

FILED
SUPREME COURT
STATE OF WASHINGTON
NOVEMBER 14, 2022
BY ERIN L. LENNON
CLERK

THE SUPREME COURT OF WASHINGTON

IN THE MATTER OF THE PROPOSED NEW
GENERAL RULE [GR 40]—INFORMAL FAMILY
LAW TRIALS [REVISED PROPOSAL]

)
)
)
)
)
)

AMENDED
ORDER

NO. 25700-A-1478

An ad hoc workgroup, including D.C. Cronin, having recommended the adoption of the proposed new General Rule [GR 40]—Informal Family Law Trials [Revised Proposal], and the Court having considered the new general rule, and having determined that the new general rule will aid in the prompt and orderly administration of justice;

Now, therefore, it is hereby

ORDERED:

- (a) That the new general rule as attached hereto is adopted.
- (b) That the new general rule will be published in the Washington Reports and will become effective January 1, 2023.

AMENDED ORDER

IN THE MATTER OF THE PROPOSED NEW GENERAL RULE [GR 40]—INFORMAL
FAMILY LAW TRIALS [REVISED PROPOSAL]

DATED at Olympia, Washington this 14th day of November, 2022.



Johnson, J.



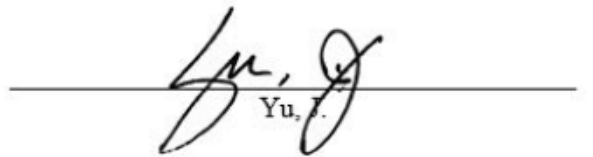
González, C.J.



Gordon McCloud, J.



Madsen, J.



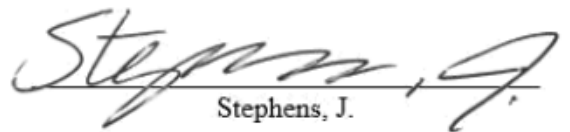
Yu, J.



Owens, J.



Montoya-Lewis, J.



Stephens, J.



Whitener, J.

GR 40

INFORMAL FAMILY LAW TRIALS (IFLT)

[NEW]

(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 model form. 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 laypersons who would otherwise be called as witnesses.

(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 IFLT 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.

Superior Court of Washington, County of _____

In re:

Petitioner/s (*person/s who started this case*):

And Respondent/s (*other party/parties*):

No. _____

Family Law Informal Trial Selection
(FLITS)

Clerks Action Required

Family Law Informal Trial Selection

Use this form if you want an Informal Trial instead of a Traditional Trial. You must file this form 30 days before the trial date (or trial setting if no trial date is scheduled).

Here are some of the differences between the two types of trials:

- **In a Traditional Trial**, both parties are allowed to call witnesses and to cross-examine the opposing witnesses. The Rules of Evidence apply.
- **In an Informal Trial** the judge, not the parties, questions the witnesses. Other than the parties, only expert witnesses are allowed. The Rules of Evidence do **not** apply. Instead, the process follows General Rule 40.

I have reviewed the *Two Kinds of Family Law Trial* brochure attached to this form.

1. **I want an Informal Trial.** I am the (*check one*)

Petitioner Respondent

I understand that if the other party does not agree to an Informal Trial, we will have a Traditional Trial.

2. **I understand than an Informal Trial works like this:**

- Both parties will give a brief summary of the issues that need to be decided. Both parties will speak to the judge under oath about the issues in the case (*examples: how to divide property and debt, parenting plan, child support, spousal support*).
- Both parties will have an opportunity to respond to the other party's statement and explain how the law applies to their case.
- There is no cross examination. The judge may ask questions.
- Most of the time, the two people in the case are the only witnesses in an Informal Trial. Sometimes a party needs an expert witness (someone with special training and

education) to give an opinion, which is allowed in informal trials. The parties or their lawyers may ask experts questions. The expert's report will be received as an exhibit.

- Non-expert witnesses are not allowed. Instead, each party may submit up to 5 declarations from other people with a maximum page count of 20 pages. Also, each party can submit any document or other evidence they want the judge to review.
- The judge will decide what credibility and weight to give documents, physical evidence, and testimony that is entered as evidence during the Informal Trial. The judge is not bound by the Rules of Evidence.
- The judge will follow the same law to decide the case, whether it is an Informal or Traditional Trial.

3. Expert witnesses (check one)

I do **not** want an evaluator or other expert witness to testify at my trial.

I want an evaluator (CASA, GAL or FCS) to be a witness at my trial.

I want another type of expert to testify at my trial. (Name) _____
has expertise in _____
and has information relevant to my case.

I have filed the report they prepared for my case.

4. I give up my right to a Traditional Trial

By agreeing to an Informal Trial, I agree to the following:

- **Voluntary.** My participation in an Informal Trial is strictly voluntary. No one can force me to agree to this process. I have not been threatened or promised anything for agreeing to an Informal Trial.
- **Format.** The normal question and answer format of trial will not be used. The judge may ask me questions about the case. The other party and I can both tell the judge anything we feel is relevant.
- **Rules.** The Rules of Evidence will not apply in this Informal Trial. I will follow the procedures of GR 40, the rule on Informal Family Law Trials.
- **Evidence.** Neither party will call any witnesses except for experts.
- **No appeal of the process.** I give up my right to appeal the judge's use of the Informal Family Law Trial process. I still have a right to appeal the final decision.

Signed on (date) _____.

Signature

Printed Name

TWO KINDS OF FAMILY LAW TRIALS

Do you have a family law trial coming up? If you do, you have a choice to make.

There are two different kinds of family law trials in Family Court. A family law trial is about divorce, legal separation, parenting plans, relocation, or child support. The two types of trials are called an Informal Family Law Trial (Informal Trial) and a Traditional Trial. You decide which type of trial is best for you.

Your trial will only be an Informal Trial if both parties agree to have one instead of a Traditional Trial.

What are the differences between Informal Trials and Traditional Trials?

	Informal Trials	Traditional Trials
How formal is the trial?	Less formal	More formal
How easy is this type of trial for a person who does not have a lawyer?	Easier	Harder
What evidence does the judge consider?	The judge decides what is important. You can talk to the judge about things that may not be allowed under the Rules of Evidence, like conversations you had with people outside the courtroom (hearsay). You can bring sworn statements from people who support your case, as well as other evidence or documents.	The parties need to follow the Rules of Evidence and make formal objections if they want to stop the judge from considering evidence.
Who asks questions?	Usually, only the judge.	Mainly the parties or their lawyers, but the judge can also ask witnesses questions.
Can I talk directly to the judge?	Yes.	Not usually. You can usually only talk to the judge during opening and closing arguments, and the other party can object while you are talking to the judge.
Who are the witnesses in the case?	Usually only the parties in the case and the Guardian ad Litem, if there is one. You can ask the judge to allow other expert witnesses, like a doctor or counselor.	Whoever you or the other party lists as a witness before trial starts.
Can I ask the witnesses questions?	No. This means that the other party or their lawyer can't interrupt you when you talk to the judge.	Yes. This means that you can ask the witness to talk about what you think is important.

TWO KINDS OF FAMILY LAW TRIALS

What do I need to know about my trial?

ALL TRIALS

1. Decide what type of trial you want. It will be a Traditional Trial unless both parties agree to an Informal Trial.
2. Before trial starts, both parties **must** prepare and give to the clerk, judge, and the other party:
 - If this is a divorce case, a list of everything you and your spouse own and owe and explain how you want the court to divide these properties and debts.
 - If child support or spousal support are an issue: a Financial Declaration, the last six months of pay stubs, and your tax returns for the last two years (with schedules, W2, and/or 1099).
 - If there are children, a proposed parenting plan.
3. Before trial, each party must give the judge and the other party a copy of all of the documents and other evidence that you will give to the judge.
4. The judge will follow the same law to decide your case, whether you have an informal or formal trial.
5. After trial, the judge will tell one party to draft the final orders. The final, written orders must contain all of the decisions that the judge made after trial. The case is not over until the judge signs the final orders.

INFORMAL TRIALS

6. Before trial, the judge will make sure the parties understand how the informal trial works and that the parties volunteer to have that kind of trial.
7. If there is a Guardian ad Litem (GAL), they will usually testify first.
8. The petitioner will speak to the judge under oath.
9. The judge asks questions. If there is a lawyer, he or she can ask the judge to ask about certain topics.
10. The respondent then speaks to the judge under oath.
11. The judge will review expert reports, if there are any, and may let experts testify.
12. The judge reviews evidence that was presented in court.
13. Each party can respond briefly to the other party.
14. Each party can explain to the judge about how the laws apply in the case.
15. The judge decides the case or sets another hearing for a decision.

TRADITIONAL TRIALS

6. Both parties make an opening statement, telling the judge about the case and how they think the judge should rule. The petitioner goes first.
7. The petitioner calls all of their witnesses. They ask the witnesses questions and may give the judge evidence. The respondent then asks the witnesses questions. The parties usually testify.
8. The respondent then calls their witnesses and presents evidence. The petitioner can question the respondent's witnesses too.
9. The judge can allow a witness to be questioned again.
10. The parties make closing argument. This summarizes the evidence, explains how the evidence means they should prevail, and tells the judge what is important.
11. The judge decides the case or sets a hearing for a decision.