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7 **IN THE SUPREME COURT**  
8 **STATE OF ARIZONA**

9 In the Matter of:

Supreme Court No. R-22-0007

10 **PETITION TO AMEND RULE 77**  
11 **AND ADD NEW RULE 77.1 OF**  
12 **THE ARIZONA RULES OF**  
13 **FAMILY LAW PROCEDURE**

**COMMENT**

14 In evaluating this Petition, the State Bar of Arizona (the “State Bar”) sought  
15 the input of its membership in general and received practice area-specific input from  
16 the State Bar’s Family Law Practice and Procedure Committee. For the Court’s  
17 consideration, and pursuant to Rule 28(e) of the Arizona Rules of Supreme Court,  
18 the State Bar hereby submits the comment of that Committee.

19 Proposed Rule 77.1 of the Arizona Rules of Family Law Procedure seeks to  
20 implement an informal family law trial (IFLT) program. The Committee is  
21 concerned the proposed program could deprive litigants of due process by, for  
22 example, denying cross-examination, having the judicial officer decide what  
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1 questions are asked of a party, and requiring a written motion to opt out of the  
2 process when opting in can be done by oral agreement.

3         The Committee is further concerned about the possibility of abuse in the  
4 judicial system when neither a party nor an attorney can question any party, and the  
5 allowance of lay witness testimony is not permitted absent a showing of good cause.  
6 For example, a new spouse can be a valuable witness for either party, but the party  
7 may not be able to articulate the reasoning for that person to be questioned. Judges  
8 do not have access to discovery or time to analyze the relevant information for each  
9 party in the same manner as an attorney or self-represented party. As a result,  
10 questions concerning relevant information may not be asked, and the Court may be  
11 forced to make decisions without full development of the evidence, leading to less  
12 satisfaction with Court rulings, and litigants feeling that they were not given a real  
13 opportunity to present their case. Such evidence will also not be available for appeal.

14         The parties may also feel pressured to opt into this type of program by the  
15 judicial officer based upon the inherent authority of the judicial officer, while not  
16 fully understanding their rights or how the absence of activities like cross-exam may  
17 impede their possible arguments on appeal. Moreover, unrepresented parties who  
18 have opted into this program are likely to face a challenge if they decide to hire an  
19 attorney later. Many attorneys may not agree to take a case already in this program  
20 without an assurance that an opt-out motion will be granted. In addition, the court's  
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1 ability to modify the procedures on its own without notice or consequence does not  
2 promote access to justice to either those parties that are not represented or those  
3 parties that are represented as they will not be prepared to properly conduct the trial.  
4 For example, under the current version, a litigant will not know if a witness affidavit  
5 will be accepted or if Rule 2 will be applied potentially until the day of trial.  
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7 **CONCLUSION**

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9 Based on the foregoing, the State Bar respectfully requests further study of  
10 this proposal and that the Petition be denied at this time.  
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12 RESPECTFULLY SUBMITTED this 29<sup>th</sup> day of April, 2022.  
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14 /s/ Lisa M. Panahi

15 Lisa M. Panahi  
16 General Counsel  
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19 Electronic copy filed with the  
20 Clerk of the Supreme Court of Arizona  
21 this 29<sup>th</sup> day of April, 2022.

22 by: P Seguin  
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