

Judge Greg Sakall  
Family Court Presiding Judge<sup>1</sup>  
Pima County Superior Court  
110 West Congress Street  
Tucson, AZ 85701

Judge Michael Peterson  
Presiding Judge  
Graham County Superior Court  
800 W Main St  
Safford, AZ 85546

Judge Bruce Cohen  
Family Department Presiding Judge  
Superior Court in Maricopa County  
125 West Washington, Ste 101  
Phoenix, AZ 85003

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

In the Matter of: ) Supreme Court  
) No. R-22-0007  
PETITION TO AMEND RULE 77 )  
AND ADOPT RULE 77.1 OF )  
ARIZONA RULES OF FAMILY )  
LAW PROCEDURE )

Pursuant to Rule 28(e)(4) of the Arizona Rules of Supreme Court,  
the undersigned submit the following Reply in support of the Petition.

Only two Comments were submitted as to the petition that seeks  
to adopt an informal family law trial (IFLT) program that would allow  
parties to opt into a more efficient and fair process to manage many  
family law cases. While the Family Court Improvement Committee

unanimously supported the Petition, the State Bar seeks further study of the proposal and a denial of the Petition at this time.

The undersigned urge the Court to adopt the Petition and not to delay consideration for further study. The reality of the situation, as noted on pages 4-5 of the Petition, is that family law judicial officers are already conducting family law trials in a fashion similar to that proposed in the Petition. If there is any doubt of whether this practice is already occurring in Arizona, the Court need only to look at *Riojas v. Mejia*, 2022 WL 324203 (App. 2022), which was filed after the Petition was filed. In that case, the Division One of the Arizona Court of Appeals affirmed the trial court and found that the Superior Court’s manner of conducting the trial with two self-represented litigants—informing the parties how the trial would be conducted at the beginning of the forty-two (42)-minute trial, the court asking the questions, giving the parties opportunities to supplement testimony or ask questions—was not improper. *Id.*, ¶¶ 7-11. Again, undersigned believed that it is

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<sup>1</sup> The courts are listed for identification purposes only. The opinions expressed in this Petition are those of the individual undersigned judges and do not necessarily reflect the views of the courts.

important to have a rule that authorizes conducting trials in this manner.

As for the State Bar's request for further study, the undersigned respectfully remind the Court that other states have already implemented IFLT's. As for an update on the Washington State proposed rule, that state's Rules Committee worked with the rule change proponent and stakeholders to develop a review proposal in response to the many comments received. The net result was a [slightly modified proposal](#) that has been [published for comment](#) until only June 30, 2022. The essential elements of that proposal remain intact.

As for the State Bar's specific concerns, the undersigned submit as follows:

- Lack of cross-examination by opposing party or counsel – Undersigned agree that “[d]ue process affords parties an opportunity to cross-examine a witness if desired.” *Riojas*, 2022 WL 324203, at ¶ 10. The Petition proposes a system in which an opposing party identifies additional areas for further questioning (Proposed Rule 77.1(e)(4)), and then the trial court will conduct additional questioning of the party or witness.

Proposed Rule 77.1(e)(16) also allows the trial court to modify the procedures “as justice and fundamental fairness requires.”

If the Court were to prefer to allow greater use of cross examination in an IFLT, Proposed Rule 771.(e)(4) could be modified as follows:

**Parties and non-expert witnesses will not be subject to cross-examination unless permitted by the Court; however, the court will ask the nonmoving party or their lawyer whether the party wishes the court to ask about any other areas. The court will inquire into these areas if requested and relevant to an issue that the court will decide.**

Such revised language is consistent with the approach proposed in the Petition and tracks the Washington proposed rule.

- The trial court deciding what questions to ask a party – Division One correctly addressed this due process concern in *Riojas*.
- Requiring a written motion to opt out – The requirement for a written motion tracks the rules and proposal(s) in other states. It also reflects that reality that often there is not a hearing in the weeks leading up to a trial. The State Bar also fails to

acknowledge that the trial court has discretion, under the Proposed Rule 77.1(c)(3), “to refuse to allow the parties to use the IFLT process at any time” and “may also direct that a case proceed in the traditional manner of trial even after an IFLT has been commenced.”

- Proposals regarding lay witnesses – The State Bar argues that relevant evidence may not be available based upon the proposed rules regarding lay witnesses. Proposal Rule 77.1(c)(6) does allow for testimony from lay witnesses based upon a showing of good cause, and even if good cause is not shown, a party will still be able to submit an affidavit or unsworn declaration from the lay witness, and the trial court will consider it if admitted (Proposed Rule 77.1(c)(9)).
- Informed Opt-In – The State Bar raises concerns that a party may feel pressured to opt in and may not fully understand their rights. The undersigned also had concerns about parties understanding their rights, and as such, drafted Proposed Rule 77.1(c)(1) and (d)(1) that requires the judicial officer to explain the process and also for a statewide form. At the beginning of

the IFLT, Proposed Rule 77.1(d)(1) would require the judicial officer to assure that the parties have freely and voluntarily given their consent and that they have not been threatened or promised anything for agreeing to the IFLT.

- Subsequent attorney involvement – The State Bar raises a concern that an attorney may not agree to take a case where it is already in the IFLT program. However, the comments received in Washington State to a similar proposed rule (Petition, p. 6) reflect the opposite and that there may be more opportunities for access to justice.
- Rule 2 and evidentiary concerns – The State Bar raises concerns regarding a party not knowing if a witness affidavit will be accepted or if Rule 2 will be applied until the day of trial. The undersigned believe that the State Bar’s concerns are misplaced. Proposed Rule 77.1(c)(6) and (9) clearly envisions affidavits from lay witnesses will be admitted and the judicial officer will give them the weight that is necessary. As to Rule 2 being applied at trial, that would only happen if the parties had agreed to proceed with a traditional trial (Proposed

Rule 77.1(c)(2)) or in a very unusual situation where the trial court converted an IFLT to a traditional trial (Proposed Rule 77.1(c)(3)).

IFLT programs in other states have met with general support from parties, attorneys, and judicial officers. It is not a one-size-fits all approach, as the undersigned acknowledged in the Petition. The Proposed Rule 77.1 recognizes the practical realities of how many family law trials have been and are being conducted, especially where both parties are self-represented, and gives much-needed guidance to the public, judicial officers, and attorneys.

RESPECTFULLY SUBMITTED this 1st day of June, 2022.

*Greg Sakall*

GREG SAKALL  
Family Bench Presiding Judge  
Superior Court, Pima County

*Michael Peterson*

MICHAEL PETERSON  
Presiding Judge  
Superior Court, Graham County

*Bruce Cohen*

BRUCE COHEN  
Family Department Presiding Judge  
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