

Greg Sakall
Judge, Division 23
Pima County Superior Court
110 W Congress
Tucson, AZ 85701
Telephone: (520) 724-8301
SPickard@courts.az.gov

**IN THE SUPREME COURT
STATE OF ARIZONA**

In the Matter of	)	Arizona Supreme Court No. R-
	)	
PETITION TO AMEND RULE	)	
77 and ADOPT RULES 77.1 and	)	
77.2, ARIZONA RULES OF	)	
FAMILY LAW PROCEDURE	)	
_____	)	

The Committee on Family Court (“COFC”), f.k.a. Family Court Improvement Committee, respectfully requests that the Court consider this Petition regarding informal family law trials (“IFLT”).

Another petition on IFLT—R-22-0007—is pending before the Court. In 2022, the COFC voted unanimously in favor of the Petition. By Administrative Order 2022-159, the Chief Justice established a pilot program in Graham, Maricopa, and Pima counties. The pilot was framed as an opt-in model wherein both parties would have to consent to proceed with an IFLT.

A final report on the IFLT program was presented at the June 2024 Arizona Judicial Council. Discussion was had regarding implementing an opt-out model for IFLT.

Before the Court takes final action on R-22-0007, the COFC believes that the Court should have the benefit of additional input from the public, bench, and bar as to an opt-out model. As such, the COFC files this Petition which, if adopted, would allow each county to adopt either an opt-in or opt-out model.

Members of the COFC disagree as to whether an IFLT program is necessary, and if necessary, whether an opt-in or opt-out model is preferable. At this time, the COFC wishes to receive additional input by means of this Petition, and will file its final position in the Reply before the Court's August 2025 Rules Agenda.

If the Court wishes to adopt a hybrid model of IFLT, proposed rule amendments are found in Attachment A. The redline shows changes from the existing Administrative Order 2022-159.

DATED this 18th day of December, 2024.

Greg Sakall

Chair, Committee on Family Court

Attachment A

Rules Allowing for Informal Family Law Trials

Rule 77 of the Arizona Rules of Family Law Procedure is amended and Rules 77.1 and 77.2 added as noted below (deletions indicated by strikethrough and additions by underscoring):

Rule 77. Trials

(a) Setting Cases for Trial. Unless the court has already set a trial on its own or at a resolution management conference or a scheduling conference, any party may file a motion to set a case for trial. The motion must state:

- (1) the date by which the case will be ready for trial;
- (2) the names, addresses, and telephone numbers of the parties or their attorneys who are responsible for the conduct of the litigation;
- (3) whether the case is entitled to a preference for trial because legal decision-making or parenting time is at issue; and
- (4) the estimated time for trial.

(b) Continuances and Scheduling Conflicts. Rule 34 addresses trial continuances and scheduling conflicts.

(c) Informal Family Law Trials. The presiding judge of the superior court in a county must adopt either an opt-in model of informal family law trials under Rule 77.1 or an opt-out model of informal family law trials under Rule 77.2. The decision must be incorporated into a superior court order that is filed with the Supreme Court clerk, with a copy filed with the court clerk in that county.

Rule 77.1. Informal Family Law Trials, Opt-In Model

(a) Applicability. Upon consent of all parties and the court, an Informal Family Law Trial (IFLT) may be held to resolve all actions brought under Title 25 of the Arizona Revised Statutes, except IV-D child support hearings and cases designated as complex under Rule 50. This rule applies to both pre-decree and post-judgment actions.

(b) General. An IFLT is an alternative trial procedure to which the parties, their attorneys, and the court voluntarily agree. Under this model, the court may admit any relevant and material evidence, even though such evidence might be inadmissible under formal rules of evidence, and the traditional format used to question

witnesses at trial does not apply. In most cases, the only witnesses will be the parties. At the discretion of the court, other relevant witnesses may be called.

(c) Election. All parties must elect an IFLT and waive a traditional trial.

(1) At any time, the court may offer the parties the option of electing an IFLT and must explain the process. If the parties make that election, the court must obtain the parties' consent on the record under oath or in writing on a form developed by the superior court.

(2) At any time and by agreement, the parties may request to change from a traditional trial to an IFLT.

(3) The court may refuse to allow the parties to use the IFLT process at any time and may direct that the case proceed traditionally, and may also direct that a case proceed in the traditional manner of trial even after an IFLT has been commenced but before judgment has been entered.

(4) A party who has agreed to proceed with an IFLT may move to opt out of the IFLT provided that the motion is filed at least 21 calendar days before trial. The court must allow a party to withdraw from an IFLT election as long as the withdrawal would not prejudice the other party. The court will not allow a withdrawal of an election that postpones the trial date absent a showing of cause.

(5) The election of a traditional trial or IFLT process does not diminish the court's authority to question witnesses or otherwise manage the proceedings in the interests of justice.

(d) Pretrial Procedures. A case proceeding as an IFLT will be subject to the same pretrial procedures and rules, including mandatory disclosure and court orders that apply to a traditional trial case.

(e) Trial Procedure. The IFLT will proceed as follows:

(1) At the beginning of the IFLT, the court will ask the parties 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.

(2) The court may ask each party or the party's attorney to summarize the issues to be presented.

(3) The moving party will be allowed to testify to the court under oath about all disputes. The party must not be questioned by another party or any lawyers but may be questioned by the court to

develop evidence required by any statute or rule necessary to address the matters at issue.

(4) Parties and non-expert witnesses will not be subject to cross-examination; 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.

(5) The process in (e)(3) and (e)(4) will then repeat for each other party.

(6) Lay witnesses (non-experts not named in the case caption) are not allowed to testify unless the court orders otherwise based on a showing good cause. Any testimony from lay witnesses must be submitted in the form of an affidavit or unsworn declaration under the penalty of perjury as provided by Rule 14.

(7) Reports from experts and court-appointed advisors will be admitted as exhibits. Legal decision-making and parenting time evaluation reports will be admitted. An expert or court-appointed advisor may not be called as a witness unless a party has specified the intention to call that witness on that party's Pretrial Statement. Upon the court's request or any party, the witness will be sworn and subjected to questioning by a party or the party's lawyer and the court.

(8) Declarations, letters, or other submissions by the parties' minor children will not be considered, but summaries or transcripts of Rule 12 child interview may be admitted, subject to the requirements of Rule 12.

(9) The court may admit any other exhibit offered by the parties that can be made a part of the record in the case. The court will then determine the materiality, relevance, and what weight, if any, to give each exhibit. The court may order the record to be supplemented by additional documents or testimony from other witnesses.

(10) A party may not offer an exhibit, affidavit or unsworn declaration under penalty of perjury during an IFLT other than those that have been timely disclosed and specified on a party's

Pretrial Statement, unless the court orders otherwise for good cause.

(11) The parties or their lawyers will then be offered the opportunity to respond briefly to the other party's testimony.

(12) The court will offer each party or the party's lawyer the opportunity to make a closing statement.

(13) After the IFLT, the court must render judgment. The court may take the matter under advisement, but best efforts will be made to issue prompt judgments.

(14) The court may put reasonable time limits on any person's testimony or argument.

(15) If an IFLT converts to a traditional trial, the court will allow each party an opportunity to object to any evidence that was offered in the IFLT, and evidence will be admitted consistent with Rule 2.

(16) The court may modify these procedures as justice and fundamental fairness requires.

(f) Judgment and Appeals. The court's final judgment will have the same force and effect as if entered after a traditional trial and may be appealed or objected to on any grounds that do not rely on the rules of evidence.

Rule 77.2. Informal Family Law Trials, Opt-Out Model

(a) Applicability. ~~Upon consent of all parties and the court,~~ Unless a party files a request for a traditional trial at least 60 days before the scheduled trial date, an Informal Family Law Trial (IFLT) ~~may~~ shall be held to resolve all actions brought under Title 25 of the Arizona Revised Statutes, except IV-D child support hearings and cases designated as complex under Rule 50. This rule applies to both pre- decree and post-judgment actions.

(b) General. An IFLT is ~~an alternative~~ the presumptive trial procedure ~~to which~~ unless the parties or their attorneys request a traditional trial by following the procedure in Rule 77.2(a), ~~and~~ or the court orders otherwise upon a finding of good cause ~~voluntarily agree~~. Under this model, the court may admit any relevant and material evidence, even though such evidence might be inadmissible under formal rules of evidence, and the traditional format used to question witnesses at trial does not apply. In most cases, the only witnesses will be the parties. At the discretion of the court, other relevant witnesses may be called.

(c) Election. ~~All parties must elect an IFLT and waive a traditional trial.~~ Any party may waive an IFLT and request a traditional trial by

following the procedure in Rule 77.2(a).

(1) By agreement at any time, including after the deadline in Rule 77.1(a), the parties may jointly request to change from ~~a traditional trial to an IFLT~~ an IFLT to a traditional trial. The court must grant that request unless it finds good cause not to do so.

(2) The election of a traditional trial or IFLT process does not diminish the court's authority to question witnesses or otherwise manage the proceedings in the interest of justice.

(d) Pretrial Procedures. A case proceeding as an IFLT will be subject to the same pretrial procedures and rules, including mandatory disclosure and court orders that apply to a traditional trial case.

(e) Trial Procedure. The IFLT will proceed as follows:

(1) At the beginning of the IFLT, the court will ask the parties to affirm that they understand the rules and procedures of the IFLT process.

(2) The court may ask each party or the party's attorney to summarize the issues to be presented.

(3) The moving party will be allowed to testify to the court under oath about all disputes. The party must not be questioned by another party or any lawyers but may be questioned by the court to develop evidence required by any statute or rule necessary to address the matters at issue.

(4) Parties and non-expert witnesses will not be subject to cross-examination; 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.

(5) The process in (e)(3) and (e)(4) will then repeat for each other party.

(6) Lay witnesses (non-experts not named in the case caption) are not allowed to testify unless the court orders otherwise based on a showing of good cause. Any testimony from lay witnesses must be submitted in the form of an affidavit or unsworn declaration under the penalty of perjury as provided by Rule 14.

(7) Reports from experts and court-appointed advisors will be admitted as exhibits. Legal decision-making and parenting time evaluation reports will be admitted. An expert or court-appointed advisor may not be called as a witness unless a party has specified the intention to call that witness on that party's Pretrial Statement. Upon the court's request or that of any party, the witness will be sworn and subjected to questioning by a party or the party's lawyer

and the court.

(8) Declarations, letters, or other submissions by the parties' minor children will not be considered, but summaries or transcripts of Rule 12 child interviews may be admitted, subject to the requirements of Rule 12.

(9) The court may admit any other exhibit offered by the parties that can be made a part of the record in the case. The court will then determine the materiality, relevance, and what weight, if any, to give each exhibit. The court may order the record to be supplemented by additional documents or testimony from other witnesses.

(10) A party may not offer an exhibit, affidavit or unsworn declaration under penalty of perjury during an IFLT other than those that have been timely disclosed and specified on a party's Pretrial Statement, unless the court orders otherwise for good cause.

(11) The parties or their lawyers will then be offered the opportunity to respond briefly to the other party's testimony.

(12) The court will offer each party or the party's lawyer the opportunity to make a closing statement.

(13) After the IFLT, the court must render judgment. The court may take the matter under advisement, but best efforts will be made to issue prompt judgments.

(14) The court may put reasonable time limits on any person's testimony or argument.

(15) If an IFLT converts to a traditional trial, the court will allow each party an opportunity to object to any evidence that was offered in the IFLT, and evidence will be admitted consistent with Rule 2.

(16) The court may modify these procedures as justice and fundamental fairness requires.

(f) Judgment and Appeals. The court's final judgment will have the same force and effect as if entered after a traditional trial and may be appealed or objected to on any grounds that do not rely on the rules of evidence.