

Counsel-led mediation guidelines

1. Background

These guidelines have been developed by the Ministry of Justice for the purpose of managing counsel-led mediation in the Family Court, in consultation with the Principal Family Court Judge, AMINZ, LEADR and the New Zealand Law Society Family Law Section.

2. Contents

These guidelines cover the following matters:

- Definitions;
- Approval process;
- Process for appointment to mediate;
- Expectations of mediators;
- Reports to the Court;
- Levels of remuneration; and
- Complaints.

3. Introduction

3.1. As an alternative to a judge-led mediation conference a Judge may appoint, or direct a Registrar to appoint, ‘counsel to assist’ to act as a mediator in what is known as counsel-led mediation. The appointment will be made under s130 of the Care of Children Act 2004

4. Definitions

- 4.1.** “Mediator” in these guidelines refers to a lawyer appointed for the purpose of conducting a counsel-led mediation.
- 4.2.** “AMINZ” is the Arbitrators and Mediators Institute of New Zealand.
- 4.3.** “LEADR” is the Association of Dispute Resolvers.
- 4.4.** “NZLS” is the New Zealand Law Society.

5. Approval process

5.1. In each Court there will be a list of approved mediators who are available to accept appointments from the Court to conduct mediation. Mediators will be appointed from this list in individual cases.

- 5.2.** Once approved, the mediator will be able to transfer his/her approval from one court region to another.
- 5.3.** The Registrar will convene a panel to consider applications for inclusion in the list of mediators available to undertake mediation appointments. This panel must consist of the Registrar (or a delegated representative) as chairperson, an experienced mediator, and at least one of the following:
- A Family Court co-ordinator;
 - A local Family Court judge;
- 5.4.** The panel may also include other members as deemed necessary to determine the application by the chairperson.
- 5.5.** Panels will be convened within 3 months if there are applications waiting to be considered and there is a need for mediators to be appointed in that region.
- 5.6.** The following appointment process should be followed:
- a. The mediator must submit an application form to the Registrar in the Court region in which they wish to practise and nominate the particular court or courts where they wish to be on the list. The application is referred to a panel convened by the Registrar.
 - b. The application should be in form PSFC CLM 1 (Attached as Appendix 1) which is available from all Family Courts and on the Family Court website. The application should be accompanied by any references or testimonials that the applicant would like the panel to consider and the names of other referees who can provide professional comment.
 - c. The Registrar shall give copies of the application and any supporting documentation to the Regional Administrative Family Court Judge who will be given 7 days to make any comments in writing relating to the application.
 - d. Panel members may make such inquiries as may be needed, including inquiries of referees, for them to be informed about the applicant's ability to meet the criteria.
 - e. The panel may arrange an interview with the applicant at a time and place determined by the Registrar.
 - f. The Registrar will advise the applicant in writing of the outcome of the application.
 - g. An unsuccessful applicant must be provided with reasons for not being included in the list.
- 5.7.** The mediator should meet the following criteria:
- a. Hold a current Practising Certificate;
 - b. Have a minimum of 5 years practice in the Family Court; or be able to demonstrate equivalent experience including an ability to demonstrate an awareness of:
 - Family systems theories and child development;
 - Gender issues;

- Domestic violence and power imbalances, and how to deal with unequal bargaining positions;
 - How to deal with highly emotional clients;
 - The challenges of dealing with unrepresented clients;
 - Community-based organisations and support groups offering families help;
 - The legislation applying to Family Court disputes; and
 - Case management and Family Court processes.
- c. Demonstrate an awareness of cultural issues;
- d. Demonstrate an awareness of disability issues;
- e. Be a current member of:
- LEADR's Panel or Advanced Panel with current accreditation of ongoing practice and training;
 - or
 - AMINZ's Panel of Mediators (either Associate or Fellow Mediator) with a current certificate of continuing professional development;
 - or
 - the NZLS Panel of Family Mediators with current accreditation of ongoing practice and training; and
- f. Be able to demonstrate that they have in place arrangements to undertake regular professional supervision.

6. Transitional provisions (*no longer applicable as at 1 January 2012*)

- 6.1.** As an interim measure, those lawyers that are not a member of either LEADR's Panel or Advanced Panel; AMINZ's Panel of Mediators; or the NZLS Panel of Family Mediators, but in all other respects meet the above criteria, may be appointed to the list of approved mediators.
- 6.2.** Where a mediator is appointed to the list of approved mediators without being a member of LEADR's Panel or Advanced Panel; AMINZ's Panel of Mediators; or the NZLS Panel of Family Mediators, that mediator must take action to remedy the situation as soon as possible and ensure that they are a member of either LEADR's Panel or Advanced Panel; AMINZ's Panel of Mediators; or the NZLS Panel of Family Mediators, no later than 31 December 2011.
- 6.3.** Mediators that are not able to provide evidence of membership of either LEADR's Panel or Advanced Panel; AMINZ's Panel of Mediators; or the NZLS Panel of Family Mediators by 31 December 2011 shall be removed from the list and will no longer be able to receive appointments as mediators from the Family Court.

7. Process for appointment

- 7.1.** Lawyers appointed for the purpose of conducting counsel-led mediation are appointed under s130 of the Care of Children Act 2004.
- 7.2.** A judge may appoint, or direct the Registrar to appoint, a lawyer for this purpose.
- 7.3.** A letter of formal acknowledgement of the appointment will then be sent to the mediator. This will comprise:
 - A standard letter of engagement, including the name of the lawyer for the child and the date that the Court requires the mediation to be completed;
 - The information sheet prepared for the Court (including details of the application made, the parties and child(ren), and contact details);
 - Any counselling report (if appropriate); and
 - The application.
- 7.4.** The Court will consider, in allocating the brief to the mediator, the following factors:
 - Match of skills to case requirements;
 - Availability of mediator; and
 - Current workload of mediators.
- 7.5.** Parties will also be sent a letter advising who has been appointed for their mediation.

8. Expectations of mediators

- 8.1.** Upon being appointed as the mediator in a specific case the mediator will:
 - Contact the parties to arrange a suitable time for all parties (and the lawyer for the child) to meet to conduct the mediation. Lawyers for the parties may attend all mediations and support people may also attend with the agreement of the mediator.
 - Discuss with the lawyer for the child the best way to represent the child's views in the process prior to mediation taking place. The role of the lawyer for the child in mediation is to ascertain and represent the views of the child.
 - Require all parties to sign a mediation agreement. The mediator will take sole responsibility for ensuring that the mediation agreement is in place prior to mediation commencing.

- Advise the parties (and lawyer for the child) of the time and location of the mediation. Generally this will be at premises provided by the mediator.
 - The mediator may wish to meet with one or both of the parties prior to mediation taking place. Where this is the case, the time will come out of the standard allocation of hours. No report to the Court is required following meetings that take place prior to mediation unless the case is deemed unsuitable for mediation as a result of the pre-meeting.
- 8.2.** During mediation, the mediator will assist the parties to resolve the dispute by:
- Identifying the issues which underlie the dispute;
 - Identifying the interests of each person involved with the dispute. In family proceedings that includes the interests of the children, which are generally regarded as paramount;
 - Developing options for the resolution of the issues underlying the dispute. The options can be short or long term and may propose a resolution of all issues or just some;
 - Exploring those options and, if possible, agreeing on a resolution of the dispute or some or all of the issues underlying it. If a comprehensive agreement cannot be reached, it may still be possible to reach a short term agreement or resolve some of the issues. However, mediators should note that the Court's expectation is that most agreements should be final and that interim agreements should only be arrived at if it is clearly inappropriate for a final agreement to be made.

9. Reports

- 9.1.** A report back to the Court should be made as soon as practicably possible after the mediation has been held. The report must detail what, if any, understandings have been reached between the parties on the matters in issue. An indication should also be given as to whether the parties wish to have any agreements turned into consent orders. If this is the case, the lawyer for the child should note their agreement to this.
- 9.2.** The report to the Court should take the form of the document attached as Appendix 2 to these Guidelines.
- 9.3.** The report must be received by the Court within the timeframe indicated by the letter of engagement unless otherwise agreed.
- 9.4.** A bill of costs should be rendered with the mediation report and should be calculated in accordance with the hourly rate of remuneration.

10. Levels of Remuneration

- 10.1.** Lawyers appointed to carry out counsel-led mediation are to be appointed at the counsel to assist the court rate of \$170 per hour (inclusive of GST). Payments will be based on the actual time taken.
- 10.2.** An initial allocation of up to 5 hours for the completion of mediation (including any pre-meetings and the filing of the required report) will be made.
- 10.3.** There is an expectation that 5 hours will be sufficient to complete mediation in the majority of cases.
- 10.4.** In some cases, where it becomes clear that the standard allocation does not provide for settlement to be reached (despite the likelihood that a settlement could be reached if time allowed), the lawyer should advise the court of this, with reasons, and an extension may be granted.
- 10.5.** A review of any agreement reached at mediation is not included in the initial allocation of hours. If parties want the mediator to be involved in a review of the agreement at a later date, a request must be made to the court for an extension of hours.
- 10.6.** Travel may be paid at the discretion of the Registrar. Any requests for travel to be reimbursed should be agreed with the Registrar prior to the travel being taken.
- 10.7.** In some circumstances mediators may require the assistance of an interpreter, cultural advisor, or co-mediator in order to progress mediation. Requests for these services should be made in writing to the court, and should outline why the particular service is required. If appropriate court staff will then make arrangement for a suitable person from the lists approved for court purposes.
- 10.8.** It should not be assumed that the Registrar will reimburse any other costs incurred by the mediator. If a mediator needs to incur costs in addition to the hourly fee, any agreed travel, and any cultural services, these should be agreed with the Registrar prior to the cost being incurred.

11. Complaints

- 11.1.** Mediators are required to abide by the policy of their professional body (AMINZ or LEADR) in relation to handling complaints about their practice or be subject to the NZLS regulatory regime.
- 11.2.** Where the Ministry of Justice receives a complaint about a mediator's practice, it will forward the complaint to the relevant professional body for investigation.
- 11.3.** For this reason all complaints should be made in writing to the Court in the first instance.



Application for inclusion in the Counsel-led mediation list

Each Court has a list of counsel who are approved to accept assignments from the Family Court under the Care of Children Act 2004. Use this form if you want to apply to be added to the list.

Before completing you should read the *Guidelines for Counsel-led mediation* on the Ministry of Justice website www.justice.govt.nz.

Please submit your completed form to the Registrar of a Court in the region in which you want to practise. Postal addresses for Courts are available on the Ministry of Justice website.

Section A | Your details

Full name: _____
 Postal address: _____
 Phone: _____ Mobile: _____
 Fax: _____ Email: _____

Which region/Court are you seeking to practise in? _____

Section B | Qualifications

1. Do you hold a current practising certificate? Yes No

If you ticked yes, please attach a copy of your practising certificate.

If you ticked no, **you cannot be appointed to the counsel-led mediation list.**

2. Are you either:

- A current member of LEADR's Panel or Advanced Panel with current accreditation of ongoing practice and training, or Yes No
- A current member of AMINZ's Panel of Mediators (either Associate of Fellow Mediator) with a current certificate of continuing professional development Yes No
- A current member of the NZLS Panel of Family Mediators with current accreditation of ongoing practice and training. Yes No

If you ticked yes, please attach relevant proof of accreditation/ membership.

3. Do you have arrangements in place for regular professional supervision as a mediator? Yes No

4. Have you practised in the Family Court for at least 5 years? Yes No

If you ticked yes, go to **section C**.

If you ticked no, please complete a summary of your experience of working with families in conflict using the guide on page 3, then go to **section C**.



Section C | Cultural and disability awareness

All applicants must demonstrate an awareness of cultural and disability issues. Please:

- answer the following questions on a separate piece of paper
- limit your answers to approximately 300 words for each question
- attach your answers this form.

1. Māori Values and Concepts

Give some examples of different approaches you have taken or would take when working as a mediator with Māori values and concepts.

2. Working Across Cultures

Give some examples of different approaches you have taken or would take when working as a mediator with people of cultures other than your own.

3. Disability issues

Give some examples of different approaches you have taken or would take when working as a mediator with people with disabilities.

Section D | Referees

Please provide the name and contact details of two referees who can provide professional comment on your application. The panel may contact your referees to provide input into your application.

Name: _____ Phone: _____

Name: _____ Phone: _____

Section E | Declaration

I agree that if my application is successful I will abide by the *Guidelines for Counsel-led mediation* issued by the Ministry of Justice.

Name: _____ Signature: _____ Date: _____

Checklist

Have you attached:

your practising certificate?

relevant proof of LEADR; AMINZ; or NZLS membership/ accreditation?

your answers to section C on cultural and disability awareness?

a summary of your experience of working with families in conflict (if required)?



Self assessment guide

If you do not have 5 years practising in the Family Court as a lawyer, you need to demonstrate you have equivalent relevant experience of working with families in conflict. Please:

- briefly describe your skills, knowledge and experience in relation to each of the criteria below
- limit your self assessment to approximately 300 words for each criteria
- attach your self assessment to this form.

1. Knowledge of Family systems theories and child development
2. Gender issues
3. Domestic violence and power imbalances, and how to deal with unequal bargaining positions
4. Dealing with highly emotional clients
5. The challenges of dealing with unrepresented clients
6. Community-based organisations and support groups offering families help
7. The legislation applying to Family Court disputes
8. Case management and Family Court processes

Appendix 2

COUNSEL-LED MEDIATION REPORT

[Family Court Reference]

Date:

To the Family Court Co-ordinator
[name] Family Court
[case name]

A mediation meeting has been completed in regard to the referral for mediation made in relation to the above case. Details are as follows:

Date of mediation: **Beginning Time:**

End Time:

Present:

<i>(Name)</i>	<i>(Role/relationship with parties)</i>	<i>Present throughout mediation (tick)</i>	<i>Attended part of mediation only (tick)</i>
	Mediator	<input type="checkbox"/>	
	Party (applicant)	<input type="checkbox"/>	
	Party (respondent)	<input type="checkbox"/>	
	Lawyer for the Child	<input type="checkbox"/>	
		<input type="checkbox"/>	<input type="checkbox"/>
		<input type="checkbox"/>	<input type="checkbox"/>
		<input type="checkbox"/>	<input type="checkbox"/>
		<input type="checkbox"/>	<input type="checkbox"/>

The matters in issue in the mediation were:

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Agreement was reached between the parties on all matters.
(Agreement attached.)

Agreement was reached by the parties on some matters.
(Agreement attached.)

The matters still in dispute are:

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.....
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.....
.....

Parties seek a consent order(s).
(Details provided in the attached Agreement.)

I agree that consent order(s) be sought in the terms of the attached Agreement.

.....
Lawyer for Child

Signed (Lawyer for the Child) (Name)

Signed:

.....
[name of mediator]