



FAMILY LAW
SECTION
NEW ZEALAND LAW SOCIETY

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The current situation that COVID-19 presents us with as family lawyers is a dynamic one that we need to continually adapt to as the risk level increases.

Click [here](#) for the latest release from the New Zealand Law Society that includes a notice from the Chief Justice in terms of arrangements for courts following the Prime Minister's statement on 21 March.

The judicial reference group is continually reviewing the court processes. Click [here](#) to read a letter received today from Principal Family Court Judge Jackie Moran.

You should ensure that you keep informed about any changes. Here are some useful links to assist you to find relevant information:

<https://www.health.govt.nz/our-work/diseases-and-conditions/covid-19-novel-coronavirus>

<https://www.justice.govt.nz/about/news-and-media/news/information-about-covid-19/>

<https://www.lawsociety.org.nz/practice-resources/practising-well/covid-19-information>

We will endeavour to keep you updated but sometimes the position changes faster than we can get information to you.

Clearly the court will be presented with unprecedented challenges. Once the threat level rises no doubt the challenges to the judicial system will also increase. There are things that we, as counsel, can currently do to assist, such as:

- **Prioritise** matters - if matters are not urgent consider suggesting that they be vacated to a later date;
- **Consider** whether matters can proceed by way of submission only by telephone conference;

- **File** memoranda well before the date of any conference/hearing; and
- **Keep the court informed** if there are parties/counsel in self isolation

When we are appointed as lawyer for child, lawyer for subject person or lawyer for care recipient consider options in representing those persons. You may be able to use video conferencing such as Skype or Zoom to meet; a simple telephone call might work, especially where the relationship is a well-established one. There may be somewhere you could meet that would minimise risk, such as at a park or environment that has appropriate strategies and facilities in place. Of course, there will be some appointments where none of these options will work.

In the current crisis it may be appropriate for counsel to decide not to meet at this time. The PPPR Act makes it clear that the obligation to meet with the subject person is only if it is practicable to do so (s65(2)).

The Care of Children Act provides that in exceptional circumstances a judge may direct that it is inappropriate for a lawyer to meet with a child or young person. If counsel considers it is not feasible to safely meet with a child or young person they may wish to do as much as possible to find out about the child's circumstances. They could then report to the court and seek a direction that they are not required to meet with the child at this stage. It would be difficult to argue that the current circumstances are not exceptional.

Counsel will need to consider the nature of the proceedings and whether the safety of the person for whom they have been appointed is at risk (for example in Oranga Tamariki or Family Violence proceedings). It may be that in some circumstances it will still remain essential to meet with the person you have been appointed to represent, in which case you should consider how to best mitigate any risk both to yourself and to anyone else, including the person you are representing. If your own health is at risk or compromised at any time this may impact on whether you should be accepting, or continuing with, an appointment.

It is not realistically possible at this stage to provide binding guidelines, particularly given the rapidly changing environment. Counsel must exercise their professional judgement taking into consideration the Ministry of Health guidelines at the time and any directions that are given by the courts.

The executive will meet by video conference this week, and regularly thereafter to discuss the challenges that we are facing. We will be feeding back any information via email bulletin. The regional representatives may like to consider meeting (possibly by video conferencing) in their regions with senior members of the bar to exchange ideas on how to best manage any specific local issues that may arise. Please copy in Kath Moran to any email regional representatives may send to members in various regions following any local meetings.

In the meantime, please do not hesitate to contact your [regional representative](#), Kath Moran kath.moran@lawsociety.org.nz or myself ks@kirstyswadling.co.nz with any of your concerns or queries. Please note that in some regions you will have a new FLS regional representative following the recent review of all the roles.

Kirsty Swadling
FLS Chair