

OREGON'S INFORMAL DOMESTIC RELATIONS TRIAL: A NEW TOOL TO EFFICIENTLY AND FAIRLY MANAGE FAMILY COURT TRIALS

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The Informal Domestic Relations Trial (IDRT) process adopted by the Deschutes County, Oregon, Circuit Court is described, evaluated, and compared to simplified family law procedural rules of other jurisdictions. The IDRT process has been created by local court rule, and will soon be adopted statewide in Oregon. The IDRT rule allows parties to choose a simplified trial or hearing format where the parties speak directly to the judge with no direct or cross-examination, nonparty witnesses are limited to experts, the traditional rules of evidence are waived, and all exhibits offered by the parties are admitted. IDRT cases are typically docketed more quickly than traditional trials; last just a couple of hours; and decisions are rendered promptly, usually the day of the hearing or trial. The court retains jurisdiction to modify the process as fairness requires and to divert cases where domestic violence or other reasons render IDRT inappropriate.

Key Points for the Family Court Community:

- Self-represented litigants are generally not capable of effectively presenting their family law case at trial because of the complexity of evidentiary rules and trial procedures.
- When conducting traditional trials involving self-represented family law litigants, judges are challenged by the requirement to remain passive, when more active engagement of the court is necessary in order to achieve fairness because few self-represented litigants understand the rules of evidence and trial procedure.
- A simplified trial and hearing process is necessary to accommodate these realities and the increasing number of self-represented family law litigants.
- The perception of procedural fairness of self-represented litigants is premised on their feeling that they were able to tell the judge their story.
- Five states and some jurisdictions outside the United States have adopted informal procedures for certain family law cases, and this trend is growing.
- Attorneys are increasingly recommending the IDRT process to clients where either only narrow issues are presented for trial or where their clients cannot afford full representation at trial.

Keywords: *Domestic Relations Trials; Family Law Trials; Informal Custody Trials; Informal Domestic Relations Trials; Pro Se Litigants; Procedural Fairness; and Self-Represented Litigants.*

INTRODUCTION

Creating a family is easy; reconstituting a family after divorce or separation is hard. No judge is required to approve a couple's cohabitation or procreation. However, in the United States only a court can grant a divorce, separation, or a judgment resolving child custody, parenting time, and support issues. So each year courts are crowded with litigants seeking resolution of their family law disputes.¹

These customers of our courts are rejecting the traditional litigation model to resolve their issues. Premarital agreements, until fairly recently considered void as against public policy, are now common.² These agreements are designed to avoid most judicial involvement if the parties' marriage ends. Alternative dispute resolution models designed to minimize court involvement are widely available. The avalanche of self-represented litigants (SRLs)³ seeking to navigate traditional court procedures is the most dramatic challenge to courts seeking to provide fair and efficient resolution of family law disputes.

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Various innovations have been developed to address the huge challenge presented by the self-represented phenomenon. These include encouraging lawyers to offer unbundled legal services and providing greater access to self-help resources, forms, and programs, such as the Center for Out-of-Court Divorce located in Denver, Colorado.⁴ This innovation was birthed by the Institute for the Advancement of the American Legal System (IAALS).⁵ IAALS convened a Summit of the national family law bar in November 2015 with the goal of generating specific and creative proposals for family justice system reform. The report, “The Family Law Bar: Stewards of the System, Leaders of Change,”⁶ summarizes the outcome. These recommendations are predicated on the goal of making the family dispute resolution system more client focused and customer friendly.

This article describes a successful innovation piloted by Deschutes County, Oregon, Circuit Court, which is now being recommended for expansion statewide in Oregon—the Informal Domestic Relations Trial (IDRT). The IDRT rule allows parties to choose a simplified trial or hearing format. In Deschutes County, when a family case is at issue, the parties are offered a choice; they may proceed using the traditional trial or IDRT.

If the parties elect the IDRT procedure and a hearing becomes necessary, the judge actively controls the process. The parties speak under oath directly to the judge with no direct or cross-examination. The judge may ask questions, but lawyers and parties may not, unless the court permits. Nonparty witnesses are limited to experts. All traditional rules of evidence, including prohibitions on hearsay testimony, are waived. Any exhibits offered by the parties are admitted, and the court determines the evidentiary weight of such exhibits.

All matters of property division, support, and children’s issues may be heard and decided. Typically, IDRT cases are docketed more quickly than traditional trials, last just a couple of hours, and decisions are rendered promptly, usually the day of the hearing or trial.

This article will explore the informal process in more detail and also compare IDRT to simplified proceeding rules of other jurisdictions.

IMPACT OF SRLs ON FAMILY COURTS

In some courts, eighty to ninety percent of family cases involve at least one SRL.⁷ The figure is slightly less in Oregon, based on estimates of local judges. Unfortunately, as in most jurisdictions, the percentage of SRLs is impossible to accurately determine because of the record-keeping practices. However, almost everywhere, their numbers are very large and growing. Estimates in Oregon pegged the number of cases in which at least one party was unrepresented at some point in the proceeding at forty-two percent in 1995 and between seventy and eighty percent today.⁸

Most litigants self-represent because they cannot afford full-service representation. These individuals either did not qualify for free or reduced-cost services or unbundled legal services are unavailable in their jurisdiction or, if unbundled legal services were available, these litigants are often unaware of this option. Over ninety percent of SRLs in a recent study by IAALS indicated that financial issues were influential to their decision not to hire a lawyer.⁹ This includes forty percent of the sample whose annual income was between \$40,000 and \$100,000.¹⁰

In the IAALS study, a significant subset of litigants chose to self-represent even though they could have afforded a lawyer, and they cited the following reasons for doing so:¹¹

1. They felt the involvement of lawyers would make the dispute more adversarial and thereby corrode the ability of the parties to cooperate in the future.
2. They wished to have a larger voice in the process, to tell their story and retain more control of the process than they perceived would be possible if lawyers were involved.
3. They felt they could navigate without lawyers (perhaps part of our increasingly self-help-driven culture). Of those citing this reason seventy-eight percent possessed some college education.

This avalanche of SRLs has clogged the family court system in many jurisdictions whose rules and procedures are ill equipped to manage litigants unfamiliar with and unsophisticated in managing the requirements of the traditional trial model. In addition, judges are often conflicted about how far they may go to assist SRLs in presenting their case. If the judge offers no assistance, unfairness too often results. However, for the court to assist one or both parties, for instance by guiding the offer of critical evidence to the court, the judge might risk violating our model of judicial neutrality.

HISTORY AND DEVELOPMENT OF IDRT

Initially IDRT was conceived as a process to more efficiently manage the crushing family court docket and also as a way to relieve judges of the discomfort and concern over whether relaxing the rules of evidence or assisting in the preparation of judgments would violate judicial ethics rules.

It immediately became obvious that the benefits of IDRT were far greater than judicial economy and avoiding judicial ethics heartburn. This process was greeted by litigants as affording access to justice in a way that SRLs, even more than represented litigants, felt was more understandable. Furthermore, procedural fairness was advanced, as litigants felt and experienced being heard directly by the person who possessed the power to resolve the dispute.¹²

Deschutes County Circuit Court proposed a Supplemental Local Rule (SLR 8.015) establishing IDRTs in 2012.¹³ The court did so in collaboration with Oregon's Statewide Family Law Advisory Committee (SFLAC).¹⁴ Since 1997 the SFLAC has generated many of Oregon's family law reforms and innovations. SFLAC was assisted in the IDRT innovation by IAALS.¹⁵ This rule was approved by Chief Justice Balmer and went into effect on May 29, 2013.

IDRT was inspired by the Idaho Informal Custody Trial (ICT) rule, which has operated since 2008.¹⁶ However, unlike IDRT, the Idaho model is limited to determining custody and child support issues.

SFLAC and Deschutes County Court considered whether this process should be enacted by statute or court rule. As discussed below, to date, the few states that have created informal trial models have opted to pursue adoption by court rule or, in the case of Michigan, supreme court order. Establishing the IDRT process by court rule was determined to be the simplest and quickest process for Oregon and allowed for a more efficient pilot project.

Before IDRT was approved, extensive vetting was accomplished with stakeholders, including domestic violence advocates, local and statewide members of the bar, and the public.

IMPLEMENTATION AND OPERATION OF THE IDRT PROCESS

CASES AND HEARING TYPES APPROPRIATE FOR IDRT

Any contested family law proceeding where evidence and testimony is allowed qualifies for IDRT. The rule provides that IDRT "may be held to resolve all issues in original actions or modifications for dissolution of marriage, separate maintenance, annulment, child support and child custody."¹⁷ All issues of discovery, child custody, parenting time, property division, and spousal support, from show cause proceedings to a trial on the merits, as well as modification proceedings, may be litigated using the IDRT process.

SELECTION OF IDRT

Upon filing, the parties are provided with a brochure summarizing the IDRT process and comparing the components of both the IDRT process and a traditional trial.¹⁸ The IDRT rule requires a forced choice by the parties. It is an opt-in process because both parties must agree and sign the waiver form. To ensure that the option is given consideration in every case, parties are forced to

affirmatively select which type of trial they choose at the time their request for a trial or hearing is made. This generally occurs at a pretrial conference for SRLs. This election process is analogous to other civil and criminal proceedings where parties must elect whether they wish a bench or jury trial.

During early development discussions, some members of the SFLAC preferred an opt-out procedure to encourage the use of IDRT. This would have made IDRT the default choice, unless at least one party chose the traditional trial. Opt-out was rejected to ensure the court obtained explicit and voluntary consent of the parties; in addition, opt-out would have required legislation to establish a statewide rule much like the legislation authorizing small claims courts.

Since selecting an IDRT necessitates that parties waive certain statutory rights, a case can be set for an IDRT only if both parties sign the form waiving the traditional trial.¹⁹

IDRT OR HEARING PROCEDURE

Steps Taken to Ensure Parties Understand the IDRT Process

In all cases, and with special emphasis in cases involving SRLs, the court carefully informs litigants about the IDRT process by:

- Providing a copy of an informational brochure (or referral to the online version of the brochure) at multiple stages in the proceedings, including at the time of filing, at the pretrial conference and at the time of trial;
- Orally advising litigants about the process at various stages in the proceedings, including at a pretrial conference and at the time of trial;
- Periodically reviewing with litigants the IDRT, consent and waiver form;
- Consultation with retained counsel if the parties are represented and recommending that the parties seek legal advice if they do not have a lawyer.

At the commencement of an IDRT proceeding, the judge carefully reviews the process with the parties and confirms their consent.

Hearing Procedure

SLR 8.015(2) provides that an IDRT will be conducted as follows:²⁰

- (a) At the beginning of an [IDRT] the parties will be asked to affirm that:
 - (i) They understand the rules and procedures of the [IDRT] process; and,
 - (ii) They are consenting to this process freely and voluntarily and that they have not been threatened or promised anything for agreeing to the [IDRT] process.
- (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 speak to the Court under oath concerning all issues in dispute. The party is not questioned by counsel, but may be questioned by the Court to develop evidence required by any statute or rule, for example, the applicable requirements of the Oregon Child Support Guidelines if child support is at issue.
- (d) The Court will ask the moving party (or the moving party's attorney if the party is represented) whether there are any other areas the party wishes the Court to inquire about. The Court will inquire into these areas if requested.
- (e) The process in subsections (c) and (d) is then repeated for the other party.
- (f) Expert reports will be entered into evidence as the Court's exhibit. If either party requests, the expert will be sworn and subjected to questioning by counsel, the parties, or the Court.

- (g) The parties may offer any documents they wish for the Court to consider. The Court will determine what weight, if any, to give each document. The Court may order the record to be supplemented. Letters or other submissions by the parties' children that are intended to suggest custody or parenting preferences are discouraged.
- (h) The parties will then be offered the opportunity to respond briefly to the comments of the other party.
- (i) The parties (or a party's attorney if the party is represented) will be offered the opportunity to make a brief legal argument.
- (j) At the conclusion of the case, the Court shall render judgment. The Court may take the matter under advisement but best efforts will be made to issue prompt judgments.
- (k) The Court retains jurisdiction to modify these procedures as justice and fundamental fairness requires.

One critical feature of IDRTs is that the parties tell their own story, in their own words, presented as they wish. Within their allotted time to speak, parties may share with the court whatever they wish. The judge will guide them toward relevant material if they stray too far and ask sufficient questions to elicit essential information necessary to render a decision.

The Role of Attorneys in the IDRT Process

The IDRT process is available to represented and self-represented parties alike. In cases with represented parties, attorneys provide consultation and advice to retained clients regarding whether or not they should select an IDRT for trial. Also, attorneys advise potential clients in initial consultations prior to being retained about the availability of the IDRT process. At the hearing the attorneys are asked to summarize the issues and may advise their clients during the process, but they do not question or cross-examine witnesses.

Attorneys also do not participate in the offering of exhibits. Any document offered into evidence will be received, subject to the right of the court to reject those that have absolutely no relevance or are otherwise inappropriate.

The role of attorneys, as well as every other step of the process, can be modified by the judge at any stage of the proceeding.

One advantage of the IDRT option is that it provides an excellent vehicle for lawyers to offer unbundled or limited-scope legal services. Several parties have consulted lawyers and then proceeded to handle the IDRT without counsel in the courtroom.

LENGTH OF IDRTs

Generally speaking, IDRTs are scheduled for two hours of in-court trial time. In addition, judges dedicate thirty minutes of pretrial time for case file review and up to sixty minutes of posttrial time to reach their decision and, in self-represented cases, complete, sign, and present the final judgment to the parties.

While a number of cases in which parties are represented are also concluded within two hours, cases in which both parties are represented generally take somewhat longer to complete.

IDRT APPEAL RIGHTS

Use of the IDRT process does not limit either party's right to appeal. However, it narrows the issues upon which an appeal may be taken, assuming the waiver itself is held to be valid and binding (the party signing is competent and there is no duress or fraud). We are not aware of any appeals challenging the validity of any waiver or IDRT proceeding.

Table 1

Number of Traditional and Informal Trials, June 2013 to December 2015

<i>Case Type</i>	<i>Formal</i>	<i>IDRT</i>	<i>Total</i>	<i>Pct.</i>
Dissolution	79	27	106	25%
Other	4	0	4	0%
Petition Custody	53	12	65	18%
Separation	10	1	11	9%
Total	146	40	186	22%

STATEWIDE APPLICATION OF IDRT

After reviewing the IDRT evaluation discussed below, the SFLAC determined IDRT is a success in Deschutes County and has recommended to Chief Justice Balmer its statewide application in the form of a new Oregon Uniform Trial Court Rule in the fall of 2016. The chief justice has indicated his support and proposed rule changes for statewide application is in process.

EVALUATION OF IDRTs IN DESCHUTES COUNTY, OREGON

Forty IDRTs were held in Deschutes County Circuit Court from June 2013 through December 2015.²¹ These represented twenty-two percent of all domestic relations trials held during this period.

A formal evaluation was designed for the IDRT pilot with the assistance of IAALS. The evaluation consisted of a litigant satisfaction survey for both traditional and IDRT cases, matched to case outcome data and a post-implementation questionnaire reflecting the experience of judges with IDRT. The litigant satisfaction survey failed to generate a sufficient number of responses from IDRT litigants and was therefore abandoned. However, the post-implementation questionnaire was expanded to include a group of attorneys. The judicial officer questionnaire responses were obtained during individual conversations with three judges. The attorney responses were obtained during a single conversation with three attorneys who had experience with IDRTs. All questionnaire responses were obtained in March and April of 2016. The results of these questionnaire-based conversations have generated the conclusions presented below.

IDRT was evaluated, based on the responses of three Deschutes County judges and three practicing attorneys who represented clients in IDRT proceedings. This evaluation followed an outline established in the Evaluation Design Judge Questionnaire. A statistically valid evaluation, based on users to date, could not be accomplished due to the inadequate number of survey responses returned.

NUMBER OF IDRTs

The judges interviewed for this evaluation had all conducted between five and ten IDRTs. The attorneys interviewed for this evaluation had all participated in one to three IDRTs and had counseled up to three clients who subsequently participated in an IDRT without representation present at the proceeding. Table 1 summarize general information about IDRT for the thirty-one months of program data from June 2013 through December 2015.

IDRTs were used most frequently in dissolution cases with twenty-five percent of trials in dissolution cases heard as an IDRT.

Table 2 shows the number of IDRTs over time. As expected, the rate of IDRTs in the first six months was lower than in the subsequent two years. This occurred because many of the trials held during the first six months of implementation were scheduled prior to the effective date of the IDRT rule.

Table 2

Number of Traditional and Informal Trials by Year

<i>Year</i>	<i>Formal</i>	<i>IDRT</i>	<i>Total</i>	<i>Pct.</i>
2013	39	6	45	13%
2014	54	16	70	23%
2015	53	18	71	25%
Total	146	40	186	22%

Table 3 shows the number of SRLs that opted for IDRTs during the sample period. In cases where both parties were self-represented, the vast majority of litigants have opted for the IDRT process over a traditional trial.

CONTENT OF THE CONSENT AND WAIVER FORM

No issues or concerns had been raised regarding the content of the written waiver. Further, all judges indicated that they engaged both parties in a colloquy, on the record and prior to the hearing or trial, to confirm the parties were aware of the content and implications of the waiver and implications of the choice of IDRT over a traditional trial.

FACTORS IN CASES THAT AFFECT SUITABILITY FOR AN IDRT

The broadest category of cases that are appropriate for the IDRT process are those where neither party is represented, where the marital assets are reasonably straightforward, and where no nonexpert witness testimony was critical to achieving a just result. Most cases involving two SRLs followed this pattern. IDRT was appropriate in these cases because most SRLs did not have sufficient familiarity with the law to effectively present their case, use witness testimony, operate within the confines of the rules of evidence, and focus on the statutory factors a judge must consider in deciding the issues presented.

Cases involving domestic violence where both parties are self-represented are viewed as particularly well suited for the IDRT process. The IDRT rules allow the victim to introduce medical and law enforcement reports without having to call a witness to establish foundation. Additionally, the IDRT process allows the victim to avoid cross-examination by the perpetrator, and the judge is able to maintain a level of control in directing the lines of inquiry and focus of the trial, thus mitigating the inappropriate exercise of power and control by a perpetrator during the conduct of the trial.

Of the forty IDRTs conducted between June 2013 and December 2015, one or both parties were represented in as many as nine cases.²² The IDRT process proved appropriate in cases where one or both litigants were represented, when the parties could not afford counsel for a traditional trial, where the trial was focused on a narrow issue, or where legal strategy suggested the IDRT process would allow evidence to be introduced that might otherwise be excluded in a formal trial process.

Table 3

Number of Traditional and Informal Trials by Representation

<i># Attorneys</i>	<i>Formal</i>		<i>IDRT</i>		<i>Total</i>	
0	13	9%	31	78%	44	24%
1	41	28%	3	8%	44	24%
2	92	63%	6	15%	98	53%
Total	146		40		186	

Case Spotlight

When initially implemented, some worried that the IDRT process would not be appropriate in cases involving high-value marital assets. These concerns were refuted by a self-represented divorcing couple who had worked together to resolve all issues, except the division of several parcels of real estate valued in excess of one million dollars. The parties had carefully researched the law, but arrived at different conclusions on how to correctly value the real estate. They simply wanted a judge to tell them who was correct and successfully used the IDRT process to bring that one issue before a judge.

There were no cases in which the IDRT process was initiated, but during the trial or hearing the judge found this process to be unfair or inappropriate.

The judges and attorneys participating in the evaluation agreed that the traditional trial process was more appropriate for cases in which both parties were represented, where there were significant and complex marital assets, where nonexpert testimony was critical in achieving a just result, or where there were complexities surrounding the issues of child custody and support.

IDRT REDUCED THE LEVEL OF CONFLICT BETWEEN THE PARTIES

The judges and attorneys participating in the evaluation were in general agreement that the IDRT process reduced conflict at trial for the following reasons:

- Friends and family members are not called to testify and publicly choose sides at trial.
- Parties are not able to elicit testimony from friends and family that is spiteful or intended to cause emotional harm to the other party.
- The parties do not cross-examine each other, eliminating their ability to ask questions intended to cause emotional distress or harm to the other party.
- While allowing both parties to completely tell their side of the story, the judges felt they were able to both set an example and direct that testimony be provided in a respectful manner. Further, with the judge asking questions, testimony stays relevant.
- The simpler process means that the rules do not interfere with the parties providing information to the judge, reducing frustration and friction among the parties.

LITIGANTS' SENSE OF FAIRNESS IN CUSTODY DISPUTES

The perception of the judges and attorneys evaluating IDRTs was that the litigants' sense of fairness was directly tied to their belief or feeling that they were heard. There was a broad consensus that the IDRT process significantly enhanced the parties' sense that the process was fair, and this was true even when the outcome was not exactly what had been advocated. The IDRT process almost guaranteed this result because parties do not present their case through witness testimony, but rather through a direct conversation with the judge.

The judges noted that when conducting a traditional trial they can ascertain the parties' legal positions but not always the underlying emotional dynamic. Using the IDRT process, the judge learns much more about how the parties feel, which allows the judge to recognize and acknowledge these feelings while still rendering a decision based on the facts and law. The outcome would very likely be the same as in a traditional trial, but the parties seem more inclined to accept the ruling after the IDRT process.

Case Spotlight

Following an IDRT on a custody modification, a couple relayed to the judge that the original dissolution trial was brutal. Both sides called friends and family to testify and say hurtful things. The emotional damage took several years to overcome. Both litigants shared that the IDRT process was much less painful, and avoiding a repeat of the painful aspects of their first trial would allow them to continue co-parenting in a positive, supportive manner.

The attorneys noted that a represented party's sense of fairness is often diminished when they feel their attorney does not ask questions or delve into subjects that are not legally relevant but are emotionally important to the client. Further, when objections lead to the exclusion of information a party considers important, that party might perceive the process to be unfair feeling that the judge did not have the opportunity to hear all of the facts. The attorneys felt that they improved their client's sense of fairness (in all trials) when they explain why certain things happened post-trial.

ACCESS TO JUSTICE

To the extent that access to justice is defined by timeliness, it is improved by the availability of IDRTs. The reason is practical: shorter trials are easier to schedule into the court's trial calendar and are more likely to be heard when scheduled. The data collected reflected that IDRT hearings were shorter than traditional hearings, no IDRT hearing took longer than half a day and most were much shorter.

BEST INTERESTS OF THE CHILD

In an IDRT the testimony of the parties in cases with SRLs is more focused on the statutory factors a judge is required to consider in determining child custody or parenting time because the judge is generally directing the lines of inquiry. This contrasts with traditional trials involving SRLs where judges have felt more constrained in their ability to direct the questioning of witnesses and parties.

The judges interviewed observed that because the judge-initiated questioning was more focused, the parties tended to follow the example set by the judge and focus their comments on issues relevant to their children's best interests and the other matters at issue. This resulted in both a reduction in arrow slinging by the parties and more targeted testimony on the issues the judge is required by statute to consider in making decisions. However, judges conducting an IDRT still allow the parties to talk themselves out, which occasionally led to excursions into irrelevancy but with the benefit of the parties having felt heard.

EFFECTIVE USE OF JUDICIAL TIME

In cases involving two SRLs, judicial efficiency is achieved with the IDRT process. IDRTs avoid the tedium of presenting numerous nonexpert witnesses to testify. There has also been a marginal reduction in the amount of time the parties testify because the direct questioning by the judge keeps the focus on the legal issues to be resolved.

PROCEDURAL JUSTICE

For cases involving two SRLs, the IDRT process was viewed as providing better procedural justice. Procedural justice can only be served if the participants understand and can effectively use the procedures in the manner and for the purpose they are intended. Most SRLs cannot effectively

employ the rules of evidence nor effectively present their case through the question–answer exchange with witnesses.

FURTHER BENEFITS AND DISADVANTAGES OF THE IDRT

Because the IDRT is established by a court rule, judges no longer worry about violating the canons of judicial ethics when employing these informal procedures. In the conduct of a trial involving one or two SRLs, a judge is no longer restrained or conflicted when proceeding informally and stretching the boundaries of evidentiary rules, when the application of these rules would prevent the admission of evidence the court needs to consider to make a decision.

The attorneys who participated in the evaluation indicated some potential clients, and some retained clients reported that, absent the availability of the IDRT process, they would likely have forgone a hearing and felt disserved by the court process.

Finally, an important goal of the IDRT was for parties to receive a decision immediately following the trial. In furtherance of this goal, several judges have adopted the practice of completing, signing, and filing the judgment at the conclusion of the trial. This provides legal finality to the parties and ensures the judgment is actually entered. Further, it eliminates the back-and-forth correspondence that frequently occurs when the judge relies on SRLs to draft the form of judgment, thereby reducing the workload of judges and staff.

SUGGESTIONS FOR IMPROVEMENT

The Deschutes County Court is in the process of developing a trial preparation outline for SRLs. There are excellent materials available, including those from the National Judicial Institute in Canada.²³ When developed, the trial preparation outline would be of particular benefit to SRLs selecting either trial process, but these materials would be available to all litigants and lawyers.

The attorney group felt that allowing the judge to review and consider any available mediator’s report could help to narrow the issues for trial. Mediation proceedings in Oregon are confidential.²⁴ As such, mediation reports are inadmissible unless both parties consent to their admissibility. Therefore, either the IDRT waiver would need to include the stipulation that mediator reports are admissible, or the mediation confidentiality statute would have to be amended.

PROGRAMS SIMILAR TO THE IDRT IN OTHER JURISDICTIONS

Australia was the first jurisdiction to introduce an informal procedure sharing many of the essential elements of the IDRT—the Children’s Cases Pilot Project began in 2004. Idaho was the first to initiate a similar procedure in the United States in 2008. Utah, Alaska, and Michigan have initiated models similar to IDRT and Iowa may be soon to follow. All jurisdictions other than Oregon’s and Alaska’s, which was modeled on Oregon’s, limit the informal proceedings to the litigation of children’s issues. Some limit the program availability to only SRLs. These are summarized below.

IDAHO

The Idaho ICT was the direct inspiration for Oregon’s IDRT. ICT Rule 713 was developed in 2008 and applies statewide. It was limited to the determination of child custody and child support issues.²⁵ Like IDRTs, the goal was to provide judges and litigants a less contentious alternative trial process. The basic premise of the ICT was suspension of the rules of evidence; waiver of the rules of discovery; and waiver of the traditional question-and-answer manner of trial that allows litigants to directly present their case, issues, and concerns to the court. The ICT excludes cross-examination, which it felt risks increasing conflict in an already highly emotional and often hostile environment.

The ICT rule was evaluated in 2010 and determined to be very positive for most litigants using this process for the same reasons the IDRT has been praised. Like IDRTs, some judges felt the Idaho model would not be appropriate when complex issues involving expert and nonexpert testimony needed to be litigated.

In July 2015, Idaho further modified family law hearing practice; though this later rule change did not affect the ICT.

In the Idaho Rules of Family Law Procedure 102 created a simpler evidentiary standard that applies in all family law cases, unless a party timely selects the strict application of the rules of evidence.²⁶ The evidentiary standard in Rule 102 provides that all relevant evidence is admitted, unless excluded for certain enumerated reasons. It is meant to replace only the evidentiary rules that apply to hearsay, character, and authentication but does not replace all of the evidentiary rules. In addition, relevant documents are admitted without further authentication and foundation if they appear on their face to be authentic. Rule 102 is not as extensive as the waiver of all of the rules of evidence that parties consent to when choosing the ICT. This portion of the Idaho evidence code was modeled on similar provisions contained in Rule 2 of the Arizona Rules of Family Law Procedure.²⁷

AUSTRALIA²⁸

Idaho's ICT model is based on a process used in Australia called The Children's Cases Program. This began as a pilot program in the Sydney and Parramatta (suburb of Sydney) registries in March 2004 and became a national program in 2006. An exhaustive description and evaluation of the pilot program was commissioned by the Family Court of Australia and published in June 2006.²⁹

The court was seeking a less adversarial, more child-focused process to conduct family law litigation. This type of trial was suggested by former Australian Chief Justice Alastair Nicholson.³⁰

The Children's Cases Program is limited to matters involving children. It requires the judge to play a more active, inquisitorial role, such as engaging the parties in discussion about what needs to be done and highlighting areas of agreement between the parties, as well as isolating issues that need to be resolved. The process is designed to be more cooperative. However, the rules of evidence are not automatically waived, and witness examination and cross-examination is allowed, though it is less aggressive than in a traditional trial. The judge is given wide discretion to apply or waive rules of evidence or procedures, as the case and justice requires.

ALASKA

In 2014, the Alaska Judicial Education Department invited co-author Jeff Hall and Judge Wells Ashby of Deschutes County to share the Deschutes County experience with IDRTs. Shortly thereafter, the Alaska Supreme Court promulgated a statewide rule, Alaska Rule of Civil Procedure 16.2, which is substantively identical to the IDRT.³¹ Thus far, the anecdotal evidence suggests that the program is a success.

UTAH

Utah's Code of Judicial Administration Rule 4-904, "Informal Trial of Support, Custody and Parent-Time," as the title suggests, is limited to the determination of child support, child custody, and parent-time issues.³² Rule 4-904 was enacted in 2014 and applies statewide. Other than being limited to children's issues, this process resembles the IDRT. The parties are not questioned, except by the court. They are permitted to tell their story without being cross-examined. The rules of evidence are waived. The final order has the force of a traditional trial, except that appeal may not be premised on a violation of the Utah Rules of Evidence.

MICHIGAN

Michigan's pilot project created by Supreme Court Order in 2010 and available in the Twenty-Ninth Judicial Circuit Court was a voluntary, opt-in process that authorized a "conference-style hearing."³³ The Michigan model was a hybrid between a IDRT and a traditional trial. Both narrative testimony and witness questioning is allowed. "Informal evidentiary rules and procedures" are followed rather than waiving the traditional rules of evidence. Michigan's pilot project is referenced as an example of an informal procedure that is not as radical a departure from the traditional trial model as IDRT. This pilot project was abandoned in 2013, suggesting a hybrid traditional/informal trial procedure may not be workable.

IOWA AND OTHER JURISDICTIONS

On July 12, 2016, the Iowa Supreme Court Family Law Case Processing Reform Task Force presented its report to a special session of the Iowa Supreme Court. This Task Force urged the adoption of the Deschutes County IDRT rules for Iowa. The Court was receptive and the matter is under active consideration.

It is likely that Iowa and other jurisdictions will enact an IDRT-like informal process in the near future. Indeed, there may be similar programs already available elsewhere in addition to those discussed above. Clearly, the IDRT process addresses the needs of both the court and litigants for many cases.

IAALS RECOMMENDATIONS

In May 2016 IAALS completed its extensive "Cases Without Counsel" research project. Among its recommendations the IAALS report supports the IDRT process, suggesting that it is a more efficient and fair process to manage cases involving SRLs.³⁴

CONCLUSION

Deschutes County's IDRT process is an innovative option for courts seeking to better serve the public and provide greater access to justice and procedural fairness in any family law matter. While no panacea, this important innovation provides a less adversarial and more user-friendly family law dispute resolution regime for many disputes. It is particularly attractive to SRLs who struggle to navigate the complexities of the traditional trial model. Families reconstituting and requiring the assistance of the court need and deserve accessible, fair, and customer-friendly innovations like IDRT.

NOTES

1. R. LaFountain, William J. Howe III and Jeffrey E. Hall, *Examining The Work of State Courts: An Overview of 2013 State Court Caseloads*, NAT'L CTR. FOR ST. CTS. (2015), available at http://www.courtstatistics.org/~media/Microsites/Files/CSP/EWSC_CSP_2015.ashx.

2. The Uniform Premarital Agreement Act has been adopted by twenty-seven states, proposed in four more and premarital agreements are valid in almost every state, including those that have not adopted this uniform law. WIKIPEDIA, https://en.wikipedia.org/wiki/Uniform_Premarital_Agreement_Act (last visited September 13, 2016).

3. "Self-represented" is used to describe litigants without lawyers, rather than the Latin "pro se."

4. The Center for Out-of-Court Divorce—Denver: Positive Solutions for Families in Transition offers Denver-area families a proven family centered approach, working in partnership with the local courts. Through the Center, families with children can take advantage of financial and legal education, mediation, and individual family counseling. The Center also provides postdecree support services. THE CENTER FOR OUT-OF-COURT DIVORCE, <http://centerforoutofcourtdivorce.org/> (last visited September 13, 2016).

5. IAALS is a national, independent research center at the University of Denver dedicated to facilitating continuous improvement and advancing excellence in the American legal system. IAALS has four initiative areas, one of which is the

Honoring Families Initiative (HFI). HFI identifies and recommends dignified and fair processes for the resolution of divorce, separation, and custody in a manner that is more accessible and more responsive to children, parents and families. Learn more about IAALS and HFI at <http://iaals.du.edu>.

NATALIE KNOWLTON, IAALS, *THE FAMILY LAW BAR: STEWARDS OF THE SYSTEM, LEADERS OF CHANGE* (2016), available at http://iaals.du.edu/sites/default/files/documents/publications/the_family_law_bar_stewards_of_the_system_leaders_of_change.pdf.

6. *Id.*

7. Jud. Council of Cal., Task Force on Self-Represented Litigants, Implementation Task Force: Final Report 2–3 (Oct. 2014) (discussing the rise of self-representation in various states over the past thirty years) available as Attachment A at: http://www.courts.ca.gov/partners/documents/EA-SRLTaskForce_FinalReport.pdf (last visited September 13, 2016).

8. This estimate is based on conversations with the chief family court judge in Multnomah County, Oregon’s largest jurisdiction. Determining the exact percentage of self-represented litigants is impossible because of the way records of cases are kept. Furthermore, frequently litigants have an attorney of record for only part of their case. Few judicial case management systems track at what different stages a litigant self-represents.

9. NATALIE ANNE KNOWLTON ET AL., IAALS, *CASES WITHOUT COUNSEL: RESEARCH ON EXPERIENCES OF SELF-REPRESENTATION IN U.S. FAMILY COURT* (2016), http://iaals.du.edu/sites/default/files/documents/publications/cases_without_counsel_research_report.pdf.

10. *Id.* at 13.

11. *Id.* at 16–22.

12. Studies in Australia and elsewhere evidence that litigants’ feelings of being treated fairly by family courts are driven far more by procedural fairness and the sense of “being heard” than by the outcome. William Howe and Chief Justice Diana Bryant, Conversation at AFCC Annual Conference, Seattle, Washington, (June 2, 2016).

13. JUDICIAL DEPARTMENT STATE OF OREGON, LOCAL SUPPLEMENTARY RULES 7 (2015), available at [https://www.ojd.state.or.us/Web/ojdpublishings.nsf/Files/Deschutes_SLR_2015.pdf/\\$File/Deschutes_SLR_2015.pdf](https://www.ojd.state.or.us/Web/ojdpublishings.nsf/Files/Deschutes_SLR_2015.pdf/$File/Deschutes_SLR_2015.pdf).

14. SFLAC, created by statute and its members appointed by the chief justice is charged with “. . . identifying family law issues that need to be addressed in the future. The Statewide Family Law Advisory Committee enabling statute is ORS 3.436. See <http://courts.oregon.gov/OJD/docs/osca/cpsd/courtimprovement/familylaw/ors3436.pdf/> (last visited September 13, 2016).

15. IAALS, through HFI, has made significant contributions to forwarding family law reform efforts in the United States. Its most recent report, *The Family Law Bar: Stewards of the System, Leaders of Change*, is outstanding. See IAALS, <http://iaals.du.edu> (last visited September 13, 2016). See also KNOWLTON, *supra* note 5.

16. STATE OF IDAHO JUDICIAL BRANCH, <https://www.isc.idaho.gov/irfp16p> (last visited September 13, 2016).

17. JUDICIAL DEPARTMENT STATE OF OREGON, *supra* note 13, at Rule 8.015(1).

18. Oregon Judicial Department, *Domestic Relations Trials in the Deschutes County Circuit Court*, http://courts.oregon.gov/Deschutes/docs/form/dissolution/IDRT_Brochure.pdf (last visited September 13, 2016).

19. DOMESTIC RELATIONS TRIAL PROCESS SELECTION AND WAIVER FOR INFORMAL DOMESTIC RELATIONS TRIAL, http://courts.oregon.gov/Deschutes/docs/form/dissolution/Trial_Selection_and_Waiver_Form.pdf (last visited September 13, 2016).

20. JUDICIAL DEPARTMENT STATE OF OREGON, *supra* note 13, at Rule 8.015(2).

21. Based on a summary review of the Odyssey case registry for cases with the hearing event “trial court” between June 1, 2013, and December 31, 2015. It is likely that the number of IDRTs is slightly undercounted.

22. Based on a summary review of the case registry and the case participant listing. The date range of attorney representation relative to the trial date was not verified in all instances.

23. NATIONAL JUDICIAL INSTITUTE, <https://www.nji-inm.ca/> (last visited September 13, 2016).

24. ORS 36.220.

25. Sup. Ct, IRFLP 713, <https://www.isc.idaho.gov/irfp713> (last visited September 13, 2016).

26. Sup. Ct, IRFLP 102, (July 1, 2015), <http://www.isc.idaho.gov/irfp102> (last visited September 13, 2016).

27. ARIZ. RULES FAM. L. PROC., http://law2.arizona.edu/clinics/child_and_family_law_clinic/Materials/Rules%20of%20Family%20Law%20Procedure.pdf (last visited September 13, 2016).

28. The Family Court of Australia has long been the gold standard in family court reform. The Children’s Cases Program is but one example. This vertically integrated family court has published periodic surveys of user satisfaction. Fam. Ct. Australia, *Court User Satisfaction Survey 2015*, available at <http://www.familycourt.gov.au/wps/wcm/connect/fcoaweb/reports-and-publications/reports/2015/> (last visited September 13, 2016).

29. Rosemary Hunter, *The Family Court of Australia’s Children’s Cases Pilot Program* iv–vi (July 25, 2007), http://citation.allacademic.com/meta/p_mla_apa_research_citation/1/7/5/3/5/p175354_index.html.

30. Fam. Ct. Australia, *The Less Adversarial Trial Handbook* iv–vi (June 02, 2009), <http://www.familycourt.gov.au/wps/wcm/connect/fcoaweb/reports-and-publications/reports/2009/LAT> (former Chief Justices Nicholson’s inducements).

31. See Ala. Rules of Ct., *Rules of Civil Procedure* (2015–2016), available at <http://www.courtrecords.alaska.gov/web-docs/rules/docs/civ.pdf>; See also Ala. Ct. Sys. Self-Help Ctr.: Fam. L., *Domestic Relations Trials- Understanding the Two Options* (May 13, 2015), available at <http://courts.alaska.gov/shc/family/shcdr-trials.htm>.

32. Utah Cts., *Informal Trial of Support, Custody and Parent-Time* (Jan. 29, 2015), available at https://www.utcourts.gov/howto/family/informal_trial/.

33. Inst. of Continuing Legal Educ., *ADM File No. 2006-25: Administrative Order No. 2008-1* (Apr. 8, 2008), available at https://www.icle.org/contentfiles/milawnews/Rules/Ao/2006-25_04-08-08_unformatted-order.pdf.

34. KNOWLTON ET AL., *supra* note 9, at 14.

William J. Howe, III, after a general civil practice for twenty years, has practiced exclusively family law with Gevurtz, Menashe, Larson & Howe, P.C., of Portland, Oregon since 1995. He was named in "Best Lawyers in America" as the 2009 Lawyer of the Year—Family Law, Portland, Oregon, and he is one of ten family lawyers from Oregon included in the 2005 and subsequent "Best Lawyers." He has also been honored in Super Lawyers and Portland Monthly and many other publications for many years. In addition to his private practice of over forty years he has devoted his time and energy to family court reform issues. He was appointed by a succession of Oregon chief justices since 1997 to serve as the vice chair of the Statewide Family Law Advisory Committee; currently serves on the advisory committee of the Honoring Families Initiative of the Institute for the Advancement of the American Legal System; is currently president of the Oregon Family Institute; has served as president on the board of the Oregon Academy of Family Law Practitioners; served on the board of directors of the Association of Family and Conciliation Courts; was chair of the Oregon Task Force on Family Law from 1993 to 1997, having been appointed by Governor Barbara Roberts in 1993 and reappointed by Governor Kitzhaber in 1995; and serves as an Oregon Court of Appeals Mediator. He has also served as pro tem judge and mediator, and he was awarded the 2003 Pro Bono Challenge Award for donating the Highest Number of Pro Bono Public Service Hours by the Oregon State Bar. In addition, he has made over 120 presentations at family law conferences and at other venues in the United States, Canada, Australia, Europe, and South Africa; has authored several articles on family law-related matters; and consulted with several jurisdictions regarding family law reform.

Jeffrey E. Hall currently serves as the trial court administrator for the Deschutes County Circuit Court, having been appointed in July 2012. He previously worked for over twenty years in the Washington State judicial branch in various roles, including trial court administrator, executive director of the Board for Judicial Administration and State Court Administrator. He served on a variety of boards and commissions in support of the Washington judicial branch, including the Judicial Information Systems Committee, Minority and Justice Commission and the Washington State Interpreter Advisory Commission. He was recently appointed to the Oregon Supreme Court Council on Inclusion & Fairness. He is a graduate of Seattle University where he earned bachelor's degrees in humanities and criminal justice. He received a master's degree in judicial administration in 1988 from the University of Denver, College of Law.