

Going to Family Court after Mediation

Applying for a Parenting Order or Order to settle a dispute between Guardians

If you want to apply to the Family Court, you usually need to have completed a Parenting Through Separation course within the last two years and Family Dispute Resolution mediation within the last 12 months.

If it's urgent - If the situation involves, or might involve, serious injury, undue hardship, risk to personal safety to you or your children and you need a court order urgently, you can make a 'without notice' application. This means that the judge will consider your application straight away. You may find it helpful to see a lawyer about making an urgent 'without notice' application for you.

You can apply for a **Parenting Order** if there's a dispute about who looks after the tamariki and when (this is called 'day-to-day care') or when parents and others see the children (this is called 'contact'). Day-to-day care used to be called 'custody' and contact used to be called 'access'.

You can apply for an **Order to Settle a Dispute between Guardians** if you want the Family Court to make decisions about guardianship issues. These issues include where the tamariki live, where they go to school, medical treatment (other than routine medical matters), what their culture, language and religion will be and any changes to their name.

What happens after you apply for an Order

Once you apply, your case will be dealt with in one of the following ways (these are called 'tracks'):

- **Without notice (urgent)** – the judge will look at the application and decide whether to make the Order straight away before the other person gets to have their say.
- **Simple** – if you and the other person agree on parenting or guardianship arrangements and want the Court to formalise it.
- **Standard** – if your case isn't urgent, but you and the other person can't agree on parenting arrangements (after completing a Parenting Through Separation course and Family Dispute Resolution).

A judge can make a decision about an Order in three ways:

- **In-chambers consideration**
- **Case conference**
- **Hearing**

In-chambers consideration

Before meeting you, the judge will look at the documents that have been filed and decide what steps your case needs to go through. The judge can decide to hold a case conference, a hearing, or both.

Case conferences

At a case conference, you and your ex-partner meet with the judge to try and reach agreement. The judge leads the conference and makes sure everyone has a chance to kōrero and have their say.

There are different kinds of case conferences:

- An **issues conference** helps the judge decide what issues need resolving and whether to hold a settlement conference or go straight to a hearing.
- At a **settlement conference** the judge tries to help you and your ex-partner settle your disagreements. The judge may let you have a support person. If you and the other person do agree about something, the judge will make a Consent Order. But if the judge sees you can't agree, your case will go to a hearing.
- At a **directions conference** the judge makes directions and Orders that will get your case ready for its hearing. You can have lawyers at a directions conference. At least five days before the conference, you and the other person or your lawyers need to give the judge more information about your case by preparing and filing a memorandum for directions conference. Sometimes – such as when the other person doesn't show up and doesn't have a good reason for it – the judge can make final Orders at a directions conference, as if it was a hearing.
- A **pre-hearing conference** takes place after a directions conference and before the hearing. If issues haven't been dealt with or new issues have come up since the directions conference, this conference lets the judge be sure the case is ready for the hearing.
- A **case management conference** can happen at any time for complex cases. Here the judge can closely manage how the case is going.

Hearings

The judge may decide that the case will go to a hearing. A hearing is more formal than a conference. It takes place in a courtroom with a judge. You can represent yourself or you can have a lawyer.

If you can't afford a lawyer, you may be able to get legal aid or free community legal help.

There are different types of hearings:

- A **formal proof hearing** happens when the other person has decided not to defend the application. Here the judge examines proof that the care and contact arrangements you're asking for are in the best interests of the child.
- At a **submissions-only hearing** the judge will decide on the matters in dispute based on the evidence and affidavits filed before the hearing. The judge might also ask you and the other person questions and talk to the lawyer for the child or any specialists who have provided reports.
- At a **defended hearing** the evidence is tested, and witnesses are cross-examined. The judge will make a decision at the end of the hearing or shortly after.

The judge can give directions that say what should happen at any stage in this process. If the judge does this, they'll tell you what this means.

To find out more, go to justice.govt.nz/after-you-apply-for-an-order