

WSR 22-08-078
RULES OF COURT
STATE SUPREME COURT
[March 31, 2022]

IN THE MATTER OF THE PROPOSED) ORDER
NEW GENERAL RULE [GR 40]—) NO. 25700-A-1418
INFORMAL FAMILY RELATIONS)
TRIAL [REVISED PROPOSAL])

D.C. Cronin/ad hoc workgroup, having recommended the proposed new General Rule [GR 40]—Informal Family Relations Trial [Revised Proposal], and the Court having approved the proposed new general rule for publication on an expedited basis;

Now, therefore, it is hereby

ORDERED:

(a) That pursuant to the provisions of GR 9(g), the proposed new general rule as shown below is to be published expeditiously for comment in the Washington Reports, Washington Register, Washington State Bar Association and Administrative Office of the Court's websites.

(b) The purpose statement as required by GR 9(e), is published solely for the information of the Bench, Bar and other interested parties.

(c) Comments are to be submitted to the Clerk of the Supreme Court by either U.S. Mail or Internet E-Mail by no later than June 30, 2022. Comments may be sent to the following addresses: P.O. Box 40929, Olympia, Washington 98504-0929, or supreme@courts.wa.gov. Comments submitted by e-mail message must be limited to 1500 words.

DATED at Olympia, Washington this 31st day of March, 2022.

For the Court

Gonzalez, C.J.

CHIEF JUSTICE

COVER SHEET FOR NEW (REVISED) GENERAL RULE PROPOSAL
INFORMAL FAMILY RELATIONS TRIALS

Proponents: Dennis "D.C." Cronin, WSBA No. 16018, 724 N. Monroe Street, Spokane, WA 99201, joined by Commissioner Jennie Laird (King County Superior Court, in her individual capacity), and Justice Mary Yu.

Purpose: See original GR 9 Cover Sheet.

The original proposed rule for Informal Family Law Trials generated a number of helpful comments. Rather than pass or reject the Rule, the Rules Committee authorized Justice Yu to explore revisions to the proposal with the proponent. Justice Yu met with the proponents and Commissioner Jennie Laird, co-Chair of the SCJA Juvenile and Family Law Committee, and requested that they review the comments and make suggestions that might address some of the comments.

After several revisions and discussions with some of the stakeholders, including the SCJA, the attached revisions are being proposed for publication and comment. The proponent accepted the modifications and are persuaded that the changes address the concerns reflected in the comments

Public Hearing: Not requested

Expedited Consideration: Expedited publication and a shortened comment period are requested because there are courts who are conducting informal trials and many other courts who wish to adopt the practice.

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, relocation, child custody, and other family law matters as established by statute.

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. Parties must file a Trial Process Selection and Waiver for IFLT that is in substantial compliance with the attached form, until a pattern form is developed by the Administrative Office of the Courts. This form shall be accepted by all superior courts, but may be modified to conform to local rule practices, provided local rule practices do not nullify this rule and/or the implementation of this rule.

3. When a trial is conducted pursuant to this rule, in accordance with ordinary trial management, the trial judge shall retain discretion to modify any of these procedures as justice and fundamental fairness require, with prior notice to the parties.

(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 and 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. However, nothing in this rule prevents a party from filing a direct appeal of any final judgment or order at the conclusion of the IFLT.

(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 address the Court under oath concerning all issues in dispute. A represented party is not questioned by their 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. A party may also present up to five declarations (limited to 20 pages total) from lay persons who would otherwise be called as a witness.

(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 shall not apply to the proceedings. The judicial officer hearing the matter shall determine the credibility and weight of the evidence that is offered.

(h) The Court shall receive and admit exhibits offered by the parties. The Court will determine what weight, if any, is given to 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 shall then be offered the opportunity to respond briefly to the statements of the other party.

(j) The parties or their counsel shall 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, and make every effort to issue prompt rulings no later than the 90 day statutory requirement. Findings shall be made and orders entered consistent with statutes and case law.

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

4. The Court may refuse to allow the parties to utilize the IFLT, 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) If the parties request an informal family law trial after a traditional trial has started, the court should consider whether enforcement of traditional trial rules after the IFLT has started will prejudice either party or the best interests of any child. The decision to continue with a traditional trial shall be left to the discretion of the judicial officer hearing the matter.

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

SUGGESTED RULE COVER SHEET

GENERAL STATEWIDE INFORMAL DOMESTIC RELATIONS TRIAL (IDRT)

GR9 (e) (2) (A) Name of Proponent: Dennis "D.C." Cronin, WSBA No. 16018, 724 N. Monroe Street, Spokane, WA. 99201.

GR9 (e) (2) (B) Spokesperson: D.C. Cronin, WSBA No. 16018, 724 N. Monroe Street, Spokane, WA 99201.

GR9 (e) (2) (C) Purpose—the reason or necessity for the suggested rule, including whether it creates or resolves any conflicts with statutes, case law, or other court rules

The challenges of 2020 have afforded unprecedented opportunities. Advancing equitable access to justice commitments of statewide agencies, organizations, and individuals seeking to collaborate and coordinate efforts, a statewide Informal Domestic Relations Trial (IDRT) Rule affords families the opportunity for equitable accessible substantive and procedural justice regardless of geographical circumstance.

To equitably access substantive and procedural justice in all Superior Court Domestic Relations systems, the people of Washington State imminently require innovative, timely, cost effective, and efficient transformative options statewide.

A general statewide IDRT Rule promotes a less adversarial process for families and provides consistency in procedural process, thereby reducing associated risks of trauma compounded within the system itself and helping to address access barriers for many experiencing the

legal system in domestic relations cases—overwhelmingly those most disparately impacted by the justice system as a whole, including people of color, victims of domestic and sexual violence, self-represented and low-income persons—as they maneuver through an overburdened legal system.¹

1 https://ocla.wa.gov/wp-content/uploads/2015/10/CivilLegalNeedsStudy_October2015_V21_Final10_14_15.pdf

In 2008, Barbara Babb, author of *Reevaluating Where We Stand: A Comprehensive Survey of America's Family Justice Systems* wrote, "Court reform relative to family law matters has risen steadily over the past decade. States have restructured their justice systems to handle increasingly complex family law cases and burgeoning family law case-loads."²

2 *Reevaluating Where We Stand: A Comprehensive Survey of America's Family Justice Systems*, Barbara A. Babb, 46 Fam. Ct. Rev. 230, 230 (2008) (footnote omitted)

And, as Rebecca Aviel noted in the 2018 Fordham Law Review article Family Law and the New Access to Justice,³ "Family court ... reformers are implementing transformative changes that are consistent with access-to-justice values: these reforms are delivering dispute-resolution mechanisms that are faster, cheaper, and easier to maneuver, particularly for self-represented litigants."

3 Family Law and the New Access to Justice, 86 Fordham L. Rev. 2279 (2018)

The suggested Rule is not in conflict with existing statutes, case law or other court rules and is similar to Thurston County LSPR 94.03F Informal Family Law Trials [Updated Rule, January 13, 2020] and King County Emergency Local Rule Amendment LFLR 23. Informal Family Law Trials effective September 2020. Uniform, comprehensive Washington State domestic relations reform has intersectional systemic impacts, and an IDRT rule may provide a beneficial resource to superior courts and others committed to the equitable access to justice. The suggested rule recognizes the inherent authority and duty of all courts to manage their own affairs, so as to achieve the orderly and expeditious disposition of cases, prevent undue congestion in the court system, conserve scarce judicial resources, and manage caseloads fairly and expeditiously for *all justice-involved persons in Washington State*.

As the 2015 report Escalating Costs of Civil Litigation in Washington recommended, there is a basis for a two-tier litigation model in Washington superior courts. The IDRT is complimentary to such a two-tier system recommended by the task force. While not specifically recommended in the July 2016 Washington State Bar Association (WSBA) Board of Governors (BOG) Report, the BOG Task Force acknowledged family law has a "constellation of concerns" and reserved further consideration of recommendations within the Escalating Costs of Civil Litigation (ECCL) Task Force "to future efforts except to the extent its recommendations also address this area of the law."

Similarly, the October 2015 Washington State Supreme Court Civil Legal Needs Study Update Committee chaired by Justice Wiggins identified "Family Related Problems" as a "Substantive Problem Area." The 2017 Legal Services Corporation report, The Justice Gap: Measuring the Unmet Civil Legal Needs of Low Income Americans indicates, "Twenty-seven percent of households with parents or guardians of children under the age of 18 have experienced a civil legal problem related to children or custody" between 2016 and 2017. In addition, the report identified civil legal problems related to family affect 17% of all low-income households, including domestic violence or sexual assault and filing for divorce or legal separation.

The suggested statewide rule for an IDRT option is an effort to provide access to justice in family law matters for unrepresented families in *all* Washington State superior courts. The IDRT also provides access to those individuals across Washington who can afford the Traditional Domestic Relations Trial, but elect not to do so, seeking a less adversarial resolution to their domestic legal matters.

Despite the investments of talent and resources of many during the past two decades, including the Washington State Supreme Court and the Office of Civil Legal Aid, Board of Judicial Administration (BJA), and other qualified entities, Washington courts and domestic relations practice continue to lag "behind the times" in transformative reform. Adoption of an IDRT Rule is where Washington State can begin, truly, as the Civil Legal Needs Study opined, meeting "the challenge" by "turning findings to action."⁴

4 2015 Civil Legal Needs Study Update.

While family law practitioners and the public may experience "silo effects" as local jurisdictions attempt to formulate local rules in response to domestic relations administrative issues, Washington State has a wealth of existing research and resources available for collaboration including, but not limited to, the (ATJ), BJA, WSBA, ATJ, ECCL, Family and Juvenile Court Improvement Program, Unified Family Court program, Supreme Court and, our law schools, as well as professional associations. In light of the urgency due to COVID related impacts, implementation of a statewide IDRT Rule provides an opportunity for comprehensive statewide uniform domestic relations reform, providing best practice guidance as multiple local and statewide court recovery and unrepresented litigant groups discuss how to best move forward.

Our surrounding geographical neighbors in Oregon, Idaho, and Alaska, implemented IDRT standards as early as 2015. A similar rule is in effect in Utah, and in 2017, a pilot program was launched in the Seventh Judicial District in Iowa, resulting in the Iowa Judicial Branch Informal Family Law Trial, implemented statewide by order of the Iowa State Supreme Court on December 1, 2020. Similarly, the 2018-2021 long-range plan from the Florida Commission on Access to Civil Justice includes study and research of IDRT.

In **Alaska**, the Rule, as amended through July 25, 2019, governing the IDRT is found at Alaska R. Civ P. 16.2. In **Idaho** the Informal Domestic Relations trial rule is found at Idaho Rule of Family Procedure 713. In **Oregon** the IDRT is found at UTCR 8.120. under Chapter 8: Domestic Relations Proceedings. In **Utah** the rule is found at Utah District Court Rule 4-904. Information concerning the Informal Family Law Trial Pilot Program can be accessed through the District Court Administration for the Seventh Judicial District of Iowa.

Further information from **Alaska** explaining and supporting an IDRT rule can be found at Alaska Court System Self Help Center: Family Law.

Further information from **Oregon**, explaining the differences between Informal and Traditional Domestic Relations Trials can be found at: Oregon Judicial Branch: Informal Family Law Trials.

Further information from **Idaho** can be found at Idaho Rules of Family Law Procedure Rule 713. Informal Trial.

Further information from **Iowa** can be found at Iowa State Supreme Court December 1, 2020 Order and Iowa Judicial Branch Informal Family Law Trial Program.

Further information from **Utah** can be found at Utah Courts Informal Trial of Support, Custody and Parent-Time.

See also, William J. Howe III & Jeffrey E. Hall, Oregon's Informal Domestic Relations Trial: A New Tool To Efficiently and Fairly Manage Family Court Trials, 55 Fam. Cr. Rev., 70 (2017).

GR9 (e) (2) (D) Hearing: Due to the implementation of Thurston County, LSPR 94.03F Informal Family Law Trials [Updated Rule, January 13, 2020] and King County Emergency Local Rule Amendment LFLR 23 Informal Family Law Trials effective September 2020 as well as the number of longstanding published Washington State committee and task force reports, data, research, and studies containing recommendations to overcome barriers to equal access to justice, it is not believed a public hearing regarding a general statewide Informal Domestic Relations Trial suggested rule is necessary.

In addition, information from the currently implemented Informal Domestic Relations Trials in Alaska, Idaho, Iowa, Oregon and Utah Courts is readily accessible.

GR9 (e) (2) (E) Expedited Consideration: 2020 has presented unprecedented challenges and unprecedented opportunities, as evidenced by the dedication of countless individuals in local jurisdictions as well as through statewide task forces and workgroups addressing best practices during court recovery. The opportunity to uniformly impact barriers impacting equitable access to justice is now.

The Board for Judicial Administration recommends domestic case standards of "90 percent of all domestic relations cases should be adjudicated within 10 months of the date of filing of the information, 98 percent within 14 months of filing, and 100 percent within 18 months". Yet in 2019, 11,125 families⁵, up from 9,162 families in 2018, had domestic relations cases pending resolution over 18 months in Washington State Superior Courts⁶, as opposed to 2,371 families with domestic relations cases pending resolution over 18 months in 2000.⁷

⁵ Superior Court 2019 Domestic Relations Case Management Statistics

⁶ Superior Court 2018 Annual Caseload Report

⁷ Superior Court 2000 Annual Caseload Report

While the case management percentages may appear to have remained fairly consistent on paper, we have yet to see the 2020 impact COVID will have on these statistics. Yet, the number of cases reported do not reflect the financial and psychological impact of backlogged, delayed, and adversarial legal proceedings experienced by children, youth, parents, relatives and employers throughout our state, most often the most vulnerable, marginalized, and impoverished members of our communities. COVID has only made matters more traumatic and as such, expedited consideration of a statewide rule is warranted for families, courts, and communities.

Even before COVID brought attention to the imminent need for civil legal equity throughout our state, one participant in the October 2015 Washington State Supreme Court Civil Legal Needs Study Update was quoted in the report as asking "'Will people in my position, or worse off than I, get any sort of meaningful help?'" The reply, "'The answer to these questions, and so many others, is up to all of us.'" Despite the Campaign for Equal Justice funding legal aid for 31,000 families in poverty in 2018, two years pre-COVID, at least 3 out of 4 low income individuals are not able to access legal assistance when it is needed.⁸ Private practice attorneys provide valuable pro bono service. Yet, valuable hours of research and committee time have yielded no discernable implementation of recommendations designed specifically to address access to justice for all. There is a critical need for the

Court to address the domestic relations judicial process for low income and other marginalized families by implementation of a statewide rule, which regardless of geographical location and local court resources, can promote equity and consistency.

8 <https://legalfoundation.org/the-campaign-for-equal-justice/>

As noted by Jane C. Murphy & Jana B. Singer, Moving Family Dispute Resolution from the Court System to the Community, 75 MD.L. REV. ENDNOTES 9 (2016), "Everyone who works in family law ... agrees on two things: family court is not good for families, and litigation is not good for children." Respectfully, it would appear that upon which we are not able to agree continues to cause barriers for implementing best practices for the families of Washington State.

Based upon nearly 20 years of research, studies, committees and task forces, respectfully, I request expeditious review and consideration of a statewide general IDRT system for domestic relations cases; a recommendation within the prevue and authority of the Washington State Supreme Court.

For disparately affected persons seeking timely and less traumatic adjudication of their domestic relations matters, as well as for the fiscal impact on counties and Superior Courts now exacerbated by the unprecedented COVID challenges of 2020 and beyond, expedited consideration is respectfully requested.

Respectfully Submitted this 16th day of December, 2020,

D.C. Cronin, WSBA No. 16018

Reviser's note: The typographical error in the above section occurred in the copy filed by the agency and appears in the Register pursuant to the requirements of RCW 34.08.040.