winners" or "losers" in family law actions. |
| Proposed FLCR 68 | Does not apply in family law matters. |

Third, there are a number of local rules that should be considered, if a set of FLCRs are going to be enacted. For example, Pierce County allows for a "Joint Notice of Reconciliation" that removes the case from the case schedule to allow parties to reconcile. See PCLSPR 94.04

(a)(5)(A). Similarly, Pierce County offers a "Notice of Collaborative Law" to remove the case from the case schedule as well. See Pierce County Local Rules, Form P.

As evidenced by the above, these rules attempt to put a round peg in a square hole. They do not accomplish the stated purpose of streamlining family law rules statewide, nor do they offer any clarity for self-represented parties. Rather, we believe the rules make the process more cumbersome and less clear. For that reason, we recommend these rules not be adopted.

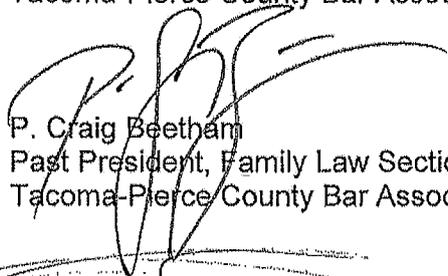
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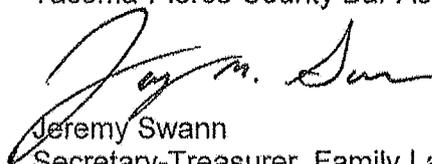
Sophia M. Palmer
President, Family Law Section
Tacoma-Pierce County Bar Association



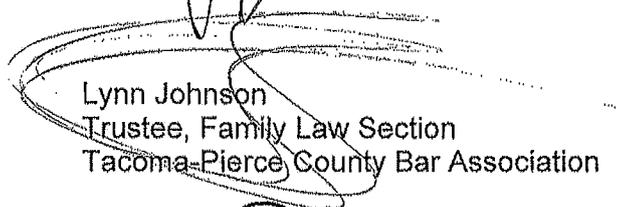
Kevin Rundle
Vice-President, Family Law Section
Tacoma-Pierce County Bar Association



P. Craig Beetham
Past President, Family Law Section
Tacoma-Pierce County Bar Association



Jeremy Swann
Secretary-Treasurer, Family Law Section
Tacoma-Pierce County Bar Association



Lynn Johnson
Trustee, Family Law Section
Tacoma-Pierce County Bar Association



Cameron Fleury
Trustee, Family Law Section
Tacoma-Pierce County Bar Association



Barb McInville
Trustee, Family Law Section
Tacoma-Pierce County Bar Association



Heather Swann
Trustee, Family Law Section
Tacoma-Pierce County Bar Association