



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](mailto: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.<sup>1</sup>

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.<sup>2</sup> For instance, it is a hallmark of Anglo-American jurisprudence to exclude hearsay. As tempting as hearsay is, such comments are unreliable,

<sup>1</sup> The references cited in the GR9 disclosure do not consistently stand for the proposition as stated.

<sup>2</sup> On this point, DRAW and FLEC take different positions.



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 reversible 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.

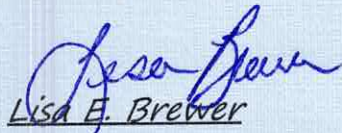
PROPOSED SOLUTIONS – (1) The court should advise litigants of all options for settlement separate from IFLT’s, including mediation, mandatory mediation, and voluntary arbitration.

(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,

A handwritten signature in blue ink, appearing to read "Lisa E. Brewer".

Lisa E. Brewer

Attorney, WSBA #24579

**From:** [OFFICE RECEPTIONIST, CLERK](#)  
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**From:** Lisa Brewer [mailto:[lbrewerlaw@msn.com](mailto:lbrewerlaw@msn.com)]  
**Sent:** Friday, July 30, 2021 5:08 PM  
**To:** Lisa Brewer <[lbrewerlaw@msn.com](mailto:lbrewerlaw@msn.com)>; OFFICE RECEPTIONIST, CLERK <[SUPREME@COURTS.WA.GOV](mailto:SUPREME@COURTS.WA.GOV)>  
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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

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