



20 March 2009

**COURTS OPERATIONAL CIRCULAR  
(Permanent Instruction)**

**FAM 09/01**

To: Regional Managers  
All Court Managers  
All Family Caseflow Managers  
All Family Court Coordinators

**SUBJECT: LAWYER FOR THE CHILD REMUNERATION RATE AS  
FROM 1 DECEMBER 2008 – ‘SUPERIOR SKILLS’  
CLARIFICATION**

**ACTION REQUIRED**

Court staff are to note that:

- ◆ This circular replaces and revokes Courts Operational Circular FAM 08/16
- ◆ This circular clarifies the ‘Lawyer for Child: Selection, Appointment and Other Matters’ Practice Note
- ◆ A list of characteristics has been developed to indicate when ‘superior skills’ are required in making Lawyer for Child appointments
- ◆ Where any *two or more* of the characteristics are present in a case then a Lawyer for Child appointment should be made at the Level 3 rate
- ◆ An assessment as to the presence of these characteristics should be made at the time of the appointment

**SUMMARY**

The purpose of this circular is to clarify the circumstances under which an appointment of Lawyer for the Child should be paid at the Level 3 rate due to the requirement for ‘superior skills’.

**BACKGROUND**

The Family Law Section has expressed concerns about the inconsistent application of the Level 3 rate around the country. This inconsistency led to cases with similar characteristics being paid at different rates depending on which court was making the referral.

### PRACTICE NOTE

The Practice Note currently sets out remuneration rates and includes three levels of rate that can be used when setting the hourly rate for payment. The Level 3 rate (\$155 to \$170 per hour including GST) is to be paid:

- In cases where **superior skills** are required;
- In cases of extreme urgency;
- In cases where there are grave concerns about the immediate safety of the children;
- In most Hague convention cases;
- In cases where there are allegations of sexual abuse.

### CLARIFICATION OF 'SUPERIOR SKILLS'

A list of characteristics has been developed to ensure consistency of appointments made at the Level 3 rate due to the need for 'superior skills'. Where any **two or more** of the following characteristics are present in a case the Lawyer for the Child referral is to be made at the Level 3 rate:

- substance and alcohol abuse especially the use of methamphetamine;
- family violence;
- suggestions of mental health issues;
- cultural considerations;
- ethnicity (interpreter) considerations;
- complex or larger families;
- self represented litigants;
- parties have gang affiliations; and
- frequent changes of lawyer

There is no quota for the number of cases that should be classified as requiring 'superior skills'. As such, **all** cases that contain two or more of the characteristics should be paid at the Level 3 rate.

It is acknowledged that these characteristics may not always be apparent at the time of the original referral. In cases where additional characteristics have come to light, the Lawyer for the Child is entitled to request that court staff review the file to determine whether the Level 3 rate should be paid.

If a Judge directs for Counsel to Assist to be appointed then it should be assumed that 'superior skills' are required and the appointment should automatically be at the Level 3 rate.



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