



## FAMILY LAW SECTION NEW ZEALAND LAW SOCIETY

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### **Auckland Family Bench and Bar forum – 11 September**

Thank you to those members who emailed in topics for discussion for the Auckland Family Bench and Bar forum that took place on 11 September. Thank you also to the many family lawyers who attended the forum. Below is a summary of the topics discussed. We encourage members to read the summary as there are important practice matters that you need to be aware of.

#### ***Relationship property docket system***

Relationship property matters in North Shore, Waitakere and Auckland central will now be placed on a docket system. This system will apply to all cases where a response has been filed on applications after 4 September 2017. The intention of the new docket system is to give these cases better focus and achieve consistency in how they are managed. The judges have been placed into teams of two. Each team will be allocated a number of files. The allocated judges will deal with all interlocutory matters on those files. Those two judges may not be the ones who will ultimately hear the matter at a hearing; they will simply deal with the interlocutory matters. The only change that counsel will see is that it will be the same two judges who will deal these applications prior to a substantive hearing. Care of Children Act files are not part of this docket system. All narrative affidavits, etc should be filed and **counsel should** be prepared to address discovery issues - at the first conference. It was suggested that discovery orders may be made at that initial conference where appropriate. The Judges may look at standard directions for relationship property cases

### ***Without notice track***

The registry is currently implementing a new system for applications placed on the without notice track. When a without notice application is made the matter will be allocated a directions conference and a short cause hearing. The reason for doing this is to comply with the timeframes noted in the legislation (directions conferences are meant to be held within 15 working days and hearings within 15 days thereafter). At the directions conference the judge will want to know whether the hearing date is required or not. If a hearing date is not required then that hearing time will be used for another matter.

### ***Practice note – special guardianship***

A “special guardianship” practice note is currently being drafted by the judges as there is no specific form available for these applications and this is a new area of the law. There was concern about the meaning of the legal test “no realistic prospect of return”. The judiciary did advise that where a social worker files a plan indicating there is no realistic possibility of return, the court requires a formal application for a declaration rather than the social workers simply asking the court to rubberstamp a declaration based on their plan. The practice note will be circulated to the profession once that has been finalised.

### ***Delays with section 133 reports***

There are delays in obtaining section 133 reports. As at the date of the forum there were 50 unallocated reports for Manukau and Auckland. In some cases, a telephone conference with a judge has been directed on the oldest files to ascertain whether a report is still necessary given the delays. The judges have invited counsel to give some thought as to whether it is still worth waiting (up to 9 months) for a report, or whether there is another way counsel could bring the information before the court. The difficulty has been the volume of requests, with a much smaller volume of available report writers. In November there is to be a review of the current list of report writers.

### ***Filing of extensive documents***

The judges discussed page limitations that they are putting on self-represented litigants where there has been a history of them filing extensive documents with the court. They encouraged counsel to make a request for page limitations on future documents to be filed where there has been a history of self-represented litigants (or other lawyers) filing voluminous documents with the court. The judges also encouraged counsel to consider the applications available to deal with pleadings that offended the Evidence Act or other rules of procedure.

### ***Access to documents on the court file***

The judiciary advised they were not aware of counsel having difficulties accessing court files where a request been made to review the file. There is currently no system available within the registry to retain all electronic documents under a unique FAM number or name. The ministry is looking at developing a system to achieve that. If a document is filed electronically, it is currently printed out and placed on the file which should be dealt with by the court within five days.

### ***Section 95 Evidence Act***

There was a discussion on section 95 of the Evidence Act and the prohibition on alleged abusers cross-examining their victims in any civil proceeding. Counsel to assist may be appointed in these instances, and if appointed they should be familiar with section 92 of the Evidence Act in relation to their role. The role of counsel to assist the court is more expansive than simply putting the questions of the self-represented litigant to the other party.

In recent domestic violence hearings, screens had been used to assist the witness in giving evidence. The judiciary encouraged counsel to consider using these types of aids in court where there is a concern that a witness may not be able to give evidence because of dynamics between the parties. In a situation where there are two litigants in person with cross allegations of family violence, it will not automatically follow that counsel to assist is appointed. This is because the court has to give a litigant in person the opportunity to appoint their own lawyer before the court can appoint counsel to assist.

### ***Practice note – self-represented litigants***

The judiciary are preparing a practice note for self-represented litigants. It is likely the practice note will contain guidance on the service of documents, providing copies of filed documents to other counsel, how documents are to be presented in court, the length of affidavits, time frames regarding cross-examination, the need to file an application requesting a McKenzie friend and other information about the court process.

### **Auckland Family Liaison meeting – 27 September**

The Auckland regional representatives attend the Auckland Family Liaison meeting on 27 September. The [minutes](#) of that meeting contain information for members on the application management team; the case management, Family Court Co-ordinators; a psychologist update; an update from the Ministry for Vulnerable Children and topics of general business. An updated [contacts and escalation sheet](#) was also provided at the meeting. Again, we encourage members to read these minutes and thank those members who emailed their issues to the regional representatives so they could be raised at the meeting.

*Kirsty Swadling*

*Chair*