

**Family Court  
Caseflow Management  
Practice Note**

## INTRODUCTION

Many changes in family law have occurred since the first comprehensive Family Court Caseflow Management Practice Note was published in 1998. This revised Practice Note is designed to update that document in light of a number of legislative and practice changes that have taken place since that time.

The Care of Children Act 2004 brought about some fundamental changes to the practice of family law, including a change in relation to many expressions. “Custody and access” disappeared and were replaced with “parenting orders” which in turn enabled the Family Court to make orders as to day-to-day care and contact. “Counsel for the child” became “lawyer for the child”.

As a result, I have previously undertaken a revision of many of the existing specific Practice Notes and all that remained was a revision of the Family Court Caseflow Management Practice Note itself, for it too required new language and a reference to new processes.

But, in addition to the need for that update, it seemed to me that the previous Family Court Caseflow Management Practice Note had become somewhat unwieldy so far as the attachment of appendices to it were concerned. I felt that an audit as to what was needed and what was not, was timely. The appendices attached here have had some minor remedial editing and have been renumbered where necessary for consistency. To reflect modern legislation and practice, the appendices required some additions, changes and deletions. However, generally the substantive content remains unchanged.

To ensure that those involved with the Family Court are working from the same documents, I have decided to reissue all the appendices as well as the Caseflow Management Practice Note itself. The addition of hyperlinks throughout should enhance user-friendliness.

I want to stress that the purpose of this Caseflow Management Practice Note is to outline best practice and to give a clear sense of direction as to how the Family Court seeks to resolve its streams of work. I have wanted to make the Practice Note consistent with the Family Courts Rules 2002 and at the same time promote best practice.

I am very grateful to the New Zealand Law Society, in particular the Family Section, which has closely read the whole of this document and offered helpful suggestions. I have adopted many of these suggestions. I gratefully acknowledge the work of my colleague Judges, in particular Judge David Brown and Judge Paul von Dadelszen, and that of my previous research clerk, Jennifer Wademan. I also thank Marita Dougherty, who tirelessly typed the whole document, and Tina Pope for so patiently and expertly assembling the final product.

I trust that all practitioners and users of the Family Court find this revised Family Court Caseflow Management Practice Note helpful.



Peter Boshier  
**PRINCIPAL FAMILY COURT JUDGE**  
24 March 2011

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# 1 FAMILY CASEFLOW MANAGEMENT

## COMMENCEMENT DATE

This revised Family Court Caseflow Management Practice Note is issued on 24 March 2011 and comes into operation on 24 March 2011.

## PRINCIPLES

- 1.1 The following principles are to apply in respect of caseflow management in the Family Court.
- (a) Once filed, applications will be managed following case management principles and guidelines established by the Family Court, with counsel accepting responsibility for their part in the process.
  - (b) The Court will give priority to cases where protection is sought for vulnerable persons, to avoid delay and additional stress.
  - (c) Parties who invoke the Court's jurisdiction have the right to expect that their proceedings will be resolved expeditiously.
  - (d) The importance of conciliation is reaffirmed. The majority of cases can and shall be resolved by conciliation processes: counselling and mediation. Both counsel and the Court accept the statutory responsibilities to promote reconciliation and conciliation.
  - (e) Cases which are unlikely to be resolved by, or are unsuitable for, conciliation shall be identified at an early stage and shall be managed by the Court throughout the course of proceedings.
  - (f) This Practice Note emphasises the importance of the parties' involvement in their own cases.
  - (g) The importance of children's rights to be consulted and heard, as set out in various statutes and applicable international treaties, is confirmed and endorsed.
  - (h) The administration of cases in the Court system requires clarity of focus by those involved in the case. So far as possible, cases shall proceed on the basis that lawyers fulfil their obligations. Judges are involved in judicial determinations and Registrars are responsible for quasi-judicial and administrative processes.

## MANAGEMENT GUIDELINES

- 1.2 The caseflow standards are based on the following principles.
- (a) It is more important to set appropriate standards than simply to consider what is currently achievable. The standards set shall be those that are desirable from the community's viewpoint rather than those which are achievable with the currently available resources.
  - (b) As the circumstances require, the Family Court will take into account attempts at reconciliation and informal resolutions, and the needs of the parties to make personal adjustments to major and possibly traumatic changes in their lives and families. Agreed standards shall be read subject to these primary considerations in relation to particular cases, as well as overall assessment of performance.

- (c) All cases not resolved by conciliation will be assigned to case management tracks in accordance with case management guidelines in this Practice Note.
- (d) The Court, in consultation with counsel and the parties, will manage all cases—from the filing of the first document invoking the Court's jurisdiction through to final disposition—without diminishing the responsibility of counsel for their part in competent case management.
- (e) Caseflow standards controlling the timeliness of cases shall be measured—from the filing of the first document invoking the Court's jurisdiction through to final disposition—regardless of the Court in which the first document is filed.
- (f) Final disposition of a case shall be the date of judgment, dismissal, settlement or discontinuance.
- (g) Caseflow standards are designed to strike a balance between allowing sufficient time for all parties to exercise their procedural rights and minimising delays in final disposition, however such delays might arise.

## **REGISTRARS' LISTS**

- 1.3 The prime objective of the Registrar's List is to get the parties and counsel to focus on the case in sufficient time before the Registrar's List call. This ensures that meaningful requests are made and enables the Registrar to give helpful directions.
- 1.4 A Registrar's List will be conducted in each Court on a regular basis. This will enable the Court to monitor the progress of cases in accordance with standard track guidelines and facilitate standard case management directions. Once complex cases are identified, where appropriate they will be assigned to a nominated Judge for case management purposes.
- 1.5 The Registrar's List is the means of ensuring that applications have been served, that steps are being taken to further the proceedings, and to ensure ongoing progress towards resolution. This is achieved by giving such interlocutory directions as are consistent with the efficient and timely compilation of evidence and other information.
- 1.6 From time to time, adjournments in a Registrar's List may be required. Normally no more than three calls in a Registrar's List are appropriate. In respect of some proceedings (particularly relationship property cases which, once served, often proceed toward settlement), lengthier adjournments between Registrars' Lists may be appropriate.
- 1.7 Normally counsel and/or parties shall not need to attend a Registrar's List. They shall, however, clearly convey to the Registrar by email, facsimile, letter or memorandum by 4.00pm the previous day, what steps have been achieved and what further directions are sought. In some cases an appearance will be necessary, useful or required by the Registrar because of differences between the parties and/or counsel which need to be resolved, or to ensure that satisfactory progress is made.
- 1.8 The Court expects that Registrars' Lists will be used to deal with standard interlocutory matters, and to ensure that evidence, including affidavits, is being assembled within the necessary timeframe before a judicial conference is held.
- 1.9 Registrars' standard pre-trial directions (which may be varied to meet the needs of particular cases) require that all evidence-in-chief shall be by affidavit. All affidavits are to be filed and served by the dates directed by the Judge or Registrar and, failing such specific direction:
  - (a) by the applicant, within 21 days of the direction;
  - (b) by the respondent, within 21 days after the applicant's affidavit(s) has been served; and

- (c) the applicant shall have a right to reply within 14 days.
- 1.10 All directions of the Registrar arising from the Registrar's List are to be sent to counsel and the parties.
- 1.11 In the event of a dispute arising from the Registrar's determination, the matter shall be referred to a Judge immediately.
- 1.12 The Registrar, in giving timetabling directions, will nominate the date for compliance in each case.

## **JUDICIAL DIRECTIONS AND SANCTIONS**

- 1.13 All Judges' directions at judicial conferences shall be typed immediately and sent to counsel and the parties. Compliance with directions will be monitored by the Registrar's List.
- 1.14 Cases will be adjourned to specified dates or to dates to be fixed by the Registrar.
- 1.15 The consequences of non-compliance with directions may include:
  - (a) an order preventing the applicant from taking any further steps until the direction is complied with;
  - (b) an order that the respondent only be allowed to defend the application on terms that the Court directs;
  - (c) an order dismissing the proceedings;
  - (d) an order striking out;
  - (e) an order vacating any hearing;
  - (f) an order referring the matter to a judicial conference;
  - (g) an order that a late affidavit or late affidavits will not be accepted; and/or
  - (h) an order for costs.

Where any of these sanctions are within the Registrar's authority, pursuant to r 221 of the Family Courts Rules 2002 (the Rules), the right of review pursuant to r 235 of the Rules shall apply.

- 1.16 Notice of all judicial conferences will be sent to the parties as well as to counsel.
- 1.17 Unless specifically directed by a Judge, complex cases shall be managed by a Judge until completion.
- 1.18 For the purposes of these guidelines a case may be identified by the Court as complex if it possesses one or more of the following features.
  - (a) It is likely to be a long defended case.
  - (b) It involves voluminous and/or complex issues.
  - (c) It involves complicated psychological or emotional issues.
  - (d) It involves considerable expenditure of public monies.
  - (e) It involves vulnerable persons or uncooperative litigants.

## **HEARINGS**

- 1.19 Every Court shall maintain a ready list for all defended cases. The ready list will consist only of cases that are able to be heard immediately and those cases that are certified by a Judge as urgent and requiring priority.
- 1.20 Normally hearings will be allocated only for cases on the ready list and allocation decisions will be made regularly by the Registrar, in consultation with the Judge responsible for case management in the particular Court. Where possible, counsel's availability will be accommodated.
- 1.21 Primary and backup hearings are to be allocated for all available defended hearing time.

## **FORMALITY**

- 1.22 Parties shall, wherever possible, sit next to their respective counsel at the table provided, rather than behind their counsel.
- 1.23 Witnesses shall sit at the desk provided while giving evidence or being cross-examined. They shall stand only when the oath is being taken or the affirmation is being made.
- 1.24 Parties and counsel are expected to stand when the Judge enters or leaves the courtroom while they are there.
- 1.25 Counsel are expected to stand when addressing or being addressed by the Court and when examining witnesses.
- 1.26 Counsel are expected to seek the leave of the Court to exit the courtroom if no other counsel will remain there.



## 2 ADOPTION ACT 1955

**Note:** All section references in this chapter are to the Adoption Act 1955. All references to rules are to the Family Courts Rules 2002.

- 2.1 All cases will have a hearing as to an interim order within 13 weeks of the date of filing.
- 2.2 On application, the applicant shall file:
- (a) Form A3 Application for adoption;
  - (b) Form A4 or A5 Consent to adoption (from natural mother and/or father);
  - (c) the affidavit required by r 244;
  - (d) the documents required by r 245; and
  - (e) [the affidavit of the natural mother](#).
- 2.3 On the filing of an application in which only the consent of the natural mother is available, the Registrar will place the application before a Judge for a determination as to whether the consent of the natural father is expedient.
- 2.4 The application shall be allocated a return date in the Registrar's List at the end of six weeks.
- 2.5 In all cases, including step-parent adoptions, the Registrar shall request without delay a report on the application from a social worker. On receipt of the social worker's report, the matter shall be referred to a Family Court Judge.
- 2.6 If the matter is in order, the Judge will advise the Registrar to set the matter down for a hearing with appropriate directions. The Registrar shall notify the applicant(s) and the social worker of the date of the hearing.
- 2.7 Unless the Court directs otherwise, the applicant(s) and the child proposed to be adopted shall attend the Court at the hearing of the application for adoption.
- 2.8 When an interim order has been made, the Registrar shall send the applicant(s) a notice in Form 4 and give written notice of the order to the social worker.
- 2.9 In cases where the Court is asked to dispense with the consent of a parent or guardian under s 8:
- (a) the application to dispense must accompany the application for adoption, together with an affidavit in support and an application for directions as to service (if required);
  - (b) either party to the proceedings requiring additional time may make an interlocutory application for directions regarding the proceedings;
  - (c) an application to dispense with consent may be made either at the time of filing an application for an adoption order, or at any time within the six months leading up to the filing of an application for an adoption order. In the latter case, an order dispensing with consent shall lapse after six months, unless an application for an adoption order is made within that six month period;
  - (d) the application shall be placed in the Registrar's List at the end of four weeks;
  - (e) if no defence is filed, the application to dispense with consent shall be set down for hearing; and
  - (f) if a defence is filed, the application shall be set down before a Judge for a judicial conference within three weeks.

- 2.10 When the Registrar considers that the case may be ready for hearing, the file is to be referred to the Judge for approval as to setting down.
- 2.11 The Registrar shall notify the date and time for the hearing in accordance with the directions of the Judge.
- 2.12 Where the Judge makes an interim order in the first instance, a final order shall be issued by the Registrar on application in accordance with the provisions of s 13.
- 2.13 Applicants should be aware that the making of an adoption order may not automatically discharge certain orders made under the Care of Children Act 2004, the Children, Young Persons, and Their Families Act 1989 or the Domestic Violence Act 1995, and that it may be appropriate to seek an order discharging any orders affecting the child at the same time the final adoption order is made. Applicants who may not be aware of what orders may exist in respect of a child may ask the Registrar for that information.

<b>3</b>	<b>BIRTHS, DEATHS, MARRIAGES AND RELATIONSHIPS REGISTRATION ACT 1995</b>
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**APPLICATION FOR DECLARATION AS TO SEX OR GENDER IDENTITY**

- 3.1 The application should be made at the Court nearest to the place where the person who is the subject of the declaration (the eligible person) normally resides.
- 3.2 The application shall be accompanied by an affidavit in support outlining the reasons for the application.
- 3.3 Any medical evidence that the eligible person wishes to submit in support of the application shall be presented in a separate affidavit.
- 3.4 Any affidavit setting out medical evidence shall include:
  - (a) a list of any medical procedures related to the application that the eligible person has undergone; and
  - (b) the effects on the eligible person of those medical procedures.
- 3.5 Once the application has been received, the Court shall ensure that service (where required) has been effected on the Registrar-General of Births, Deaths, Marriages, and Relationships (the Registrar-General).
- 3.6 The Court shall consider whether any other person needs to be served with the application. Where additional service is necessary, the eligible person (and where the applicant is someone else, the applicant) shall be informed of who else has been served.
- 3.7 Following receipt of the application, the matter shall be set down in the Registrar's List within six weeks of the application being filed.
- 3.8 At the Registrar's List:
  - (a) if no notice of opposition has been filed, the matter shall be set down for a formal proof hearing as soon as reasonably practicable;
  - (b) if a notice of opposition has been filed, a judicial conference shall be held within 28 days. At the judicial conference, a date for a hearing shall be set down. Directions shall be made as to how the hearing shall be conducted.
- 3.9 If an order is made, the Court shall ensure that a copy of the order is sent to the Registrar-General.

**APPLICATION TO CORRECT BIRTH CERTIFICATE AND/OR TO APPEAL A DECISION OF THE REGISTRAR-GENERAL**

- 3.10 The application must be filed in the closest registry to the Registrar-General (at present the Wellington Registry).
- 3.11 Upon receipt of the application by the correct registry, the Court shall ensure that service (where necessary) has been effected on the Registrar-General.
- 3.12 The Court shall consider whether any other person needs to be served with the application. Where additional service is necessary, the eligible person (and where the applicant is someone else, the applicant) shall be informed of who else has been served.
- 3.13 Following receipt of the application, the matter shall be set down in the Registrar's List within six weeks of the application being filed.
- 3.14 At the Registrar's List:

- (a) if no notice of opposition has been filed, the matter shall be set down for a formal proof hearing as soon as reasonably practicable;
  - (b) if a notice of opposition has been filed, a judicial conference shall be held within 28 days. At the judicial conference, a date for a hearing shall be set down. Directions shall be made as to how the hearing shall be conducted.
- 3.15 If an order is made, the Court shall ensure that a copy of the order is sent to the Registrar-General.

<b>4 CHILD SUPPORT ACT 1991</b>
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- 4.1 All cases will be disposed of within 13 weeks of filing.
- 4.2 In the case of without notice applications for suspension, the application is to be placed before a Judge immediately upon filing.
- 4.3 When an on notice application is filed, a date four weeks later shall be allocated in the Registrar's List.
- 4.4 At the Registrar's List hearing, Registrar's standard pre-trial directions apply.
- 4.5 Immediately upon compliance with the pre-trial directions, a hearing date within the next six weeks will be allocated.
- 4.6 In the event that the pre-trial directions are not complied with, the application shall be placed in a second Registrar's List.
- 4.7 An affidavit in form CS28 of Schedule 3 of the Family Courts Rules 2002 shall be filed by the applicant and the respondent (not being the Commissioner) at least 10 working days before the hearing.

## **5 CHILDREN, YOUNG PERSONS, AND THEIR FAMILIES ACT 1989**

**Note:** All section references in this chapter are to the Child, Young Persons and Their Families Act 1989.

5.1 The hearing of all applications will commence within 60 days of the filing of the application.

### **WITHOUT NOTICE APPLICATIONS**

5.2 When proceedings which include an application for a s 78 custody order are filed, they are to be placed immediately before a Judge who will consider:

- (a) the appropriate orders to be made on those applications;
- (b) whether it is necessary to appoint lawyer for the child or counsel to assist. A lawyer for the child shall be appointed in accordance with [Practice Note: Lawyer for the child: Selection, appointment and other matters](#) and shall act in accordance with [Practice Note: Lawyer for the child: Code of Conduct](#);
- (c) making orders as to service;
- (d) making a direction that there be a family group conference unless one has already been held; and
- (e) making a direction for a judicial conference to be held within 14 days if an interim custody order is made.

5.3 If unable to be concluded or timetabled at the initial conference, the proceedings will be adjourned by the Judge to a further judicial conference at which, if no defence has been filed, an unopposed declaration may be made. If a defence has been filed, generally the matter will be timetabled for a mediation conference or, if that is not to be held, a hearing.

### **ON NOTICE APPLICATIONS**

5.4 A lawyer for the child shall be appointed in accordance with [Practice Note: Lawyer for the child: Selection, appointment and other matters](#) and shall act in accordance with [Practice Note: Lawyer for the child: Code of Conduct](#).

5.5 These will be monitored by the Registrar in a Registrar's List, to be held within the earlier of 28 days of the filing of the application, or 14 days after service on all necessary persons, to the point where all necessary persons have been served and the family group conference has been completed. At that point the proceedings will be allocated a judicial conference.

5.6 At the judicial conference, if no defence has been filed, an unopposed declaration may be made. If a defence has been filed, the matter will be timetabled to a hearing.

### **FOLLOWING THE MAKING OF A DECLARATION**

5.7 On the making of a declaration, the proceedings will be adjourned for the filing of a plan and report (within 28 days or such other period as the Court has directed pursuant to s 131(1)), and a disposition hearing will be directed if necessary.

- 5.8 On making orders at the disposition hearing, the Court will order their statutory review in six or 12 months (depending on the age of the child) or, if circumstances require, in such lesser period as the Court may order.
- 5.9 The procedure for review will be in accordance with [Practice Note: Lawyer for the child: Selection, appointment and other matters](#).

## **REPORTS**

- 5.10 Where a social worker's report is requested under s 186 and two sites of Child, Youth and Family are involved, the Registrar shall ensure that a single report is provided rather than one from each site. This will be on the basis that the social worker at the site nearest to the Court requesting the report shall take the lead responsibility for preparing and filing the report, which shall combine the information obtained by each site.

## **REFERRALS TO CHILD, YOUTH AND FAMILY IN OTHER PROCEEDINGS**

- 5.11 Where the Court makes a referral to the Ministry of Social Development pursuant to s 15 and/or s 19, the process for referral set out in [Joint Protocol Ministry of Justice and Department of Child, Youth and Family](#) must be followed.

<b>6 DAY-TO-DAY CARE AND CONTACT (CARE OF CHILDREN ACT 2004 AND FAMILY PROCEEDINGS ACT 1980)</b>
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**Note:** All section references in this chapter are to the Care of Children Act 2004, unless otherwise indicated. All references to rules are to the Family Courts Rules 2002.

- 6.1 Applications should contain a brief affidavit regarding the proposal for care of children by both of the parents, the guardians and any other persons. Those preparing affidavits to accompany the application shall have regard to the duty imposed by ss 8 and 19 of the Family Proceedings Act 1980 on lawyers and the Family Court to promote reconciliation and conciliation.
- 6.2 The application and accompanying documents shall be served unless otherwise directed by a Judge.
- 6.3 Where an application is filed, the “Early Intervention Process” (set out in the [flowchart](#)) shall be followed.
- 6.4 Such an application shall be referred to the Registry for triage and case management, where the decision shall be made as to whether the application shall proceed down the “standard track” or be referred to the Judge for his or her consideration as to whether it should proceed down the “urgent track”. If the Judge does not agree to it being placed on the urgent track, it will proceed down the standard track.

#### **URGENT TRACK**

- 6.5 Where placement on the urgent track is sought, an application to reduce the time for filing a defence is to be filed so as to ensure that the time limits are able to be complied with. A Judge may of his or her own motion reduce the time for filing a defence.
- 6.6 A Judge in chambers shall confirm that the application shall enter the urgent track or transfer it to the standard track.
- 6.7 On referral of the application to a Judge by the Family Court Co-ordinator, a lawyer for the child shall be appointed in accordance with [Practice Note: Lawyer for the child: Selection, appointment and other matters](#) and shall act in accordance with [Practice Note: Lawyer for the child: Code of Conduct](#).
- 6.8 Within 14 days of the application being filed, there shall be a judicial conference under r 175. Counsel shall file memoranda outlining the issues no later than three days before the judicial conference.
- 6.9 Within 42 days of the judicial conference, a half day hearing shall be held.
- 6.10 At any stage on the urgent track, the application may be transferred to the standard track.

#### **STANDARD TRACK**

- 6.11 A lawyer for the child shall be appointed if a defence is filed or prior cause shown in accordance with [Practice Note: Lawyer for the child: Selection, appointment and other matters](#), and parties will be referred to the “Parenting through separation” programme unless they have already attended that programme.



- 6.12 Counsellors shall advise on the progress of counselling within six weeks of the application being referred to them, in accordance with [Practice Note: Family Court counsellors](#). However, if counselling is proving ineffective in promoting reconciliation or conciliation, the referral may be terminated and a report provided back to the Court by the counsellor at any time.
- 6.13 On any referral to counselling, the application is to be allocated a date in the Registrar's List within six weeks.
- 6.14 On that Registrar's List date, where issues in contention have been resolved, appropriate steps shall be considered to bring the matter to a final conclusion (for example, referral to a Judge to make consent orders). A Judge may direct a hearing or other steps to be taken to satisfy the Court that the proposed consent orders safeguard the best interests of the child(ren) in the case.
- 6.15 Where the matter is not resolved at counselling, referral to a counsel-led or Judge-led mediation shall follow. In the case of counsel-led mediation, the Registrar shall appoint an approved lawyer to conduct the mediation.
- 6.16 Counsel-led or Judge-led mediation shall take place within 12 weeks of the application being filed, at a time and place arranged by the mediator.
- 6.17 Where issues remain outstanding at the end of a counsel-led or Judge-led mediation, a s 175 judicial conference will follow within 14 weeks of the application being filed, to consider:
- (a) timetabling directions;
  - (b) whether there is the possibility for a settlement;
  - (c) the need for any reports under s 132 and/or s 133;
  - (d) whether the application shall have a half day hearing or whether it shall be deemed to be a complex hearing;
  - (e) whether detailed directions for the hearing shall be given; and
  - (f) the need for any other appropriate directions.
- 6.18 A half day hearing shall be heard within two to four weeks of the judicial conference being held.
- 6.19 If the matter proves complex it shall be removed from the Early Intervention Process.

## **OTHER MATTERS**

- 6.20 All applications for parenting orders (including interim orders) must be made using Form 35A. If both an interim and final parenting order is sought, parties should file one application form only, indicating what orders are sought.
- 6.21 For guidance on applications relating to children's medical emergencies, see [Protocol: Children's medical emergencies: Guardianship applications to the Family Court](#).
- 6.22 Where a social worker report or specialist report is directed, a Judge will settle the brief for such a report, following consultation with counsel where appropriate. The Court will allocate a date in the Registrar's List for the filing of such a report within 10 weeks of the direction.
- (a) Where the request is for a s 132 report, the process for referral set out in [Joint Protocol Ministry of Justice and Department of Child, Youth and Family](#) must be followed.

- (b) Where the request is for a s 133 report, the process set out in [Practice Note: Specialist report writers](#) must be followed.
- 6.23 When the report is received the Registrar shall release a copy of the report to:
- (a) the lawyer acting for each party, on the basis that the report is not given or shown to the parties if the Court so orders;
  - (b) the lawyer for the child, who may give or show the report to the child only if the Court so orders. However, in every case the lawyer for the child will explain to the child the purpose and contents of the report unless the lawyer considers that to do so would be contrary to the welfare and best interests of the child; and
  - (c) any party who is a self-represented litigant unless the Court is satisfied that the information in the report would, if provided directly to that party, place the child concerned or another person at risk of physical, sexual or psychological abuse. In such a case, counsel to assist the Court may be appointed to explain the contents of the report to the self-represented litigant.
- 6.24 Where a social worker's report is requested under s 132 and two sites of Child, Youth and Family are involved, the Registrar shall ensure that a single report is provided rather than one from each site. This will be on the basis that the social worker at the site nearest to the Court requesting the report shall take the lead responsibility for preparing and filing the report, which shall combine the information obtained by each site.
- 6.25 In all proceedings under this Act long affidavits traversing the history of the conduct of the parties are usually neither helpful nor relevant. Affidavits in these proceedings shall concentrate on the issues and, in particular, on how the present and future needs of the children can best be met and on the quality of the parenting which each parent—and those assisting them—is likely to provide. Affidavits for those applications on the urgent track should address only the immediate issues for determination.
- 6.26 Where the Court makes a referral to Child, Youth and Family pursuant to s 15 and/or s 19 of the Children, Young Persons, and Their Families Act 1989, the process for referral set out in [Joint Protocol Ministry of Justice and Department of Child, Youth and Family](#) must be followed.
- 6.27 Where orders are made for supervised contact, the procedure set out in [Practice Note: Children's supervised contact](#) shall be followed.

<b>7</b>	<b>DISSOLUTION OF MARRIAGE AND CIVIL UNION (FAMILY PROCEEDINGS ACT 1980)</b>
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**JOINT APPLICATION**

- 7.1 Where an application for an order dissolving a marriage or civil union is made jointly by both parties to the marriage or civil union, and both applicants consent to the order being made in their absence, the Registrar will consider the application within one week of filing.
- 7.2 If a party requests a hearing in accordance with the legislation, the Registrar will convene a hearing before a Family Court Judge. The hearing will be within six weeks of the request being filed in the Family Court.

**SINGLE APPLICATION, UNDEFENDED OR NO APPEARANCE REQUESTED BY RESPONDENT**

- 7.3 Where an application for an order dissolving a marriage or civil union is made by one party to the marriage or civil union and the applicant advises the Registrar that he or she consents to the order being made in their absence, the Registrar will consider the application within six weeks of filing.
- 7.4 If a party subsequently requests a hearing in accordance with the legislation, the Registrar will convene a hearing before a Family Court Judge. The hearing will be within six weeks of the request being filed in the Family Court.

**SINGLE APPLICATION: DEFENDED OR APPEARANCE REQUESTED BY ONE OR BOTH PARTIES**

- 7.5 Where an application for an order dissolving a marriage or civil union is made by one party to the marriage or civil union and is either defended or a party requests a hearing, the file shall be referred to a Judge to direct a judicial conference or make timetabling directions pending the hearing.

## 8 DOMESTIC VIOLENCE ACT 1995

**Note:** All references to rules in this chapter are to the Family Courts Rules 2002.

### WITHOUT NOTICE APPLICATIONS

- 8.1 The Court's objective is to ensure that without notice applications for temporary protection orders are dealt with by a Judge as far as possible on the day of filing, and that applications on notice or requiring a hearing are heard and disposed of within the statutory timeframe.
- 8.2 All applications shall be filed with affidavit(s) in support, a certificate of disclosure signed by the lawyer acting (where applicable), and information sheets (as required by r 20(1)(d) and r 308). The applicant is to identify whether a protected persons programme is sought.
- 8.3 The Registrar is to check compliance with the Domestic Violence Act 1995 and the Rules if an application is made by a representative.
- 8.4 If without notice, the case is to be referred immediately to a duty Judge (via facsimile or email if necessary) with details of the programme for the respondent and, if applicable, the associated respondent. Unless directed by a Judge to the contrary, special time shall be rostered by the Registrar for without notice applications.
- (a) Unless directed, the applicant is not required to be present.
  - (b) If the order(s) is/are made:
    - (i) service on the respondent/associated respondent shall be arranged by the Registrar;
    - (ii) a copy of the order(s) shall be sent to the Police;
    - (iii) the applicant shall give notice of any occupation order to any person having an interest in the property affected by it;
    - (iv) the Family Court registry shall notify the programme provider of the terms of the direction to attend a specified programme;
    - (v) where requested, the Registrar shall refer the applicant and any children or specified person to a protected persons programme; and
    - (vi) where orders are made for supervised contact, the procedure set out in [Practice Note: Children's supervised contact](#) shall be followed.
  - (c) Each notice of intention to appear shall be accompanied by an affidavit which complies with r 315. If that affidavit does not accompany the notice, it will not be accepted for filing. The Registrar shall direct that any affidavit(s) in reply by the applicant shall be filed within 14 days.
  - (d) In any case where an application to vary or discharge or notice of intention to appear is filed, or if a hearing is directed by a Judge or otherwise required, the Registrar shall allocate a hearing within 42 days. The Judge may direct a judicial conference.
  - (e) Any objection by the respondent/associated respondent to attend a programme (unless it accompanies a notice of intention to appear) and any application to vary a standard condition relating to weapons shall be allocated a short judicial conference from which a hearing within 42 days will be allocated.

- (f) If a final order is made (either on expiry of the three-month period or by order of the Court after hearing), then, subject to service of the temporary order having been effected not less than 10 clear days before that expiry, the Registrar shall seal the same and arrange for service.

## **ON NOTICE APPLICATIONS**

- 8.5 If an application is on notice, the Registrar shall assign the matter to a Registrar's List. That Registrar's List must be within 14 days of the date of allocation.
- (a) At a Registrar's List, if no proof of service is available, the Registrar shall reschedule to a Registrar's List within 14 days.
  - (b) At a Registrar's List, if proof of service is available and the matter is not defended, the Registrar shall allocate a date for a formal proof hearing.
  - (c) If defended, the notice of defence shall be accompanied by an affidavit which complies with r 314. If that affidavit does not accompany the notice, it will not be accepted for filing.
  - (d) If defended, the Registrar shall set a hearing date in accordance with r 313(1) (but subject to r 313(2)) and direct any further affidavits to be filed by a date no later than two weeks prior to the hearing. The Registrar may give such other directions as are appropriate. The Judge may direct a judicial conference.
  - (e) After the hearing, if order(s) are made, service is to be arranged and a copy of the order(s) is/are to be sent to the Police. The Family Court registry shall notify the programme provider of the terms of the direction to attend the specified programme.
  - (f) Where orders are made for supervised contact, the procedure set out in [Practice Note: Children's supervised contact](#) shall be followed.
- 8.6 The Court expects that on notice applications will be disposed of within 13 weeks of filing.

<p><b>9 FAMILY PROTECTION ACT 1955, LAW REFORM (TESTAMENTARY PROMISES) ACT 1949, PROPERTY (RELATIONSHIPS) ACT 1976</b></p>
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- 9.1 All cases will be disposed of within 26 weeks of the date of filing.
- 9.2 The following directions apply where a claim is brought under:
- (a) the Law Reform (Testamentary Promises) Act 1949; or
  - (b) the Family Protection Act 1955 (whether or not a claim is also brought under the Property (Relationships) Act 1976).
- 9.3 Although the only named respondent in proceedings under the Family Protection Act 1955 and the Law Reform (Testamentary Promises) Act 1949 is to be the personal representative of the deceased person against whose estate the claim is brought, applications for relief under those Acts and the Property (Relationships) Act 1976 must be accompanied by a without notice application for directions as to service and for such orders for representation as may be required.
- 9.4 Pursuant to r 381(2) of the Family Courts Rules 2002, the application for directions for service shall include:
- (a) the date of death of the deceased and the date of grant of probate or letters of administration;
  - (b) whether the deceased died testate or intestate and, if testate, a copy of his or her last will with codicils (if any);
  - (c) the value of the estate so far as it is known to the applicant;
  - (d) the names, addresses, occupations and ages of the beneficiaries under the will or persons entitled on intestacy, as the case may be;
  - (e) the names, addresses, occupations and ages of the persons of each class entitled to claim under the Family Protection Act 1955; and
  - (f) any other information that is relevant.
- 9.5 The following directions as to service shall be complied with.
- (a) The non-existence of particular classes of claimant under s 3 of the Family Protection Act 1955 shall be deposed to category by category and not globally, so that the deponent's attention is drawn directly to every possible class of claimants.
  - (b) Where many adults require to be served, every reasonable effort shall be made before approaching the Court to have possible claimants standing in the same interest agree in writing to have one of their number served as representing all having the same interest.
  - (c) With the enlarged provisions for grandchildren's claims, the grandchildren shall be clearly shown by stocks and consideration given to whether:
    - (i) adult grandchildren standing in the same interest can consent to be served through one of their number as in (b) above; and
    - (ii) infant grandchildren shall be represented in stocks by counsel appointed by the Court or by an adult parent who is to be served.
- 9.6 In the case of infant children it is customary to obtain and file the consent of counsel whom it is requested be appointed to represent such children.

- 9.7 The application for directions for service shall be accompanied by a memorandum prepared by counsel specifying the orders for service which are being sought, together with the reasons for those orders.
- 9.8 Upon filing the appropriate application (together with an application for directions for service, affidavit in support and memorandum of counsel), the file will be referred to a Judge for the making of directions for service and/or representation.
- 9.9 The file shall then be placed in a Registrar's List within 10 weeks for service. Affidavits of service are to be filed only with respect to persons-who have taken no steps.
- 9.10 At the Registrar's List hearing, counsel shall advise by memorandum if further affidavits are to be filed and the further directions being sought.
- 9.11 Once all parties have been served and defences filed or the time for filing defences has expired, the Registrar shall arrange for the proceedings to be set down before a Judge for a judicial conference. At the judicial conference the Judge will consider whether the proceedings should progress to a settlement conference or a hearing.
- 9.12 Unless it is specifically directed otherwise in the direction for a settlement conference:
- (a) five days prior to the settlement conference counsel are to file a memorandum as to:
    - (i) the issues; and
    - (ii) the value of property in dispute;
  - (b) five days prior to the settlement conference the respondent shall file and serve an affidavit setting out the assets and liabilities of the estate;
  - (c) the parties who have taken steps must attend the settlement conference, together with their counsel.
- 9.13 If the proceedings are unable to be concluded at the settlement conference or no settlement conference is directed, the Judge will direct the proceedings to a hearing.

<b>10</b>	<b>HAGUE CONVENTION AS TO THE CIVIL ASPECTS OF INTERNATIONAL CHILD ABDUCTION (PART 2, SUBPART 4 OF THE CARE OF CHILDREN ACT 2004)</b>
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**Note:** All section references in this chapter are to the Care of Children Act 2004. References to rules are to the Family Courts Rules 2002.

- 10.1 All cases will be disposed of within six weeks, except where a specialist report or other evidence or material or information is required which cannot be obtained immediately. Such cases shall be disposed of within 13 weeks.
- 10.2 Immediately on filing an application, the Central Authority will advise the name of the case and of counsel appointed to represent the applicant/Authority to the Administrative Family Court Judge of the appropriate region.
- 10.3 In each case the file should be referred immediately to a Family Court Judge who will be responsible for managing the file in consultation with the Registrar and for hearing and determining the case.
- 10.4 When the application is filed, the Judge shall consider the issues to be addressed including:
- (a) the need for an order abridging the time for filing a notice of defence and affidavit to four working days;
  - (b) the need for an order directing that the notice of defence particularises in specific detail the exact s 106 defences relied upon, and that the affidavit is to fully set out all the evidence-in-chief upon which the respondent seeks to rely in support of those defences;
  - (c) the need for an order directing that the child(ren) not be removed from New Zealand pending further order of the Court;
  - (d) the need to issue a warrant authorising a member of the Police or a social worker to take possession of the child(ren) and place them with a suitable person pending the outcome of the proceedings;
  - (e) the need to issue a warrant to the Police or a social worker to take possession of the child(ren) and deliver the child(ren) to any person or authority named in the warrant for the purpose of returning the child(ren) in accordance with an order made for the return of the child(ren);
  - (f) the need for contact with the Central Authority concerning arrangements for the return of the child(ren) and/or arrangements in the country of habitual residence;
  - (g) directing a r 175 case management conference to be held within seven to 10 days. That conference is to address:
    - (i) whether orders for the prompt return of the child(ren) can be made by consent;
    - (ii) whether the matter is suitable for mediation and, if so, directions for the appointment of counsel to assist to mediate the matter in accordance with the [Counsel-led mediation guidelines](#);
    - (iii) the appointment of lawyer for the child and/or a s 133 report writer, together with the fixing of a brief;



- (iv) if a s 133 report is directed, a further direction that the parties are to file affidavits addressing matters raised in the psychologist's report within five working days of the receipt of the report; and
  - (v) directing that the matter be set down for fixture at a date to be advised by the Registrar but within the disposal period referred to in [paragraph 10.1](#) above. If the proceedings are in a satellite Court, they are to be transferred to a central hub Court for prompt determination if necessary.
- 10.5 The [Practice Note: Hague Convention cases: New Zealand Family Court Guidelines](#) and [Practice Note: Hague Convention cases: Mediation process – Removal, retention and access](#) are to be followed in each case.

<b>11</b>	<b>INTELLECTUAL DISABILITY (COMPULSORY CARE AND REHABILITATION) ACT 2003</b>
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### APPLICATION FOR CARE ORDERS

**NOTE:** Such applications were transitional procedures to bring under the Act impaired persons then in prison: they are now extremely unlikely.

- 11.1 The application should be made at the Court nearest to the place where the proposed care recipient has been assessed.
- 11.2 The application form shall be filed by the care co-ordinator along with:
- (a) an affidavit by the care co-ordinator outlining, in brief, the reasons why the proposed care recipient has an intellectual disability;
  - (b) the care and rehabilitation plan for the proposed care recipient;
  - (c) the care programme for the proposed care recipient;
  - (d) an information sheet; and
  - (e) any relevant reports by any specialist on the proposed care recipient.
- 11.3 When the application is received, the Registrar shall promptly forward it to a Judge.
- 11.4 The Registrar shall also serve copies of the application and support documents to anyone who is entitled to appear and be heard, including:
- (a) the proposed care recipient;
  - (b) any welfare guardian of the proposed care recipient;
  - (c) the principal caregiver of the proposed care recipient;
  - (d) if the proposed care recipient is a child or young person, each parent or guardian of the child or young person;
  - (e) any lawyer for the proposed care recipient;
  - (f) if the proposed care recipient is a prisoner, the superintendent who has the control of the proposed care recipient or to whose control he or she is to be returned on ceasing to be a care recipient;
  - (g) if the proposed care recipient is a former special patient, the Director of Area Mental Health Services who applied to have the proposed care recipient assessed;
  - (h) the care co-ordinator;
  - (i) the responsible district inspector; and
  - (j) any other person the Court considers should be entitled to appear and be heard because of that person's interest in the welfare of the proposed care recipient.
- 11.5 If the proposed care recipient is not legally represented, the Registrar shall consider appointing counsel to represent the proposed care recipient in accordance with:
- (a) [Practice Note: Intellectual Disability \(Compulsory Care and Rehabilitation\) Act 2003: Selection and review of 'Counsel for intended care recipient' list](#); and
  - (b) [Practice Note: Intellectual Disability \(Compulsory Care and Rehabilitation\) Act 2003: Reviews, applications for orders, and representation](#).

The matter shall be referred to the Judge for confirmation.

- 11.6 Where counsel for the proposed care recipient has been appointed, counsel shall meet with the proposed care recipient before the hearing. Counsel shall report back to the Court on any matters that need to be raised, including but not limited to:
- (a) the practicality of continuing to represent the proposed care recipient;
  - (b) the need for further expert reports;
  - (c) whether any experts relied upon in the application will be cross-examined by or on behalf of the proposed care recipient; and
  - (d) any other directions that may be necessary.
- 11.7 If any person wishes to be heard on the application, the Registrar shall ensure that the examination and hearing takes place within 14 days of the application being filed. If the hearing cannot take place within 14 days, all parties entitled to appear and be heard at the hearing must be notified and informed of the reasons for the delay.
- 11.8 After the examination by the Judge, if no-one wishes to be heard on the application, the Judge may determine the application without further hearing.

#### **APPLICATIONS FOR EXTENSION, CANCELLATION OR VARIATION OF A CARE ORDER**

- 11.9 Applications are to be filed and heard in the Court or Courts specified in [Practice Note: Intellectual Disability \(Compulsory Care and Rehabilitation\) Act 2003: Reviews, applications for orders, and representation](#).
- 11.10 When an application for extension is filed, whether or not an application to defer expiry of the order is also filed, the application is to be placed before a Judge for consideration whether the likely ultimate hearing date requires deferment of expiry.
- 11.11 A copy of the application to extend, vary or cancel the order and any order made deferring expiry is to be served on all the persons listed in [paragraph 11.4](#) and such persons may apply for cancellation or variation of the order deferring expiry.
- 11.12 The Registrar will obtain a copy of the Police summary and the Judge's sentencing notes from the Court at which the original order was made.
- 11.13 If the proposed care recipient is not legally represented, the Registrar shall consider appointing counsel to represent the proposed care recipient in accordance with:
- (a) [Practice Note: Intellectual Disability \(Compulsory Care and Rehabilitation\) Act 2003: Selection and review of 'Counsel for intended care recipient' list](#); and
  - (b) [Practice Note: Intellectual Disability \(Compulsory Care and Rehabilitation\) Act 2003: Reviews, applications for orders, and representation](#).
- 11.14 Where counsel for the proposed care recipient has been appointed, counsel shall meet with the proposed care recipient before the hearing. Counsel shall report back to the Court on any matters that need to be raised, including but not limited to:
- (a) the practicality of continuing to represent the proposed care recipient;
  - (b) the need for further expert reports;
  - (c) whether any experts relied upon in the application will be cross-examined by or on behalf of the proposed care recipient;
  - (d) any witnesses who might be called on behalf of the care recipient;
  - (e) whether there is a need for a judicial conference; and
  - (f) any other directions that may be necessary.
- 11.15 The Registrar will fix a time and date of hearing when and as directed by the Judge.



## 12 MENTAL HEALTH (COMPULSORY ASSESSMENT AND TREATMENT) ACT 1992: SECTION 16 REVIEWS

**Note:** All section references in this chapter are to the Mental Health (Compulsory Assessment and Treatment) Act 1992.

- 12.1 Upon the filing of an application for review under s 16, the hospital receiving the application shall communicate immediately with the appropriate Court and discuss with the Registrar the earliest practicable scheduling of the application.
- 12.2 When the s 16 application is received by the Court, it must be acted upon within three working days unless there are exceptional circumstances.
- 12.3 The Judge's visit shall occur at the hospital or place where the patient is being assessed. If that is not practicable, arrangements can be made to have the patient brought to the nearest Court where a Judge is available.
- 12.4 Once the date for review has been set, the hospital shall advise the applicant for the s 8 assessment and the other persons listed in s 10(4)(a) of the fact of the filing of the s 16 application and of the date and place of the intended review.
- 12.5 When the s 16 application is referred to the Court, the hospital shall also provide for the Judge (prior to the review) and for any lawyer representing the patient, copies of the following documents.
- (a) Application for assessment.
  - (b) Certificate of medical practitioner.
  - (c) Notice to attend an assessment examination.
  - (d) Certificate of preliminary assessment.
  - (e) Clinical report to Director of Area Mental Health Services (DAMHS).
  - (f) Notice requiring the patient to undergo a five day assessment.
- 12.6 Where the review occurs beyond the initial five day assessment period, the following documents shall also be supplied.
- (a) Certificate of further assessment.
  - (b) Further clinical report to DAMHS.
- 12.7 It will be the responsibility of the hospital to arrange for the attendance of the responsible clinician and at least one other health professional familiar with the patient's assessment and treatment. If the responsible clinician has not yet assessed the patient, then the medical practitioner who completed the s 10 certificate of preliminary assessment shall also be in attendance.
- 12.8 The Court shall expect a report in writing from the responsible clinician and a written clinical report from the second health professional.
- 12.9 The review shall take the form of an inquiry. The presiding Judge will lead the inquiry with those matters required to be covered by s 16(3) and by then consulting and inviting such questions or contributions as will, in the Judge's opinion, facilitate the inquiry.
- 12.10 Information received at the inquiry will not be on oath but all proceedings shall be recorded. The Judge's decision is to be recorded on a standardised form (of distinctive colour readily noticeable on the file) and, where appropriate, formal reasons are to be given in writing.
- 12.11 If the application is a second one made under s 16(1C), it will be for the hospital to provide any evidence that the patient's condition has not changed since the last review.



## 13 PROPERTY (RELATIONSHIPS) ACT 1976

**Note:** References to rules in this chapter are to the Family Courts Rules 2002.

- 13.1 All standard track cases will be disposed of within 26 weeks of filing.
- 13.2 All complex track cases will be disposed of within 39 weeks of filing.
- 13.3 When an application is filed, there must be filed at the same time an affidavit in support, setting out the information required by r 392 including the issues and proposals for division of property.
- 13.4 It is the responsibility of the Court to attend to service of the documents but the applicant is encouraged to do so.
- 13.5 To ensure that the above steps occur in a timely fashion, when an application is filed, the Registrar shall assign a Registrar's List date six weeks away. The Registrar shall then check on whether service has occurred and whether the required documents have been filed, and allocate a judicial conference to be held within 42 days.
- 13.6 Before the conference, counsel or parties must ensure that they have filed and served their P(R)1 affidavits as to assets and liabilities, which are required from the applicant under r 398(1) and from the respondent under r 398(2).
- 13.7 The parties are expected to attend the judicial conference along with their counsel.
- 13.8 At the judicial conference the Court may consider, among other things:
- (a) clarification and/or agreement on the extent of the assets and liabilities;
  - (b) with the assistance of counsel, whether the case is to be considered standard or complex;
  - (c) settling the issues;
  - (d) setting tasks to clarify the issues and either directing or making orders so as to procure further information;
  - (e) recommending that alternative dispute resolution be attempted through mediation;
  - (f) directing an inquiry pursuant to s 38 of the Property (Relationships) Act 1976;
  - (g) directing that a settlement conference occur; and
  - (h) setting the case down for hearing.
- 13.9 Where cases are being monitored in the Registrar's List, they will be allocated a judicial conference if the Registrar considers that delay warrants judicial intervention, or at the request of counsel or parties. Ordinarily the Registrar will allocate a judicial conference after two adjournments in the Registrar's List.
- 13.10 Parties and counsel shall be aware of the jurisdiction which the Court has to award costs for delay and/or non-compliance with its directions.
- 13.11 It shall be noted that this Practice Note does not contain all the provisions in the Rules relating to proceedings under the Property (Relationships) Act 1976. Full compliance with those rules will be expected.

<b>14</b>	<b>PATERNITY (FAMILY PROCEEDINGS ACT 1980 AND STATUS OF CHILDREN ACT 1969)</b>
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- 14.1 All undefended cases shall be disposed of within 13 weeks.
- 14.2 All other applications shall be disposed of within 26 weeks.
- 14.3 All applications shall be accompanied by affidavit(s) in support.
- 14.4 Any without notice application for directions as to service (filed with the application or subsequently) shall set out fully all steps taken to locate the respondent.
- 14.5 The application shall be placed in the Registrar's List within 10 weeks of filing.
- 14.6 The matter shall be set down for a formal proof hearing where the requirements as to service have been met, the time for filing a defence has expired and the respondent has taken no steps.
- 14.7 If the proceedings are undefended and agreement is reached, a memorandum as to consent orders shall be filed without delay.
- 14.8 If the proceedings are defended:
  - (a) the application shall be placed before a Judge to consider making a recommendation for parentage tests and directions for payment; and
  - (b) the application shall be adjourned to a further Registrar's List eight weeks from that time.
- 14.9 If the application is still defended, standard pre-trial directions apply.



<b>15</b>	<b>PROTECTION OF PERSONAL AND PROPERTY RIGHTS ACT 1988</b>
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**Note:** All section references in this chapter are to the Protection of Personal and Property Rights Act 1988.

- 15.1 All undefended cases will be disposed of within 13 weeks of filing.
- 15.2 All defended cases will be disposed of within 26 weeks of filing.
- 15.3 The application shall be filed together with affidavit(s) in support and applications for orders dispensing with service on, or the attendance of, the subject person.
- 15.4 Medical, psychiatric or any other expert reports supporting the exercise of the Court's jurisdiction shall be filed with an application.
- 15.5 If the subject person of an application is not represented, the Registrar shall appoint counsel to represent that person in accordance with [Practice Note: Protection of Personal and Property Rights Act \(Selection and review of 'Counsel for the subject person' list\)](#). Counsel so appointed will be asked by the Registrar to report within a certain timeframe on the following matters.
- (a) Whether service on the subject person is required, and, if so, how.
  - (b) Whether attendance of the subject person is required at the hearing.
  - (c) Whether any further consents are required.
  - (d) Any other relevant matters.
- 15.6 Counsel for the subject person are referred to the [Guidelines for counsel for the subject person appointed under Protection of Personal and Property Rights Act 1988](#) for direction on their role.
- 15.7 The application shall be given a date in the Registrar's List at the end of three weeks for a report from counsel for the subject person.
- 15.8 If an application is undefended and all matters are in order, the Registrar shall make appropriate recommendations and refer the matter to the Judge for orders on the papers if it is determined that a hearing is unnecessary and/or undesirable.
- 15.9 Where an application has been made for a pre-hearing conference under s 66(1), the Registrar will refer the matter to a Judge. Where the Judge gives a direction for a conference, it will be arranged under s 66(3).
- 15.10 If the application is defended, the application shall be set down for a judicial conference on a date within three weeks.
- 15.11 [Practice Note: Applications under the Personal and Property Rights Act 1988](#) shall be followed in all cases where an application is filed for a personal order, an order to administer property, appointment of a welfare guardian and/or a property order.

**Appendices to the Family Court  
Caseflow Management  
Practice Note**

**APPENDIX 1: AFFIDAVIT OF NATURAL MOTHER**

**IN THE FAMILY COURT**  
**HELD AT**

FAM \_\_\_\_\_ - \_\_\_\_\_ - \_\_\_\_\_

**IN THE MATTER** of the Adoption Act 1955

**AND**

**IN THE MATTER** of an Application to adopt

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**AFFIDAVIT OF NATURAL MOTHER**

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Note: *Delete inapplicable sentences/paragraphs as necessary*

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PRESENTED FOR FILING BY:

### AFFIDAVIT OF NATURAL MOTHER

I, [full name] of [place], [occupation], swear that –

1.        I am the mother of [full name of child, if named], a [female/male child] born at [place] on [date] as evidenced by the Certificate of Birth annexed to the consent to adoption signed by me and filed herein.
2.        THE father of my child is [full name of father] / I do not know the identity of the father of my child.
3.        I am unmarried / I am married to [full name of spouse].
4.        I have never been married to, or in a civil union, or in a de facto relationship with the father of my child / I have been married to, or in a civil union, or in a de facto relationship with the father of my child [provide details].
5.        AT no time between conception and birth of my child did I live with the father of my child as husband and wife or as de facto partners / BETWEEN conception and the birth of my child I lived with the father of my child as husband and wife or as de facto partners [provide details].
6.        THE father of my child has not had and has not attempted to have any contact or involvement with my child / THE father has had the following contact or involvement with my child: [describe the nature of the relationship of the father with the child (if any) and the role he has played during the pregnancy and in the child's life (if any)].
7.        TO the best of my knowledge no testamentary guardian of my child has been appointed by any person and no order of the Court has been made declaring any other person to be the guardian of my child nor is an application for any such order pending / TO the best of my knowledge the following person(s) are guardians of my child [full name of guardian(s)].
8.        NO adoption order is in force in respect of my child / AN adoption order is in force in respect of my child [provide details].
9.        NO declaration or order of paternity, or child support or maintenance order in respect of my child has been made and nor is any application for any such order pending / A declaration or order of paternity or child support or maintenance order in respect of my child has been made [provide details].
10.        NO person has by agreement or otherwise acknowledged paternity of my child / THE following person has by agreement or otherwise acknowledged paternity of my child [provide details].
11.        NO person has contributed as father towards the birth expenses and/or maintenance and support of my child / THE following person has contributed as father towards the birth expenses and/or maintenance and support of my child [provide details].
12.        I am now [age] years of age.
13.        I believe that the adoption of my child would be in my child's welfare and best interests for the following reasons:
  - i \_\_\_\_\_
  - ii \_\_\_\_\_
  - iii \_\_\_\_\_
14.        I have reached my decision to have my child adopted after a great deal of thought.
15.        I have discussed the matter of adoption with [insert who spoken to, e.g. social worker, counsellor, parents] on one or more occasion(s) / I have not discussed the matter of adoption with any other person.

16. I am satisfied after various discussions, talks and independent advice that I desire without qualification or reservation on my part (apart from any conditions contained in paragraph 19) to have my child adopted.
17. I have had fully explained to me the effect of the making of an adoption order as set out in the Adoption Act 1955 and I fully understand that the effect of such an order, if made, would be that I would lose all rights in or claim to my child.
18. I have not received nor paid and do not intend to receive or pay any payment in connection with the proposed adoption of my child.
19. I have imposed no conditions to my consent with respect to the religious denomination and practice of the applicant(s) / I have imposed the following conditions to my consent with respect to the religious denomination and practice of the applicant(s): *Here set out conditions*
20. I have been made aware that I am required to disclose to the Court any matters that may be relevant for the Court's assessment of the application. I bring to the attention of the Court the following: *Here set out any other matters*

.....  
Signature of Applicant

SWORN at .....this.....day [month, year] before me:

.....  
A Solicitor of the High Court of New Zealand

<b>APPENDIX 2: PRACTICE NOTE: LAWYER FOR THE CHILD: SELECTION, APPOINTMENT AND OTHER MATTERS</b>
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**1 BACKGROUND**

- 1.1 The terms of this Practice Note have been settled in consultation with the Ministry of Justice and the Family Law Section of the New Zealand Law Society.

**2 CONTENTS**

- 2.1 The Practice Note covers the following matters.
- (a) Legislative provisions for the separate representation of children.
  - (b) Process for appointment.
  - (c) Review procedures under the Children, Young Persons, and Their Families Act 1989.
  - (d) Reports.
  - (e) Content of referral.
  - (f) Process for selection.
  - (g) Criteria for selection.
  - (h) Review of the list.
  - (i) Administration of the list.
  - (j) Complaints.
  - (k) Removal from the list.

**3 INTRODUCTION**

- 3.1 This Practice Note replaces all previous Practice Notes pertaining to the selection, appointment and payment of lawyer for the child.

**4 TERMS AND DEFINITIONS**

- 4.1 In this Practice Note:
- (a) COCA means the Care of Children Act 2004;
  - (b) CYPTFA means the Children, Young Persons and Their Families Act 1989;
  - (c) FCA means the Family Courts Act 1980
  - (d) The term 'child' includes child as defined in COCA and both 'child', 'children' and 'young person' as those terms are defined in the CYPTFA.
  - (e) References to 'the lawyer,' unless otherwise stated, means a lawyer appointed by the Court to act for a child.
  - (f) References to 'report writer' means any social worker or report writer from whom a

report has been requested under section 132 or 133 of COCA or under section 178, 186 or 187 of the CYPTFA. 'Specialist report' has a corresponding meaning.

## **5 SEPARATE REPRESENTATION OF CHILDREN**

5.1 Various of the Family Law Acts authorise the Court to appoint a lawyer to act for a child who is the subject of, or who is a party to, proceedings under that Act.

- (a) Sections 7(a) and (b) of COCA the Court may appoint a lawyer if the Court has concerns for the safety and wellbeing of the child and considers an appointment necessary.
- (b) Sections 162(1)(a) and (b) of the Family Proceedings Act 1980 authorises the Court to appoint a barrister or solicitor to represent any child who is the subject of, or who is otherwise a party to, any proceedings under that Act if the Court is satisfied that the appointment is necessary or desirable.
- (c) Section 159 of the CYPTFA requires the Court to appoint a barrister or solicitor to represent any child or young person who is the subject of any proceedings under Part 2 (Care and protection of children and young persons) or Part 3A (Trans-Tasman transfer of protection orders and protection proceedings) of that Act and, if the Court thinks desirable, for such other purposes as the Court may specify (including any other proceedings under that Act or any other enactment).
- (d) Section 81(1)(b) of the Domestic Violence Act 1995 authorises the Court to appoint a lawyer to represent the child in any proceedings on an application for a protection order made on the child's behalf or in any proceedings relating to or arising out of a protection order made on that child's behalf.
- (e) Section 37A of the Property (Relationships) Act 1976 authorises the Court to appoint a lawyer to represent children of the marriage, de facto relationship or civil union in any proceedings under that Act if there are special circumstances that render appointment necessary or desirable.
- (f) Sections 226(1)(a) and (b) of the Child Support Act 1991 authorises the Court to appoint a barrister or solicitor to represent any child who is the subject of, or who is otherwise a party to, any proceedings under that Act if the Court is satisfied that the appointment is necessary or desirable.

## **6 PROCESS FOR APPOINTMENT OF LAWYER FOR THE CHILD IN ANY SPECIFIC CASE**

- 6.1
- (a) Appointments must be made by the Court.
  - (b) The Judge is responsible for settling the brief for the lawyer.
  - (c) The brief will have regard to the role of the issues raised by the specific proceedings and will otherwise require the lawyer to carry out his or her task as prescribed by section 9B of the Family Courts Act 1980 and shall be settled as at the time of appointing the lawyer.
  - (d) The initial brief (and any extensions approved by the Court) will cover the span of the appointment of the lawyer up until the time of any hearing unless the case is sooner resolved.

*COCA*

- (e) Unless any risks to the children are identified earlier, appointments under s 7 of the Care of Children Act 2004 generally will not be made until either a issues or settlement has identified that the appointment of the lawyer is necessary in resolving the dispute between the parties to the proceeding.
- 6.2 When allocating the brief to the lawyer, the Court will consider the following factors:
- (a) Match of skills to case requirements.
  - (b) Availability of the lawyer.
  - (c) Current workload of the lawyer.
  - (d) Equitable distribution of work among lawyers on the list.
- 6.3 Every brief shall include:
- (a) A task to be carried out by the lawyer as set out above in paragraph 6.1 (b).
  - (b) Any reporting requirements, both written and otherwise;
  - (c) The time and funding allocated to carry out the brief; and
  - (d) The timeframe for completion of the tasks.
- 6.4 The role of the lawyer is referred to in detail in the Law Society's Lawyer for the Child Best Practice Guidelines.
- 6.5 Once the Court has settled the brief for the lawyer, the Registrar will negotiate an estimate for time and cost for undertaking the outlined brief with the proposed lawyer. This will include payment of any disbursements. Once an acceptable arrangement has been reached, the Judge will sign a Minute of Appointment.
- 6.6 A bill of costs should be rendered in a form agreed to between the Ministry of Justice and the New Zealand Law Society. This will be set out in 6 minute time units calculated in accordance with an agreed hourly rate of remuneration.
- 6.7 Where, during the course of the work, it becomes clear that the estimate of time does not cover the work required for the proper discharge of the lawyer's task in the specific case, the lawyer should report that fact to the Court with reasons. The lawyer should use best endeavours to report before the estimate is exceeded.
- 6.8 Where the nature of the assignment changes and the lawyer believes a different payment level should apply, the lawyer should report to the Court as soon as practicable. Where the lawyer and the Registrar cannot agree on any additional cost, the matter should be resolved by the procedures set out in the legislation under which the lawyer has been appointed.
- 6.9 Upon delivery of judgment, the lawyer's appointment will continue:
- (a) for 28 days in order to advise on the merits of an appeal (s 9B(d) FCA) ; and
  - (b) in COCA cases to comply with s 55(4).
- 6.10 Each Court will maintain a register listing each appointment of a lawyer, the date of appointment, the estimate of fees and actual fees paid, the type of case and the date on which the appointment terminates.
- 6.11 The record will be available for the regular monthly management meeting of each Family Court.
- 6.12 In larger metropolitan areas (such as Auckland and Wellington), where several Courts use one



pool of lawyers, there should be inter-Court communication to ensure that, as far as possible, there is a spread of assignments to all listed lawyers.

## **7 CHILDREN, YOUNG PERSONS, AND THEIR FAMILIES ACT 1989: REVIEW PROCEDURES**

- 7.1 The lawyer's appointment will continue after the initial proceedings have been finalised or have subsequently been reviewed, with a further review to follow.
- 7.2 Though the lawyer's appointment continues in this way, no active work is to be undertaken until the time of the review, unless specifically authorised by the Court or issues arise unexpectedly or urgently.
- 7.3 Because the appointment continues, the lawyer becomes a person who has to agree to the reviewed plan. Early consultation will be required by the person preparing the plan (refer ss 132(1)(b) and 135(3)(e) of the CYPTFA).
- 7.4 If there is no dispute about the reviewed plan and the direction in which the proceedings are to go, those preparing the reviewed plan should obtain the formal consent of all parties as required. The consent forms should indicate whether parties wish to attend a hearing or whether they consent to the review being conducted without a hearing. The Judge should be advised of any dispute when the plan is filed.
- 7.5 After filing, the plan will be placed before a Judge to consider release of the report and any other steps to be taken, and whether orders can be made on the papers.
- 7.6 The intention of this procedure is to reduce to a minimum any disruption to the lives of children, foster parents and others by having them attend the Court, but at the same time to protect all parties' rights under the CYPTFA. This is particularly appropriate where everyone agrees that the status quo should continue. It is also intended to lead to significant savings in time and cost.

## **8 REPORT FROM LAWYER FOR CHILD**

- 8.1 Reports are to be provided as specified by the brief or as otherwise directed by a Judge.
- 8.2 Copies of the reports must be forwarded to the lawyers for the parties or, if they are unrepresented, to the parties directly.
- 8.3 The report should summarise steps taken by the lawyer and results that have been achieved. It should then outline further steps to be taken or recommended. The report should be short, factual and informative, but should be couched in neutral terms and should not introduce any material that ought to come to the Court's knowledge only by way of evidence. Further steps recommended may include one or other of the following.
  - (a) That the parties be referred to a Parenting Information Programme, or FDR.
  - (b) That a settlement or directions conference be held.
  - (c) That the matter proceed to a hearing.
  - (d) That the matter is transferred to a different track, or is classified as a complex case.
  - (e) That a report be prepared under ss 132 or 133 of the Care of Children Act 2004 or ss 178, 186 or 187 of the CYPTFA. Reasons for such a report should be stated.
- 8.4 Because circumstances differ so much from case to case, Judges have been reluctant to

approve a set form or model to be used as a basis for reports required from the lawyer. Nevertheless, the following draft is included as a useful guideline. It focuses attention on:

- (a) Relevant issues;
- (b) The point that has been reached by the parties;
- (c) The input to date by the lawyer; and
- (d) Advice to the Court on initiatives that may be appropriate.

8.5 Reports should be comprehensive, but concise and to the point. In an appropriate case the lawyer may refer in a neutral way to issues settled or still to be determined.

The Registrar

Family Court

**Re: B Family – day/month/year**

Thank you for your letter of [date] advising of my appointment as lawyer for the children. This is my report of my attendance to date.

**Summary of issues:**

- 1. The future of Mr and Mrs B's marriage.
- 2. Day-to-day care of three children.
- 3. Occupation of a state rental home.

**Situation:**

- 1. Mr and Mrs B and their children presently occupy the home.
- 2. There are three children directly affected by the dispute:
  - (a) G – pupil Wellington College;
  - (b) R – pupil Wellington College; and
  - (c) P – a child with an Autistic Spectrum Disorder (ASD) and an intellectual disability. P attends a special school.
- 3. Mr and Mrs B have attended counselling.
- 4. A settlement conference was held on Friday 11 July. However, the problems have not been resolved, and an urgent hearing has been sought.

**My attendances on the child/ren to date:**

- 1.
- 2.
- 3.
- 4.

**Other attendances to date:**

1. Read Court documents.
2. Formulated an approach.
3. Spoke on telephone and attended on the parties' lawyer.
4. Conference with Mrs B.
5. Conference with Mr B.
6. Conference with Principal, Special School.
7. Conference with school counsellor, Wellington College.
8. Telephone conference, social worker, Wellington Hospital.
9. Attended mediation conference.
10. Conference with school Principal preparing affidavit.
11. Conference with school counsellor preparing affidavit.

It appears that the only and most appropriate means of resolution is an urgent Court hearing. I have, at this stage, decided to call witnesses to give evidence at the hearing and, to that end, am in the process of preparing affidavits.

I intend to speak to ..... from the Ministry of Education who has completed an assessment of P. I will also be speaking to G and R and intend to meet further with Mr and Mrs B and their solicitors prior to the hearing.

I have to date spent X hours on the case as detailed by my interim bill, which is enclosed.

Yours faithfully,

## **9 PROCESS FOR SELECTION OF LAWYER FOR THE CHILD**

- 9.1 In each Court there will be a list of lawyers who are available to accept appointments from the Court as lawyer for the child and from which the lawyer may be appointed in individual cases.
- 9.2 The appointment of a lawyer on the list of lawyers available to undertake Family Court appointments is a judicial appointment, with the judge being the convenor of an appointment panel established in accordance with this paragraph.
- 9.3 The Registrar will convene a panel to consider applications for inclusion in the list of lawyers for the child available to undertake Family Court appointments.
- 9.4 This panel will consist of a Caseflow Manager or a Family Court Co-ordinator as chair, two nominees from the Family Law Section of the New Zealand Law Society, and a Family Court Judge nominated by the Regional Administrative Family Court Judge (Administrative Judge).
- 9.5 The panel should normally sit with four people, but a panel of three may be convened in some circumstances (for example, where an interview would be unable to be arranged within a reasonable timeframe).
- 9.6 Any panel of three must include a Family Court Judge, a nominee from the Family Law Section and the Caseflow Manager or Family Court Co-ordinator.
- 9.7 Panels will be convened as required, but no less than twice a year if there are applications waiting to be considered and a need for a lawyer to be appointed.
- 9.8 The following appointment process should be followed:

- (a) The lawyer must submit an application form to the Registrar in the Court region in which they wish to practise, nominating 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 L4C 1 which is available from the Family Court website or any Family Court. 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, confidential comment.
- (c) The Registrar shall give copies of the application and any supporting documentation to the Administrative Judge who shall be given seven days to make any comments in writing relating to the application.
- (d) Panel members may make such enquiries as may be needed for them to be informed about the applicant's ability to meet the criteria, including enquiries of referees.
- (e) On completion of its enquiries, the panel may arrange an interview with the applicant at such time and place as may be determined by the Registrar.
- (f) Not less than seven days prior to the interview, the Registrar shall forward a report to the applicant detailing the enquiries made by the panel including details of any response that is adverse to the applicant. In the event of there being insufficient time available to consider the application, the panel may adjourn the interview or otherwise arrange a hearing to consider the application.
- (g) The Family Court Judge convening the panel makes the appointment to the list. The role of the other members of the panel is to advise the Judge.
- (h) An unsuccessful applicant shall be provided with reasons for not being included in the list.
- (i) The Registrar will advise of the recommendation in writing to the following people: the applicant, the Court, the Family Law Section and, in the event that the application is successful, the National Office of the Ministry of Justice.

9.9 The lawyer should meet the following criteria. They should have:

- (a) A current Practising Certificate;
- (b) The ability to exercise sound judgement and identify central issues;
- (c) A minimum of five years practice in the Family Court;
- (d) Proven experience in running defended cases in the Family Court;
- (e) A sound knowledge of COCA, CYPTFA, The Domestic Violence Act 1995 and the Family Courts Rules 2002.
- (f) An understanding of, and an ability to relate to and listen to, children of all ages;
- (g) Good people skills and an ability to relate to and listen to adults;
- (h) Sensitivity and awareness of gender, ethnicity, sexuality, cultural and religious issues for families;
- (i) Relevant qualifications, training and attendance at courses relevant to the role;
- (j) Personal qualities compatible with assisting negotiations in suitable cases and working co-operatively with other professionals;
- (k) Independence; and

- (l) Knowledge, understanding, and a commitment to comply with the Law Society's Lawyer for the Child Best Practice Guidelines.

9.10 The lawyer will be able to transfer their approval from one Court region to another.

## **10 REVIEW OF LAWYER FOR THE CHILD LISTS**

10.1 A review of lawyer for the child lists must be undertaken at intervals of not more than three years. The Registrar in each Court must ensure that lists of approved lawyers are reviewed at such intervals. Where several Courts use one pool of lawyers, the Registrars in those Courts may choose to review the lists of approved lawyers together.

10.2 The Registrar shall give notice of the triennial review to all lawyers who are currently on the list. Such notice will include a requirement for all lawyers whose names appear on the list to indicate, within 28 days:

- (a) Whether they wish to continue to receive lawyer for the child appointments;
- (b) Whether they wish to withdraw from the lawyer for the child list; or
- (c) Whether they have any matters relating to present or past appointments which they wish to draw to the attention of the panel.

10.3 The panel shall meet as soon as practicable and reconstitute the list of lawyer for the child. The panel shall also consider any matters raised by a lawyer that relate to the administration of the list.

10.4 The name of a lawyer may only be deleted from the list at:

- (a) the lawyer's request,
- (b) as a result of the lawyer's failure to respond within the stipulated time, or
- (c) as the result of a review by the panel of the lawyer's ongoing suitability for the role.

10.5 The panel shall notify all lawyers on the reviewed list whether their names have been retained or deleted from the list, as the case may be, as well as specify the reasons for any deletion.

10.6 The Registrar shall send the reviewed list, with any revisions, to the National Office of the Ministry of Justice and the Family Law Section.

## **11 Remuneration**

11.1 Until regulations are made fixing the rate of remuneration, the rates paid to lawyers shall be agreed between the Ministry of Justice and the New Zealand Law Society.

11.2 The Ministry of Justice shall publish the rates on the following website: [www.justice.govt.nz/family-justice](http://www.justice.govt.nz/family-justice) and update the rates accordingly.

## **12 COMPLAINTS**

- 12.1 Any complaints about the lawyer are to be made in writing to the Family Court Registry where the proceedings are held
- 12.2 If the proceedings have not been concluded the complaint is made to the presiding Judge. If the proceedings have been concluded the complaint is made to the Administrative Family Court Judge responsible for the Court where the proceedings were filed.
- 12.3 Subject to any direction by the Judge handling the complaint, the Registry shall send copies of any complaint to the lawyer who is the subject of the complaint, any lawyers for other parties and any party not represented who is involved in the proceedings.
- 12.4 The Judge considering the complaint shall:
- a) make such directions from time to time as the circumstances require;
  - b) make such enquiries as he or she thinks fit;
  - c) ensure disclosure is made to the lawyer complained about of all relevant material;
  - d) set a timetable for the lawyer to respond to the complaint and for the complainant to respond to the lawyers reply;
  - e) otherwise observe the rules of natural justice;
- and then determine whether the complaint has substance or not.
- 12.5 If the Judge determines the complaint does not have substance, he or she shall dismiss it.
- 12.6 If the complaint has substance, the Judge may require the lawyer to do any or all of the following:
- a) formally apologise in writing to the complainant;
  - b) complete up to 6 assignments under the supervision of a named experienced lawyer for child;
  - c) have a named experienced lawyer for child as mentor for a period of up to 12 months.
- 12.7 If the complaint raises a substantial issue which the Judge considers is not able to be addressed as set out above, he or she shall refer the complaint to the Panel to determine whether the lawyer should be removed from the list. In that case the provisions of paragraph 13 shall apply.
- 12.8 The lawyer who is subject of the complaint, as well as any lawyers for other parties and any party not represented, shall be notified of the outcome of the complaint by the Registrar of the Court or the Panel as appropriate. The NZLS shall also be notified of the outcome of the complaint if it was the original recipient of the complaint.
- 12.9 Nothing in this Practice Note limits the Court's jurisdiction to do whatever it considers appropriate in the circumstances or otherwise limit the right of the Law Society or other statutory authority to consider any complaint about a lawyer.

### **13 REMOVAL FROM THE LIST OF LAWYER FOR THE CHILD**

- 13.1 The lawyer may be removed from the list and this shall occur by the same process used to select lawyers in paragraph 10, with all necessary modifications.
- 13.2 Grounds upon which lawyers can be removed shall be:
- (a) Professional misconduct in carrying out duties as lawyer for the child; or
  - (b) Demonstrable failure to abide by the Lawyer for the Child Best Practice Document or other failure to carry out duties responsibly and competently; or
  - (c) Conduct which, in the opinion of the panel, is likely to bring the office of the lawyer into disrepute.
- 13.3 The panel shall advise the lawyer in writing that it is considering removing his or her name from the list.
- 13.4 The notice from the panel to the lawyer shall:
- (a) Specify the reasons why the panel is considering the removal of the lawyer from the list;
  - (b) State the right of the lawyer to make submissions or representations within 21 days from the date of service of the notice; and
  - (c) Set out the intention of the panel to consider removing the lawyer from the list after 21 days unless the lawyer indicates in writing that he or she opposes removal.
- 13.5 When the 21-day time period has expired, the panel shall convene to consider whether or not the lawyer should remain on the list. In the event that the lawyer has made submissions or representations opposing the removal, the Registrar shall convene a hearing.
- 13.6 At any defended hearing, the lawyer shall be entitled to be represented and shall be entitled to call witnesses in support.
- 13.7 The Registrar shall advise the Administrative Judge, the lawyer, the relevant Court, the Family Law Section and the National Office of the Ministry of Justice of the decision in writing.

#### **COMMENCEMENT DATE**

This revised practice note comes into operation on 3/4/2015

Judge Laurence Ryan

**PRINCIPAL FAMILY COURT JUDGE**

Dated 26/3/2015

**APPENDIX 3:** **REVOKED: PRACTICE NOTE: LAWYER FOR THE CHILD: CODE OF CONDUCT** (*Replaced by Family Law Section Lawyer for the Child Best Practice Guidelines*)



<b>APPENDIX 4: PRACTICE NOTE: CHILDREN'S SUPERVISED CONTACT</b>
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## **PRACTICE NOTE: CHILDREN'S SUPERVISED CONTACT**

### **1 BACKGROUND**

- 1.1 The terms of this Practice Note have been settled in consultation with the Ministry of Justice and the Family Court.
- 1.2 Family Court referrals for supervised contact should only be made to approved service providers (providers).
- 1.3 A provider can become approved in one of two ways:
  - (a) by providing evidence of having Child, Youth and Family approval status under s 403(1) of the Children, Young Persons, and Their Families Act 1989; or
  - (b) by a Family Court Coordinator approving the provider where there is a local need for the provider, and where the provider is a member of the Aotearoa New Zealand Association of Supervised Contact Services Inc.
- 1.4 This Practice Note sets out the procedures to be followed:
  - (a) for information and reports passing between the Family Court and the service provider; and
  - (b) upon review and termination of supervised contact.

### **2 FORMS**

- 2.1 The forms for use in conjunction with this Practice Note are located on the Family Court website ([www.justice.govt.nz/family](http://www.justice.govt.nz/family)).

### **3 INTRODUCTION**

- 3.1 The objects of this Practice Note are to:
  - (a) establish a national set of procedures and arrangements between the Family Court and supervised contact providers;
  - (b) ensure that the need of any child using such a service for protection and safety is met; and

- (c) ensure that the child's welfare and best interests are promoted.
- 3.2 The Court has jurisdiction under the Care of Children Act 2004, the Domestic Violence Act 1995, and the Children, Young Persons, and Their Families Act 1989 to make orders in respect of day-to-day care, contact, custody and access. This includes orders for supervised contact or access affecting children and young people.
- 3.3 In exercising that jurisdiction, the Court must regard the welfare and best interests of the child as the paramount consideration and, in particular, have regard to the need to protect the child from physical, sexual, and psychological abuse, ill-treatment, and exposure to behaviour which may emotionally or psychologically harm the child.

#### **4 REFERRAL OF CASES FOR SUPERVISED CONTACT**

- 4.1 Where it is proposed to refer a case which is before the Court to a supervised contact provider, where appropriate the Family Court will supply to the provider:
- (a) the names and contact details of the parties;
  - (b) the name(s) and age(s) of the child(ren);
  - (c) a copy of all relevant orders, including the FAM reference number, the custody and access orders, parenting orders and orders under the Domestic Violence Act 1995, Care of Children Act 2004 and Children, Young Persons, and Their Families Act 1989, and such relevant applications, affidavits, reports and memoranda as the Judge shall permit;
  - (d) the reason(s) for the request for supervision and, in particular, any concerns for the safety and welfare of the child(ren); and
  - (e) the nature and extent and length of period of supervision which is sought, including the date of any review.

It is the responsibility of the Court to supply these documents to the provider.

The assessment may also include an interview with the child and relevant family members.

The provider will ensure that these documents are secure and viewed only by those who are authorised to do so. At the conclusion of the assessment or provision of service, whichever is the later, the documents shall be returned to the Family Court.

- 4.2 Information is to be provided on a form generated by the Case Management System.
- 4.3 The service provider will assess:
- (a) the nature and extent of any risk to the welfare and safety of the child(ren);
  - (b) the nature and extent of any risk to the welfare and safety of other relevant persons;
  - (c) whether the child(ren) is/are likely to be, or to become, comfortable with the proposed supervised contact arrangements;
  - (d) the appropriate level of contact for the individual child and the availability of the provider;
  - (e) the level of vigilance required for supervision; and
  - (f) whether the provider has the capacity and resources to provide the level of supervision required.
- 4.4 The provider will supply the Court with a report upon completion of the assessment. The report will indicate whether the provider:
- (a) accepts the original referral from the Court; or
  - (b) seeks any variation to the original referral including a recommendation for a review date. The Court must approve any variation sought in respect of the original referral; or
  - (c) declines the referral from the Court. The provider must include the reasons for declining. The Court then has the responsibility to refer the case elsewhere if the Court considers that further referral is appropriate.
- 4.5 If the provider accepts the referral, the Court will confirm in writing the contract for supervised contact with the provider when it receives the assessment report. This will outline the number of sessions of supervised contact to be provided.

## **5 INFORMATION AND REPORTS**

- 5.1 The provider agrees to provide information on supervised contact to the Court. This will be provided on completion of the eighth session or within three months, whichever is the earlier, or upon request from the Court.
- 5.2 Parents/caregivers shall be informed at the point of intake that such reports will be provided to the Family Court.
- 5.3 Any requests for the report must be made through the Family Court.
- 5.4 The provider will advise the Family Court or lawyer for the child if they consider

that there are welfare or other concerns arising in the course of supervised contact.

- 5.5 Where additional reports other than the Court report are required, the Court may engage the services of a specialist report writer. The intention is that the Court does not rely on the provider for this evidence. If the Court considers that the information set out in the provider report does not go far enough and it wishes to hear a report on other matters such as attachment, bonding, fear, safety and other such psychological issues, the appropriate avenue for the Court to receive such information is through a specialist report writer pursuant to s 133 of the Care of Children Act 2004.
- 5.6 The Court shall advise the provider of any changes to the original reason for the request for supervision (refer 4.1(d)).
- 5.7 Normally a supervised contact provider should not be required to give evidence in Court. The report provided by the supervised contact provider is expected to be sufficient for the Court's needs.

## **6 REVIEW OF SERVICE PROVISION**

- 6.1 The lawyer for the child will organise a review of service provision based on the recommendation of the service provider in the assessment report, or as requested by the Family Court.

## **7 TERMINATION OF PERIOD OF SUPERVISION**

- 7.1 A provider may decline to continue providing supervised contact for a referred family at any time. The provider must notify the Court immediately. Termination might be indicated in circumstances in which, in the view of the provider:
- (a) the child is being, or is at risk of being, adversely affected by the supervised contact;
  - (b) the supervisor's safety is at risk;
  - (c) other risk factors are unmanageable, for example, use of drugs and alcohol, intimidating behaviour, risk to other users;
  - (d) there is non-compliance with the rules of the supervised contact by an adult user of the service.
- 7.2 If supervised contact is to be discontinued for any reason, the provider shall notify

the Court, lawyer for the child and the parties, and provide reasons for the discontinuation.

- 7.3 If supervised contact is to be discontinued by the Family Court, the Court will notify the provider immediately.
- 7.4 An exit plan needs to be prepared for each child before finishing supervised contact. This is to ensure that the child is prepared appropriately for the transition from supervised contact.

### **COMMENCEMENT DATE**

This revised Practice Note is issued on 13 June 2013 and comes into operation on 13 June 2013.

**Judge L J Ryan**

**PRINCIPAL FAMILY COURT JUDGE**

**APPENDIX 5: JOINT PROTOCOL MINISTRY OF JUSTICE AND  
DEPARTMENT OF CHILD, YOUTH AND FAMILY,  
1 JULY 2000**

**NOTE** This protocol has been updated to account for the following changes:

- (a) the Department for Courts is now the Ministry of Justice;
- (b) Child, Youth and Family Services is now Child, Youth and Family; and
- (c) the Care of Children Act 2004 and the Family Courts Rules 2002 have been passed.

No substantive changes have been made.

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## REFERRAL BY THE FAMILY COURT TO CHILD, YOUTH AND FAMILY

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### Introduction

This protocol details the service requirements to ensure that there is an effective and efficient child protection network for vulnerable and at risk children, young people and families.

This protocol specifies three tracks for referral by the Family Court to Child, Youth and Family. The fourth track details the reciprocal arrangements for the lawful exchange of information between the Department and the Ministry and between the Court and Child, Youth and Family.

The tracks are:

1. Section 15 CYP&F Act 1989 reporting of ill-treatment or neglect of child or young person.
  2. Section 19(1)(b) CYP&F Act 1989 referrals of care or protection cases to the Care and Protection Co-ordinator.
  3. Section 132 Care of Children Act 2004 reports from Director-General for social work report.
  4. Requests for information.
- 

### Liaison

The Ministry of Justice liaison person in each location will be the Family Court Co-ordinator. Each Child, Youth and Family site will identify a Court liaison person.

The liaison role will be to jointly monitor timeliness, quality of referrals and reports, and to facilitate regular meetings, including the judiciary and other relevant parties, to ensure that the protocol is working effectively in each area.

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### Process for referral

The Family Court has a number of legislative options for requesting either information to assist the Court or requiring care and protection action by Child, Youth and Family.

Child, Youth and Family may approach the Court to review the track option chosen by the Court or the timeframes, if either appears to be inappropriate.

The Court will make referrals to Child, Youth and Family on the appropriate form:

- Form 001, Track 1, S 15 Referral to Child, Youth and Family
- Form 002, Track 2, S 19 Referral to Care & Protection Co-ordinator
- Form 003, Track 3, S 132 Referral for Social Work Report

See [Appendix A: Table for a summary of the referral tracks](#)

[Appendix D: For a table of forms](#)

[Appendix E: For s 14 Definition of child or young person in need of care or protection](#)

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**SECTION 15 CYP&F ACT 1989 REPORTING OF ILL-TREATMENT OR NEGLECT OF CHILD OR YOUNG PERSON: TRACK 1**

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**Referrals**

If the Court in any proceedings before it believes that any child or young person may have been, has been, or is likely to be harmed (whether physically, emotionally or sexually), ill-treated, abused, neglected or deprived, a s 15 referral may be made to Child, Youth and Family by the Court for an investigation under s 17.

This referral will be made to the National Call Centre or Duty Social Worker not the Care and Protection Co-ordinator.

This referral will be made on Form 001, and on judicial direction will include copies of relevant affidavits, orders and reports.

***Any request by a third party to Child, Youth and Family for the information provided by the Court should be referred to the Court.***

If a critical or very urgent risk is suspected, the notification should be immediately phoned to the National Call Centre or Duty Social Worker and the forms faxed.

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**Child, Youth and Family action**

1. On receipt of the notification, the receiving Child, Youth and Family site will advise the Court **preferably within one working day** or as soon as possible:
  - the date the notification was received;
  - the response time assigned to it (see 2 below);
  - if there is a current investigation; and
  - the allocated social worker (where possible).

*(See s 15 response form 001: Initial report)*

2. Child, Youth and Family will prioritise cases according to the time within which an investigation will commence.

Initial response requirements are:

- critical (same day);
- very urgent (same day plus 1);
- urgent (within 7 days);
- low urgency (within 28 days); or
- no further action.

3. When the investigation into the s 15 notification is completed Child, Youth and Family will provide the Court with a brief **written** report, **as soon as is practicable**, conveying the outcome of the investigation and any further actions planned (s 17(3)).

*If the Court requires substantive details regarding the outcome of the case the Court will request a s 132 (Care of Children Act 2004) report to provide such details.*

*(See s 15 response form 001: Outcome of investigation)*

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**Information sharing with section 15 notifications**

Communication and relationship building between the Department and the Ministry is seen as the key to ensuring that s 15 notifications are effectively managed. Child, Youth and Family and Courts staff are encouraged to keep in touch about the progress of the case.

Until a case has been allocated the liaison person will ensure that the Court is kept informed of the progress in allocating the case and the expected final response time from Child, Youth and Family to Courts.

The allocated social worker in Child, Youth and Family and the Family Court Co-ordinator in Courts should ensure that the Department and the Ministry are kept fully informed, as soon as possible, of any changes in the child's circumstances or significant events – such as care arrangements, related orders, family/whanau meetings or Family Group Conferences.

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**SECTION 19(1)(b) CYP&F ACT 1989 REFERRALS OF CARE OR PROTECTION CASES TO THE CARE AND PROTECTION CO-ORDINATOR BY COURT: TRACK 2**

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**Referrals**

Where in any proceedings the Court **believes** that any child or young person is in need of care or protection on one or more of the grounds specified in s 14(1) of the Act, the Court may refer the matter to a Care and Protection Co-ordinator under s 19(1)(b) of the CYP&F Act.

The referral will be made on **Form 002**, and upon judicial direction will include copies of all relevant affidavits, orders and reports.

***Any request by a third party to Child, Youth and Family for the information provided by the Court should be referred to the Court.***

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**Child, Youth and Family action**

The Child, Youth and Family C&P Co-ordinator will provide a report to the Court to indicate **intended** action within **seven days**.

*(See s 19 Form 002: Initial report to be completed)*

1. When the referral has been accepted and an FGC is to be convened, an invitation will be extended to counsel for the child or, in the case of an application under the Domestic Violence Act, counsel to assist the Court, to attend the FGC, pursuant to s 22(1)(h) of the Act.
  2. The Co-ordinator will advise the Court if a social work report has been requested and the expected timeframe for the completion of that report.
  3. The Care and Protection Co-ordinator must report to the Court **within 28 days** (s 19(4)(a) or (b) CYP&F Act).
  4. The final written report will meet the timeframes established by/or negotiated subsequently with the Court.
  5. Where an FGC has been held a copy of the FGC recommendations, decisions and plans will be provided to the Court.
- 

**Response times**

1. Receipt of referral: report to Court on intended action within seven working days.
  2. Statutory requirement for report to Court is 28 days, (ss 19(4)(a) or (b)).
  3. Final report to Court by agreed date.
-

**SECTION 132 CARE OF CHILDREN ACT 2004 REPORTS FROM CHIEF EXECUTIVE: TRACK 3**

**Referrals**

Requests for reports under s 132 Care of Children Act 2004 are specific to day-to-day care and contact issues and are confined to the parties to those proceedings.

Section 132 requests will not be used to activate general care or protection investigations in place of s 15 or s 19(1)(b) CYP&F Act, or to investigate placement options for a child other than with the parties to the proceedings.

The referrals will be made on **Form 003**, and upon judicial direction will include copies of relevant affidavits, orders and reports.

***Any request by a third party to Child, Youth and Family for the information provided by the Court should be referred to the Court.***

Referrals will be forwarded to the Duty Social Worker, or designated person at the relevant site.

**S 132 reports**

The following table identifies two types of s 132 reports:

Report	Information included
Limited report	<p>A report with a specific brief from the Court as to the issues to be reported on, e.g:</p> <ul style="list-style-type: none"> <li>• whether the family is known to Child, Youth and Family, as per Track 4, this may include details of any previous/current notifications/history with Child, Youth and Family, i.e, a file search.</li> <li>• specific details for access arrangements.</li> </ul> <p>Where such a brief is given a short and focussed report will be expected back rather than a lengthy assessment.</p> <p>Whatever the brief the report should always include additional information which may be relevant to the proceedings, for example, an acknowledgement that there is a current investigation being undertaken, the parties are known to Child, Youth and Family, etc.</p>
General report	<p>A general s 132 report will include:</p> <ul style="list-style-type: none"> <li>• details of any current or previous notifications/history with Child, Youth and Family;</li> <li>• information regarding dates of interviews/contact with the parties, child(ren), other significant adults involved;</li> <li>• background information;</li> <li>• present circumstances;</li> <li>• parenting ability;</li> <li>• relationship to the child;</li> <li>• future plans;</li> <li>• extent of co-operation with other parties.</li> </ul> <p>The report must also address any specific issues identified by the Court.</p>

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**Note**

1. If a social worker forms a suspicion in preparing a report that there are care or protection issues, they must take the appropriate action under s 15 and advise the Court as soon as possible..
  2. Section 132 reports remain the property of the Court and cannot be provided to third parties. Any request for access to the s 132 report must be referred to the Court.
- 

**Response time**

The specific time for reporting back will either be established in the brief or negotiated and recorded subsequently.

A general report would be expected to take six weeks to prepare but it is expected that a limited report would be able to be provided within a much shorter timeframe.

*(See Track 4 for additional information)*

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## REQUEST FOR INFORMATION: TRACK 4

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### Introduction

These are the processes that will establish the arrangements for the lawful provision of information between the Ministry of Justice, the Court and Child, Youth and Family. Child, Youth and Family may also use this track to get information from the Court as part of a care or protection investigation.

Child, Youth and Family will provide the Court with information under s 132 of the Care of Children Act 2004.

The Ministry of Justice will provide information to Child, Youth and Family in accordance with any requests under s 66 of the CYP&F Act 1989.

Court records can be addressed by Child, Youth and Family in accordance with the relevant search rules.

(See [Appendix B](#))

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### Making requests

The following details the procedures for accessing information from:

1. Child, Youth and Family to the Court.
  2. The Ministry of Justice to Child, Youth and Family.
  3. The Court to Child, Youth and Family.
- 

#### 1. Information provided by Child, Youth and Family to the Court by a section 132 report

The Court may request a s 132 report from Child, Youth and Family specifically to determine whether Child, Youth and Family has had:

1. previous, or current involvement with the family named in the request; and
2. whether there are any current orders.

It is not expected that this report will provide the substantive details of Child, Youth and Family's involvement. If this information is later required by the Court an additional report may be requested.

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### Response times

A specific and limited report could be provided in one working day.

(See s 132 Form 003: CYF response)

The timeframe for a more detailed report will either be established in the brief or negotiated and recorded subsequently.

---

**2. Information provided by the Ministry of Justice to Child, Youth and Family under section 66 CYP&F Act**

**Access to Ministry of Justice information**

Child, Youth and Family can request information held by **Ministry of Justice**, not the Court, pursuant to its specific statutory powers, under s 66 CYP&F Act.

The Ministry of Justice will provide Child, Youth and Family with information held by the **Ministry**, not the Court, in accordance with s 66 of the CYP&F Act. Ministry of Justice information would include information held on the Family Court database or the equivalent manual registers. This could include information about current proceedings, orders etc, but not substantive details.

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**3. Information provided by the Court to Child, Youth and Family: Search rules**

**Access to Court files**

Child, Youth and Family may request the Registrar for access to the Court files in accordance with the appropriate search rules.

The most relevant rules for the purposes of this protocol are as follows:

- (a) Rule 8 of the Family Proceedings Rules generally governs access to information concerning proceedings under the Family Proceedings Act 1980 and Care of Children Act 2004 in the Family Court and where a proper interest has been established in the proceedings.
- (b) Rule 95 of the Domestic Violence Rules governs access to information concerning proceedings under the Domestic Violence Act.

(See [Appendix B](#) for a summary of search rules)

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**Response time**

Information from local **Ministry of Justice** records could be provided within one working day.

Timeframes for access to **Court files** will be negotiated with the Court by Child, Youth and Family.

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**APPENDIX A:  
REFERRALS FROM COURTS FOR SERVICES FROM CHILD, YOUTH AND FAMILY**

The following table summarises the legislative criteria for each referral track, including its purpose, the action required by Child, Youth and Family, and possible outcomes.

Track	Criteria	Purpose	Action by CY&F	Outcome
<b>Section 15 CYP&amp;F Act</b>	Belief that a care or protection issue <b>may</b> exist (s 14 grounds).	Statutory Child, Youth and Family investigations to determine care or protection issues.	<ul style="list-style-type: none"> <li>Referral accepted. Court advised within one working day of priority assigned to case.</li> <li>Consult with Care and Protection Resource Panel (CPRP).</li> <li>Possible SAT/CAT (i.e. joint investigation with police).</li> <li>SW assessment – formulation of belief (s 14 grounds).</li> </ul>	<ul style="list-style-type: none"> <li>Social work investigation and assessment completed, identifying any further action required.</li> <li>Brief written report to Court of outcome of investigation.</li> </ul>
<b>Section 19(1)(b) CYP&amp;F Act</b>	Belief (s 14 ground) formed by Court (including counsel) that a care or protection issue exists.  <b>Note:</b> All information relevant to this belief needs to be supplied as per the protocol to reduce the necessity for a Child, Youth and Family investigation.	Care and Protection Co-ordinator (CPC) to consider and, if appropriate, holds family group conference (FGC) to resolve care or protection issues, or to suggest alternative action.	<ul style="list-style-type: none"> <li>CPC reports to Court of intended action, within seven days of receiving referral.</li> <li>CPC may ask for s 19(3) social work investigation (outcome to CPC, not Court).</li> <li>CPC consults Care &amp; Protection Resource Panel.</li> <li>CPC convenes FGC (counsel for child attends FGC).</li> <li>CPC must report back to Court within 28 days.</li> </ul>	<ul style="list-style-type: none"> <li>FGC Plan.</li> <li>Copy of recommendations, decision and/or plan sent to Court.</li> <li>Court orders possible.</li> <li>A report to the Court on action taken.</li> </ul>
<b>Section 132 Care of Children Act 2004</b>	Caregiver dispute (proceedings on guardianship/day-to-day care/contact). Court requires information as specified, or a general report. The report must include any prior or current Child, Youth and Family involvement with family.	Advice as to applicant/respondent parties' ability to provide care.  <b>Note:</b> If the social worker forms a suspicion or belief there are care or protection issues, s/he must make a s 15 notification under s 17 of the CYP&F Act. The Court is to be advised if this occurs.	<ul style="list-style-type: none"> <li>Social work report prepared for Court as per Judge's direction within agreed timeframe.</li> </ul>	<ul style="list-style-type: none"> <li>Court makes decision about orders under Care of Children Act 2004.</li> </ul>

Track	Criteria	Purpose	Action by CY&F	Outcome
<p><b>Information request</b></p>	<p>Court requires information as specified under s 132 request.</p> <p>Child, Youth and Family may seek information from Ministry (s 66 CYP&amp;F Act), and/or require access to Court records as specified under the search rules.</p>	<p>The Court has information relevant to any proceedings to ensure the care or protection needs of a child/young person are met.</p> <p>Child, Youth and Family has information relevant to a current investigation.</p>	<ul style="list-style-type: none"> <li>• Information requested by Court is provided in s 132 report.</li> <li>• Information made available as per protocol.</li> </ul>	



**APPENDIX B:  
SUMMARY OF SEARCH RULES**

**Requests for access to Court records**

Child, Youth and Family may request access to Court files in accordance with the appropriate search rules.

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**Family proceedings**

- (i) Rules 426-434 of the Family Courts Rules generally govern access to information concerning family related proceedings in the District Court that have been determined and where a genuine or proper interest has been established.
- (ii) Part 3 subpart 2 of the High Court Rules generally governs access to information concerning family related proceedings in the High Court and Court of Appeal that have been determined and where a genuine or proper interest has been established.
- (iii) Rule 8 of the Family Proceedings Rules governs access to information concerning proceedings under the Family Proceedings Act 1980 and Care of Children Act 2004 in the Family Court and where a proper interest has been established.
- (iv) Other relevant search provisions are rule 95 of the Domestic Violence Rules and s 23 of the Adoption Act 1955.

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**Criminal proceedings**

- (i) Section 71 of the Summary Proceedings Act permits a certified copy of convictions to be provided to any person with a genuine or proper interest in respect of summary criminal proceedings in the District Court.
  - (ii) The Criminal Proceedings (Access to Court Documents) Rules 2009 govern access to files, by application to a Judge, in respect of criminal proceedings in the High Court and in respect of Jury trials in the District Court.
  - (iii) Rule 9 of the Children, Young Persons, and Their Families Act 1989 Rules governs access to criminal proceedings in the Youth Court where a proper interest has been established.
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**APPENDIX C:  
MEMORANDUM OF UNDERSTANDING  
DEPARTMENT FOR COURTS AND DEPARTMENT OF CHILD, YOUTH AND  
FAMILY SERVICES  
1 JULY 2000**

**SECTION 19(1)(B) CYP&F ACT 1989 REFERRALS OF CARE OR PROTECTION CASES TO THE  
CARE AND PROTECTION CO-ORDINATOR BY COURT: TRACK 2**

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**Background**

This protocol was piloted at four Courts and the Courts' associated five Child, Youth and Family sites. An evaluation of the pilot found that:

- There was no demonstrated capacity by pilot sites for the Family Court to reduce professional service costs as a result of the pilot.
  - Child, Youth and Family funding levels were sufficient to meet the demand for s 29 Court reports, except in Christchurch where the Court did fund additional reports.
  - In sites where there was a dedicated resource, either a staff member or a contracted worker, employed to complete s 29 reports, the Court was generally satisfied with the quality of the reports.
  - The protocol resulted in improved relationships between the Courts and Child, Youth and Family sites and greater effectiveness in service delivery in three of the four areas involved in the pilot.
- 

**Outcomes and objectives of the joint protocol**

The intended outcome of this protocol is to provide an improved model for the delivery of the reporting services Family Courts need from Child, Youth and Family so that complete and accurate information is available to Judges when making decisions which involve the welfare and safety of children.

All Family Courts and Child, Youth and Family sites will implement the protocol from 1 July 2000.

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**Approach and plan**

The implementation plan will progressively roll out the protocol to provide consistent delivery of Child, Youth and Family services to Family Courts.

The implementation plan is scheduled to meet the following milestones:

*Continued on next page*

Milestone	Date
Protocol agreed	1 March 2000
Locations and timetable agreed	20 March 2000
Managers' sign off timetable for briefings	20 March 2000
Training for implementation starts	22 March 2000
Memorandum of Understanding signed	26 June 2000
Implementation of protocol	1 July 2000
Interim Report on implementation to Group Managers in both Departments	30 July 2000
Annual Report on implementation to Group Managers in both Departments	30 July 2001

**Implementation management**

**Sponsors**

The implementation is jointly sponsored by the representatives of the Chief Executives of the Department for Courts and the Department of Child, Youth and Family Services.

**Project Co-ordinators**

Carmel McKee, Advisory Officer, Child, Youth and Family, and Judy Moore, Family Account Manager, Department for Courts have been appointed by each department to implement the protocol nationally.

The Project Co-ordinators will be responsible for setting the implementation plan up and co-ordination of its operation within their respective agencies.

They will share tasks and undertake responsibilities in their area of expertise. This will include training for staff in both departments and for any new data capture required to meet operational requirements.

They will also act as advisors to front-line staff in the operation of the protocol.

Judy Moore will be responsible for liaison with judiciary.

**Benefits and risk management**

The **benefits** of implementing this protocol are expected to be:

- improvements to the quality, timeliness and quantity of reports available to Family Courts from Child, Youth and Family;
- improvements to the specificity and quality of referrals received from Family Courts to Child, Youth and Family.

- improved communication between Courts and Child, Youth and Family.

The **risks** are that:

- there will be no perceived improvement in the timeliness and quality of reports provided by Child, Youth and Family;
  - work volumes for both departments will grow beyond current funding and service capacity;
  - inappropriate referrals will be made by Department for Courts.
-

**PROTOCOL BETWEEN  
THE DEPARTMENT OF CHILD, YOUTH AND FAMILY SERVICES  
AND THE FAMILY COURT**

**1 JULY 2000**

**1. Purpose of agreement**

The Chief Executive, Department for Courts and the Chief Executive, Department of Child, Youth and Family Services have agreed to enter into a Memorandum of Understanding in relation to the services which Child, Youth and Family provides to the Family Court.

**2. Memorandum of Understanding**

**Signatories to the Memorandum of Understanding** - Operational Managers in each agency, namely Fiona Saunders-Francis, Manager Operational Policy, Department for Courts and Ken Rand, General Manager Service Delivery, Child, Youth and Family.

**Period covered by the Memorandum of Understanding** - The Memorandum will come into force on 1 July 2000 and continue at the discretion of the Operational Managers.

**Dispute resolution** - The departments agree that any disputes between them, which cannot be resolved, will be taken to the relevant Operational Managers in the first instance and then to Chief Executives.

**Request for reports from Child Youth and Family** - All judicial requests for s 29 reports under the Guardianship Act 1968, notifications under s 15 or referrals under s 19 Children, Young Persons, and Their Families Act 1989 will be forwarded to the local Child, Youth and Family Duty Social Worker, or the National Call Centre on the forms identified in Appendix D.

**3. Funding for services**

**Funding** - Referrals from the Courts under s 15 and s 19 Children, Young Persons, and Their Families Act 1989 and s 29 Guardianship Act 1968 are included in the service level agreement and will all be funded from Vote: Child, Youth and Family.

**Signed** on behalf of the Department for Courts by

**Fiona Saunders-Francis**, Manager Operational Policy

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Acting under delegation pursuant to the State Sector Act 1988

**Signed** on behalf of the Department of Child, Youth and Family Services

by **Ken Rand**, Group Manager Service Delivery

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Acting under delegation pursuant to the State Sector Act 1988

Date:

**APPENDIX D:  
FAMILY COURT REFERRAL FORMS FOR SERVICES FROM  
CHILD, YOUTH AND FAMILY**

**TABLE OF FORMS**

These forms are available from local Family Courts or the local office of Child, Youth and Family.

<b>Court/CYF 001</b>	Track 1 Section 15 CYP&F Act 1989 Court Referral to Child, Youth and Family Child, Youth and Family Interim and Final Report forms
<b>Court/CYF 002</b>	Track 2 Section 19(1)(b) CYP&F Act 1989 Court Referral to Care and Protection Co-ordinator Care and Protection Co-ordinator Interim Report form
<b>Court/CYF 003</b>	Track 3 Section 132 Care of Children Act 2004 Referral for Social Work Report Child, Youth and Family Report for s 132 Information Request

**APPENDIX E:  
SECTION 14(1) DEFINITION OF CHILD OR YOUNG PERSON IN NEED OF  
CARE OR PROTECTION, CHILDREN, YOUNG PERSONS,  
AND THEIR FAMILIES ACT 1989**

- (1) A child or young person is in need of care or protection within the meaning of this Part of this Act, if –
- (a) The child or young person is being or is likely to be, harmed (whether physically or emotionally or sexually), ill-treated, abused, or seriously deprived; or
  - (b) The child's or young person's development or physical or mental or emotional wellbeing is being, or is likely to be, impaired or neglected, and that impairment or neglect is, or is likely to be, serious and avoidable; or
  - (c) Serious differences exist between the child or young person and the parents or guardians or the other persons having the care of the child or young person to such an extent that the physical or mental or emotional wellbeing of the child or young person is being seriously impaired; or
  - (d) The child or young person has behaved, or is behaving, in a manner that:
    - (i) Is, or is likely to be, harmful to the physical or mental or emotional wellbeing of the child or young person or to others; and
    - (ii) The child's or young person's parents or guardians, or the persons having the care of the child or young person are unable or unwilling to control; or
  - (e) In the case of a child of or over the age of 10 years and under 14 years, the child has committed an offence or offences the number, nature, or magnitude of which is such as to give serious concern for the wellbeing of the child; or
  - (f) The parents or guardians or other persons having the care of the child or young person are unwilling or unable to care for the child or young person; or
  - (g) The parents or guardians or other persons having the care of the child or young person have abandoned the child or young person; or
  - (h) Serious differences exist between a parent, guardian, or other person having the care of the child or young person and any other parent, guardian, or other person having the care of the child or young person to such an extent that the physical or mental or emotional wellbeing of the child or young person is being seriously impaired; or
  - (i) The ability of the child or young person to form a significant psychological attachment to the person or persons having the care of the child or young person is being, or is likely to be, seriously impaired because of the number of occasions on which the child or young person has been in the care or charge of a person (not being a person specified in subsection (2) of this section) for the purposes of maintaining the child or young person apart from the child's or young person's parents or guardians.

## **FAMILY COURT PRACTICE NOTE SPECIALIST REPORT WRITERS**

### **1 INTRODUCTION**

- 1.1 This Practice Note replaces all previous practice notes pertaining to specialist report writers.
- 1.2 Specialist report writers do not include cultural, medical or psychiatric report writers.
- 1.3 This revised Practice Note will take effect from 9 July 2018.

### **2 BACKGROUND**

- 2.1 The terms of this Practice Note were originally settled by the Principal Family Court Judge, the Ministry of Justice, the Family Law Section of the New Zealand Law Society, the New Zealand Psychologists Board, the New Zealand Psychological Society, and the New Zealand College of Clinical Psychologists.
- 2.2 The complaints process was amended in March 2011 following consultation between the Principal Family Court Judge, the Ministry of Justice, and the New Zealand Psychologists Board.
- 2.3 The complaints and reviews processes were amended in March 2014 following consultation between the Principal Family Court Judge, the Ministry of Justice, and the New Zealand Psychologists Board.
- 2.4 The complaints and competency reviews process was amended in September 2016 following consultation between the Principal Family Court Judge and the New Zealand Psychologists Board.
- 2.5 The reports and content of referral process were amended in July 2018 following consultation between the Acting Principal Family Court Judge, the New Zealand Law Society and the New Zealand Psychologists Board.

### **3 CONTENTS**

- 3.1 This Practice Note covers the following matters:
  4. Terms and definitions.
  5. Legislative provisions.
  6. Process for appointment.
  7. Case management.
  8. Reports.
  9. Access to notes.
  10. Second opinions or critiques.
  11. Content of referral.



12. Process for selection.
13. Criteria for selection.
14. Review of the list.
15. Administration of the list.
16. Complaints.
17. Competency reviews.
18. Removal from the list.

#### **4 TERMS AND DEFINITIONS**

4.1 In this Practice Note:

- (a) References to “the Board” refer to the New Zealand Psychologists Board;
- (b) The term “specialist report writer” means any person (other than a cultural report writer) from whom a psychological report has been requested under s 133 of the Care of Children Act 2004 or under s 178 of the Children, Young Persons and Their Families Act 1989 (CYPF Act);
- (c) References to “report writers”, unless otherwise stated, refer to specialist report writers. “Report” has a corresponding meaning;
- (d) References to “(the) lawyer” and “lawyer for the child” unless otherwise stated mean a barrister and/or solicitor appointed by the Court for any child/young person;
- (e) References to “counsel to assist”, unless otherwise stated, mean a barrister and/or solicitor appointed to assist the Court; and
- (f) The term “child” includes both “child” and “young person” as defined in the CYPF Act.

#### **5 LEGISLATIVE PROVISIONS**

- 5.1 Section 133 of the Care of Children Act 2004 provides for the Court to appoint a person to prepare a cultural, medical, psychiatric, or psychological report on a child who is the subject of any of the following applications: guardianship, parenting order (other than an application for an interim order), and return of a child abducted to New Zealand.
- 5.2 Section 178 of the CYPF Act provides for the Court to appoint a person to prepare a medical, psychiatric or psychological report on a child who is the subject of care and protection proceedings, and in respect of any parent, guardian or caregiver to which the proceedings relate. An order for a report on a parent, guardian or caregiver must be with their consent.
- 5.3 Any psychologist accepting an appointment under s 178 of the CYPF Act is bound by provisions of the Act. Particular reference is made to the requirements of s 179(4) of the CYPF Act:
  - (4) *Every child or young person who is examined under section 178(1) of this Act is, where practicable, entitled to have present during that examination one adult—*
    - (a) *who is nominated for that purpose by that child or young person or, if the age or level of maturity of the child or young person makes it impracticable for him to*

- her to make such a nomination, by a social worker; and*
- (b) *who consents to be present.*

## **6 PROCESS FOR APPOINTMENT**

- 6.1 Appointments must be made by the Court. The Judge is responsible for settling the brief for the report writer. This will usually be done in consultation with the lawyer for the child and the parties' solicitors. The lawyer for the child will consult with any party to the proceedings who is unrepresented.
- 6.2 In allocating the brief to a report writer, the Court will consider:
- (a) the match of skills to the case requirements;
  - (b) the availability of the report writer;
  - (c) the current workload of the report writer; and
- 6.3 Once the Court has settled the brief for the report writer, the Registrar will negotiate and approve the hourly rate of payment and an estimate of time and cost for undertaking the brief with the report writer. This will include any payment of any disbursements.
- 6.4 Extensions to the initial allocation of hours: Where, during the course of the work, it becomes clear that the initial allocation of hours is insufficient for the report writer to meet the requirements of the brief satisfactorily, the report writer must seek an extension to the initial allocation of hours from the Registrar before commencing the additional work.
- 6.5 Extensions to the brief: Where, during the course of the work, the report writer considers that an extension or variation to the content of the brief is required, the matter must be referred to the Court in writing for approval by the Judge before the extension or variation is commenced.
- 6.6 A bill of costs should be provided with the report and should be calculated in accordance with the agreed hourly rate of remuneration.
- 6.7 Where a case is to proceed to a hearing, the Registrar and the report writer will settle a basis for payment for preparation and appearance at hearings. Prior to the hearing, the report writer will be advised of the time when he or she is required to be present at Court in anticipation of being called to give evidence.

## **7 CASE MANAGEMENT**

- 7.1 In most cases, an appointment under s 133 of the Care of Children Act 2004 will be made following counselling and a mediation conference, or following the filing of an urgent application resulting from a perceived serious welfare issue.
- 7.2 An appointment under s 178 of the CYPF Act will usually be made after the family group conference has been held. Reports that are required for family group conferences are the responsibility of

Child, Youth and Family. Section 178 reports are reports to the Court and will require the Court's permission for release and use for any purpose, including at a family group conference.

- 7.3 On receipt of the engagement letter, the report writer will forward written acceptance of the referral to the Family Court Co-ordinator.
- 7.4 A letter advising of the appointment of the report writer under s 133 of the Care of Children Act 2004 or s 178 of the CYPF Act will be sent to the parties, the parties' lawyers and, where such have been appointed, to lawyer for the child and/or counsel to assist.
- 7.5 The report writer will not attend a mediation conference or a family group conference without the written approval of a Judge.
- 7.6 In the interests of efficiency and effective cost control:
- (a) The brief for the report writer should be concise and specific; and
  - (b) Timetabling directions should follow the filing of a report to avoid lengthy delays between completion of the report and the hearing, and to avoid the need for updated reports.
- 7.7 The appointment will terminate on the date the report is filed, unless the report writer is requested by the Court to give evidence.
- 7.8 Where a report is commissioned under the Care of Children Act 2004 or under the CYPF Act, a party to the proceedings or lawyer for the child may present evidence on any matter referred to in the report.
- 7.9 Section 134(7) of the Care of Children Act 2004 and s 194 of the CYPF Act provide for the Court to call the report writer as a witness, if it thinks fit. Report writers who are asked by a lawyer to give evidence at a hearing should, before doing so, request advice from the lawyer as to whether the Court requires them to be called as a witness.

<b>8</b>	<b>REPORTS</b>
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- 8.1 Reports are usually expected to take six to eight weeks to prepare. Within ten weeks of the direction appointing the report writer the Court will allocate a date in the Registrar's list to develop a timetable for further steps to be taken.
- 8.2 For matters relating to the preparation, presentation and content of reports, report writers should refer to the most recent guidelines published by the profession in New Zealand.
- 8.3 Report writers also have a responsibility to comply with the relevant obligations of the code of conduct for expert witnesses contained in Schedule 4 to the High Court Rules. The Court will supply a copy of Schedule 4 to the specialist report writer at the time of appointment.
- Here are the relevant obligations.
- (a) An expert has an overriding duty to assist the Court impartially on relevant matters within the expert's area of expertise.

- (b) An expert is not an advocate for any party.
  - (c) An expert must state his or her qualifications in a report.
  - (d) If an expert witness believes that his or her evidence might be incomplete or inaccurate without some qualification, that qualification must be stated.
  - (e) The facts, matters and assumptions on which opinions are expressed must be stated explicitly.
  - (f) The reasons for opinions given must be stated explicitly.
  - (g) Any literature or other material used or relied upon to support opinions must be referred to by the expert.
  - (h) The expert must not give opinion evidence outside the witness's area of expertise.
- 8.4 The Court can only commission a report on the child (s 133(2) Care of Children Act 2004, and s 178(1) the CYPF Act). A report on a parent or guardian can only be requested by the Court under s 178(2) of the CYPF Act, and only with the consent of the proposed subject person. Report writers are thus to avoid making a parent or guardian the subject of the report. If, in the opinion of the report writer, it would be valuable to provide the Court with further information on a parent or guardian, this should be drawn to the attention of the Court. The Court will then decide how to proceed. There is no provision for a report on a parent or guardian under the Care of Children Act 2004.
- 8.5 When a report commissioned under the Care of Children Act 2004 is received, the Registrar will release a copy of the report to:
- (a) The lawyer acting for each party, on the basis that the report is not given or shown to the parties if the Court so orders;
  - (b) The lawyer for the child, who may give or show the report to the child only if the Court so orders. However, in every case the lawyer for the child will explain to the child the purpose and contents of the report unless the lawyer considers that to do so would be contrary to the welfare and best interests of the child;
  - (c) Counsel to assist; and
  - (d) Any party who is unrepresented unless the Court is satisfied that the information in the report, if provided directly to that party, would place the child concerned or another person at risk of physical, sexual or psychological abuse. The Court may appoint counsel to assist the Court to explain the contents of the report to the unrepresented party. (See s 134 Care of Children Act 2004.)
- 8.6 When a report commissioned under the CYPF Act is received, the Registrar will release a copy of the report to:
- (a) Every person entitled to appear and be heard on the proceedings to which the report relates;
  - (b) Any barrister or solicitor appearing for that person;
  - (c) The lawyer for the child, or any other person representing the child or young person;
  - (d) Counsel to assist;
  - (e) A parent or guardian, or any other person having the care of the child or young person;

- (f) The Chief Executive of Child, Youth and Family; and
- (g) Any other person whom the Court considers has a proper interest in receiving a copy of the report. (See s 191 CYPF Act.)

The Court may order that the whole or any part of the report not be disclosed to the above persons where the Court is satisfied that disclosure would be detrimental to the physical or mental health or emotional wellbeing of the child, young person or other person to whom the report relates (see s 192 CYPF Act.)

- 8.7 The report writer shall state in a separate paragraph whether, in the opinion of the report writer, the report should be given or shown to the child by the lawyer acting for the child. If the report writer believes to do so would be contrary to the welfare and best interests of the child, that should be stated.
- 8.8 If the Registrar has concerns about the release of any report, the issue will be referred to a Judge for directions.

<b>9 ACCESS TO NOTES</b>
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- 9.1 All applications for access to psychologist's notes and other materials relied upon for the production of a report under s 133 of the Care of Children Act 2004 or s 178 of the CYPF Act shall be made to the Family Court.
- 9.2 The Privacy Act 1993 does not apply to information held or created by the Court in its judicial function. This includes the report and any notes or materials relied upon by a report writer in preparing their report.
- 9.3 On application to the Family Court, generally notes and materials will be made available to a suitable expert engaged by a party to the proceedings, in order for that expert to be able to give a second opinion or critique on the report requested by the Court.
- 9.4 Generally disclosure of notes and materials to counsel in order to aid them to prepare their case will not be permitted. However, on application to the Family Court, counsel may be granted access to notes and materials relating to their own clients, but not any other person.
- 9.5 The Court may release notes and materials after proceedings have been concluded or where no proceedings are pending. Any such release is at the discretion of the Court and, in the exercise of its discretion, the Court will take account of the fact that the most appropriate time to test the report is during the hearing before the Family Court.
- 9.6 While the Court will consider the interests of justice, the welfare and best interests of the child shall be the paramount consideration in deciding whether or not to release the notes and materials.
- 9.7 The Court may attach any conditions it sees fit to the release of notes and materials.

<b>10</b>	<b>SECOND OPINIONS OR CRITIQUES</b>
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- 10.1 Second opinions or critiques are usually called for by one of the parties in order to challenge a report already before the Court. Typically, the second opinion/critique writer works from the Court-appointed report writer's report and associated notes and materials (for example, psychometrics, school reports, children's drawings, video or audio recordings).
- 10.2 Second opinions or critiques that involve examination of the Court-appointed report writer's notes and other materials must be approved by a Family Court Judge before those materials are released.
- 10.3 The Court-appointed report writer has an obligation to co-operate with the second opinion/critique writer where the preparation of such a report has been approved by the Court.
- 10.4 Authorisation of access to the report or the report writer's source data does not authorise access to, contact with or interview of the child(ren) who is/are the subject of the report, or any party to or witness in the proceedings. Authorisation of such access, contact or interview may only take place within the terms of a specific order of the Court. Such an order is likely to be made by the Court only in the most exceptional circumstances. Such access, contact or interview with any such party or witness is subject to their express consent.
- 10.5 The Judge's directions to give effect to a second opinion or critique request should include a brief for the second opinion/critique writer and directions as to the material to be released and the manner in which the material is to be accessed. In normal circumstances this would be that inspection of the Court-appointed report writer's notes and materials is to take place at his or her premises since, in most cases, notes and materials will need some interpretation by him or her. Exceptions to this general process should be detailed; for example, that notes are to be copied and sent to the second opinion/critique report writer with the expectation that there will be subsequent phone contact to clarify and interpret notes and materials.
- 10.6 The Court will give the Court-appointed report writer a copy of the critique or second opinion and he or she will be given an opportunity to respond to the critique or second opinion.
- 10.7 The costs associated with the preparation of the second opinion or critique will be carried by the party requesting the second report. Such costs will include reasonable fees payable to the Court-appointed report writer for his or her time in assisting the second opinion/critique report writer with the access and interpretation of his or her notes and materials, and any meetings with that second opinion/critique report writer following receipt of their report, should such a meeting be required by the Judge.

<b>11</b>	<b>CONTENT OF REFERRAL</b>
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11.1 Under s 133 of the Care of Children Act 2004, the referral from the Court should comprise:

- (a) The standard engagement letter;
- (b) The brief;
- (c) The current information sheet G7;
- (d) A copy of Schedule 4 of the High Court Rules 2016;
- (e) A copy of the original application, including any without notice application;
- (f) A copy of the notice of defence;
- (g) A copy of any affidavits of the parties;
- (h) A copy of the lawyer for child report;
- (i) A copy of the Judge's directions, if applicable;
- (j) Interim reporting requirements (if any);
- (k) The date for filing of the report (reports are usually expected to take six to eight weeks to prepare); and
- (l) An upper limit of authorised hours to complete the brief.

A list of documents supplied by the Court will be attached to the engagement letter.

11.2 Under s 178 of the CYPF Act, the referral from the Court should comprise:

- (a) The standard engagement letter;
- (b) The brief;
- (c) The current information sheet CYPF4;
- (d) A copy of Schedule 4 of the High Court Rules 2016;
- (e) A copy of the original application, including any without notice application;
- (f) Copies of any applications filed by the child's/children's parents or caregivers;
- (g) A copy of any affidavits of the parties;
- (h) A copy of the lawyer for Child report;
- (i) A copy of the Judge's directions, if applicable;
- (j) Interim reporting requirements (if any);
- (k) The date for filing of the report (reports are usually expected to take six to eight weeks to prepare); and
- (l) An upper limit of authorised hours to complete the brief.

A list of documents supplied by the Court will be attached to the engagement letter.

11.3 If a lawyer for child report is not filed by the time the Court appoints the report writer and sends the report writer the letter of engagement and additional documents prescribed under paragraphs 11.1 or 11.2, the Court will forward a copy to the appointed report writer once the Court receives the report.

- 11.4 Affidavits and lawyer for child reports provide the background and perspective of the parties. Affidavits and lawyer for child reports relevant to the issues outlined in the brief should be sent to the report writer. Such affidavits and lawyer for child reports will contain untested material and they should be treated with caution, particularly in relation to contentious issues and where, as in most cases, the affidavit and lawyer for child report evidence is incomplete.
- 11.5 Should additional affidavits be filed after the appointment of the report writer, the Court will forward copies of these affidavits to the report writer.
- 11.6 If additional information is required, the report writer must make the request in writing to the Family Court Co-ordinator.
- 11.7 The referral will also include:
- (a) The agreed hourly rate of payment;
  - (b) An agreed allocation of hours for interviews and writing the report;
  - (c) Standard disbursements payable; and
  - (d) Provision for application for extensions to authorised hours or changes to the brief.
- 11.8 Additional expenditure incurred, except for unforeseen additional attendances where there was no opportunity to seek prior approval, will not be reimbursed.
- 11.9 Judicial approval is required for:
- (a) Requests for access to, or copies of, additional file material;
  - (b) Access to the Court file/s;
  - (c) Access to Child, Youth and Family's diagnostic videos; or
  - (d) Access to Police videos (access is governed by regulation 22 of the Evidence Regulations 2007).
  - (e) Requests for access to, or copies of, a supervised access providers report.
- 11.10 At the end of proceedings, the Court will advise the report writer of the Court's decision and will provide a copy of that decision to the report writer.

<b>12 PROCESS FOR SELECTION</b>
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- 12.1 In each Court there will be a list of report writers who are available to accept appointments from the Court as a report writer and from which the report writer may be appointed in individual cases.
- 12.2 The Registrar or Family Court Co-ordinator will convene a panel to consider applications for inclusion in the list of report writers available to undertake Family Court appointments. The panel will consist of a Caseflow Manager or Family Court Co-ordinator as chair, two experienced report writers appointed by the Court, and a Family Court Judge nominated by the Principal Family Court Judge.



- 12.3 The panel should normally sit with four people, but a panel of three may be convened in some circumstances (for example, when an interview would be unable to be arranged in a reasonable timeframe). Any panel of three must comprise a Family Court Judge, an experienced report writer and a Caseflow Manager or Family Court Co-ordinator.
- 12.4 Panels will be convened as required, but no less than twice a year if there are applications waiting to be considered and a need for a report writer to be appointed.
- 12.5 The following appointment process should be followed.
- (a) The applicant will submit an application in form SRW1a to the Registrar in the Court region in which they wish to practise, nominating their area of specific expertise and the particular Court or Courts where they wish to be on the list.
  - (b) The application will be referred to a panel convened by a Registrar or a Family Court Co-ordinator.
  - (c) The Registrar shall give copies of the application and any supporting documentation to the Regional Administrative Family Court Judge (Administrative Judge) who shall be given seven days to make any comment in writing in relation to the application.
  - (d) Panel members may make such enquiries as may be needed for them to be informed about the applicant's ability to meet the criteria, including enquiries of the applicant's supervisor and two referees.
  - (e) The panel will interview each applicant. If the panel has any concerns about the applicant's ability to meet the criteria, these concerns will be put to the applicant, who will have the opportunity to reply.
  - (f) An unsuccessful applicant shall be provided with reasons for not being included in the list. It is expected that if an applicant is not selected the panel will have discussed its concerns with the applicant during the selection process.
  - (g) It is expected that the panel's approval will be by way of a consensus decision.
  - (h) The Registrar will advise the applicant and the Court/s, of the decision in writing.
  - (i) On request, the National Office of the Ministry of Justice will make a list of approved report writers available to the Board, the New Zealand Psychological Society and the New Zealand College of Clinical Psychologists.
  - (j) Report writers will be able to transfer their approval from one Court to another. Where such a transfer is sought, the Registrar of the original Court shall confirm with the Court to which transfer is sought, that approval has been given and the date of that approval.

<b>13</b>	<b>CRITERIA FOR SELECTION</b>
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- 13.1 To be eligible for selection onto the list, the report writer must:
- (a) Be a registered psychologist with a current practising certificate;
  - (b) Be a current financial member of the New Zealand Psychological Society or the New Zealand College of Clinical Psychologists; and
  - (c) Have five years' clinical experience or its equivalent, including a minimum of three years'

experience in child and family work.

13.2 Psychologists will provide evidence of competency in the following areas.

- (a) Assessment/diagnostic skills:
  - (i) child-parent attachment, bonding;
  - (ii) child development; and
  - (iii) physical, psychological and sexual abuse.
  
- (b) Demonstrated knowledge and understanding of:
  - (i) family systems;
  - (ii) family separation and impact on children and adults;
  - (iii) parenting skills;
  - (iv) family violence and impact on children and adults;
  - (v) child abuse and neglect;
  - (vi) alcohol and drug misuse and abuse;
  - (vii) psychopathology;
  - (viii) local community resources for children and their families; and
  - (ix) the responsibilities of the report writer in relation to the Family Court.
  
- (c) Cultural awareness, including an understanding of:
  - (i) the need and ability to refer to/make use of specialist cultural advice for families of different cultures;
  - (ii) the significance of cultural prohibitions, customs and language of other cultural groups; and
  - (iii) alternative child and human development perspectives.

13.3 Evidence of competency will be demonstrated by relevant academic and formal training, participation in relevant workshops, seminars and conferences, and by maintaining knowledge with current trends in research and literature.

13.4 On initial appointment to the list, each report writer will:

- (a) Complete a statement listing any past complaints and outcomes and any current complaints, or confirming that no complaints, past and/or present, have been made; and
- (b) Agree to advise the Court if they are at any time the subject of a complaint to their professional body and/or the Psychologists Board or the Health and Disability Commissioner, and to provide the Court with information on the outcome of any such complaint.

<b>14 REVIEW OF THE LIST</b>
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- 14.1 The Registrar in each Court will ensure that every report writer is reviewed at intervals of not more than three years. Where several Courts use one pool of report writers, the Registrars in those Courts may choose to review the list of report writers together.
- 14.2 The panel convened by the Registrar of each Court to consider applications for inclusion on the list of report writers available to undertake Family Court appointments will also conduct the reviews of report writers.
- 14.3 The Registrar will request all report writers who are currently on the list to indicate on a SRW4a, within 28 days:
- (a) Whether they wish to remain on the list and continue to receive report writer appointments; or
  - (b) Whether they wish to withdraw from the list.
- 14.4 If a report writer wishes to remain on the list they must complete an application form prior to the review and provide all the information requested in the form.
- 14.5 The panel shall meet as soon as practicable and reconstitute the report writer list.
- 14.6 The panel will consider all the information provided by the report writer as well as any other matters raised that relate to the administration of the list, and may choose to meet with the report writer.
- 14.7 The panel will contact the report writer's regulatory body, for example the Psychologists Board, to confirm whether the report writer is of good standing.
- 14.8 A report writer may only be removed from the list at the report writer's request, or as a result of the report writer's failure to respond within the stipulated time. The Registrar will notify all report writers as to whether they are to remain on the list or have been removed, as the case may be, and specify any reasons for removal.

<b>15 ADMINISTRATION OF THE LIST</b>
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- 15.1 Each Court will maintain a register (CMS report) listing, case by case, each report writer's appointment, the date of the appointment, the type of case and the date on which the appointment terminates.
- 15.2 The report is to be available for the regular monthly management meeting of each Family Court.
- 15.3 In areas such as Auckland and Wellington where several Courts use one pool of report writers, there should be inter-Court communication to ensure that, as far as possible, there is a spread of assignments to all listed report writers.

<b>16 COMPLAINTS</b>
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- 16.1 This Practice Note applies to complaints made where proceedings are pending, in progress, or have been concluded.
- 16.2 Nothing in this Practice Note is intended to oust any jurisdiction which the Board or the Health and Disability Commissioner has to deal with any complaint which arises in connection with proceedings in the Family Court. The Family Court will inform the Board whenever a formal complaint against a psychologist is made directly to the Court and any steps taken in response to that complaint.
- 16.3 The Family Court should deal with most complaints involving psychologists as part of its jurisdiction to regulate its own process and exercise the powers and functions conferred upon the Court by statute. In addition, the Board will typically deal with matters that go beyond the process of the Court and raise questions about professional competence, conduct or ethics. This may include matters such as inappropriate relationships between the report writer and the parties, breaches of privacy and incompetence. The Court will formally refer all such cases to the Board. Furthermore, the Health and Disability Commissioner should deal with complaints about the examination of the child, who in this context is defined as the consumer of the health service provided. The parents and other parties are not deemed to be health consumers in this context.
- 16.4 Many complaints to the Family Court will be those that raise questions about the quality of the evidence before the Court. Matters that will generally be dealt with by the Family Court may include:
- (a) Allegations of perceived bias;
  - (b) Allegations that the report writer has a sexist, racist or otherwise discriminatory approach;
  - (c) The methodology used;
  - (d) Allegations that one parent was treated differently from the other parent without sufficient reason given; and
  - (e) Any matter relating to the content of the report, such as failure to deal with any fact or issue, the length of the report or the style of the report.
- 16.5 Complaints made to the Family Court about the examination of the child may be directed to the Health and Disability Commissioner or an Advocate under the Health and Disability Commissioner Act 1994. The child may choose to lay such a complaint with any appropriate party, including the Court.
- 16.6 Complaints to be dealt with by the Court where proceedings are pending or in progress should be referred to the presiding Judge. Complaints after proceedings have concluded should be referred to the Administrative Judge.
- 16.7 Where a complaint to the Family Court relates to proceedings that are pending or in progress, the presiding Judge will deal with the complaint where possible, either before the hearing or in the course of the hearing, for example, through cross-examination, submission, or evidence called on behalf of the complainant.

- 16.8 Where a complaint to the Family Court relates to proceedings that have concluded, the Administrative Judge will consider the complaint and produce a minute containing the view of the Court regarding the complaint. The complaint and minute need not be formally referred to the Board unless it appears to the Judge there are issues of competence or other issues best dealt with by the Board.
- 16.9 Complaints made directly to the Family Court, as opposed to the Board or the Health and Disability Commissioner, must be received no later than six months from the date the proceedings concluded. Complaints made outside this timeframe will be automatically rejected by the Family Court. This provision does not apply where a complaint is referred to the Family Court by the Board or the Health and Disability Commissioner. Where a complaint made to the Family Court is rejected because it is out of time, the Registry will still advise the Board that the complaint was made and how it was dealt with.
- 16.10 The Family Court will generally consider all complaints at first instance. Any complaint referred by the Board to the Family Court shall be directed to the Registrar of the Family Court at which the report was requested. The Registrar will refer the complaint to the presiding Judge, or Administrative Judge, to consider. Where the Board has referred a complaint to the Court, the Judge considering it shall provide a written minute to the Board as soon as practicable, detailing any opinion on the merits of the complaint and any action that will be taken by the Court. The Court will advise whether:
- (a) The complaint relates to a matter within the Court process, and so will initially be dealt with by the Court; and/or
  - (b) The complaint appears to be of sufficient seriousness to require formal referral to the Board.
- 16.11 Subject to the provisions of clause 16.12 below, the Board will deal with complaints according to its own procedure and the requirements of the Health Practitioners Competence Assurance Act 2003 and is not bound by any decision of the Court.
- 16.12 The Judge considering a complaint may, in the event that the proceedings before the Family Court have not been concluded, reach the view that it is inappropriate for further investigation of the complaint until the final disposition of the proceedings. The purpose for the exercise of such a discretion is to avoid a potential breach of the rules of natural justice that may arise because of the Board's duty to disclose all information it has in relation to a complaint. In the event that a Judge determines to defer consideration of a complaint, the Board is to be notified by the Court. If the Board considers a complaint serious enough to warrant immediate attention, the Board should notify the Judge accordingly and that Judge will then specifically make a direction addressing the disclosure of the Psychologist's report pending the conclusion of the hearing. Such a direction may provide for the report to be made available to the Board, subject to the condition that the report not be copied or provided to the complainant or any other party, or there may be a direction that certain portions of the report be redacted.
- 16.13 Where a complaint is dealt with by the Board and relates to a report under s 133 of the Care of Children Act 2004 or s 178 of the CYPF Act, the Board may make a written request for a copy of the report. Subject to clause 16.12 above the Family Court will release a copy of the report to the Board for the sole purpose of dealing with the complaint. If the Board appoints a Professional Conduct Committee to assess the complaint, the above protocol applies to the Committee.

16.14 Complaints must be in writing.

<b>17</b>	<b>COMPETENCY REVIEWS</b>
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17.1 Pursuant to section 35 of the Health Practitioners Competence Assurance Act 2003 (HPCA), the board is required to undertake competency reviews under those circumstances described in section 35(1).

17.2 In accordance with s35(2) HPCA, the board is to notify the Principal Family Court Judge if it undertakes a competency review of a Health Practitioner. Upon receipt of the notification, the Principal Family Court Judge will notify the Family Court Judges of those courts where the Health Practitioner is providing services.

17.3 The Administrative Family Court Judge for those Courts may then, at his or her discretion, direct that there be no further referrals to that Health Practitioner until the outcome of the competency review is known.

17.4 In the event the Administrative Family Court Judge decides to cease referrals, the Board and Health Practitioner shall be notified by the Registrar of the Court.

<b>18</b>	<b>REMOVAL FROM THE LIST</b>
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18.1 The report writer may be removed from the list and this shall occur by the same process used to select report writers in paragraph 12, with all necessary modifications.

18.2 Grounds upon which report writers can be removed shall be:

- (a) Professional misconduct in carrying out their duties; or
- (b) Demonstrated failure to abide by this Practice Note or other failure to carry out duties responsibly and competently.

18.3 The panel shall advise the report writer in writing that it is considering removing his or her name from the list.

18.4 The notice from the panel to the report writer shall:

- (a) Specify the reasons why the panel is considering the removal of the report writer from the list;
- (b) State the right of the report writer to make submissions or representations within 21 days from the date of service of the notice; and
- (c) Set out the intention of the panel to consider removing the report writer from the list after 21 days unless the report writer indicates in writing that he or she opposes removal.

- 18.5 When the 21-day time period has expired, the panel shall convene to consider whether or not the report writer should remain on the list. In the event that the report writer has made submissions or representations opposing the removal, the Registrar shall convene a hearing.
- 18.6 At any hearing, the report writer shall be entitled to be represented and shall be entitled to call witnesses in support.
- 18.7 The Registrar shall advise the report writer, the Administrative Judge, the relevant Court/s and the report writer's regulatory body of the decision in writing.

**COMMENCEMENT DATE**

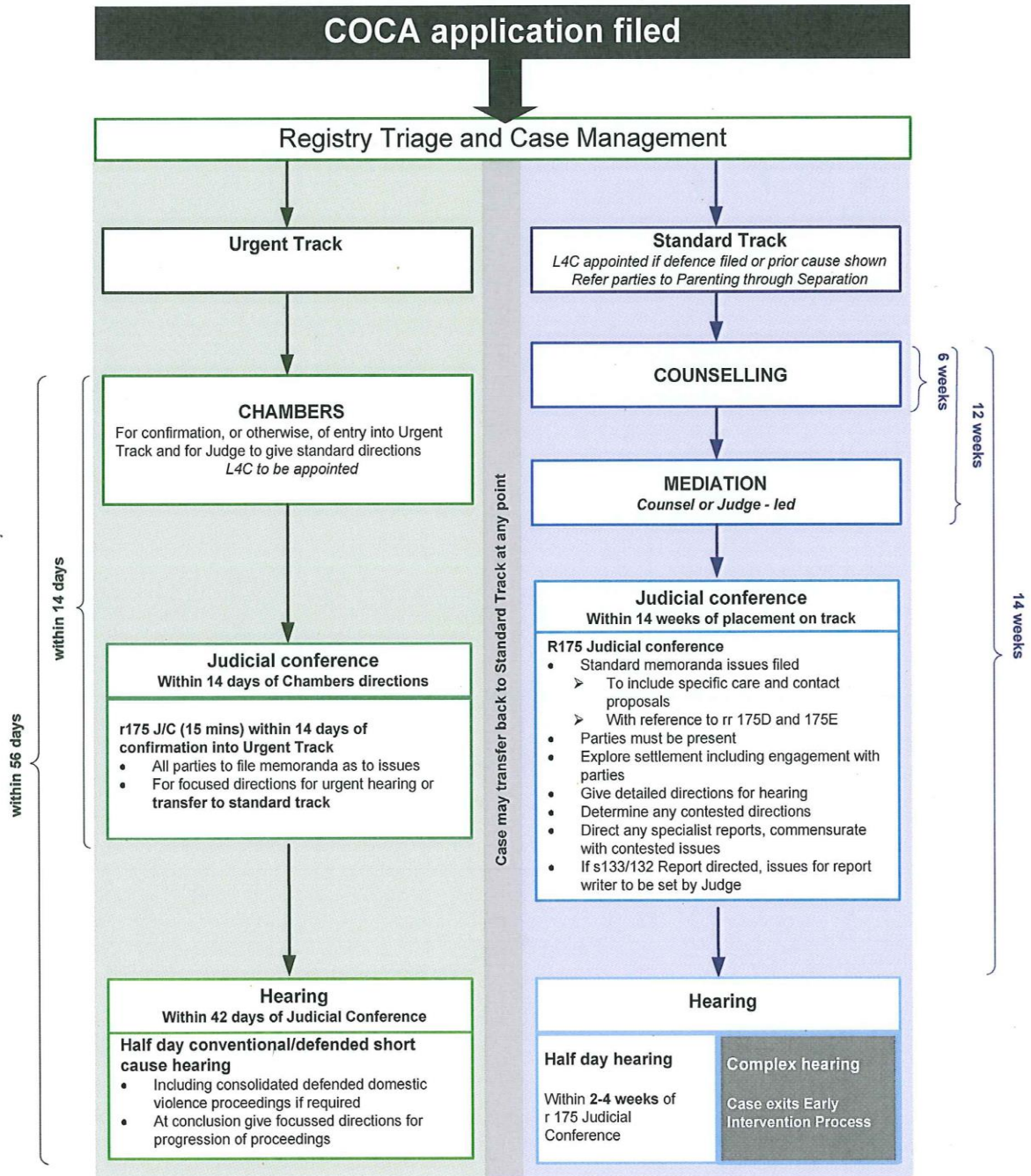
This practice note comes into operation on 9 July 2018

David Smith

**Acting Principal Family Court Judge**

**APPENDIX 7: FLOWCHART OF EARLY INTERVENTION PROCESS**

**Early Intervention Process**





**APPENDIX 8:    *REVOKED PRACTICE NOTE: FAMILY COURT  
COUNSELLORS (REPLACED BY GUIDELINE:  
FAMILY COURT COUNSELLORS)***

<b>APPENDIX 9:      PROTOCOL: CHILDREN'S MEDICAL EMERGENCIES: GUARDIANSHIP APPLICATIONS TO THE FAMILY COURT</b>
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- 1      On 18 December 1996 a Protocol was issued by the Principal Family Court Judge, after consultation with the then Children, Young Persons and Their Families Service, the Ministry of Health, the Police and, as it was then known, the Department for Courts. The aim of the protocol was to assist those who are concerned with the care and protection of children and who may wish to obtain an appropriate order from a Court in any emergency situation which might pose a threat to the life or wellbeing of any child. At that time the Family Court did not have jurisdiction to order that a child be made a ward of the Court for the particular purpose of authorising the performance of any medical procedure or treatment (such as a blood transfusion); that jurisdiction was vested solely in the High Court. The Family Court now has full "wardship" jurisdiction, concurrent with and subject to the jurisdiction of the High Court.
- 2      Notwithstanding the change to the jurisdiction of the Family Court, it is still appropriate for a protocol to be in place to facilitate the processing of guardianship applications designed to obtain an appropriate order from the Court in a medical emergency.
- 3      Where the Family Court is approached on the basis outlined above, the following protocol should apply.
  - (a)      **Grounds for application:** Where a child's life or wellbeing is in serious jeopardy and it is believed on good grounds that the guardian or guardians of the child will not consent to the administration of such reasonable medical or therapeutic treatment as is considered to be required, an application should be made to the Family Court<sup>1</sup>.
  - (b)      **Applicant:** The authority seeking to administer what is considered the appropriate treatment (usually a hospital) should instruct its own solicitors to make the guardianship application to the Family Court as soon as it appears likely that the assistance of the Court will be required. Alternatively, where the circumstances so require, the authority seeking to administer what is considered the appropriate treatment should contact the nearest office of the Department of Child, Youth and Family (the Department) for the Department to make the application.
  - (c)      **Orders sought:** The applicant should seek an order placing the child under the guardianship of the Court to enable the Court, if it thinks fit, to authorise such medical and surgical procedures as may be required to safeguard the welfare and wellbeing of the child and, if considered necessary, to appoint a person to be the agent of the Court for that purpose<sup>2</sup>. If the hospital is the applicant, leave to apply

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<sup>1</sup> The Family Courts Rules 2002 (the Rules) provide for the filing of the application in the Court nearest to where the applicant or the parent(s)/guardian(s) live. Preferably the application is to be filed in the Court nearest to the hospital in which the child is a patient or, if the child is not in hospital, in the Court nearest to where the child is residing. In most cases, that Court is also likely to be the nearest to where the applicant or parent(s)/guardian(s) reside (see r 28 of the Rules). Section 31(1) of the Care of Children Act 2004 states: "An eligible person may make an application to a Court with jurisdiction under this section for: (a) an order placing under the guardianship of the Court a child who is neither married nor living with a de facto partner; (b) an order appointing a named person to be the agent of the Court either generally or for any particular purpose."

<sup>2</sup> Section 31(2) of the Care of Children Act 2004 defines an "eligible person", in relation to a child, as any of the following: a parent or guardian of the child; a partner of a parent of the child; the child himself or herself; the chief executive of Child, Youth and Family; or any other person granted leave to apply by the Court.

will need to be sought (such application being filed at the same time as the one for placement under guardianship of the Court).

- (d) If a situation such as is contemplated in [paragraph \(a\)](#) arises during the working week there should be no difficulty in obtaining a hearing before a Judge. If there is no resident Judge available, the Registrar will forward the papers to a Judge as soon as it is filed by way of facsimile and a hearing by way of telephone link-up will be arranged. The Court will ensure that the application is given the appropriate urgency.
- (e) If the emergency arises at the weekend or during any holiday period, the hospital, the Department and the Registrar will need to know what course to follow to obtain access to a Judge at that time. The following procedures will apply.
  - (i) The applicant (either the Department or the hospital) should advise the Court that an application is about to be made. (The Registrar will already have advised the hospital and the Department of the name and telephone number of the member or members of the Court staff to contact outside working hours).
  - (ii) Where the circumstances require the Department to make the application, the hospital should contact the duty social worker at the nearest office of the Department as soon as it appears likely that the assistance of the Court will be required.
  - (iii) Upon receipt of advice that an application is to be made, the Court will alert a Judge that an application is about to be made. (The Registrar will have the after hours telephone numbers of the Judges who preside in his or her Court).
  - (iv) Arrangements will be made by the Court to place the application before a Judge as soon as it is ready. The Registrar is to ensure that the application is referred to a Family Court Judge, and only if one is unavailable is the reference to be to a District Court Judge.
  - (v) Thereafter, consideration of the application and the procedure to be followed will be in the hands of the Judge.
  - (vi) Although it is anticipated that an application and any affidavit(s) in support will normally be in writing, it is acknowledged that in some circumstances oral applications and evidence will have to be accepted.

- 4 Copies of this new Protocol are to be made available to the Medical Association, the Police, the Department of Child, Youth and Family, the Ministry of Health (and, through the Ministry, to the hospitals) and the Ministry of Justice. Each of these agencies will be responsible for ensuring that it is disseminated to the appropriate staff in its agency.

#### COMMENCEMENT DATE

This revised Protocol is issued on 24 March 2011 and comes into operation on 24 March 2011.



Judge P F Boshier  
**PRINCIPAL FAMILY COURT JUDGE**

**APPENDIX 10: PRACTICE NOTE: HAGUE CONVENTION CASES:  
NEW ZEALAND FAMILY COURT GUIDELINES  
(On the appointment of lawyer for the child/counsel to  
assist, specialist reports and on views of the child)**

**1 PRELIMINARY**

- 1.1 All section references are to the Care of Children Act 2004.
- 1.2 References to the Hague Convention are to the Hague Convention on the Civil Aspects of International Child Abduction.
- 1.3 Nothing in this Practice Note shall derogate from the objects of the Hague Convention as set out in Article 1.

**2 THE APPOINTMENT OF LAWYER FOR THE CHILD**

- 2.1 The appointment of lawyer for the child shall be considered where any of the defences in s 106 is raised by the respondent (unless the Court is satisfied that the appointment would serve no useful purpose).
- 2.2 In deciding whether to make an appointment, the Court shall have regard to:
  - (a) whether the Court would be adequately or more properly assisted by authorising an expert report under s 133;
  - (b) the functions of the Central Authority as set out in Article 7 of the Hague Convention; and
  - (c) the importance of dealing with applications speedily and in a summary manner, and to this end the need to minimise the hearing time required.

**3 COUNSEL TO ASSIST THE COURT**

- 3.1 The appointment of counsel to assist the Court shall be considered where, by virtue of special circumstances or difficulties, the Judge needs the assistance of counsel.

**4 BRIEFING GIVEN TO LAWYER FOR THE CHILD AND COUNSEL TO ASSIST THE COURT**

- 4.1 Upon the appointment of lawyer for the child or counsel to assist the Court, the Court will give consideration to whether:
  - (a) the appointment should be for a specified purpose and/or limited period of time;
  - (b) there should be an initial appointment for a specific task with a review following completion of the task (at a judicial conference).
- 4.2 In Hague Convention cases, the brief given to the lawyer for the child and counsel to assist the Court shall be clearly defined by a Judge, usually at a judicial conference which follows the expiry of the time for the filing of a notice of defence. Counsel will be required to file a joint memorandum prior to that conference, setting out the terms of a suggested brief. A standard brief for lawyer for child which might be used is attached.

## 5 BRIEF GIVEN TO EXPERT REPORT WRITERS

- 5.1 In Hague Convention cases, the brief given to expert report writers under s 133 shall be clearly defined by a Judge. Counsel will be required to file a joint memorandum setting out the terms of a suggested brief.
- 5.2 The brief given to expert report writers shall address:
- (a) the parameters of the issues to be determined in Hague Convention cases, so as to ensure that the report writer is aware of the specific task under Part 2 Subpart 4 of the Care of Children Act 2004;
  - (b) the questions of fact to be determined arising from the s 106 defences in the case in question.

## 6 THE VIEWS OF THE CHILD

- 6.1 In every Hague Convention case the Court shall consider whether or not s 6 applies.
- 6.2 It is expected that s 6 will apply in those cases where the following defences are raised.
- (a) More than a year and settled (s 106(1)(a)).
  - (b) Grave risk of harm or intolerable situation (s 106(1)(c)).
  - (c) Child's objections (s 106(1)(d)).

## COMMENCEMENT DATE

This revised Practice Note is issued on 24 March 2011 and comes into operation on 24 March 2011.



Judge P F Boshier  
**PRINCIPAL FAMILY COURT JUDGE**

**STANDARD BRIEF FOR LAWYER FOR THE CHILD IN  
HAGUE CONVENTION PROCEEDINGS**

- 1 Consider the issues for the child(ren) arising from the specific s 106 defences pleaded in the notice of defence.
- 2 If the “child objection” defence is raised, then the brief is to be extended to address the following.
  - (a) Does the child object to his or her return?
  - (b) If the child objects, the basis for his or her objection.
  - (c) Comment on any factors which may assist the Court in weighing up the issues of the child’s age and maturity.
  - (d) Identify any factors (if any) impacting on the child’s views.
  - (e) Report on any views (if any) a child may have about matters affecting him or her in the context of the Hague Convention proceedings.
  - (f) Identify any matters from the child’s perspective (if any) relevant to the exercise of the Court’s discretion should a defence be made out.
  - (g) From the child’s perspective, are there any other defences which should have been pleaded?
  - (h) Represent the views of the child at the hearing.

## APPENDIX 11: GUIDELINES RELATING TO THE APPOINTMENT OF PSYCHOLOGISTS AND LAWYER FOR CHILD IN CASES RELATED TO THE HAGUE CONVENTION

**Note:** All section references in these Guidelines are to the Care of Children Act 2004.

### 1 PROPOSED BRIEFING FOR PSYCHOLOGISTS

1.1 The primary concerns when briefing a psychologist are to ensure that:

- (a) the report has the appropriate limited focus; and
- (b) it can be completed in a short timeframe.

1.2 The appointment of a psychologist is most likely to be sought where the defence of child's objection (s 106(1)(d)) is raised. In those circumstances, a suggested brief might be:

*The psychologist is to be directed to complete the report within \_\_\_\_ of today's date addressing the following matters.*

*Having regard to the child's objection to return:*

- (a) *What is the basis of that objection?*
- (b) *Does it appear as if the objection is reality based and/or affected by undue influence and/or able to be addressed by explanation or intervention?*
- (c) *Does the child have sufficient maturity and understanding to recognise the implication of the objection?*
- (d) *Having regard to the child's age, cognitive ability, maturity and the options available, how might the child respond if the Court makes an order for return despite the objection?*

1.3 As the parties may wish to address matters that arise as a result of the report, I suggest a further direction.

*That the parties be entitled to file affidavits addressing matters raised in the psychologist's report within 10 days of the receipt of the report.*

1.4 Such a specific brief should ensure that the psychologist is able to complete this report quickly and should not need to interview any other parties other than the child(ren) involved.

1.5 If the child's objection defence has been coupled with a defence of grave risk of harm or intolerable situation (s 106(1)(c)) then the brief at (a), (b) and (c) should also address alleged physical/psychological harm or intolerable circumstances.

1.6 In circumstances where grave risk is advanced as the sole defence (without being coupled with an objection, for example, because of some kind of adverse psychological impact of the return to the country of habitual residence, depression or suicide possibility for the child) then the brief might be:

*Having regard to the defence that the child might be exposed to grave risk of physical or psychological harm or would otherwise be placed in an intolerable situation (and having regard to the factual basis asserted by the parent in support of that objection):*

- (a) *What, if any, would be the psychological impact on the child of an order for return to \_\_\_\_\_?*
- (b) *In what ways could the psychological effect be ameliorated?*

- 1.7 The other circumstances in which a psychologist might be appointed is where it is argued that the child is settled in the new environment. The jurisprudence in relation to this defence makes it clear that “settled” has two components: the physical element of being established in the community, and the emotional constituent denoting security and stability. The physical elements of settlement will need to be established on the facts. In each case counsel must decide whether it is necessary to have psychological evidence of the emotional stability or whether there is sufficient evidence of that stability on the facts (affidavit evidence of wider family members, reports from the school and views expressed through lawyer for child). To require the psychologist to address this issue may run the risk of substituting the psychologist’s conclusion for the Judge’s role.

## 2 BRIEF FOR LAWYER FOR THE CHILD

- 2.1 The [Practice Note: Hague Convention cases \(on the appointment of lawyer for the child/counsel to assist, specialist reports and on the views of the child\)](#) specifies that the Court must consider whether the appointment is for a specified purpose or limited period of time and whether or not the initial appointment should be reviewed following completion of the task. Therefore, any brief might need to be framed in two parts: the first part to address the initial task following the filing of the notice of defence; the second part to state what role should exist if the matter proceeds to a defended hearing. However, a very rare set of circumstances would have to exist for the appointment not to continue to the hearing.
- 2.2 In general, a suggested brief for lawyer for the child might be as follows:
- (a) *Taking into account the defences raised by the respondent, what are the child’s views<sup>1</sup>?*
  - (b) *From the child’s perspective are there any other defences which should be pleaded?*
  - (c) *From the child’s perspective, are there any interim orders and/or directions that the Court should make pending the hearing? For example:*
    - (i) *directions in relation to contact with the left behind parent;*
    - (ii) *alternative placement if there is a flight risk or alternatively direction that child not be removed from current physical residential address pending hearing.*
  - (d) *To represent the child at the hearing.*

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<sup>1</sup> It is likely that lawyer for the child, in addressing the issue when he or she files a memorandum, would also have considered whether or not a psychologist should be appointed so that the evidence of these views and the basis for the views are properly placed before the Court, that is, as evidence which is capable of cross-examination.



<p><b>APPENDIX 12: PRACTICE NOTE: HAGUE CONVENTION CASES: MEDIATION PROCESS – REMOVAL, RETENTION AND ACCESS</b></p>
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**1 FILING OF APPLICATION**

- 1.1 Upon the filing of the application in the Court, it shall be referred without delay to a Judge to consider the issue of mediation.

**2 CONSIDERATION OF MEDIATION**

- 2.1 Unless the Central Authority has advised the Court that the left behind and taking parents are attempting a resolution by way of mediation, counsel instructed for the Central Authority shall advise the Court at the time of the filing of the application whether or not he or she considers that mediation may be appropriate in the particular case.
- 2.2 If the Court considers that mediation may be appropriate, a letter will be sent to the taking parent outlining the mediation process, its voluntary nature and inviting his or her participation.
- 2.3 If it is determined that mediation is appropriate, counsel to assist shall be appointed to conduct counsel-led mediation. The Registrar shall appoint a lawyer (approved in accordance with the procedure set out below) to conduct the mediation.
- 2.4 It shall be made clear to both the left behind parent and the taking parent that neither shall be compelled to participate in the mediation process. The parties shall be advised that mediation does not in any way dilute the legal process nor is it derogating from either party's right to ask the Court to determine the application. A willingness to mediate is not to be seen as acquiescence on the part of the left behind parent.

**3 TIMING OF MEDIATION**

- 3.1 Mediation must not delay the Court proceedings and will run parallel to but separate from the Court process.
- 3.2 If mediation is considered appropriate in a particular case, mediation will be scheduled to occur as soon as practicable after receipt of the application. Mediation should occur within seven to 14 days.
- 3.3 Mediation can occur any time after the direction has been made appointing counsel to assist and preferably before the judicial conference.
- 3.4 However, mediation can be revisited at the judicial conference if mediation was for some reason not considered previously and there are indications that it is appropriate. If mediation is agreed to at the judicial conference, it shall be scheduled within two to seven days of the judicial conference.

#### **4 MEDIATION PROCESS**

- 4.1 The parties will be provided with information about the mediation process and what to expect.
- 4.2 Mediation will be by way of telephone, skype or other webcam/internet facility. If audio-visual (AVL) is available and the parties agree to fund the use of this facility or it is cost neutral, then AVL may be an option.
- 4.3 Parties will be in separate locations to the mediator to ensure that neither party is disadvantaged. If a party elects to travel to New Zealand to participate in mediation at his or her own cost, then mediation may be conducted at the same location.
- 4.4 If counsel attend the mediation, they are there to observe, to participate if requested or invited to by the mediator and to provide clarification and advice, if sought. It is important that counsel are aware of what has occurred at mediation and are able to facilitate and/or draft an agreement.
- 4.5 All parties are to be given the opportunity and encouraged to access independent legal advice. If counsel are not present at mediation, counsel may be available by telephone, e-mail or to meet with the party before any agreement is signed.
- 4.6 If agreement is reached, the mediation may need to be adjourned to ensure any orders sought are enforceable in both States.
- 4.7 At the conclusion of the mediation, if agreement has been reached the mediator shall provide a report setting out the substance of the agreement and whether any orders are sought from the Court. Counsel for the parties will draft a memorandum for filing in the Court, seeking orders on the terms as agreed.
- 4.8 The fees and expenses incurred in the appointment of counsel to assist under [paragraph 2.3](#) shall be payable in the first instance out of the Crown Account, subject however to the jurisdiction of the Court to order either or both of the taking and left behind parents to make a refund of all or part of those fees and expenses pursuant to s 131(4) of the Care of Children Act 2004.

#### **5 JUDICIAL CONFERENCE**

- 5.1 The application will be served and set down for a judicial conference in the usual way. It is anticipated that the judicial conference will be held within 14 to 21 days of the application being filed.
- 5.2 If mediation has not been held or completed by the judicial conference, timetabling directions will be made at the judicial conference to avoid delay in determining the application for return of the child(ren).
- 5.3 If agreement is reached at mediation, at the judicial conference a Judge may:
  - (a) give leave to the applicant to withdraw the application; or
  - (b) make orders by consent if the Court is satisfied that there is jurisdiction to do so.

## **6 NON-ADMISSIBILITY OF EVIDENCE**

- 6.1 Any statement, or admission disclosed or made to a mediator or during the course of mediation is not admissible in any Court, or before any person acting judicially.

## **7 LAWYER FOR THE CHILD**

- 7.1 If the child is of an age or has a level of maturity where it is appropriate to take his or her views into account and/or defences have been indicated that are tenable, the Court may consider the appointment of lawyer for the child, who is to report by memorandum prior to the mediation conference. If a lawyer for the child is appointed, his or her attention must be drawn to the fact that any considerations in Hague Convention cases are not welfare based. Counsel's role is to ensure that the mediator is aware of what the child says and what is important to him or her.
- 7.2 The appointment of lawyer for the child prior to a counsel-led mediation in Hague Convention cases is to be considered in accordance with [Practice Note: Lawyer for the child: Selection, appointment and other matters](#) and [Practice Note: Hague Convention cases: New Zealand Family Court Guidelines](#).
- 7.3 It is not anticipated that a child shall attend or be present at mediation. If the lawyer for the child is required to attend, that attendance is to provide information on the child's views but only if the child wishes his or her views to be expressed.

## **8 HAGUE MEDIATORS**

- 8.1 A panel of lawyers will be identified as mediators in Hague Convention cases after agreement between the Central Authority and the Principal Family Court Judge.
- 8.2 All mediators must have a good knowledge and experience of Hague Convention proceedings and principles. The mediator will be expected to have undertaken training and have experience in mediation. Mediators must be appointed in accordance with the [Counsel-led mediation guidelines](#) issued by the Ministry of Justice, which relate to the Early Intervention Process in Care of Children Act 2004 cases.
- 8.3 The list of approved mediators will be made available to Judges, who will be encouraged to appoint mediators from the approved list.
- 8.4 Hague Convention mediators will be given a maximum of three hours to set up and prepare for the mediation and up to five hours to conduct the mediation and provide any report to the Court.
- 8.5 Hague Convention mediators are referred to the [Counsel-led mediation guidelines](#) setting out what is expected of mediators.

## **9 RIGHTS OF ACCESS**

- 9.1 The foregoing provisions in these Guidelines shall apply to applications to enforce rights of access, with the necessary modifications.

## **10 DEFINITION**

- 10.1 The term "parent" includes:
- (a) any person who is an applicant for the return of a child;

- (b) any person claiming to have rights of access in respect of a child;
- (c) any person who opposes the return of a child; and
- (d) any person who opposes a claim for access to a child.

**COMMENCEMENT DATE**

This Practice Note is issued on 24 March 2011 and comes into operation on 24 March 2011.



Judge P F Boshier  
**PRINCIPAL FAMILY COURT JUDGE**

**APPENDIX 13: PRACTICE NOTE: INTELLECTUAL DISABILITY  
(COMPULSORY CARE AND REHABILITATION)  
ACT 2003  
(Selection and review of ‘Counsel for intended care  
recipient’ list)**

**1 SELECTION AND REVIEW OF ‘COUNSEL FOR INTENDED CARE RECIPIENT’ LIST**

- 1.1 In the Courts at Auckland, Manukau, Hamilton, Wellington, Christchurch and Dunedin (the primary Courts of filing) there will be a list of counsel who are available to accept appointments from the Court as counsel for intended care recipients. Counsel may be appointed in individual cases from this list.
- 1.2 Appointment of counsel for proceedings in a Court which is not a primary Court of filing will be at the discretion of a Judge of that Court, who may have regard to the lists.
- 1.3 The Ministry of Justice and the Family Law Section of the New Zealand Law Society have agreed to this process.
- 1.4 The Registrars of the primary Courts will each convene a panel to consider applications for inclusion in the list of counsel for the intended care recipient available to undertake Family Court appointments. This panel will consist of a Caseflow Manager or a Family Court Co-ordinator as chair, two nominees from the Family Law Section of the New Zealand Law Society, and a Family Court Judge nominated by the Regional Administrative Family Court Judge (Administrative Judge). The panel should normally sit with four members, but a panel of three may be convened in some circumstances (for example, where an interview would be unable to be arranged within a reasonable timeframe). Any panel of three must include a Family Court Judge, a nominee from the Family Law Section and the Caseflow Manager or Family Court Co-ordinator.
- 1.5 Panels will be convened as required, but no less than twice a year if there are applications waiting to be considered and a need for counsel to be appointed.
- 1.6 The following appointment process should be followed.
  - (a) Counsel must submit an application form to the Registrar in the Court region in which they wish to practise, nominating 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 does not have to be in any particular form but should address the criteria detailed in [paragraph 1.7](#). 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, confidential comment.
  - (c) The Registrar shall serve copies of the application and any supporting documentation on the Administrative Judge, who shall be given seven days to make any comments in writing relating to the application.
  - (d) Panel members may make such enquiries as may be needed for them to be informed about the applicant’s ability to meet the criteria, including enquiries of referees.
  - (e) On completion of its enquiries, the panel may arrange for the applicant to be interviewed at such time and place as may be determined by the Registrar.

- (f) At least seven days before the interview, the Registrar shall forward a report to the applicant detailing the enquiries made by the panel, including details of any response that is adverse to the applicant. In the event of there being insufficient time available to consider the application, the panel may adjourn the interview or otherwise arrange a hearing to consider the application.
- (g) The role of the other members of the panel is to advise the Judge. The Family Court Judge on the panel makes the appointment to the list.
- (h) An unsuccessful applicant shall be provided with reasons for not being included in the list.
- (i) The Registrar will advise of the recommendation in writing to the following people: the applicant, the Court, the Family Law Section and, in the event that the application is successful, the National Office of the Ministry of Justice.

1.7 Counsel for the intended care recipient should meet one or more of the following criteria, depending on the needs of the case.

Counsel should:

- (a) have appropriate knowledge of the objects, principles and provisions of the Intellectual Disability (Compulsory Care and Rehabilitation) Act 2003 and the Mental Health (Compulsory Care and Treatment) Act 1992;
- (b) be experienced in proceedings under the Mental Health (Compulsory Care and Treatment) Act 1992;
- (c) have an understanding of mental illnesses and disabilities generally;
- (d) have an ability to communicate with people with disabilities;
- (e) have general litigation experience;
- (f) have any relevant specialist training that would be of benefit to counsel; and
- (g) have appropriate cultural awareness and experience.

## **2 REVIEW OF COUNSEL FOR INTENDED CARE RECIPIENT LISTS**

2.1 A review of lists must be undertaken at intervals of not more than three years. The Registrar in each Court must ensure that its list of approved counsel is reviewed at such intervals.

2.2 The Registrar shall give notice to all counsel currently on the list. Such notice will include a requirement for all counsel whose names appear on the list to indicate within a period of not more than 28 days:

- (a) whether they wish to continue to receive appointments;
- (b) whether they wish to withdraw from the list; or
- (c) whether they have any matters relating to present or past appointments that they wish to draw to the attention of the panel.

2.3 The panel shall meet as soon as practicable and reconstitute the list of counsel for the intended care recipient. The panel shall also consider any matters raised by counsel that relate to the administration of the list.

2.4 The name of counsel may only be deleted from the list at counsel's request or as a result of counsel's failure to respond within the stipulated time. The panel shall notify all counsel on the reviewed list whether their names have been retained or deleted from the list, as the case may be, and the reasons for any deletion must be specified.

- 2.5 The Registrar shall send the reviewed list, with any revisions, to the National Office of the Ministry of Justice and the Family Law Section.

### **3 COMPLAINTS**

- 3.1 Any complaints about counsel for the intended care recipient while proceedings are pending should be referred to the presiding Judge. If the party making a complaint is represented, the complaint should be made by that party's lawyer, on the client's behalf, in writing.
- 3.2 Copies of the complaint should be sent to counsel for the other parties and directly to any party that is not represented.
- 3.3 Complaints about counsel made after proceedings have been concluded should be referred to the Administrative Judge responsible for the Court in which the proceedings were filed.
- 3.4 On receipt of a complaint, the Administrative Judge may refer the complaint to a panel to recommend whether or not counsel should be removed from the list, in which case the provisions of [paragraph 1](#) shall apply, with all necessary modifications.
- 3.5 It is not intended by this Practice Note to limit the jurisdiction of the Court to do whatever it considers to be appropriate in the circumstances or otherwise limit the right of the Law Society or other statutory authority to consider any complaint about counsel for intended care recipients.

### **4 REMOVAL OF COUNSEL FOR THE INTENDED CARE RECIPIENT**

- 4.1 Counsel for the intended care recipient may be removed from the list and this shall occur by the same process used to select counsel for the intended care recipient in [paragraph 1](#), with all necessary modifications.
- 4.2 Grounds upon which counsel can be removed shall be:
- (a) professional misconduct in carrying out duties as counsel for the intended care recipient; or
  - (b) demonstrable failure to carry out duties responsibly and competently.
- 4.3 The panel shall advise counsel for the intended care recipient in writing that it is considering removing his or her name from the list.
- 4.4 The notice from the panel to counsel for the intended care recipient shall:
- (a) specify the reasons why the panel is considering the removal of counsel from the list;
  - (b) state the right of counsel to make submissions or representations within 21 days from the date of service of the notice; and
  - (c) set out the intention of the panel to consider removing counsel from the list after 21 days unless counsel indicates in writing that he or she opposes removal.
- 4.5 When the 21-day period has expired, the panel shall convene to consider whether or not counsel should remain on the list. In the event that counsel has made submissions or representations opposing the removal, a hearing shall be convened by the Registrar.
- 4.6 At any defended hearing, counsel shall be entitled to be represented and shall be entitled to call witnesses in support.

- 4.7 The Registrar shall advise the Administrative Judge, counsel, the relevant Court, the Family Law Section and the National Office of the Ministry of Justice of the decision in writing.

**COMMENCEMENT DATE**

This revised Practice Note is issued on 24 March 2011 and comes into operation on 24 March 2011.



Judge P F Boshier  
**PRINCIPAL FAMILY COURT JUDGE**



**APPENDIX 14: PRACTICE NOTE: INTELLECTUAL DISABILITY  
(COMPULSORY CARE AND REHABILITATION)  
ACT 2003  
(Reviews, applications for orders, and representation)**

**Note:** All section references in this Practice Note are to the Intellectual Disability (Compulsory Care and Rehabilitation) Act 2003.

**1 REVIEWS**

- 1.1 For the purposes of reviews under s 74, reports and other documents required by s 72 must be presented to the designated Court closest to where the Care Co-ordinator is based.
- 1.2 The designated Courts are the Family Courts at Auckland, Manukau, Hamilton, Wellington, Christchurch and Dunedin.
- 1.3 When a report is presented to the Court under [paragraph 1.1](#), the Care Co-ordinator must at the same time give or send the report (which must be accompanied by the documents specified in s 72(3)) to those persons specified in s 73(1), and provide the written advice specified in s 73(3). The written advice should call for written submissions to be presented to the Court within 28 days after the copy report has been received, unless further time is allowed by the Court on application. The Care Co-ordinator should tell the Court when the report was given or sent to every person specified in s 73(1).
- 1.4 Reviews will generally be determined on the papers, unless the Court directs otherwise.
- 1.5 When a report is presented, after allowing sufficient time for presentation of any written submissions under s 73(3), the Court will assess whether a hearing is necessary and produce a minute directing how the case is to proceed. If a hearing is not necessary, the review will be conducted on the papers.
- 1.6 If, for the purposes of a review under s 74, the Court calls for reports under s 75(a) or obtains a second opinion under s 75(b), copies must be given to the Care Co-ordinator, who must give or send copies to the persons specified in s 73(1) as set out in [paragraph 1.3](#).
- 1.7 The Court will then assess again whether a hearing is necessary, as set out in [paragraph 1.5](#), and will direct accordingly.
- 1.8 If the Court determines that a hearing is necessary, a hearing will take place at the Court closest to where the care recipient is receiving treatment or is currently residing.

**2 APPLICATIONS FOR ORDERS UNDER SECTION 45 OR SECTIONS 84 to 87**

- 2.1 Applications for an order under s 45 or ss 84 to 87 must be filed at the designated Court closest to where the Care Co-ordinator is based.
- 2.2 Applications, other than without notice applications, should be served in accordance with s 119. The designated Court where the application was filed will then review the application when the service period has expired.
- 2.3 Hearings for applications under s 45 or ss 84 to 87 are to take place at the Court closest to where the care recipient is receiving treatment or is currently residing.

- 2.4 If the Court is satisfied that no person wishes to be heard, the hearing may be dispensed with and the application determined on the papers at the designated Court closest to where the Care Co-ordinator is based (see s 131).

### **3 REPRESENTATION: SELECTION AND APPOINTMENT**

- 3.1 Where the Court directs that a lawyer for the care recipient is to be appointed (see s 124), the lawyer will be appointed by the Registrar at the designated Court closest to where the Care Co-ordinator is based as soon as possible after the report under s 72 or the application is received.
- 3.2 The Registrar will appoint an appropriate lawyer, having regard to their experience and expertise in the relevant areas of law.
- 3.3 If the care recipient is receiving treatment or is currently residing outside the area of the designated Court at which the application was filed, a lawyer should be appointed from the area in which the care recipient is receiving treatment or is currently residing.

### **COMMENCEMENT DATE**

This revised Practice Note is issued on 24 March 2011 and comes into operation on 24 March 2011.



Judge P F Boshier  
**PRINCIPAL FAMILY COURT JUDGE**

**APPENDIX 15: PRACTICE NOTE: PROTECTION OF PERSONAL AND PROPERTY RIGHTS ACT  
(Selection and review of 'Counsel for the subject person' list)**

**1 SELECTION AND REVIEW OF 'COUNSEL FOR THE SUBJECT PERSON' LIST**

- 1.1 In each Court there will be a list of counsel who are available to accept appointments from the Court as counsel for the subject person, from which counsel may be appointed in individual cases.
- 1.2 The Ministry of Justice and the Family Law Section of the New Zealand Law Society have agreed to this process.
- 1.3 The Registrar will convene a panel to consider applications for inclusion in the list of counsel available to undertake Family Court appointments. This panel will consist of a Caseflow Manager or a Family Court Co-ordinator as chair, two nominees from the Family Law Section of the New Zealand Law Society, and a Family Court Judge nominated by the Regional Administrative Family Court Judge (Administrative Judge). The panel should normally sit with four members, but a panel of three may be convened in some circumstances (for example, where an interview would be unable to be arranged within a reasonable timeframe). Any panel of three must include a Family Court Judge, a nominee from the Family Law Section and the Caseflow Manager or Family Court Co-ordinator.
- 1.4 Panels will be convened as required, but no less than twice a year if there are applications waiting to be considered and a need for counsel to be appointed.
- 1.5 The following appointment process should be followed.
  - (a) Counsel must submit an application form to the Registrar in the Court region in which they wish to practise, nominating 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 does not have to be in any particular form but should address the criteria detailed in [paragraph 1.6](#). 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, confidential comment.
  - (c) The Registrar shall serve copies of the application and any supporting documentation on the Administrative Judge, who shall be given seven days to make any comments in writing relating to the application.
  - (d) Panel members may make such enquiries as may be needed for them to be informed about the applicant's ability to meet the criteria, including enquiries of referees.
  - (e) On completion of its enquiries, the panel may arrange for the applicant to be interviewed at such time and place as may be determined by the Registrar.
  - (f) Not less than seven days prior to the interview, the Registrar shall forward a report to the applicant detailing the enquiries made by the panel, including details of any response that is adverse to the applicant. In the event of there being insufficient time available to consider the application, the panel may adjourn the interview or otherwise arrange a hearing to consider the application.
  - (g) The role of the other members of the panel is to advise the Judge. The Family Court Judge on the panel makes the appointment to the list.

- (h) An unsuccessful applicant shall be provided with reasons for not being included in the list.
  - (i) The Registrar will advise of the recommendation in writing to the following people: the applicant, the Court, the Family Law Section and, in the event that the application is successful, the National Office of the Ministry of Justice.
- 1.6 Counsel for the subject person should meet one or more of the following criteria, depending on the needs of the case.
- Counsel should:
- (a) have appropriate knowledge of the objects, principles and provisions of the Protection of Personal and Property Rights Act 1988, Mental Health (Compulsory Assessment and Treatment) Act 1992 and Health and Disability Commissioner Act 1994;
  - (b) be experienced in proceedings under the Protection of Personal and Property Rights Act 1988 and the Mental Health (Compulsory Assessment and Treatment) Act 1992;
  - (c) have an understanding of age related illnesses and disabilities generally;
  - (d) have an ability to communicate with people with disabilities;
  - (e) have general litigation experience;
  - (f) have general legal experience including conveyancing, commercial law, administration of trusts and estates and estate litigation;
  - (g) have an awareness of community groups and the role of rest homes and hospitals in the care of the elderly or people with disabilities;
  - (h) have any relevant specialist training that would be of benefit to counsel;
  - (i) have appropriate cultural awareness and experience.

## **2 REVIEW OF 'COUNSEL FOR THE SUBJECT PERSON' LISTS**

- 2.1 A review of the 'Counsel for the subject person' lists must be undertaken at intervals of not more than three years. The Registrar in each Court must ensure that its list of approval counsel is reviewed at such intervals. Where several Courts use one pool of counsel, the Registrars in those Courts may choose to review the lists of approved counsel together.
- 2.2 The Registrar shall give notice to all counsel currently on the list. Such notice will include a requirement for all counsel whose names appear on the list to indicate within a period of not more than 28 days:
- (a) whether they wish to continue to receive appointments;
  - (b) whether they wish to withdraw from the list; or
  - (c) whether they have any matters relating to present or past appointments which they wish to draw to the attention of the panel.
- 2.3 The panel shall meet as soon as practicable and reconstitute the list of counsel for the subject person. The panel shall also consider any matters raised by counsel that relate to the administration of the list.
- 2.4 The name of counsel may only be deleted from the list at counsel's request or as a result of counsel's failure to respond within the stipulated time. The panel shall notify all counsel on the reviewed list whether their names have been retained or deleted from the list, as the case may be, and the reasons for any deletion must be specified.

- 2.5 The Registrar shall send the reviewed list, with any revisions, to the National Office of the Ministry of Justice and the Family Law Section.

### **3 COMPLAINTS**

- 3.1 Any complaints about counsel for the subject person while proceedings are pending should be referred to the presiding Judge. If the party making a complaint is represented, the complaint should be made by that party's lawyer, on the client's behalf, in writing.
- 3.2 Copies of the complaint should be sent to counsel for the other parties and directly to any party that is not represented.
- 3.3 Complaints about counsel made after proceedings have been concluded should be referred to the Administrative Judge responsible for the Court in which the proceedings were filed.
- 3.4 On receipt of a complaint, the Administrative Judge may refer the complaint to a panel to recommend whether or not counsel should be removed from the list, in which case the provisions of [paragraph 1](#) shall apply, with all necessary modifications.
- 3.5 It is not intended by this Practice Note to limit the jurisdiction of the Court to do whatever it considers to be appropriate in the circumstances or otherwise limit the right of the Law Society or other statutory authority to consider any complaint about counsel for the subject person.

### **4 REMOVAL OF COUNSEL FOR THE SUBJECT PERSON**

- 4.1 Counsel for the subject person may be removed from the list and this shall occur by the same process used to select counsel for the subject person in [paragraph 1](#), with all necessary modifications.
- 4.2 Grounds upon which counsel can be removed shall be:
- (a) professional misconduct in carrying out duties as counsel for the subject person;  
or
  - (b) demonstrable failure to carry out duties responsibly and competently.
- 4.3 The panel shall advise counsel for the subject person in writing that it is considering removing his or her name from the list.
- 4.4 The notice from the panel to counsel for the subject person shall:
- (a) specify the reasons why the panel is considering removal of counsel from the list;
  - (b) state the right of counsel to make submissions or representations within 21 days from the date of service of the notice;
  - (c) set out the intention of the panel to consider removing counsel from the list when 21 days has expired unless counsel indicates in writing that he or she opposes removal.
- 4.5 When 21 days has expired, the panel shall convene to consider whether or not counsel should remain on the list. In the event that counsel has made submissions or representations opposing the recommendation, a hearing shall be convened by the Registrar.
- 4.6 At any defended hearing, counsel shall be entitled to be represented and shall be entitled to call witnesses in support.

- 4.7 The Registrar shall advise the Administrative Judge, counsel, the relevant Court, the Family Law Section and the National Office of the Ministry of Justice of the decision in writing.

#### **COMMENCEMENT DATE**

This revised Practice Note is issued on 24 March 2011 and comes into operation on 24 March 2011.



Judge P F Boshier  
**PRINCIPAL FAMILY COURT JUDGE**

<b>APPENDIX 16: PRACTICE NOTE: APPLICATIONS UNDER THE PROTECTION OF PERSONAL AND PROPERTY RIGHTS ACT 1988</b>
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## **1 APPLICATIONS**

- 1.1 This Practice Note relates to the following applications under the Protection of Personal and Property Rights Act 1988 (PPPR Act).
- (a) Application for personal order.
  - (b) Application for order to administer property.
  - (c) Application for appointment of welfare guardian.
  - (d) Application for property order.

## **2 PURPOSE OF PRACTICE NOTE**

- 2.1 The purpose of this Practice Note is to ensure that the Court has before it evidence:
- (a) relating to the merits of the application;
  - (b) that the proposed appointee is a suitable appointee;
  - (c) that the proposed appointee is capable of carrying out the responsibilities and duties required under the PPPR Act; and
  - (d) to consider if there is any relevant overlap between the PPPR Act, the Mental Health (Compulsory Assessment and Treatment) Act 1992 and the Intellectual Disability (Compulsory Care and Rehabilitation) Act 2003.

## **3 EVIDENCE**

- 3.1 An application is to be supported by evidence.
- 3.2 Schedule 9 of the Family Courts Rules 2002 provides for the format of applications under the PPPR Act.
- 3.3 Affidavits are to be filed to support the applications.
- 3.4 The affidavit in support shall follow, as close as is practicable, the specimen affidavit form in the Schedules to this Practice Note.
- 3.5 The affidavit format is designed to cover most areas of evidence that need to be addressed and can be modified to include such evidence as may be required for a specific case.
- 3.6 If the applicant considers that the person to whom the application relates (the subject person) should not attend any or all of the hearings or should not be served, then an application should be filed for such a direction (s 74 PPPR Act).

## **4 COUNSEL FOR THE SUBJECT PERSON**

- 4.1 If the subject person is not represented, the Family Court Co-ordinator shall nominate counsel to represent that person for approval and appointment by a Judge.

- 4.2 Counsel so appointed will be asked by the Registrar to report to the Court within 28 days on the following matters.
- (a) Whether the subject person should be served with the application.
  - (b) Whether the subject person's attendance is desirable or should be excused at subsequent Court hearings.
  - (c) Whether any further medical evidence is required.
  - (d) Whether any (further) consents are required from family/whanau members.
  - (e) Whether the provisions of the Mental Health (Compulsory Assessment and Treatment) Act 1992 and/or the Intellectual Disability (Compulsory Care and Rehabilitation) Act 2003 apply or are likely to apply to the subject person.
  - (f) Specific powers sought under the First Schedule of the Act in relation to the management of property (s 31 PPPR Act).
  - (g) The type and suitability of the personal order proposed (s 10 PPPR Act).
  - (h) The appropriateness of an order to administer property (s 11 PPPR Act).
  - (i) The aspects of personal care and welfare in respect of which the appointment of a welfare guardian is sought (s 12 PPPR Act).
  - (j) Who else should be served (including the District Inspector of Mental Health).
  - (k) Such other matters relating to the application that counsel considers appropriate to raise and to request further directions as appear necessary.
- 4.3 If the subject person is represented by his or her own lawyer, then that lawyer is expected to address the above issues in a memorandum, filed prior to a pre-hearing conference and within the same timeframe as that set out for the Court-appointed lawyer in [paragraph 4.2](#).
- 4.4 The filing of reports will be monitored through the 'TASK' facility in CMS.

## **5 ORDERS ON THE PAPERS**

- 5.1 If the application is undefended and all matters are in order, the Registrar shall make appropriate recommendations and refer the matter to the Judge for orders on the papers. The Judge may decide that further information or a pre-hearing conference is required.

## **6 PRE-HEARING CONFERENCE**

- 6.1 Where an application has been made for a pre-hearing conference under s 66 of the PPPR Act, the Registrar will refer the matter to a Judge. Where the Judge gives a direction for a conference, it will be arranged by the Registrar under s 66(3) of the PPPR Act.
- 6.2 If the application is defended, the application shall be set down for a pre-hearing conference within three weeks.

## **7 SERVICE ON DISTRICT INSPECTOR AND OTHER MATTERS**

- 7.1 Where a proposed subject person is also subject to treatment or assessment under the Mental Health (Compulsory Assessment and Treatment) Act 1992, there may be a need to co-ordinate the planning of treatment and other matters relating to the welfare of that person so as to avoid conflict and/or duplication between the two Acts. The Court may direct service on a District Inspector.



- 7.2 In the majority of cases the District Inspector's role will be an ombudsman-type role to ensure that any relevant material is before the Court and, if necessary, to facilitate co-ordination, and it is envisaged that the District Inspector may only need to file a memorandum. If the District Inspector considers that his or her involvement requires more input then he or she can seek further directions from the Court.

#### **COMMENCEMENT DATE**

This revised Practice Note is issued on 24 March 2011 and comes into operation on 24 March 2011.



Judge P F Boshier  
**PRINCIPAL FAMILY COURT JUDGE**

**SCHEDULE OF AFFIDAVIT FORMS FOR AMENDED PRACTICE NOTE  
PROTECTION OF PERSONAL AND PROPERTY RIGHTS ACT 1988**

**SCHEDULE 1**

Affidavit for welfare guardian

**SCHEDULE 2**

Affidavit for personal order

**SCHEDULE 3**

Affidavit for property administrator

**SCHEDULE 4**

Affidavit for property manager

**SCHEDULE 1**

**IN THE FAMILY COURT**

AT *(Place)*

*(Full name, address and occupation of applicant)*

Applicant

*(Full name, address and occupation of person in respect of whom this application is made)*

Person the application is about

**AFFIDAVIT IN SUPPORT OF APPLICATION  
FOR APPOINTMENT AS WELFARE GUARDIAN  
(The Protection of Personal and Property Rights Act 1988)**

This document is filed by *(Name and address for service, and if filed by lawyers, the name and telephone number of the acting lawyer)*

**AFFIDAVIT IN SUPPORT OF APPLICATION  
FOR APPOINTMENT AS WELFARE GUARDIAN**

I, \_\_\_\_\_ of \_\_\_\_\_  
*Name* *Address*  
\_\_\_\_\_, \_\_\_\_\_ swear (or affirm):  
*Occupation*

1 I confirm my consent to act as welfare guardian for the person in respect of whom the application is made ("the person") pursuant to an order to be made under the Protection of Personal and Property Rights Act 1988 ("the Act").

2 My relationship with the person is as follows:

3 I am aged twenty years or over.

4 I confirm the contents of my application for

- A welfare guardianship order.
- A review of the order dated \_\_\_\_\_ appointing \_\_\_\_\_ as welfare guardian(s).

*(Delete one)*

*(If exceptional circumstances exist for more than one welfare guardian see s 16(6) of the Act.)*

5 I confirm that I am familiar with the responsibilities and duties of a welfare guardian pursuant to the Act.

6 I confirm that to the best of my knowledge the person is ordinarily resident in New Zealand and

- is of or over the age of 20 years or is or has been married, and
- is not already the subject of a property order.

*(If application is in respect of a person under 20 years refer to s 12(3) of the Act and set out reasons).*

7 To the best of my belief I confirm

- that the person wholly lacks the capacity to make or communicate decisions relating to any particular aspect(s) of the person's personal care and welfare;
- that my appointment as welfare guardian is the only satisfactory way to ensure that appropriate decisions are made relating to the following particular aspect(s) of the personal care and welfare of the person;

for the following reasons:

*(Set out factual basis including reference to any medical reports/evidence. Continue on separate page if necessary).*

- 8 (Complete/Delete if not applicable)
- To the best of my belief the person is not receiving treatment/assessment under any Compulsory Treatment Order made under the Mental Health (Compulsory Assessment and Treatment) Act 1992.
  - To the best of my belief the person is a patient under a Compulsory Treatment Order made under the Mental Health (Compulsory Assessment and Treatment) Act 1992. An order was made for in-patient/community treatment by the District Court at (*Place*) on (*Date*) and that order still continues. The person receives treatment from (*Name of hospital or service provider*).
  - To the best of my belief, the person is not subject to any such Order but is currently receiving treatment/assessment under the Mental Health (Compulsory Assessment and Treatment) Act 1992 from (*Name of hospital or service provider*).

- 9 In the information sheet that accompanies this application, I have named the following people/organisations affected by this application. I have obtained consents from the following: (*Set out*)

I consider service should be effected on the following: (*See Note 1*) (*Set out names/organisations*)

To the best of my knowledge and belief there are no other persons/organisations including family and whanau members who should be served with the application.

- 10 I do not believe the person should be served with the application for the following reasons: (*Set out reasons – delete if inapplicable*)

- 11 I do not believe the person should appear in Court in respect of the hearing of this application for the following reasons: (*Set out reasons – delete if inapplicable*)

12 I consider that I am a suitable person to be appointed by the Court as a welfare guardian for the following reasons:

*(Set out your reasons. The Court needs to be satisfied that the applicant is a person who can be entrusted with the statutory obligations (set out in clause 13) and that there are no factors – legal or otherwise – that would stand in the way of an appointment. Therefore you need to cover the following:*

- *Are you or have you ever been the subject of a bankruptcy order made under the Insolvency Act 1967? and/or;*
- *Are you presently subject to a compulsory treatment order made under the Mental Health (Compulsory Assessment and Treatment) Act 1992?*
- *Have you any previous criminal convictions? If so, please list.*
- *Are you subject to an order made under the Protection of Personal and Property Rights Act 1988?*

*If one or more applies, applicant to set out reasons why he/she should be appointed.)*

13 I state as follows:

- That I am capable of carrying out the duties of a welfare guardian for the person in a satisfactory manner, having regard both to the needs of the person and my relationship with the person; and
- That I will always act to protect and promote the welfare and best interests of the person; and
- That I will seek to encourage the person to develop and exercise such capacity as they have to understand the nature and foresee the consequences of decisions relating to their personal care and welfare, and to communicate such decisions; and
- That I will seek to encourage the person to act on his/her own behalf to the greatest extent possible; and
- That I will seek to facilitate to the greatest extent possible the integration of the person into the community; and
- That I will consult so far as is practicable with the person and such other persons or representatives of non-profit organisations as are, in my opinion interested in and competent to advise me in relation to the personal care and welfare of the person; and
- That, if the person is or becomes subject to a property order, I will regularly consult with the property manager to ensure there is no breakdown in communication; and

- That there is unlikely to be any conflict between my interests and those of the person.
- 14 I confirm that I am aware that I am not entitled to remuneration for my services.
- 15 I confirm that I am aware that all expenses reasonably incurred by me as welfare guardian can be charged against and payable out of the property of the person. I acknowledge that at all times when incurring any such expenses the needs of and the ability of the person's estate to pay for those expenses will be taken into account by me.
- 16 At this stage I envisage that the following expenses are likely to be incurred: (*Set out – if none, write none*)
- 17 I seek a temporary order because it is in the best interests of the person that an immediate order be made until the Court is able to make a final decision, for the following reasons: (*Set out reasons*) (*Delete if inapplicable*)

**SWORN/AFFIRMED** at \_\_\_\_\_

this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_

before me

\_\_\_\_\_ Applicant

\_\_\_\_\_  
*Signature of person administering oath/affirmation who shall add his/her office*

**Note 1**

*(As a minimum requirement service should be effected on the following persons:*

- *Person in respect of whom the application is made (unless the person wholly lacks the capacity to understand the nature and purpose of the proceedings, or exceptional circumstances exist to justify dispensing with service);*
- *Each parent or guardian of that person;*
- *If the person is not living with either his or her parents or guardian/s, any person with whom the person is living;*

- *If the person is subject to a property order, the manager of the person's property.)*

*(If applicant does not seek service, reasons to be given – e.g. family member whereabouts unknown.)*



**SCHEDULE 2**

**IN THE FAMILY COURT**

AT *(Place)*

*(Full name, address and occupation of applicant)*

Applicant

*(Full name, address and occupation of person in respect of whom this application is made)*

Person the application is about

**AFFIDAVIT IN SUPPORT OF APPLICATION  
FOR PERSONAL ORDER  
(The Protection of Personal and Property Rights Act 1988)**

This document is filed by *(Name and address for service, and if filed by lawyers, the name and telephone number of the acting lawyer)*

**AFFIDAVIT IN SUPPORT OF APPLICATION  
FOR PERSONAL ORDER**

I, \_\_\_\_\_ of \_\_\_\_\_  
*Name* *Address*  
\_\_\_\_\_, \_\_\_\_\_ swear (or affirm):  
*Occupation*

- 1 I am the applicant for
- a personal order
- or
- a review of a personal order made on \_\_\_\_\_ (*Date*)
- (Delete one that is inapplicable)

For the person in respect of whom the application is made (“the person”) as follows:  
(Set out specific order(s) required – see s 10(1) of the Protection of Personal and Property Rights Act 1988 (“the Act”))

- 2 My relationship with the person is as follows:

- 3 I confirm the contents of my application.

- 4 I confirm that to the best of my knowledge the person
- is ordinarily resident in New Zealand and is of or over the age of 20 years; or
  - is under the age of 20 and is or has been married.
- (Delete if inapplicable)

- 5 To the best of my belief I confirm that the person (*Delete one not applicable*)
- Lacks, wholly or partly, the capacity to understand the nature, and to perceive the consequences of decisions in respect of matters relating to his/her personal care and welfare
  - Has the capacity to understand the nature, and to foresee the consequences of decisions in respect of matters relating to his/her personal care and welfare but wholly lacks the capacity to communicate those decisions in respect of such matters

for the following reasons: (*Set out factual basis including reference to any medical reports/evidence*)

6 (*Complete and delete if inapplicable*)

- To the best of my belief the person is not receiving treatment/assessment under any Compulsory Treatment Order made under the Mental Health (Compulsory Assessment and Treatment) Act 1992.
- To the best of my belief the person is a patient under a Compulsory Treatment Order made under the Mental Health (Compulsory Assessment and Treatment) Act 1992. An order was made for in-patient/community treatment by the District Court at (*Place*) on (*Date*) and that order still continues. The person receives treatment from (*Name of hospital or service provider*).
- To the best of my belief, the person is not subject to any such Order but is currently receiving treatment/assessment under the Mental Health (Compulsory Assessment and Treatment) Act 1992 from (*Name of hospital or service provider*).

7 In the information sheet that accompanies this application, I have named the following as people/organisations affected by this application. I have obtained consents from the following: (*Set out*)

I consider service should be effected on the following: (*See Note 1*) (*Set out names/organisations*)

To the best of my knowledge and belief there are no other persons/organisations including family and whanau members who should be served with the application.

8 I do not believe the person should be served with the application for the following reasons: (*Set out reasons – delete if inapplicable*)

- 9 I do not believe the person should appear in Court in respect of the hearing of this application for the following reasons: *(Set out reasons – delete if inapplicable)*
- 10 I believe that the order sought will make the least restrictive intervention possible in the life of the person having regard to the degree of the person’s incapacity and I will endeavour to enable or encourage the person to develop such capacity as he/she has to the greatest extent possible.
- 11 My reasons for obtaining this order are as follows: *(Set out in sufficient detail to inform the Court why the order is necessary)*
- 12 I seek a temporary order because it is in the best interests of the person that an immediate order be made until the Court is able to make a final decision, for the following reasons: *(Set out reasons) (Delete if inapplicable)*

**SWORN/AFFIRMED** at \_\_\_\_\_

this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_

before me

\_\_\_\_\_ Applicant

\_\_\_\_\_  
*Signature of person administering oath/affirmation who shall add his/her office*

**Note 1**

*(As a minimum requirement service should be effected on the following persons:*

- *Person in respect of whom the application is made (unless the person wholly lacks the capacity to understand the nature and purpose of the proceedings, or exceptional circumstances exist to justify dispensing with service);*

- *Each parent or guardian of that person;*
- *If the person is not living with either his or her parents or guardian/s, any person with whom the person is living;*
- *If it is proposed that a person be appointed as welfare guardian or manager, that person;*
- *If a welfare guardian is acting for the person, that welfare guardian;*
- *If the person is subject to a property order, the manager of the person's property.)*

*(If applicant does not seek service, reasons to be given – e.g. family member whereabouts unknown.)*

**SCHEDULE 3**

**IN THE FAMILY COURT**

AT *(Place)*

*(Full name, address and occupation of applicant)*

Applicant

*(Full name, address and occupation of person in respect of whom this application is made)*

Person the application is about

**AFFIDAVIT IN SUPPORT OF APPLICATION  
TO ADMINISTER PROPERTY  
(The Protection of Personal and Property Rights Act 1988)**

This document is filed by *(Name and address for service, and if filed by lawyers, the name and telephone number of the acting lawyer)*

**AFFIDAVIT IN SUPPORT OF APPLICATION  
TO ADMINISTER PROPERTY**

I, \_\_\_\_\_ of \_\_\_\_\_  
*Name* *Address*  
\_\_\_\_\_, \_\_\_\_\_ swear (or affirm):  
*Occupation*

1 I confirm my consent to act under an order to administer property for the person in respect of whom the application is made (“the person”) pursuant to an order to be made under the Protection of Personal and Property Rights Act 1988 (“the Act”)

2 My relationship with the person is as follows:

3 I confirm the contents of my application for:

- an order to administer.
  - a review of an order to administer made on \_\_\_\_\_ (Date).
- (Delete one that is inapplicable)*

4 I confirm that I am familiar with the responsibilities and duties pursuant to an order to administer property under the Act.

5 I confirm that to the best of my knowledge the person is ordinarily resident in New Zealand and

- is of or over the age of 20 years or is or has been married,
- and is not already the subject of a property order.

6 To the best of my knowledge and belief I confirm that the person

- Lacks, wholly or partly, the capacity to understand the nature, and to foresee the consequences of decisions in respect of matters relating to his/her personal care and welfare; or
- Has the capacity to understand the nature and foresee the consequences of decisions in respect of matters relating to his/her personal care and welfare but wholly lacks the capacity to communicate those decisions in respect of such matters.

*(Delete if inapplicable)*

The basis of my knowledge and belief is as follows: *(Set out factual basis including reference to any medical reports/evidence. Continue on separate page if necessary)*

7 *(Complete/Delete if inapplicable)*

- To the best of my belief the person is not receiving treatment/assessment under any Compulsory Treatment Order made under the Mental Health (Compulsory Assessment and Treatment) Act 1992.
- To the best of my belief the person is a patient under a Compulsory Treatment Order made under the Mental Health (Compulsory Assessment and Treatment) Act 1992. An order was made for in-patient/community treatment by the District Court at (*Place*) on (*Date*) and that order still continues. The person receives treatment from (*Name of hospital or service provider*).
- To the best of my belief, the person is not subject to any such Order but is currently receiving treatment/assessment under the Mental Health (Compulsory Assessment and Treatment) Act 1992 from (*Name of hospital or service provider*).

8 In the information sheet that accompanies this application I have named the following as people/organisations affected by this application. I have obtained consents from the following: (*Set out*)

I consider service should be effected on the following: (*See Note 1*) (*Set out names/organisations*)

To the best of my knowledge and belief there are no other persons/organisations including family and whanau members who should be served with the application.

9 I do not believe the person should be served with the application for the following reasons: (*Set out reasons – delete if inapplicable*)

10 I do not believe the person should appear in Court in respect of the hearing of this application for the following reasons: (*Set out reasons – delete if inapplicable*)

11 I consider that I am a suitable person to be appointed by the Court as a property administrator for the following reasons:



*(Set out your reasons. The Court needs to be satisfied that the applicant is a person who can be entrusted with the statutory obligations (set out in clause 12) and that there are no factors – legal or otherwise – that would stand in the way of an appointment. Therefore you need to cover the following:*

- *Are you or have you ever been the subject of a bankruptcy order made under the Insolvency Act 1967? and/or;*
- *Are you presently subject to a compulsory treatment order made under the Mental Health (Compulsory Assessment and Treatment) Act 1992?*
- *Have you any previous criminal convictions? If so, please list.*
- *Are you subject to an order made under the Protection of Personal and Property Rights Act 1988?*

*If one or more applies, applicant to set out reasons why he/she should be appointed).*

12 I state as follows:

- That I am capable of carrying out the duties under an order to administer property for the person in a satisfactory manner, having regard both to the needs of the person and my relationship with the person;
- That I will always act in the best interests of the person;
- That I will carry out my duties in such a way as to enable or encourage the person to develop such capacity as the person may have to the greatest extent possible;
- I acknowledge that during my appointment as far as it may be practicable I will consult with the person and such other persons or representatives from any non-profit group interested in the welfare of the person and are competent to advise in relation to management of the person's property. I acknowledge that there is power for me to apply to the Court for further directions where I have received advice which is in conflict with my duties as manager or is otherwise objectionable (s 43(3)). I also acknowledge that I will regularly consult with the person's duly approved welfare guardian (where appointed) if it is someone other than me (s 43(6)).

13 *(Complete one)*

I confirm that there is no conflict or is unlikely to be any conflict between my interests and those of the person.

or

I confirm that there is a conflict or is likely to be a conflict between my interests and those of the person but that conflict is unlikely to impinge upon my ability to carry out my duties under the order for the following reasons: *(Set out circumstances of possible or actual conflict and reasons for being able to act)*

- 14 I seek an order to administer the following property of the person, acknowledging the restrictions on value of items which may be administered: *(See s 11(2) and set out property)*
- 15 I confirm that I am aware that I am not entitled to any remuneration for my services.
- 16 I confirm that all expenses properly incurred by me under the personal order can be charged against and payable out of the property of the person. I acknowledge that at all times when incurring any such expenses the needs of and the ability of the person's estate to pay for those expenses will be taken into account by me.
- 17 At this stage I envisage that the following expenses are likely to be incurred: *(Set out – if none, write none)*
- 18 I seek a temporary order because it is in the best interests of the person that an immediate order be made until the Court is able to make a final decision, for the following reasons: *(Set out reasons) (Delete if inapplicable)*

**SWORN/AFFIRMED** at \_\_\_\_\_

this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_

before me

\_\_\_\_\_ Applicant

\_\_\_\_\_  
*Signature of person administering oath/affirmation who shall add his/her office*

**Note 1**

*(As a minimum requirement service should be effected on the following persons:*

- *Person in respect of whom the application is made (unless the person wholly lacks the capacity to understand the nature and purpose of the proceedings, or exceptional circumstances exist to justify dispensing with service);*

- *Each parent or guardian of that person;*
- *If the person is not living with either his or her parents or guardian/s, any person with whom the person is living;*
- *If a welfare guardian is acting for the person, that welfare guardian.)*

*(If applicant does not seek service, reasons to be given – e.g. family member whereabouts unknown.)*

**SCHEDULE 4**

**IN THE FAMILY COURT**

AT *(Place)*

*(Full name, address and occupation of applicant)*

Applicant

*(Full name, address and occupation of person in respect of whom this application is made)*

Person the application is about

**AFFIDAVIT IN SUPPORT OF APPLICATION  
FOR PROPERTY ORDER  
(The Protection of Personal and Property Rights Act 1988)**

This document is filed by *(Name and address for service, and if filed by lawyers, the name and telephone number of the acting lawyer)*

**AFFIDAVIT IN SUPPORT OF APPLICATION  
FOR PROPERTY ORDER**

I, \_\_\_\_\_ of \_\_\_\_\_  
*Name* *Address*  
\_\_\_\_\_, \_\_\_\_\_ swear (or affirm):  
*Occupation*

- 1 I confirm my consent to act as manager of property or any specified part of that property of the person in respect of whom the application is made ("the person") pursuant to an order to be made under the Protection of Personal and Property Rights Act 1988 ("the Act")
- 2 My relationship with the person is as follows:
- 3 I am aged 20 years or over.
- 4 I confirm the contents of my application/co-application for:
  - A property order.
  - A review of the property order dated \_\_\_\_\_ appointing \_\_\_\_\_ as property manager/s.

*(Delete one that is inapplicable)*
- 5 I confirm I am familiar with the responsibilities and duties of a property manager pursuant to the Act.
- 6 I confirm that to the best of my knowledge the person
  - is domiciled or is ordinarily resident in New Zealand;
  - the person owns property situated in New Zealand.

*(Delete if inapplicable)*
- 7 To the best of my belief I confirm that the person lacks wholly or partly the competence to manage his/her own affairs in relation to his/her property for the following reasons: *(Set out factual basis including reference to any medical reports/evidence) (Continue on separate sheet if necessary)*

- 8 In the information sheet that accompanies this application, I have named the following people as people/organisations affected by this application. I have obtained consents from the following people/organisations: (*Set out*)

I consider service should be effected on the following (*See Note 1*): (*Set out names/organisations*)

To the best of my knowledge and belief there are no other persons/organisations including family and whanau members who should be served with the application.

- 9 I do not believe the person should be served with the application for the following reasons: (*Set out reasons – delete if inapplicable*)

- 10 I do not believe the person should appear in Court in respect of the hearing of this application for the following reasons: (*Set out reasons – delete if inapplicable*)

- 11 (*Complete/delete if inapplicable*)

- To the best of my belief the person is not receiving treatment or assessment under any Compulsory Treatment Order made under the Mental Health (Compulsory Assessment and Treatment) Act 1992.
- To the best of my belief the person is a patient under a Compulsory Treatment Order made under the Mental Health (Compulsory Assessment and Treatment) Act 1992. An order was made for in-patient/community treatment by the District Court at (*Place*) on (*Date*) and that order still continues. The person receives treatment from (*Name of hospital or service provider*)

- To the best of my belief, the person is not subject to any such Order but is currently receiving treatment/assessment under the Mental Health (Compulsory Assessment and Treatment) Act 1992 from (*Name of hospital or service provider*)

12 I consider that I am a suitable person to be appointed by the Court as a property manager for the following reasons:

*(Set out your reasons. The Court needs to be satisfied that the applicant is a person who can be entrusted with the statutory obligations (set out in clause 13) and that there are no factors – legal or otherwise – that would stand in the way of an appointment. Therefore you need to cover the following:*

- *Are you or have you ever been the subject of a bankruptcy order made under the Insolvency Act 1967? and/or;*
- *Are you presently subject to a Compulsory Treatment Order made under the Mental Health (Compulsory Assessment and Treatment) Act 1992?*
- *Have you any previous criminal convictions? If so, please list.*
- *Are you subject to an order made under the Protection of Personal and Property Rights Act 1988?*

*(If one or more applies, applicant to set out reasons why he/she should be appointed.)*

13 I state as follows:

- That I am capable of carrying out the duties of a property manager for the person in a satisfactory manner, having regard both to the needs of the person and my relationship with the person;
- That I will always act in the best interests of the person;
- That I will seek to encourage the person to develop and exercise such competence as that person has, to manage his or her own affairs in relation to their property.

14 (*Complete one*)

I confirm that there is no conflict or is unlikely to be any conflict between my interest and those of the person.

or

I confirm that there is a conflict or is likely to be a conflict between my interests and those of the person but that conflict is unlikely to impinge on my ability to carry out my duties as property manager for the following reasons: (*Set out circumstances of conflict and reasons for being able to act*)

- 15 I ask that the order cover (*Delete which does not apply*)
- All the property of the person.
  - The following specified property of the person: (*List the property*)

If I become aware of any further property of the person requiring management, I acknowledge the need to make a further application to vary the original order.

- 16 I am aware that I am not entitled to remuneration for my services unless directed by the Court at the time of making this order or any subsequent order.

- 17 (*Complete one*)

I confirm that I do not seek remuneration for my services.

or

I seek remuneration for my services for the following reasons: (*Set out reasons and basis for remuneration*)

- 18 I confirm that all expenses properly incurred by me as manager can be charged against and payable out of the property of the person. I acknowledge that at all times when incurring any such expenses the needs of and the ability of the person's estate to pay for those expenses will be taken into account by me.

At this stage I envisage that the following expenses are likely to be incurred in managing the person's property: (*Set out – if none, write none*)

- 19 I acknowledge that during my appointment as far as it may be practicable I will consult with the person and such other persons or representatives from any non-profit group interested in the welfare of the person and are competent to advise in relation to management of the person's property. I acknowledge that there is power for me to apply to the Court for further directions where I have received advice which is in conflict with my duties as manager or is otherwise objectionable (s 43(3)). I also acknowledge that I will regularly consult with the person's duly approved welfare guardian (where appointed) if it is someone other than me (s 43(6)).

- 20 I confirm that I am aware of my responsibility to prepare and file in the Court statements containing prescribed particulars as referred to in s 45 in the Act as to the person's property as follows:

- within three months of the date of the order;



- within 30 days following the expiry of each year during which my managership continues;
- within 30 days as at the date of my ceasing to be manager.

21 I confirm that I am aware that failure to file the statements is an offence and I am liable on summary conviction to a fine not exceeding \$1,000. I further confirm that I am aware that if I file a statement which includes any particular that I know to be false, I commit an offence and am liable on conviction on indictment to imprisonment for a term not exceeding three years.

22 I seek a temporary order because it is in the best interests of the person that an immediate order be made until the Court is able to make a final decision, for the following reasons: (Set out reasons) (Strike out if not applicable)

**SWORN/AFFIRMED** at \_\_\_\_\_

this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_

before me

\_\_\_\_\_ Applicant

\_\_\_\_\_  
*Signature of person administering oath/affirmation who shall add his/her office*

**Note 1**

*(As a minimum requirement service should be effected on the following persons:*

- *Person in respect of whom the application is made (unless the person wholly lacks the capacity to understand the nature and purpose of the proceedings, or exceptional circumstances exist to justify dispensing with service);*
- *Each parent or guardian of that person;*
- *If the person is not living with either his or her parents or guardian/s, any person with whom the person is living;*
- *If a welfare guardian is acting for the person, that welfare guardian.)*

*(If applicant does not seek service, reasons to be given – e.g. family member whereabouts unknown.)*

<b>APPENDIX 17: GUIDELINES FOR COUNSEL FOR SUBJECT PERSON APPOINTED UNDER PROTECTION OF PERSONAL AND PROPERTY RIGHTS ACT 1988</b>
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## **1 INTRODUCTION**

- 1.1 This set of guidelines is for counsel appointed to act for subject persons under the Protection of Personal and Property Rights Act 1988.
- 1.2 All section references are to the Protection of Personal and Property Rights Act 1988.
- 1.3 These guidelines are in addition to the duties set out in the Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules 2008 and the [Practice Note: Applications under the Protection of Personal and Property Rights Act 1988](#).
- 1.4 The role and practice of counsel for the subject person (counsel) must be guided by the principles relating to intervention under the Act: a presumption of competence (ss 5 and 24) and that the Court is to make the least restrictive intervention possible (ss 8 and 28).
- 1.5 The appointment is made pursuant to s 65.

## **2 DISCRETION**

- 2.1 The intent of the guidelines is to promote quality and consistency of practice without fettering the discretion of counsel to exercise professional judgement.
- 2.2 It is essential counsel responds to the characteristics of each case and client rather than following a formulaic approach.
- 2.3 The guidelines seek to establish benchmarks for good practice while allowing counsel to tailor practice to the needs and circumstances of individual subject persons.

## **3 THE ROLE OF COUNSEL FOR THE SUBJECT PERSON**

- 3.1 Counsel is to provide representation and advice to the subject person.
- 3.2 In some cases there will be a clear doubt about the level of competence. In other cases competence may be recoverable after a stroke, mental illness or alcoholism.
- 3.3 Where the subject person lacks competence to manage his or her affairs, the role of counsel will necessarily be to take a best interests approach, while always bearing in mind that the objective is to make the least restrictive intervention possible and to enable or encourage the subject person to exercise and develop such capacity as he or she has to the greatest extent possible.
- 3.4 Counsel has a duty to put before the Court the views of the subject person where that person has a view, whether or not counsel considers that is a valid point of view.
- 3.5 Where there is a conflict between the views of the subject person and information relevant to the welfare and best interests of that person, counsel shall discuss the issues with the subject person as far as possible and attempt to resolve the conflict with that person, but also put before the Court all relevant information from a best interest point of view.
- 3.6 Separate counsel can be appointed to assist the Court where appropriate (s 65(3)).

- 3.7 Where the subject person is able to express a clear view, that view should be put before the Court and, in appropriate circumstances, a hearing held.

#### 4 TASKS FOR COUNSEL FOR THE SUBJECT PERSON ON AN APPLICATION FOR APPOINTMENT OF WELFARE GUARDIAN AND/OR PROPERTY ADMINISTRATOR

- 4.1 In every case, it is necessary to meet with the subject person (s 65).
- (a) Where a subject person is unable to communicate, check that adequate protections will be in place (see, for example, the attached draft order for ex-Kimberley residents, where NASC is required to file a report every 12 months after observing the subject person. This is a process negotiated specifically for ex-Kimberley residents, and is included here as Appendix B).
  - (b) If there is a compulsory order under the Mental Health (Compulsory Assessment and Treatment) Act 1992, explain why an order is necessary (see *Vukor v McDonald* (1998) 17 FRNZ 545).
- 4.2 Contact other family members and/or friends to check for any conflicts and/or consents.
- 4.3 If there is conflict within the family, consider whether a family meeting, mediation or settlement conference would be appropriate to resolve issues.
- 4.4 Consider:
- (a) whether any specific direction/condition needs to be included in the final order (s 10);
  - (b) the capital and income limits prescribed in s 11 for a property administrator;
  - (c) whether a personal order is a lesser intervention instead of the appointment of a welfare guardian. **Note: Appointment of welfare guardian requires that the subject person “wholly lacks capacity” (s 12(2) cf s 6);**
  - (d) if a personal order is required for medical treatment, whether a provision to enforce transport to that treatment is needed.
- 4.5 File a memorandum for the Court as set out in [paragraph 4.2](#) of the [Practice Note: Applications under the Protection of Personal and Property Rights Act 1988](#) covering the following matters.
- (a) Jurisdiction (including adequacy of medical evidence).
  - (b) Service (including service on subject person) and whether any other persons are to be served (s 63(2)).
  - (c) Whether the subject person should be excused attendance at Court (s 74) and, if the subject person should attend, what special arrangements need to be made (if any) so that the subject person can be heard.
  - (d) Any conflict within the family.
  - (e) The most suitable order to meet the test of least restrictive intervention.
  - (f) Any interim order necessary.
  - (g) Any specific recommendations for the form of the order (ss 10, 11, 12).
  - (h) Suitability of proposed welfare guardian/property administrator, considering:
    - (i) whether this person will support the involvement of other friends and family members;

- (ii) whether this person raises any concerns as to the requisite understanding and ability to carry out the tasks required, including honesty (especially for a property administrator);
    - (iii) whether this person will be sufficiently available to carry out the tasks (time and geographical availability).
  - (i) Procedures necessary, that is, mediation; orders made on the papers; directions for hearing; hearing.
  - (j) Review date.
  - (k) Whether orders need to be suspended pending an appeal (s 82).
  - (l) Whether fees for counsel for the subject person should be paid out of the estate or out of the Consolidated Fund.
- 4.6 Be present for service, if considered appropriate. Note that it is not appropriate for counsel to serve the subject person with the proceedings.
- 4.7 At a mediation or hearing, represent the interests of the subject person. **Counsel is reminded that under s 75 the subject person has the right to be heard.**
- 4.8 Ensure the application is progressed in a timely manner without inappropriate delay.

## 5 TASKS FOR COUNSEL FOR SUBJECT PERSON ON APPLICATION FOR APPOINTMENT OF PROPERTY MANAGER

- 5.1 In every case, it is necessary to meet the subject person to explore any contribution he or she can make to the relevant issues.
- 5.2 Make contact with the applicant, through their lawyer if they are represented, to explore the reasons for the application.
- 5.3 Make contact with other family members and/or friends to check for any conflicts and/or consents.
- 5.4 Carry out some investigation to ascertain if the property exceeds the limits for an order to administer property (s 11) and consider if such an order would be a preferable order. Consider if the assets could be reduced to qualify by setting up a funeral fund or purchasing some furniture or equipment for the subject person so as to reduce their capital.
- 5.5 Consider whether the subject person ever signed a valid enduring power of attorney which may avoid the need for an order.
- 5.6 Check whether the subject person has a will. If so:
- (a) endeavour to obtain or at least view a copy of the will; and
  - (b) check for conflict in relation to the role of property manager, for example, whether a major part of the estate is left to a different person.
- It will not be necessary for counsel to advertise to ascertain if a will exists, unless directed by the Court.
- 5.7 File a memorandum for the Court as set out in [paragraph 4.2](#) of the [Practice Note: Applications under the Protection of Personal and Property Rights Act 1988](#) covering the following matters.
- (a) Jurisdiction, including adequacy of medical evidence.
  - (b) Service (including service on the subject person and whether any other persons are to be served (s 63(2))).

- (c) Whether the subject person should be excused attendance at Court (s 74) and, if the subject person should attend, what special arrangements need to be made (if any) so that the subject person can be heard.
  - (d) Whether the application indicates the property is owned or controlled. Whether there is any interest in Māori land (s 31B).
  - (e) Whether there is any conflict within the family.
  - (f) What the least restrictive intervention is.
  - (g) Whether any urgent temporary order is necessary.
  - (h) The suitability of the proposed property manager, considering:
    - (i) whether any further inquiry as to honesty is indicated;
    - (ii) financial competency;
    - (iii) ability to file annual returns;
    - (iv) conflict with provisions of the will;
    - (v) whether this person will consult appropriately with other family members and the subject person, where appropriate (s 43);
    - (vi) whether this person will be sufficiently available to carry out the necessary tasks.
  - (i) Procedures necessary, that is, settlement conference; orders on the papers; directions for hearing; hearing.
  - (j) Powers required by appointee (Schedule 1 - note limits in clauses (n) and (o)).
  - (k) Whether the person needs a will or a new will (s 55).
  - (l) Whether orders should be suspended during an appeal.
  - (m) Whether fees for counsel for the subject person should be paid out of the estate or the Consolidated Fund.
- 5.8 Be present for service, if considered appropriate. Note that it is not appropriate for counsel to serve the subject person with the proceedings.
- 5.9 At a mediation or hearing, represent the interests of the subject person. **Counsel is reminded that under s 75 the subject person has the right to be heard.**
- 5.10 Ensure the application is progressed in a timely manner without inappropriate delay.
- 5.11 If the Court directs that a will be prepared, Appendix A (attached) sets out the tasks required to be taken.

#### COMMENCEMENT DATE

These revised Guidelines are issued on 24 March 2011 and come into operation on 24 March 2011.



Judge P F Boshier  
**PRINCIPAL FAMILY COURT JUDGE**

## APPENDIX A

### TASKS FOR COUNSEL FOR SUBJECT PERSON WHEN A NEW WILL IS REQUIRED

- 1 Ensure that an affidavit from the subject person's regular doctor has been filed as to the subject person's testamentary capacity as follows.
  - (a) Does the subject person understand that by the will they would be disposing of their property on their death to one or more objects of their regard?
  - (b) Does the subject person know of the probable extent and value of the property which would be disposed of?
  - (c) Does the subject person have any appreciation of the possible moral claims of relatives and others not benefited by the will?
  - (d) Does the subject person have sufficient memory at least to react when reminded of facts relevant to the matters referred to in (a), (b) and (c) See: *B v H* [1992] NZFLR 2798 (281-282).
- 2 Ensure that the Court has the following information.
  - (a) Full particulars as to the family.
  - (b) The size of the estate.
  - (c) The income, the expenses and the general circumstances of the subject person.
  - (d) His or her nature while still of testamentary capacity.
  - (e) The general background to his or her affairs, together with particulars of those persons who may have an interest in the application.
  - (f) Reasons why he or she believes a will should be prepared.
- 3 Prepare and file submissions on the following matters.
  - (a) The subject person's views (if any) on the proposed will.
  - (b) Whether the will meet the test of the actual subject person, on the basis also that the person would have recognised the broad terms of any claims on the estate and would have been advised by a competent solicitor.
  - (c) Whether the proposed will gives effect to what the testator with all his or her traits and foibles would have seen fit to do if now able to do it.

## APPENDIX B

### 1 ORDER CONFIRMING THE APPOINTMENT OF WELFARE GUARDIAN(S) AND ANCILLARY ORDERS

**ON APPLICATION** made to it, the Court makes an order confirming the appointment of [ ] and [ ] as welfare guardian for [ *subject person*] of [ *address* ], [ *occupation* ].

**THIS ORDER** is made under s 86 of the Protection of Personal and Property Rights Act 1988 (the Act).

1.1 The welfare guardians are empowered to make decisions in relation to the following aspects of the personal care and welfare of [ *subject person*].

(a) The place from time to time at which [ *subject person*] shall reside. In this regard the welfare guardians must have provided encouragement in terms of s 18(4)(a) of the Act where appropriate, and consulted in terms of s 18(4)(c) of the Act with the designated Needs Assessment and Service Co-ordination Service (NASC) and the preferred Service Provider as the case may be.

(b) That [ *subject person*] shall receive proper personal amenities and the necessities of life.

(c) That [ *subject person*] shall receive proper health and medical care and hospitalisation for appropriate treatment.

(d) That [ *subject person*] shall receive such standard and reasonable measures as are necessary to promote and maintain [ *his/her*] physical, emotional and psychiatric health, personal hygiene, care and general well being.

The welfare guardians shall not be empowered in respect of any matter as prescribed in s 18(1) of the Act.

1.2 The welfare guardians may apply to the Court for directions relating to the exercise of their powers as welfare guardians for [ *subject person*].

1.3 The welfare guardians must apply to this Court for a review of this order not later than three years after the date of this order. This order expires on that date unless, on a review of the order, the Court decides that it must continue beyond that date.

### 2 NASC

2.1 The NASC is required to prepare a report on [ *subject person*] every 12 months, but may do so sooner if an issue arises. That report is to be prepared after the subject person has been examined and interviewed in so far as that is possible.

2.2 NASC is to file a copy of the report with the Court and to forward a copy to counsel for the subject person.

2.3 In the event of a disagreement between the welfare guardian(s) and the NASC or the service provider, in respect of placement in the community or other issues under ss 18(3) and (4), the NASC may apply to the Court for directions.

**3 DIRECTIONS**

- 3.1 *(Where appropriate)* The file is to be transferred to the Family Court at [.....] being the Family Court closest to the new residence for the subject person.
- 3.2 The appointment of counsel for the subject person is to continue. *(If the file has been transferred to a different Court, a new counsel will be appointed in that area).*
- 3.3 *(If the file is to be transferred)* Counsel appointed at the transferring Court is to prepare a summary of points to note for the new counsel to be appointed, and that summary is to be passed on with the Court documents to the new counsel appointed.
- 3.4 The brief of counsel for the subject person is:
- (a) to monitor all review and report dates;
  - (b) to contact the relevant NASC if a report is not filed on time and to notify the Court;
  - (c) to remind the welfare guardian to apply for review of orders as directed by the Court; and
  - (d) to report any difficulties to the Court and seek further directions where necessary.
- 3.5 Counsel is granted leave to apply to the Court at any time before the statutory review period expires in the event that the placement for the subject person is not working or there are issues in the NASC report which give cause for concern.

\_\_\_\_\_  
Registrar

\_\_\_\_\_  
Date