



Northwest Justice Project

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Executive Director

July 30, 2021

Clerk of the Supreme Court
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GR 40 – Informal Domestic Relations Trial (IDRT)

Dear Supreme Court Justices:

The Northwest Justice Project (NJP) writes in support of proposed General Rule 40, with some concerns and suggested edits to the proposed rule.

NJP's Interest as a Provider of Civil Legal Services

Washington State recognizes that “[t]he provision of civil legal aid services to indigent persons is an important component of the state’s responsibility to provide for the proper and effective administration of civil and criminal justice.” RCW 2.53.005. The Northwest Justice Project is the largest provider of civil legal aid in Washington State, employing over 165 attorneys working in 19 offices across the state. NJP provides representation to low-income people in over 13,000 cases a year. Approximately 36% of NJP’s cases in 2020 involved family law matters such as protection orders, dissolution of marriage, and parenting plans.

Proposed General Rule 40

The lack of representation in family law matters is a significant problem. The court process can be complicated and confusing for attorneys at times and can be almost impossible for unrepresented parties to navigate successfully. Most family law litigants are unrepresented, an informal process would be simpler for pro se individuals to navigate and succeed in finalizing their case. Litigants are not required to use the GR 40 process, but it provides an option that eliminates barriers that the more formal option requires. For example, the proposed rule provides that the parties will not be cross-examined by the other parties. This provision would address the concerns that a litigant may have in testifying if they know the other party will not be able to directly address them in court.

NJP does not believe that this proposed rule is a substitute for representation in a full trial where all issues can be fully litigated. NJP seconds the comments made by the Access to Justice Board that until there is a civil Gideon right to counsel in the civil legal system, many marginalized and unrepresented litigants will be unable to proceed through the court system. This informal option may help some pro se litigants finalize their cases, but it does not replace the need for adequate representation. There should continue to be a focus on securing adequate funding for representation of all litigants.

The following are areas of concern with the proposed rule:

- The right to appeal should not be foreclosed and the rule should specifically provide that the appeal rights are not affected by participation in the IDRT process.
- The proposed rule should clearly state that the rules of evidence do not apply so that there is not different treatment depending on how courts interpret this rule. ER 1101 should be amended under ER 1101(a)(c) to add the IDRT process to the list of situations where the evidence rules need not apply.
- There should be more clarity about what litigants are told about the rule. Make sure the information is in plain language and add safeguards on the front end of the disclosure so that litigants know what they are getting in this new process.
- The process and local rules will still differ from county to county and will likely still be confusing to most pro se litigants. All counties should be required to develop a checklist of what needs to be done and what the deadlines are in each county. As part of this checklist, there should be a requirement for when documents that a party plans to use at trial be provided to the other party and how they will be provided.
- There should be screening of both parties when they opt into this process. As part of that screening, a JIS report should be run. While domestic violence may not always be a reason not to use the IDRT process, additional screening should be done to make sure that parties are knowingly and intelligently waiving the full trial and choosing this process.
- Additional care should be taken when LEP litigants use the IDRT process as the manner in which a judge questions an LEP litigant. Judges should take into consideration cultural and language barriers so they ask questions that elicit all the appropriate and desired information.

NJP has proposed amendments to GR 40 at the end of this letter which we believe may address some of the concerns listed above and we ask that you consider these amendments.

Sincerely,

Mary Welch
Statewide Advocacy Counsel for Family Law

SUGGESTED [NEW] GENERAL RULE 40

INFORMAL DOMESTIC RELATIONS TRIAL (IDRT)

(1) Upon the consent of both parties, Informal Domestic Relations Trials (IDRT) may be held to resolve any or all issues in original actions or modification for dissolution of marriage, separate maintenance, invalidity, child support, parenting plans, residential schedules, and child custody filed under chapters 26.09; 26.19; 26.26A; 26.26B; and 26.27 RCW.

(2) The parties may select an IDRT within 14 days of a case ~~subject to this rule being at issue being set for trial~~. The parties must file a Trial Process Selection and Waiver for IDRT in substantially the form specified at _____. This form must be accepted by all superior courts. This form will fully inform the parties of the differences between an IDRT and a formal trial. If domestic violence is alleged by either party or found in a JIS search, additional screening will be done prior to assignment to a IDRT process.

(3) The IDRT will be conducted as follows:

(a) At the beginning of an IDRT, the parties will be asked to affirm that they understand the rules and procedures of the IDRT process, they are consenting to this process freely and voluntarily, and they have not been threatened or promised anything for agreeing to the IDRT process.

(b) The Court may ask the parties or their lawyers for a brief summary of the issues to be decided.

(c) The moving party will be allowed to speak to the Court under oath concerning all issues in dispute. The party is not questioned by counsel, but may be questioned by the Court to develop evidence required by any statute or rule, for example, the applicable requirements of the Washington State Child Support Schedule if child support is at issue.

(d) The parties will not be subject to cross-examination. However, the Court will ask the nonmoving party or their counsel whether there are any other areas the party wishes the Court to inquire about. The Court will inquire into these areas if requested and if relevant to an issue to be decided by the Court.

(e) The process in subsections (3)(c) and (3)(d) is then repeated for the other party.

(f) Expert reports will be received as exhibits. Upon request of either party, the expert will be sworn and subjected to questioning by counsel, the parties, or the Court.

(g) The Court will receive any exhibits offered by the parties. The Court will determine what weight, if any, to give each exhibit. The Court may order the record to be supplemented. The rules of evidence do not apply to the IDRT.

(h) The parties or their counsel will then be offered the opportunity to respond briefly to the statements of the other party.

(i) The parties or their counsel will be offered the opportunity to make a brief legal argument.

(j) At the conclusion of the case, the Court shall render judgment. The Court may take the matter under advisement, but best efforts will be made to issues prompt judgments.

(k) The Court may modify these procedures as justice and fundamental fairness requires.

(4) The Court may refuse to allow the parties to utilize the IDRT procedure at any time and may also direct that a case proceed in the traditional manner of trial even after an IDRT has been commenced but before judgment has been entered.

(5) A party who has previously agreed to proceed with an IDRT may file a motion to opt out of the IDRT provided that this motion is filed not less than 10 calendar days before trial. This time period may be modified or waived by the Court upon a showing of good cause. A change in the type of trial to be held may result in a change in the trial date.

(5) A party's right to appeal the Court's rulings is not affected by their participation in the IDRT.

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Enclosed please find NJP's comments to the Proposed GR 40 – IDRT.

Thank you,

Mary Welch

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