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July 13, 2021

Honorable Charles W. Johnson, Co-Chair
Honorable Mary I. Yu, Co-Chair
Washington State Supreme Court Local Rules Committee
Sent Electronically To: supreme@courts.wa.gov

Re: Proposed General Rule 40

Dear Justice Johnson and Justice Yu:

The Superior Court Judges' Association (SCJA) Family and Juvenile Law Committee (FJLC) strongly supports the implementation of a rule permitting and governing informal family law trials, with the attached offered edits to Proposed General Rule 40. We believe it would be especially helpful to self-represented parties who must bring the issues of the most importance to them – access to their children, safety from intimate partner violence, financial security – to the court for decision, yet who struggle mightily to figure out how to participate meaningfully in their court case. Making informal family law trials available statewide through a general rule assists courts of all sizes in creating these programs, and ensures that access to justice does not depend on geography.

In Thurston and King counties, judicial officers report that the informal family law trial rules their courts have adopted have been extremely successful. To some extent, the adoption of local Informal Family Law Trials (IFLT) rules has reflected the practical realities of how some family law trials have been conducted in the past, especially in matters where both parties are self-represented.

In both of those counties, the rule actually refers to “Informal Family Law Trials” or “IFLT,” rather than the currently-proposed “Informal Domestic Relations Trials” or “IDRT.” We prefer “IFLT,” as “family law” is the more often used, “plain language” reference to the area of law which used to be referred to as “domestic relations.”

A statewide rule which permits local jurisdictions to retain needed flexibility to flesh out the practicalities of the IFLT process, dependent upon local court resources and case volume, is preferred. This recognizes that case processes differ from county to county. For instance, some counties issue a case schedule with a trial date set at filing. In those counties, a rule permitting opt-in to an IFLT prior to “trial setting” would not make sense. Other counties do have trial setting, but the timing of such setting varies quite a bit. Therefore, our edits include needed deference to local rules for process.

Honorable Charles W. Johnson, Co-Chair
Honorable Mary I. Yu, Co-Chair
Washington State Supreme Court Local Rules Committee
July 13, 2021
Page 2

We believe the rule must include a requirement that parties formally affirm that in opting in to the IFLT process, they are entering into a process where the Rules of Evidence will not apply, and where they are waiving their right to appeal based on evidentiary issues or processes which differ from that of a formal trial process. Clarity is needed to ensure parties know and understand what they are opting in to, and so judicial officers are clear about their responsibility in examining and assessing the evidence. We have also included a provision to ensure the trial judge considers the possible prejudice to any party should the court consider, or should a party make a motion to, opt out of the IFLT process at any time, including after the trial has started but before ruling has been made.

The FJLC sub-group which met to discuss this proposed rule had a lively discussion about whether specific, additional training may or should be made available to judges presiding over IFLTs. While many agreed it would be a good idea, others were concerned that such a requirement would mandate reassignment of scarce resources, which during this time when courts are facing unprecedented backlogs and scarcity of funding, we did not feel comfortable suggesting.

We also discussed the logistics of exhibits, and admission of same. We collectively read the rule to mandate that any/all offered exhibits shall be admitted, and that the judge in making findings would refer, when appropriate, to which exhibits or documents were specifically relied upon. Because the process for handling, filing, and storing exhibits also varies so much across jurisdictions, we did not propose specific alternative language except to note that local jurisdictions could address this if they choose.

Thank you for taking the time to consider our input and to review our proposed edits. If we can be of any assistance in the future, please do contact us at your convenience. Commissioner Laird can be reached, as the primary contact person on this issue, at 206-477-1442, or via email at jennie.laird@kingcounty.gov.

Sincerely,

Commissioner Jennie Laird, Co-Chair
Judge Cindy Larsen, Co-Chair
SCJA Family & Juvenile Law Committee

Attachments

cc: SCJA Board of Trustees
Crissy Anderson

SUGGESTED [NEW] GENERAL RULE 40

**INFORMAL FAMILY LAW TRIAL
(IFLT)**

(1) Upon the consent of both parties and with approval of the court, Informal Family Law Trials (IFLT) 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, child custody, and other family law matters as established by local rule.

(2) The parties may select an IFLT within 30 days before trial or trial setting if no trial date is set at filing, or as otherwise directed by local court rule. The parties must file a Trial Process Selection and Waiver for IFLT in substantially the form specified at _____. This form must be accepted by all superior courts, but may be modified to conform to local rule practices.

(3) When a trial is conducted pursuant to this rule, the following procedures may, at the discretion of the trial judge and consistent with local rules, be used. The trial judge retains discretion to modify any of these procedures as justice and fundamental fairness require.

(a) At the beginning of an IFLT, the parties will be asked to affirm that they understand the rules and procedures of the IFLT process, they are consenting to this process freely and voluntarily, and they have not been threatened or promised anything for agreeing to the IFLT process. Parties must affirm that they waive the right to appeal the court's use of the IFLT process or the court's admission of evidence pursuant to the IFLT process that is not consistent with the traditional court process, court rules and Rules of Evidence.

(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 their counsel (if represented), 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 unless permitted by the court. 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 Rules of Evidence will not apply.

(h) The Court will receive and admit 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 process for submitting, filing, and storing exhibits shall be governed by local rule.

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

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

(k) At the conclusion of the case, the Court shall make its ruling or may take the matter under advisement, but best efforts will be made to issue prompt rulings. Findings shall be made and orders entered consistent with family law statutes and case law, the same as for traditional family law case resolution.

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

(4) The Court may refuse to allow the parties to utilize the IFLT procedure, or a party who has previously agreed to proceed with an IFLT may file a motion to opt out of the IFLT, at any time including after an IFLT has started but before a ruling has been issued.

(a) In assessing whether this change in format should be made after trial has started, the trial judge will consider whether enforcement of traditional trial rules after the IFLT has started will prejudice either party.

(b) A change in the type of trial to be held may result in a change of the trial date.

SUGGESTED [NEW] GENERAL RULE 40

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**INFORMAL ~~FAMILY LAW~~DOMESTIC RELATIONS TRIAL
(~~IDRT~~IFLTIFLT)**

(1) Upon the consent of both parties and with approval of the court, Informal ~~Family Law~~Domestic Relations Trials (~~IDRT~~IFLTIFLT) 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, and other family law matters as established by local rule, filed under chapters 26.00; 26.19; 26.26A; 26.26B; and 26.27 RCW.

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(2) The parties may select an ~~IDRT~~IFLT-IFLT within 14-30 days before trial or trial setting if no trial date is set at filing, or as otherwise directed by local court rule of a case subject to this rule being at issue. The parties must file a Trial Process Selection and Waiver for ~~IDRT~~IFLT-IFLT in substantially the form specified at _____. This form must be accepted by all superior courts, but may be modified to conform to local rule practices.

(3) When a trial is conducted pursuant to this rule, the following procedures may, at the discretion of the trial judge and consistent with local rules, be used. The trial judge retains discretion to modify any of these procedures as justice and fundamental fairness require. The IDRT will be conducted as follows:

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(a) At the beginning of an ~~IDRT~~IFLT, the parties will be asked to affirm that they understand the rules and procedures of the ~~IDRT~~IFLT process, they are consenting to this process freely and voluntarily, and they have not been threatened or promised anything for agreeing to the ~~IDRT~~IFLT process. Parties must affirm that they waive the right to appeal the court's use of the IFLT process or the court's admission of evidence pursuant to the IFLT process that is not consistent with the traditional court process, court rules and Rules of Evidence.

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

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(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 their counsel (if represented), 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.

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(d) The parties will not be subject to cross-examination unless permitted by the court. 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 Rules of Evidence will not apply.

(h) The Court will receive and admit 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 process for submitting, filing, and storing exhibits shall be governed by local rule.

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

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

(k) At the conclusion of the case, the Court shall render judgment make its ruling or may. The Court may take the matter under advisement, but best efforts will be made to issues prompt judgments rulings. Findings shall be made and orders entered consistent with family law statutes and case law, the same as for traditional family law case resolution.

(l) 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 IFLT procedure at any time, or a party who has previously agreed to proceed with an IFLT may file a motion to opt out of the IFLT, at any time including after an IFLT has started but before a ruling has been issued.

(a) 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. In assessing whether this change in format should be made after trial has started, the trial judge will consider whether enforcement of traditional trial rules after the IFLT has started will prejudice either party.

(b) A change in the type of trial to be held may result in a change of the trial date.

(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

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good cause. A change in the type of trial to be held may result in a change in the trial date.

From: [OFFICE RECEPTIONIST, CLERK](#)
To: [Linford, Tera](#)
Subject: FW: SCJA FJLC - GR 40, letter of support with proposed edits
Date: Friday, July 23, 2021 8:08:28 AM
Attachments: [7.12 - FJLC edits to Prop Rule 40 - with changes.docx](#)
[7.12 - FJLC edits to Prop Rule 40 - clean.docx](#)
[FJLC Proposed General Rule 40 07132021.docx](#)

From: Laird, Jennie [mailto:Jennie.Laird@kingcounty.gov]
Sent: Friday, July 23, 2021 7:51 AM
To: OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>
Cc: Larsen, Cindy <Cindy.Larsen@snoco.org>; Anderson, Crissy <Crissy.Anderson@courts.wa.gov>
Subject: SCJA FJLC - GR 40, letter of support with proposed edits

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Attached please find the Superior Court Judges' Association's Family & Juvenile Law Committee's letter in support of proposed GR 40, as edited here. This has been approved by the SCJA Board of Trustees for submission.

We've attached a copy of the proposed rule with our proposed edits "tracked," and then also provided a "clean" copy of our edited proposal, for ease of viewing.

Please contact me with any questions, or if any additional input is requested.

Thank you,
Commissioner Jennie Laird
Judge Cindy Larsen
Co-Chairs, SCJA FJLC

From: Anderson, Crissy <Crissy.Anderson@courts.wa.gov>
Sent: Friday, July 23, 2021 7:28 AM
To: Laird, Jennie <Jennie.Laird@kingcounty.gov>; Larsen, Cindy <Cindy.Larsen@snoco.org>

Cc: David Estudillo <destudillo@grantcountywa.gov>; Helson, Janet <Janet.Helson@kingcounty.gov>; Valdez, Andrea <Andrea.Valdez@courts.wa.gov>; Green, Heidi <Heidi.Green@courts.wa.gov>; Ireland, Shelley <Shelley.Ireland@courts.wa.gov>
Subject: GR 40

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Good morning Commissioner Laird and Judge Larsen,

The SCJA Board has approved submission of FJLC's comment re proposed GR 40, Informal Domestic Relations Trials.

Thank you!

Crissy Anderson, J.D.

Court Association Coordinator

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