



Northwest Justice Project

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June 30, 2022

Clerk of the Supreme Court
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GR 40 – Informal Family Law Trial (IFLT) (Revised Proposal)

Dear Supreme Court Justices:

The Northwest Justice Project (NJP) writes in general support of revised proposed General Rule 40, but still has some concerns about certain provisions that are in GR 40 and the lack of guidance in other areas. This rule will be implemented differently in different counties and without careful consideration of different factors such as domestic violence and language barriers, litigants using this process could have vastly different experiences across the state.

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 involve family law matters such as protection orders, dissolution of marriage, and parenting plans.

Proposed General Rule 40

As NJP stated in its comments to the original proposed GR 40, the lack of representation in family law matters is a significant problem. The court process can be complicated and confusing even for attorneys. The majority of family law litigants do not have attorneys. For them, the process is almost impossible to navigate successfully. An optional informal trial process, such as GR 40 provides, would be a simpler way for many unrepresented individuals to finalize their cases. The IFLT proposal offers an important option that eliminates barriers, allowing unrepresented litigants to present the evidence a judge needs to make a just decision.

This proposed rule fills a need, but it is not a substitute for representation in a full trial where all issues can be fully litigated. While this informal option will help some pro se litigants, 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 proposed rule references a “Trial Process Selection” and “Waiver for IFLT” form. Although the rule states the form is attached, it was not attached to the proposed rule. When this form is eventually drafted, it should be carefully reviewed to make sure the information is in plain language and contains sufficient information for litigants to make an informed decision.
- 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 is not necessarily a reason not to use the IFLT process, additional screening should be done to make sure that parties are knowingly and intelligently waiving the full trial and choosing this 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 plain language pre-trial checklist with local deadlines. The checklist should include when and how to exchange documents that each party plans to use at trial.
- Additional care should be taken when limited English proficient (LEP) litigants use the IFLT 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.
- In the previous version of this proposal, cross-examination was not permitted. This proposal allows cross-examination when “permitted by the court.” There is no information on what factors the court will consider when making this decision. This is information that a litigant should have before deciding whether or not to participate in the IFLT process.

Thank you for taking these concerns into consideration as you review the proposed GR 40.

Sincerely,



Mary Welch

Statewide Advocacy Counsel for Family Law

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Enclosed please find NJP's comments regarding proposed GR 40.

Thank you.

Mary Welch – Statewide Advocacy Counsel

Northwest Justice Project

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