



Family Law Section e-Bulletin - Issue 128 - 10 February 2017

Request for documents – Legal Aid Services (LAS)

This bulletin replaces the bulletin sent on 20 December regarding this issue.

By way of background, the FLS has obtained legal opinions on this issue and has provided guidance to members on the disclosure of documents to LAS. The two most current legal opinions are, the [first](#) dated 8.12.14 and the [second](#) dated 13.8.15. The guidance given to FLS members reflects the advice in the legal opinions we have received. LAS has also obtained legal opinions on this issue and those opinions have reached a [contrary conclusion](#). LAS accordingly does not agree with the position that FLS has taken on this issue.

It remains the view of the FLS (not Legal Aid Services) that the only documentation that family legal aid providers are required to provide to LAS are:

- The legally-aided client's application(s) and affidavit(s); and
- Any judge's minute where the judge has specifically directed the minute is to be made available to LAS.

In order to obtain any other documentation, the FLS view remains that LAS should apply to the Family Court under rule 429 of the Family Courts Rules 2002. At a meeting on 16 December attended by the FLS chair, manager and David Howden from LAS, Judge Ryan suggested that the LAS develop a template rule 429 application form so that applications can be dealt with as quickly and efficiently as possible. The FLS understands that LAS is currently considering a draft application form process.

LAS anticipates that the Legal Services Act 2011 will be reviewed in 2018 and LAS advises that it will seek a statutory amendment to the Act to clarify/resolve this issue so as to enable LAS to request documentation directly from counsel for the legally aided client rather than making an application under [rule 429](#).

Until the issue is resolved by a statutory amendment, the FLS intends to follow the legal

advice it has received on this issue when providing guidance to its members.

It is up to the individual practitioner to make their own decision based on the guidance received.

LAS has advised it will continue to follow the legal advice it has received.

If you encounter any difficulties with a request for documents by the LAS, please email the FLS manager at kath.moran@lawsociety.org.nz

Michelle Duggan
Chair

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